CODIFIED ORDINANCES OF THE CITY OF FAIRVIEW PARK OHIO

Complete to December 31, 2018

CERTIFICATION

We, Eileen Ann Patton, Mayor, and Liz L. Westbrooks, Clerk, of the City of Fairview Park, Ohio, pursuant to Ohio Revised Code 731.23 and 731.42, hereby certify that the general and permanent ordinances of the City of Fairview Park, Ohio, as revised, rearranged, compiled, renumbered as to sections, codified and printed herein in component codes are correctly set forth and constitute the Codified Ordinances of the City of Fairview Park, Ohio, 1978, as amended to December 31, 2018.

/s/ Eileen Ann Patton
Mayor

/s/ Liz L. Westbrooks
Clerk

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publication by
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Cleveland, Ohio

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CITY OF FAIRVIEW PARK, OHIO

ROSTER OF OFFICIALS

(2018)

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Steven Ownes	Recreation Director
Regina Sillasen	Senior Life Director
Michael Mackay	City Engineer

The publisher
expresses his appreciation
to

LIZ. L. WESTBROOKS
Clerk

and all other City officials who gave
their time and counsel to this codification
and supplements

CITY OF FAIRVIEW PARK

ORDINANCE NO. 96-82
REQUESTED BY: LOCAL GOVERNMENT & COMMUNITY SERVICES COMMITTEE
SPONSORED BY: COUNCILMAN McCAFFERTY

ORDINANCE NO. 96-82

BY:

AN ORDINANCE APPROVING AND ADOPTING THE CODIFIED ORDINANCES OF FAIRVIEW PARK, OHIO, 1996, REPEALING CERTAIN ORDINANCES IN CONFLICT THEREWITH, PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE AND THE CODIFIED ORDINANCES, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FAIRVIEW PARK, STATE OF OHIO:

SECTION 1. That pursuant to Ohio R.C. 731.23, the ordinances of the City of Fairview Park, Ohio, of a general and permanent nature, as compiled, revised, rearranged, renumbered and codified, are hereby approved, adopted and enacted as the Codified Ordinances of Fairview Park, Ohio, 1996, which are attached hereto and made a part hereof as "Exhibit A".

SECTION 2. That all of the provisions of the Codified Ordinances of Fairview Park, Ohio, 1996, shall be in full force and effect upon passage and approval of this ordinance. The Codified Ordinances of Fairview Park, Ohio, 1978, excepting such sections as are recodified in the Codified Ordinances of Fairview Park, Ohio, 1996, and all other ordinances in conflict with the Codified Ordinances of Fairview Park, Ohio 1996, are hereby repealed from and after the effective date of this ordinance, except as hereinafter specifically provided.

SECTION 3. That the repeal provided for in Section 2 of this ordinance shall not affect:

(1) Any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this ordinance.
(2) Any ordinance or resolution promising or guaranteeing the payment of money by or to the City, or authorizing the issuance of any bonds of the City, or by any evidence of the City's indebtedness, or any contract or obligation assumed by the City.
(3) The administrative ordinances or resolutions of Council not in conflict or inconsistent with the provisions of the Codified Ordinances.
(4) Any right, license or franchise conferred by any ordinance or resolution of Council on any person or corporation.
(5) Any ordinance establishing, naming, relocating or vacating any street or public way.
(6) Any ordinance or part thereof providing for salaries or compensation.
(7) Any prosecution, suit or other proceeding pending, or any judgment rendered on or prior to the effective date of this ordinance.
(8) Any ordinance levying or imposing taxes or assessments.
(9) Any ordinance establishing or changing the boundaries of the City.
(10) Any ordinance or resolution adopted by Council after September 4, 1996.

SECTION 4. That the ordinances and material included in the Codified Ordinances of Fairview Park, Ohio, 1996, have all heretofore been duly published as required by Section 11 of Article IV of the City Charter, except the following material, of which notice of inclusion in the Codified Ordinances is hereby given as required by Sections 731.23 and 731.231 of the Ohio Revised Code, which is listed by section number in the Comparative Section Table in the Preliminary Unit. Any section without a previous ordinance history indicates the substantive matter is new and ordained by this adopting ordinance.

SECTION 5. That a copy of this ordinance and a copy of the Codified Ordinances of Fairview Park, Ohio, 1996, shall be posted in City Hall as provided in Section 11 of Article IV of the City Charter.

SECTION 6. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason that there exists an imperative necessity for the earliest publication and distribution of the Codified Ordinances to the officials and citizens of the City, so as to facilitate administration, daily operation and avoid practical and legal entanglements; and provided it receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its adoption and approval by the Mayor.

PASSED: October 21, 1996

APPROVED: October 22, 1996

/s/ William F. Minek
President of Council

/s/ Karl Kubb
Mayor

Attested:

/s/ Beverly J. Munro
Clerk of Council

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EDITOR'S NOTE

The arrangement and numbering of the City Code into component codes, titles, chapters and sections are based on an adaptation of the decimal numbering system which is similar to that used in the Ohio Revised Code, and in accord with the best accepted practice in instituting a codification. Each section is self-identifying as to code, chapter and section number. For example, 305.06 indicates that the code number is 3, the chapter number is 305 (or the 5th chapter within code 3), and the section number is .06. The code and chapter numbers appear left of the decimal, with the code number preceding the first two digits left of the decimal, and the chapter number being all digits left of the decimal. The section number appears right of the decimal. As another example, 113.10 indicates the code number is 1, the chapter number is 113 (or the 13th chapter within code 1), and the section number is .10.

This numbering system has the advantage of inherent flexibility in allowing for an almost endless amount of expansion. Codes, titles and chapters initially are odd-numbered, thus reserving the use of even numbers for future legislation. Sections within chapters are consecutively numbered, except that penalty provisions are usually assigned the number .99 as used in the Revised Code. Newly created sections subsequent to the original codification may be indicated by three digits right of the decimal in the event the law properly belongs between two consecutively numbered sections. For example, newly created 575.061, 575.062 and 575.063 follow 575.06 and precede 575.07 to be placed in their logical position.

Section histories enable a user to trace the origin of the law contained in the section. The history indicates the derivation by reference to either its passage date and the ordinance number originally assigned to it at that time, or to its inclusion in any prior code. Sections without histories indicate that the section contains new matter which was ordained by the Adopting Ordinance which enacts the City Code.

The Comparative Section Table is included to show the disposition of every ordinance included in the City Code. It indicates whether a given ordinance was consolidated with another into one section or split into two or more sections. Cross references direct the user to subject matter reasonably related to material contained within a given chapter.

GENERAL INDEX

EDITOR'S NOTE: References are to individual code sections. As additional aids for locating material, users are directed to:

(a) The Comparative Section Table which indicates in the Codified Ordinances the disposition of the ordinances or resolutions integrated therein.

(b) The table of contents preceding each component code, and the sectional analysis preceding each chapter.

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EDITOR'S NOTE: Source material for the Codified Ordinances of Fairview Park was either ordinances or resolutions enacted by Council, or new matter ordained by the Adopting Ordinance. Sections of the Codified Ordinances without any history indicate that such sections contain new matter ordained by the Adopting Ordinance. In the following table, the disposition of all source material in the Fairview Park Codified Ordinances is indicated.

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73-45	6-18-73	129.09
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CHARTER

OF THE

CITY OF FAIRVIEW PARK, OHIO

EDITOR'S NOTE: The Fairview Park City Charter was originally adopted by the electors at the general election of November 4, 1958. All sections with a date at the end thereof indicate that the substantive provisions of those sections were amended or enacted on the date given.

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CHARTER

OF THE

CITY OF FAIRVIEW PARK, OHIO

PREAMBLE

We, the people of the City of Fairview Park, in the County of Cuyahoga and State of Ohio, in order to secure for ourselves the benefits of municipal home rule and to exercise all the powers of local self-government under the Constitution and laws of the State of Ohio, do hereby adopt this Charter for our City.

ARTICLE I
NAMES AND BOUNDARIES

The Municipality now existing in the County of Cuyahoga, State of Ohio, and known as Fairview Park shall continue to be a body politic and corporate under the name of the City of Fairview Park, with the same boundaries as now exist, but with power and authority to change its boundaries in the manner authorized by the laws of the State of Ohio, except that no territory shall be detached from or annexed to the City, nor shall the City be annexed to or merged with any other body politic, nor shall the corporate existence of the City be terminated, without the assent of a majority of the electors of the City voting on such proposal at a regular election in such manner as Council shall by resolution or ordinance prescribe.
(Amended 11-6-79.)

ARTICLE II
MUNICIPAL POWERS

The City of Fairview Park shall have all the powers, general or special, governmental or proprietary, express or implied, which may now or hereafter lawfully be possessed or assumed by municipalities of the class of this municipality under the Constitution and laws of the State of Ohio. No enumeration of specific powers in this Charter shall be held to be exclusive.

All such powers shall be exercised in the manner prescribed in this Charter, or if not prescribed herein, in such manner as Council may determine, or unless a contrary intent appears in this Charter or in the enactments of the Council, in such manner as now or hereafter may be provided by the laws of the State of Ohio.

ARTICLE III
THE MAYOR

SECTION 1. TERM.

The Mayor shall be elected at the regular municipal election in the year 1959, and every fourth year thereafter, for a term of four (4) years. His term shall commence and he shall assume office on the first day of January next following such election. He may be a candidate to succeed himself. (Amended 11-6-90)

SECTION 2. QUALIFICATIONS.

The Mayor shall have been a qualified elector and a resident of the City for at least two (2) years immediately prior to the date of his election, and shall continue to be a qualified elector and resident therein during his term. He shall not serve on continuous active military service in excess of one (1) month, either state or national, nor shall he hold any other public office, public employment or public appointment, except that of Notary Public and member of the United States Militia, National Guard, Reserve Corps of the United States or except as an uncompensated or compensated member of a board, commission, or committee as a representative of the City. He shall not, directly or indirectly, solicit, contract for, receive or be interested in any profit or emolument from or on account of any contract, job, work or service with or for the City.

If the Mayor is absent for more than one month, secondary to being called to active duty as a Reserve Member of the Federal Armed Forces, or as a member of a National Guard Unit or Militia, then the office of the Mayor shall be considered vacant and the office shall be filled as hereinafter provided in this Charter.
(Amended 11-6-90; 11-2-99)

SECTION 3. REMOVAL.

If at any time the Mayor shall cease to possess any of the aforesaid qualifications of office, or shall be convicted of a felony or other crime involving moral turpitude, or be unable to perform the duties of the office due to death, prolonged illness, physical or mental disability or absence from the City in excess of ninety days, it shall be the duty of Council to declare the office of Mayor vacant, and upon such declaration the office of Mayor shall automatically and immediately become vacant. Such declaration by Council shall be made only after public hearing upon the charge or charges brought, and provided, further, that the Mayor shall have been notified in writing of the charge or charges against him at least fifteen (15) days in advance of such hearings; provided further that he or his counsel shall have the opportunity to be heard, present evidence, and examine, under oath, all witnesses appearing in support of such charge or charges. To be effective such declaration of vacancy in the office of Mayor must receive the affirmative vote of at least a majority plus one of the members elected to Council.
(Amended 11-6-90; 11-3-09.)

SECTION 4. VACANCY IN THE OFFICE OF MAYOR.

(a) Absence. When the Mayor is absent or inaccessible or is unable for any cause or reason to perform his duties, the President of Council shall become the acting Mayor but during such temporary absence, he shall not have the power of veto nor shall he thereby cease to be President of Council.

(b) Vacancy. In the event the office of Mayor shall become vacant for any reason, the President of Council shall thereupon become the Mayor, and serve for the unexpired term or until the beginning of the term of a successor duly elected as hereinafter provided, and his office as President of Council shall become vacant.

(c) Absence of President of Council. In the event the President of Council shall be absent or inaccessible or is unable for any cause or reason to perform his duties as acting Mayor, then Council by a vote of a majority of the remaining members of Council shall designate one of their number to act as Mayor provided that such person so designated shall not have the power of veto nor shall he thereby cease to be a member of Council.

(d) Election of Successor in the Event of Vacancy. In the event the office of Mayor shall become vacant, a successor for the unexpired term shall be elected as Mayor at the next regular municipal election, provided that (1) such election shall occur more than two (2) years prior to the expiration of the unexpired term, and (2) the vacancy shall have occurred more than one hundred twenty (120) days prior to such election. A President of Council or a Councilman, who has become Mayor pursuant to subsections (b) and (c) of this section, may be a candidate to succeed himself. (Amended 11-6-90.)

SECTION 5. DUTIES AND POWERS OF THE MAYOR.

(a) Executive Powers. The Mayor shall be the chief executive officer of the City. He shall supervise the administration of the City's affairs and shall exercise control over and be responsible to the electors for all departments, divisions and offices. He shall be the chief conservator of the peace within the City and shall cause all laws and ordinances to be enforced. He shall be responsible for the preparation and submission of the annual estimate of receipts and expenditures, and of appropriation measures, and shall at all times keep the Council fully advised as to the financial condition and needs of the City. He shall cause all terms and conditions imposed in favor of the City or its inhabitants in any franchise or contract to which the City is a party to be faithfully kept and performed.

Except as may otherwise be provided by this Charter or the laws of the State of Ohio, the Mayor shall have the power to appoint, promote, transfer, reduce or remove any officer or employee of the City except (a) those required by this Charter to be elected, (b) those whose terms of office may be fixed by this Charter, and (c) Directors of all departments who shall be appointed by the Mayor subject to advise and consent of the majority of Council. Except as otherwise may be provided in this Charter, all Directors and all appointive officers may be removed by the Mayor, provided, however, that such removal shall not take effect without the concurrence of a majority plus one of the members elected to Council.

The Mayor shall execute on behalf of the City all contracts, conveyances, evidences of indebtedness, and all other instruments to which the City is a party. He shall have custody of the seal of the City and may affix it to all of said instruments, but the absence of the seal shall not effect the validity of any such instrument. The Mayor shall be recognized as the official and ceremonial head of the City government by the Governor for military purposes and by the courts for the purpose of serving civil processes.

(b) Legislative Powers. Every ordinance passed or resolution adopted by the Council shall be attested by the Clerk of Council and promptly presented to the Mayor. If the Mayor approves such ordinance or resolution, he shall sign it within ten (10) days after its passage or adoption by the Council, but if he does not approve it, he shall return it to the Council with his written objections within said ten (10) days of delivery to said Clerk, which objections shall be entered in full on the journal of the Council. The Mayor may approve or disapprove the whole or any part or item of an ordinance or resolution appropriating money, but otherwise his approval or disapproval shall be addressed to the entire ordinance or resolution. If the Mayor does not sign or veto an ordinance or resolution after its passage or adoption within said ten (10) day period, it shall take effect in the same manner as if he had signed it. When the Mayor has disapproved an ordinance or resolution or part or item thereof, as herein provided, the Council shall, not later than the next regular meeting, proceed to reconsider it, and if upon reconsideration the ordinance or resolution or part or item thereof be approved by vote of a majority plus one of the members elected to Council, it shall then take effect as if it had received the signature of the Mayor. In all such cases the vote shall be taken and entered upon the journal.

(c) Judicial Powers. The Mayor shall have all the judicial powers granted by this Charter, the ordinances of the City, and the general laws of the State of Ohio.

(d) Office and Hours. The Mayor shall have his office at City Hall. The Mayor shall devote his time and effort during City business hours and at such other times as may be necessary to the business of the City. (Amended 11-6-90; 11-3-09)

ARTICLE IV
THE COUNCIL

SECTION 1. NUMBER AND TERMS.

All legislative powers of the City, except as otherwise provided by this Charter and by the Constitution of the State of Ohio, shall be vested in a Council of seven members, five of whom shall be elected by the several wards, one of whom shall be elected at large, and one of whom shall be elected at large as president of Council. (Amended 11-2-99)

Members of Council, including the President of Council, shall be elected at the regular municipal election in the year 2011 for a term of four (4) years and every fourth year thereafter for a term of four (4) years. All members of the Council shall assume office on the first day of January next following their election.
(Amended 11-8-66; 11-3-09)

SECTION lb. THE BOUNDARIES OF WARDS.

The boundaries of wards shall be subject to change in order to conform to the one-man, one-vote edict of the Supreme Court. Every ten years after the Federal census figures are available, the Council shall examine the community and determine whether a reapportionment is necessary, and if necessary, shall propose a plan for reapportionment. If the Council fails to act within sixty days from the availability of the Federal census figures, the Mayor then shall have thirty days to present a reapportionment plan to Council. Council shall then have thirty days to examine the plan and make any amendments to such plan. If Council fails to act upon the Mayor's plan within said thirty days after its submission by the Mayor, the Mayor's plan shall then become law. (Added 11-4-69.)

SECTION 2. QUALIFICATIONS.

No person shall be eligible to be a member of Council, unless he shall have been continuously a resident and a qualified elector of the City of Fairview Park for two (2) years immediately prior to his election or appointment. In addition to the foregoing requirements, no person shall be eligible to be a member of Council, elected from a ward, unless he shall have been continuously a resident and qualified elector of such ward for one (1) year immediately prior to his election or appointment.

No person shall serve as a member of Council unless during his term of office he shall continue to be a resident and a qualified elector of the City of Fairview Park, and if elected or appointed from a ward, shall be and continue to be a resident of such ward. He shall not hold any other municipal office or municipal employment in this City except as otherwise provided in this Charter, and except that of Notary Public. He shall forfeit his office as Councilman, or President of Council, in the event he is called to full-time military service for a period exceeding thirty (30) consecutive days. He shall not be interested in the profits or emoluments of any contract with, or job, work or service for the City. Any member who shall cease to possess any of the qualifications herein required shall forthwith forfeit his office, and any such contract in which any member is or may become interested may be declared void by the Council.

SECTION 3. PRESIDENT OF COUNCIL.

(a) Separate Office. The President of Council shall be elected by the voters. Candidates for such office shall file specifically for that office in accordance with Article IX of this Charter.

(b) Duties. The President of Council shall preside at all regular and special meetings of Council. He shall perform such duties as presiding officer as may be imposed upon him by the Council.

(c) Acting Mayor. In the absence of the Mayor, the President of Council shall act as Mayor as provided in Article III of this Charter.

(d) Vacancy in Office. In case of a vacancy, the President of Council shall be elected by Council from among its members and the one so elected shall vacate his office as Councilman and shall serve for the unexpired term of such President. (Amended 11-3-09)

SECTION 4. REMOVAL.

The Council shall be the judge of the election and qualifications of its own members, including the President of Council. Council may by at least a majority plus one vote of all the members elected to Council expel or remove any member including the President of Council for gross misconduct, malfeasance, nonfeasance, misfeasance in or disqualification for office; for violation of his oath of office; for the conviction while in office of a crime involving moral turpitude; for persistent failure to abide by the rules of Council; or for absence without justifiable excuse from three consecutive regular meetings. Prior to any such action by Council, the accused member shall be notified in writing of the charge against him at least ten (10) days in advance of any hearing upon such charge, and he and his counsel shall be given an opportunity to be heard, present evidence or examine under oath any witness appearing in support of such charge. (Amended 11-3-09)

SECTION 5. VACANCIES.

Whenever any office of Councilman becomes vacant, the vacancy shall be filled for the unexpired term by majority vote of the remaining members of the Council eligible to vote. If the vacancy be not filled within thirty days, the Mayor shall fill it by appointment.

SECTION 6. SALARIES AND BONDS.

The Council shall have the power to fix its own compensation and that of each employee of the City, including officers and members of any board or commission of the City, whether elected, appointed or chosen, and to establish bond for the faithful discharge of the duties of the office. The premium of any bond required by the Council shall be paid by the City. The compensation of all elected officials shall be fixed at least thirty (30) days prior to the filing date of nominating petitions for the terms beginning on the next succeeding first day of January, and shall not thereafter be changed in any respect during any such term or any part thereof. The Council may authorize any officer of the City to make such travel as the Council deems to be in the public interest, and may provide that the expense of such travel be paid by the City.

SECTION 7. MEETINGS.

(a) Regular Meetings. The Council shall meet in the Council Chambers at such times as may be prescribed by its rules, regulations, ordinances or by-laws, except that it shall hold regular meetings at least twice each calendar month, provided, however, that it may recess during the months of July and August, subject to call of the Mayor. All meetings of the Council, whether regular or special, shall be open to the public.

(b) Special Meetings. Special meetings of the Council may be called in accordance with and as provided for by the rules, regulations or by-laws adopted by the Council. In absence of such provisions, special meetings may be called by a vote of the Council taken at any regular or special meetings thereof, or shall be called by the Clerk of Council upon the written request of the Mayor or President of Council, or three (3) members of Council. Any such request shall state the time, place and date thereof, and the subject or subjects to be considered at the meeting, and no other subject or subjects shall be considered. Notice in writing of each such special meeting called at the request of the Mayor, President of Council, or three (3) members of Council, shall be given to each member of Council and the Mayor, by serving on each of them personally or by leaving a copy thereof at his usual place of residences, not less than twenty-four (24) hours preceding the date and hour of such meeting. Service of such notice may be waived in writing.

SECTION 8. QUORUM.

A majority of the members elected to Council shall constitute a quorum for the transaction of business at any meeting of the Council, but a lesser number may adjourn the meeting from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance or resolution.

SECTION 9. RULES AND JOURNAL OF COUNCIL.

Council shall adopt its own rules, regulations or by-laws and shall keep a journal of all of its proceedings. The journal shall be open for public inspection at all reasonable times. The voting upon any ordinance, resolution, or motion shall be by roll call, and the vote of each Councilman shall be entered upon the journal.

SECTION 10. CLERK OF COUNCIL AND EMPLOYEES OF COUNCIL.

A Clerk of Council shall be appointed and may be removed by Council. Council may employ such other employees as it deems necessary for the proper discharge of the duties of Council.

The Clerk of Council shall keep an accurate and complete journal of the proceedings of Council, authenticate by his signature and have custody of and properly file and index all laws, ordinances and resolutions of Council, and shall have custody of other official documents, reports, papers and communications received by the Council, and have custody and control of all files of Council, and perform such other duties as Council shall require.

SECTION 11. FORM OF LEGISLATIVE ACTION.

All legislative action by Council shall be by ordinance or resolution introduced in written or printed form. An affirmative vote of at least a majority of the members elected to Council shall be required for the passage or enactment of every ordinance or resolution. Unless otherwise provided herein, every ordinance or resolution shall be read at three (3) different Council meetings unless a majority plus one of the members elected to Council dispense with this requirement. If a written or printed copy of the ordinance or resolution shall have been furnished to each member of Council prior to its introduction, the ordinance or resolution shall be deemed to have been read if the title is fully read, provided however, at the request of two or more members of Council the full text of the ordinance or resolution shall be read.

All ordinances, resolutions, statements, orders, proclamations and reports required by law or by this Charter or by ordinance to be published or posted, shall be posted at one place, the City Hall, for a period of not less than fifteen (15) days prior to the taking effect thereof. Any emergency ordinance or resolution shall also be published or posted as aforesaid, but said requirements shall not postpone the immediate taking effect thereof as provided in Section 12 of this Article. (Amended 11-6-90; 11-3-09.)

SECTION 12. EFFECTIVE DATE OF ORDINANCES AND RESOLUTIONS.

(a) Each ordinance or resolution providing for the appropriation of money, for an annual tax levy, or for improvements petitioned for by the owners of a majority of the front footage of property to be benefited and specially assessed therefor, and any emergency ordinance, resolution or other action necessary for the immediate preservation of public peace, health or safety, shall take effect, unless a later date be specified therein, upon its approval by the Mayor, or upon the expiration of the time within which it may be vetoed by the Mayor, or upon its passage after veto by the Mayor, as the case may be.

No other ordinance, resolution or action of Council shall become effective until forty (40) days after its approval by the Mayor or upon the expiration of the time within which it may be vetoed by the Mayor or upon its passage after veto by the Mayor, as the case may be.

Each emergency ordinance, resolution or other action shall contain a statement of and reasons for the necessity for such emergency action, and shall require the affirmative vote of a majority plus one of the members elected to Council for its enactment.

No action of Council, whether legislative or administrative in nature, (1) authorizing the surrender or joint exercise of any municipal power; (2) granting any franchise; (3) entering into a contract, consent agreement or compact with any other governmental unit, agency or association of any kind, including regional government or agency; (4) rezoning any property; (5) changing the uses permitted in any zoning district or classification; (6) amending or repealing any zoning ordinance; or (7) providing, permitting, authorizing, enlarging or approving any (a) public, low-cost, subsidized and/or scatter-site housing or housing project; (b) government rent or mortgage supplement scheme or plan of any type whatsoever, whether publicly or privately owned or leased; (c) group housing unit having more than three unrelated persons; (d) converting any multi-family dwelling (apartment house) into condominiums; (e) the erection of any dwelling or dwelling unit which does not conform to the then existing zoning or building codes, as the same are applied to all other single or multi-unit dwellings, as the case may be; or (f) establishing or providing for any urban renewal district or project; shall be designated an emergency measure nor enacted under a suspension of the rules.

The reasons for, necessity for, facts supporting the reasons for and/or necessity for and/or the bonafides of any emergency ordinance, resolution or other action of Council shall be subject to Judicial review.

(b) All ordinances, resolutions, proclamations, motions, and Charter provisions, existing prior to the date of adoption hereof inconsistent with this section are hereby repealed and declared null and void.

(c) This section shall be severable and if any subsection, part, word or application thereof is held invalid for any reason, such holding shall not invalidate or affect the force and effect of any other section, subsection, part, word or application thereof.
(Amended 11-4-75.)

SECTION 13. ASSESSMENTS, ADVERTISING OF CONTRACTS AND SALE OF MUNICIPAL PROPERTY.

The Council may make provision by ordinance for:

(a) The procedure for making public improvements and levying assessments, including the procedure for combining two or more public improvements, and the levying of assessments therefor in one proceeding if the Council finds that it will be economical and practical to undertake such improvements jointly;

(b) The advertising and awarding of contracts and alterations or modifications of contracts;

(c) The sale or disposal of municipal property;

(d) Such other general regulations as the Council may deem necessary.

SECTION 14. ENACTMENT OF ZONING ORDINANCES AND REGULATIONS, NOTICE.

(a) Any comprehensive or master plan designed to guide or regulate or control the development of the entire City through zoning ordinances in effect or to be enacted shall be submitted to the electors of the City. A majority of those voting at any regular or special election wherein such comprehensive or master plan shall have been submitted to the electorate, must approve the same, otherwise such proposed plan shall have no force or effect. Amendments to or repeal of any comprehensive or master plan, or any part thereof, shall likewise be submitted to the electorate, and a majority of those voting upon such amendment or repeal shall approve the same prior to any amendment or repeal having any force or effect.

(b) The Council may provide by ordinance for the procedure for the passage and amendments to any zoning ordinance, the maps and regulations thereof, and the publication of notice and public hearings thereof, provided that the minimum notice of the time and place of such public hearing shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the city, with the first such notice being published not less than thirty days (30) prior to the first public hearing at which Council considers such ordinance. In the event it is proposed to amend, enlarge, or change any area, zone or district classification, defined in an enacted ordinance, then, in addition to the newspaper notice hereinbefore provided, notice of the time and place of such public hearing shall be given by first class mail, postage pre-paid, ten (10) days before such hearing, to the record title holders of the property immediately adjacent, adjoining and abutting on such area, zone, or district proposed to be changed. Record title holder shall mean the title holder of such property as disclosed by the Records of the Auditor of Cuyahoga County, thirty (30) days immediately prior to the date of such public hearing. If the mailing address of such record title holder cannot be reasonably ascertained, then the aforesaid newspaper notice of such hearing shall be deemed adequate notice. Nothing herein provided shall be construed as limiting the power of the Council from enlarging on such notice.
(Amended 11-6-73; 11-2-99)

SECTION 15. DEDICATION OF PARKS, VACATION; USE, DISPOSITION OR RENTAL THEREOF.

(a) Park Dedication, Mandatory Referral to Electorate, Etc. Council may, from time to time, dedicate lands owned by the City to be used as parks, parkways, playgrounds, or otherwise as public recreational areas. In this Charter all such lands already so dedicated and all those which may in the future be dedicated to such purposes, are referred to as "dedicated parks". The dedication of all or any one of the "dedicated parks" shall not be vacated, nor shall any "dedicated park" or any part thereof, be sold, conveyed, nor shall the exclusive use thereof be granted, by the Council, nor shall any "dedicated park" or any portion thereof be leased or rented for a term in excess of one year, nor shall any portion thereof be used or permitted to be used by any person, corporation, governmental body or other entity for other than park and recreational uses, unless and until such has, first, been submitted to the Parks and Recreation Commission, as required in Article VII, Section 3 (c) for report and recommendation.

Any matter so referred to the Parks and Recreation Commission shall be acted upon by it within sixty (60) days from the date or referral unless a longer time be allowed by Council. If the Parks and Recreation Commission shall fail to act within the time allotted, it shall be deemed to have approved such matter. If any provision of such ordinance or resolution is disapproved by formal action of the Parks and Recreation Commission, the adoption of such ordinance or resolution shall require a majority plus one affirmative vote of all members elected to Council for adoption or authorization.

After any proposal to vacate any part or all of any "dedicated park" or any proposal to sell, convey, lease or rent for a period in excess of one (1) year, or in any manner alienate, or grant the exclusive use of, any "dedicated park" or any portion thereof, shall have been processed through the Parks and Recreation Commission and approval of said proposal has been duly obtained by the Council from the Commission, or, following its disapproval by said Commission, said proposal has been affirmatively adopted by Council pursuant to a majority plus one vote by all members elected to Council for adoption or authorization, each such proposal shall be suspended and without legal effect until said proposal shall have been submitted to the electorate at a general or special election in the manner and subject to the procedures which shall be established by ordinance, and approved by the majority of the electors voting thereon.

(b) Matters Not Requiring Vote of Electorate. Following approval by the Parks and Recreation Commission, or subsequent to disapproval by the Commission followed by an affirmative adoption or authorization by vote of a majority plus one of the members elected to Council on said proposal, Council may without approval of the electorate lease or rent or permit the use of any part of any "dedicated park" for a period not in excess of one year, to or by any person, corporation, governmental body or their entity for the operation of any facility, or the performance of any service or function, incidental to or congruous with park and recreational usages; or, following such processing through the Commission, Council may grant and/or convey easements or similar interests over, under and across "dedicated parks" or any portion thereof, for the construction, installation and maintenance of sewers and utility lines.

(c) Emergency Legislation Prohibited; Exceptions. The passage of an emergency measure of any ordinance or resolution pertaining to any of the matters requiring referral to the electorate, as set forth in subsection (a) of this Section 15 of this Article IV, is prohibited. Matters set forth above in "(b) Matters Not Requiring Vote of Electorate", shall be subject to passage of emergency measures, but not until any such matter shall have first been referred to the Parks and Recreation Commission.

Whenever Council finds that an emergency is of such nature as to require approval or disapproval by the Commission within less than sixty (60) days of any proposed emergency measure relating to matters not subject to mandatory referral to the electorate, Council shall have the power to call for a meeting of said Commission within any period of time reasonable under the circumstances; and the Commission shall then promptly approve or disapprove of said proposed emergency measure. In the event of disapproval by the Commission, said proposed emergency measure may nonetheless be affirmatively adopted or authorized by a majority plus one vote of all members elected to Council.
(Added 5-5-70; 11-3-09)

SECTION 16. VOTER APPROVAL OF ZONING CHANGES.

(a) An ordinance, resolution, or other action, whether legislative or administrative in nature, effecting a change in the zoning classification or district of any property within the City of Fairview Park, Ohio, shall not become effective after the passage thereof, until Council submits such ordinance, resolution or other action to the electorate at a regularly scheduled election in November or a primary election in May occurring more than sixty (60) days after the passage of the ordinance, resolution, or other action and such ordinance, resolution or other action is approved by a majority of the electors voting thereon, in this Municipality and in each ward in which the change is applicable to property in the ward.

(b) An ordinance, resolution, or other action, whether legislative or administrative in nature, effecting change in the uses permitted in any zoning use classification or district of the City of Fairview Park, Ohio, shall not become effective after the passage thereof, until Council submits such ordinance, resolution or other action to the electorate at a regularly scheduled election in November or a primary election in May occurring more than sixty (60) days after the passage of the ordinance, resolution or other action and such ordinance, resolution or other action is approved by a majority of the electors voting thereon, in this Municipality and in each ward in which the change is applicable to property in the ward.
(Amended 11-7-95.)

(c) The requirement of approval by a majority of voters voting thereon in this Municipality and in each ward in which the change is applicable shall also apply to changes in zoning classification, district or use sought to be effected by initiative petition.

(d) All ordinances, resolutions, proclamations, motions and Charter provisions inconsistent with this section are hereby repealed and declared null and void.

(e) This section shall be severable and if any subsection, part, word or application thereof is held invalid for any reason, such holding shall not invalidate or affect the force and effect of any other subsection, part, word or application thereof.
(Added 11-4-75.)

ARTICLE V
ADMINISTRATIVE OFFICERS AND DEPARTMENTS

SECTION 1. GENERAL PROVISIONS.

A Department of Law, Department of Finance, Department of Public Service and Development, Department of Recreation, Department of Police, and Department of Fire are hereby established by this Charter and Council shall provide for the organization thereof. Each department or office shall be headed by a Director, except Police and Fire which shall be headed by Chiefs. The Council may by ordinance provide for the establishment and organization of other departments or divisions thereof. All appointments and removals in the several departments shall be made by the respective directors and chiefs. The appointment or dismissal of the Police or Fire Chief shall not be subject to confirmation by Council but shall be governed by applicable civil service law, rules and regulations.

Whenever a vacancy occurs in the position of department director or chief officer of any City department, the Mayor shall appoint an interim director to that position within thirty (30) days, and for a period not to exceed ninety (90) days, until a permanent director is nominated by the Mayor and approved by Council. An interim appointment shall not be a bar to a permanent appointment subject to the same advice and consent of council for all department directors, or other chief officers of any City departments. (Amended 11-2-93; 11-2-99)

SECTION 2. DIRECTOR OF LAW.

The Director of Law shall be the head of the Law Department and shall be appointed by the Mayor, with the advise and consent of the majority of Council. He may be removed from office by the Mayor. The Director of Law shall serve the Mayor, the Council, the administrative officers and departments, and the commissions and boards of the City as legal counsel, and shall represent the City in all proceedings in court or before any administrative body. He shall act as the prosecuting attorney for the City. No person shall act as Director of Law unless duly admitted to practice law in the State of Ohio. He shall perform all other duties now or hereafter imposed upon City Solicitors by the laws of the State of Ohio unless otherwise provided by ordinance of the Council, and he shall perform such other duties as the Council or the Mayor may impose upon him consistent with his office. (Amended 11-4-75; 11-2-99)

SECTION 3. DIRECTOR OF FINANCE.

The Director of Finance shall be the head of the Finance Department and the fiscal officer of the City. He shall be appointed by the Mayor, with the advise and consent of the majority of Council. He may be removed from office by the Mayor. He shall serve the Mayor and the Council as financial advisor in connection with municipal affairs, and he may serve as Clerk of Council. In such capacity or capacities, he shall keep the records of said bodies, and shall authenticate all records, documents and instruments of the City on which authentication is proper. The Director of Finance shall examine all payrolls, bills and other claims against the City and shall issue no warrant unless he shall find that the claim is in proper form, correctly computed and duly approved, and that it is due and payable, and that an appropriation has been made therefor; and he shall perform all other duties now or hereafter imposed upon City Auditors or Treasurers by the laws of the State of Ohio unless otherwise provided by this Charter, or by ordinance of the Council, and he shall perform such other duties as the Mayor may impose upon him consistent with his office.
(Amended 11-4-75; 11-2-99)

SECTION 4. DIRECTOR OF PUBLIC SERVICE AND DEVELOPMENT.

The Director of Public Service and Development shall be appointed by the Mayor, with the advise and consent of the majority of Council. He may be removed from office by the Mayor. The Director of Public Service and Development shall be the head of the Division of Building and, if established by Council, the Division of Health. The Director of Public Service and Development shall have charge of all public works and improvements and the construction thereof, and all engineering and inspection in connection therewith, except those having reference to the Departments of Police, Fire and Recreation. He shall be charged with the construction, improvement, repair and maintenance of streets, avenues, alleys, lanes, sidewalks, bridges, wharves, docks, and breakwalls; of water mains, pumps, systems, pipes, purification and filtration plants and the water distribution system; of sewers, sewage systems, drains, ditches, culverts, streams, viaducts, watercourses and harbors, and of all public buildings, dedicated parks, parks, cemeteries, and other public places belonging to the City or dedicated to public use except as otherwise provided in the Charter. He shall manage and control cemeteries, market houses, sewage treatment plants, waterworks and all public utilities of the City supported in whole or in part by taxation, and shall enforce all the obligations of privately owned or operated public utilities enforceable by the City.

He shall have charge of the making and preservation of all surveys, maps, plans, drawings and estimates for public work except as otherwise provided in the Charter; the cleaning, resurfacing, repairing, sprinkling and lighting of streets and public places; the collection and disposal of waste; and the preservation of all property belonging to the City and pertaining to the functions thereof.

The Director of Public Service and Development shall develop, coordinate, activate, implement, encourage, foster, and promote plans and programs for economic and community development, redevelopment and improvement for and within the City. The Director of Public Service and Development shall make all necessary rules and regulations for the Department of Public Service and Development. He shall perform such other duties consistent with his office, as may be required by this Charter, by ordinance of the Council, or as directed by the Mayor. (Amended 11-2-93; 11-2-99)

SECTION 5. DIRECTOR OF RECREATION.

The Director of Recreation shall be appointed by the Mayor, with the advice of the Parks and Recreation Commission and the advise and consent of the majority of Council. The Director of Recreation may be removed from office by the Mayor. The Director of Recreation shall have charge of all municipally owned or operated recreational premises, recreational areas, playgrounds and recreational facilities and improvements and the construction thereof, and all engineering and inspection in connection therewith. He shall be charged with the construction, improvement, repair and maintenance of recreational premises, recreational areas, recreational facilities and playgrounds belonging to or operated by the City or dedicated to public use.

He shall have charge of the making and preservation of all surveys, maps, plans, drawings and estimates for public work relating to recreational premises, recreational areas, recreational facilities and playgrounds belonging to or operated by the City. The Director of Recreation shall make all necessary rules and regulations for the Department of Recreation. He shall perform such other duties consistent with his office, as may be required by this Charter, by ordinance of the Council, or as directed by the Mayor. (Amended 11-2-93; 11-2-99)

SECTION 5A. DIRECTOR OF SENIOR LIFE.

The Director of Senior Life shall be appointed by the Mayor, with the advice and consent of the majority of Council. The Director of Senior Life may be removed from office by the Mayor. The Director of Senior Life shall have charge of the City of Fairview Park Senior Center and all programs operated therein. The Director of Senior Life shall make all necessary rules and regulations for the Department of Senior Life and shall perform such other duties consistent with the office, as may be required by this Charter, by ordinance of the Council, or as directed by the Mayor. (Added 11-3-09)

SECTION 6. TERMINATION OF OFFICE OF DIRECTORS.

On the first day of January next following the election of the Mayor, the term of office of every Director, other than the Chiefs of the Departments of Police and Fire, shall expire. (Amended 11-2-93.)

ARTICLE VI
THE CIVIL SERVICE COMMISSION

SECTION l. MEMBERSHIP.

The Civil Service Commission shall consist of three (3) electors of the City, not holding other municipal office or appointment, to be appointed by the Mayor, for terms of six (6) years each, except that of the three appointed for the term beginning January 1, 1959, one shall be appointed for a term of two (2) years, one for a term of four (4) years, and one for a term of six (6) years. A vacancy occurring during the term of any member of the Civil Service Commission shall be filled for the unexpired term in the manner authorized for an original appointment.

SECTION 2. OFFICERS.

The Commission shall designate one of its members as Chairman and may appoint a Secretary who need not be a member of the Commission and may hold other municipal office or appointment.

SECTION 3. DUTIES.

The Civil Service Commission shall provide by rule for the ascertainment of merit and fitness as the basis for appointment and promotion in the service of the City, as required by the Constitution and/or laws of the State of Ohio, and for appeals from the action of the Mayor or any director in any case of transfer, reduction or removal. The action of the Commission on any such appeal shall be final except as otherwise provided by the laws of Ohio. Except as herein provided, the Civil Service Commission shall determine the practicability of competitive examinations for any non-elective officer or job classification in the service of the City.

SECTION 4. REMOVAL.

The Mayor may at any time suspend any Commissioner for inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office, incapacity or incompetency; provided, however, that such suspension shall not become final without the concurrence of a majority plus one of the members elected to Council. (Amended 11-3-09)

SECTION 5. FUNDS.

A sufficient sum shall be appropriated by the Council each year to carry out the civil service provisions of this Charter.

ARTICLE VII
BOARDS AND COMMISSIONS

SECTION 1. BOARD OF ZONING AND BUILDING APPEALS.

(a) Organization. There shall be appointed, commencing January 1, 1959, in place of the Board of Zoning Appeals created by the existing ordinance of the City, a Board of Zoning and Building Appeals composed of five (5) qualified members appointed by the Mayor, who shall be appointed for a term of five (5) years except that members first appointed shall be appointed one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years and one for a term of five years. Any vacancy shall be filled in the same manner for the unexpired term. All board members shall serve without compensation and the Mayor shall have the right to remove any member for cause. The Building Inspector and the City Engineer shall furnish the necessary technical advice and services required by the Board.

(b) Powers and Duties. The Board of Zoning and Building Appeals shall have the following duties and powers:

(1) To hear and decide appeals made for exceptions to and variations in the application of ordinances governing zoning in the City of Fairview Park in conformity with the purpose and intent thereof and to hear and decide all appeals made for exceptions to and variations in the application of ordinances, or orders or regulations of administrative officials or agencies.

(2) To approve or disapprove materials, types of construction, appliances, devices or appurtenances proposed for use pursuant to the Building Code of the City.

(3) To hear and decide appeals from, and to review upon motion of any member of the Board, any order, requirement, decision or determination of the Building Inspector or of any other administrative official or agency of the City, relating to the location, design, materials, construction, alteration, repair, equipment, use or occupancy, maintenance, removal or demolition of any building or other structure or any appurtenance connected or attached to such buildings or structures, regulated by the Building Code of the City and any rule or regulation or amendment or repeals thereof made by said officials or agencies under the authority conferred upon them by the Building Code of the City, by reversing or affirming in whole or in part, or modifying such order, requirement, decision or determination, or rule, regulation, amendment or repeals thereof as in its opinion ought to be made in the premises.

(4) To exercise with respect to buildings situated in the City the same powers as are exercised by the Board of Building Standards under the laws of the State of Ohio to the extent that it is competent for this Charter so to authorize the Board.

(5) To formulate and submit to the City Council, changes in and amendments to the Building Code which the Board determines as desirable for the proper regulation of buildings and structures and the equipment thereof and appurtenances thereto in the City of Fairview Park.

(6) To establish rules and regulations for its own procedure not inconsistent with this section.

(7) To do and perform such other duties and functions as may be imposed upon it by this Charter or ordinances and resolutions of the Council.
(Adopted 11-4-58.)

(c) EDITOR'S NOTE: Former subsection (c) was repealed by the voters on November 3, 2009.

SECTION 2. PLANNING AND DESIGN COMMISSION.

(a) Membership. The Planning and Design Commission shall consist of seven (7) voting members. One (1) voting member shall be the Mayor; one (1) voting member shall be a member of Council to be appointed by the President of Council for such term as the President of Council shall determine; one (1) voting member shall be a registered architect who shall be appointed by the Mayor; one (1) voting member shall be a person who is skilled in or engaged in the business of landscape architecture who shall be appointed by the Mayor; and three (3) voting members shall be electors of the City who shall be appointed by the Mayor. None of the three (3) elector members shall be employed by the City nor shall such elector members hold any other municipal office or appointment. Subject to the provisions of Article IV, Section 6 of this Charter, compensation may be paid to the registered architect and to the person who is skilled in or engaged in the business of landscape architecture or to the alternates therefore as may be fixed by Council. The three (3) elector members of the Planning and Design Commission shall serve without compensation. The terms of the three (3) elector-members shall be for four years each, and the separate terms of the present elector-members shall terminate respectively at the conclusion of the 31st day of December of the years 1994, 1995 and 1996. The term of the registered architect shall be for a term of four years, provided that the term of the registered architect first appointed subsequent to the effective date of this section shall terminate at the conclusion of the 31st day of December, 1995. The term of the person who is skilled in or engaged in the business of landscape architecture shall be for a term of four years, provided that the term of the person skilled in landscape architecture first appointed subsequent to the effective date of the section shall terminate at the conclusion of the 31st day of December, 1995. The Mayor shall appoint an alternate registered architect and an alternate person who is skilled in or engaged in the business of

landscape architecture to serve during the temporary absence or disqualification of the registered architect or person who is skilled in or engaged in the business of landscape architecture. The term of the alternate registered architect and of the person skilled in or engaged in the business of landscape architecture shall coincide with that of the regular members.

A vacancy occurring during the term of any member of the Planning and Design Commission shall be filled for the unexpired term in the manner authorized for the original appointment. The appointing authority of a member of the Planning and Design Commission as herein provided shall have the right to remove such appointed member or alternate appointed member for cause.

No member of the Planning and Design Commission shall, while acting as a member thereof, participate in the review of, or give advice upon, any development proposal or building plans or drawings prepared for or on behalf of any person other than for or on behalf of the City, of which said member or any partner or professional associate is the author, or in which said member or any partner or professional associate has any direct or indirect financial interest.

(b) Duties and Powers. The Planning and Design Commission shall be responsible for the long-range planning of the City to insure its orderly and harmonious development. It shall be the function and duty of the Planning and Design Commission to act as the platting commissioners of the City, and as such it shall have control of planning and shall provide regulations with respect to the platting of all lands within the City so as to secure their harmonious development; to provide for the coordination of streets with other streets and with the official municipal plan; to provide for open spaces for traffic, utilities, access of fire fighting apparatus, recreation, light and air, and for the avoidance of congestion of population.

It shall make such regulations as it deems necessary as to the manner in which streets and other public ways shall be graded and improved; the manner in which and the extent to which water, sewer and other utility mains, piping or other facilities shall be installed, or establish any other conditions precedent to the approval of a proposed plat.

The Planning and Design Commission shall make plans and maps of the whole or any portion of the City and make changes in, additions to, and estimates of such plans or maps when it deems the same advisable. It shall have such powers as may be conferred upon it by ordinance of the Council concerning the plan, design, location, removal, relocation and alteration of any public building or structure or those located on public streets or property, the location, relocation, widening, extension and vacation of streets and other public places, the zoning and re-zoning of the City for any lawful purpose, and such other powers as may now or hereafter be conferred upon it by ordinance of the Council or the general laws of the State of Ohio not inconsistent with this Charter or such ordinances.

All plans, recommendations and regulations made by the Planning and Design Commission as hereinbefore described shall be submitted to Council for approval before the same shall be considered as official.

The Planning and Design Commission shall, at least every five years, review the subdivision regulations and zoning ordinances, texts, maps and recommend to the Mayor and Council such revisions and amendments as in its judgment are desirable.

The Planning and Design Commission shall have such duties and powers as Council shall provide by ordinance concerning the review and regulation of the design, construction, alteration, moving or razing of buildings in the City for the purpose of maintaining the high character of community development and protecting the real estate within the City from the impairment or destruction of value.

The Planning and Design Commission shall, in addition to such standards and criteria as may be provided by ordinance, consider and apply the following standards and criteria in its review of development proposals in the City for the purpose of maintaining the high character of community development and protecting real estate within the City from impairment or destruction of value:

(1) Materials - shall be appropriate for the use of building, for weathering, and for relationship to other materials including those used on adjacent buildings.

(2) Colors and Textures - shall be appropriate for the size and scale of the building, for weathering, and for relationship to the site and adjacent buildings.

(3) Architectural Details and Ornaments - shall be meaningful to the overall once design, and appropriate for the size and scale of the building, and for weathering.

(4) Mechanical Equipment - shall be considered as it affects rooftop appearance, sidewall openings, sound levels, smoke and other nuisance aspects. Also mechanical equipment shall be considered as it relates to overhead wires, gas and electric meter stations and any other visible appurtenances.

(5) Approaches, Drives and Parking Areas - shall be considered as they affect the appearance from the street and from the site as well. The relationship of paving to the building shall be appropriate considering factors such as safety, drainage and landscaping.

(6) Landscaping - shall be appropriate for the size and use of the area, and for its relationship to building, street, parking area, walks and adjacent buildings.

(7) Lighting - shall be considered for the appropriateness of nighttime illumination of the grounds, drives, walks, parking area, the building, and its effect upon surrounding areas.

(8) Signs - shall be considered for appropriateness of size, scale, shape, color and illumination in relation to building and site.

The Planning and Design Commission shall also have power to recommend to the Parks and Recreation Commission proposals for the use, utilization and beautification of the dedicated parks, other parks, parkways, playgrounds and any and all recreational areas owned or controlled by the City, provided only that said recommendation shall not be inconsistent with other provisions of this Charter.

The Planning and Design Commission shall have such other duties and powers as may be provided by ordinance of Council.

(c) Funds: A sufficient sum shall be appropriated by the Council each year to carry out the planning provisions of this Charter.

(d) Mandatory Referral. No public building, street, boulevard, dedicated park, other park, parkway, playground, harbor, dock, wharf, bridge, tunnel, or publicly or privately owned utility or part thereof shall be constructed or authorized to be constructed in the City nor shall any street, avenue, dedicated park, other park, parkway, playground or public recreational area, boulevard or alley be widened, narrowed, relocated, vacated, or its use changed, or any ordinances referring to zoning or other regulations controlling the use or development of land be passed, unless and until it shall have been submitted to the Planning and Design Commission for report and recommendation. Any matter so referred to the Planning and Design Commission shall be acted upon by it within sixty (60) days from the date of reference unless a longer time be allowed by Council. If the Planning and Design Commission shall fail to act within the time allotted, it shall be deemed to have approved such matter. Any provision of any ordinance, resolution, or order disapproved by formal action of the Planning and Design Commission shall require a majority plus one vote of all members elected to Council for adoption or authorization. No ordinance referring to zoning or other regulations controlling the use or development of land as provided herein shall be passed unless a minimum public notice of thirty days has been provided in a newspaper of general circulation in the city.
(Amended 11-2-93; 11-2-99; 11-3-09)

SECTION 3. PARKS AND RECREATION COMMISSION.

(a) Membership. The Parks and Recreation Commission shall consist of five (5) members, to be appointed as herein provided:

(1) One (1) member shall be a member of the Board of Education of the Fairview Park City School District and shall be appointed by such Board of Education for a term of two (2) years.

(2) One (1) member shall be a member of the City Council and shall be appointed by such Council for a term of two (2) years.

(3) Three (3) members shall be qualified electors of the City not holding other office, appointment or employment in the government of the City or of the School District to be appointed by the Mayor for a term of five years. The term for the present members of the Commission shall expire on the 31st day of December of the years 1991, 1992 and 1993.

(4) A vacancy occurring during the term of any member shall be filled for the unexpired term in the same manner as that member's original appointment.

(5) All members of the Parks and Recreation Commission shall serve without compensation. (Amended 11-6-90.)

(b) Duties and Powers. In addition to any powers which may be provided by ordinance of Council, and exclusive thereof, the Parks and Recreation Commission shall have these independent powers and duties: It shall be the function and duty of the Parks and Recreation Commission as to all dedicated parks, other parks, parkways, playgrounds and public recreation areas, improved or unimproved, whether owned or under the control of the City, to initiate and make periodic recommendations to the Administration as to each and all of such public places, concerning their nature, function, use, utilization, maintenance, beautification, control, regulation, acquisition, sale or other alienation, or their rental or lease.

(c) Mandatory Referral. No ordinance or resolution concerning the nature, function, use, utilization, maintenance, beautification, control, sale or other alienation, or the rental or lease in excess of one (1) year, of dedicated parks, other parks, parkways, playgrounds, or public recreation areas, or any part of any such dedicated park or other public place, whether improved or unimproved, and whether owned by the City or controlled by the City, as provided for in Section 15 of Article IV hereof, shall be passed, unless and until the matter shall have been submitted to the Parks and Recreation Commission for report and recommendation. Any matter so referred to the Parks and Recreation Commission shall be acted upon by it within sixty (60) days from the date of referral unless a longer time be allowed by Council; however, in certain matters not requiring referral to the electorate, where the Council has found an emergency measure is required, Council may, under the provisions of Article IV, Section 15(c) call for a meeting of said Commission within any period of time reasonable under the circumstances of the emergency and obtain prompt approval or disapproval of the proposed emergency measure. If the Parks and Recreation Commission shall fail to act within the time allotted, it shall be deemed to have approved such matter. If any provision of such ordinance or resolution is approved by formal action of the Parks and Recreation Commission, the adoption of such ordinance or resolution shall require a majority plus one affirmative vote of all members elected to Council for adoption or authorization. (Amended 5-5-70; 11-3-09.)

SECTION 4. THE BOARD OF CONTROL.

The Mayor, a member of Council eligible to vote selected by the Council, and the directors of the several departments, established either by this Charter or by ordinance, shall constitute a Board of Control. The Mayor shall be ex-officio president and shall appoint a secretary. The Board shall keep a journal of its proceedings. The voting shall be taken by yeas and nays and entered in the journal, and the vote of a majority of all of the members of the Board shall be necessary to adopt any question, motion, or order. All meetings of the Board shall be open to the public. The maximum amount of any contract which shall be entered into without the prior approval of the Board of Control shall not exceed the limitations set by State law. The Board shall have such further powers and perform such further duties as shall be prescribed by ordinance. (Amended 11-4-69.)

SECTION 6. ARCHITECTURAL BOARD OF REVIEW.

(EDITOR'S NOTE: This section was repealed by the electors on November 2, 1993.)

ARTICLE VIII
FINANCES

SECTION 1. ANNUAL ESTIMATE.

The fiscal year of this City shall, unless Council by proper action adopts a different date, be the same as that established from time to time for cities by the general law of Ohio. Within forty-five (45) days after the beginning of each fiscal year, the Mayor, with the assistance of the Director of Finance, shall prepare and submit to the Council an estimate of the revenues and expenditures of the City for the current fiscal year. Such estimate shall be compiled from information which shall be furnished by the head of each department, division, board or commission in such form and detail as the Mayor may require.

SECTION 2. APPROPRIATION ORDINANCE.

The Mayor shall furnish to the Council, with the estimate hereinbefore mentioned, an ordinance making appropriations for the expenditures of the City during the year embraced by said estimate. The Council shall adopt such ordinance in its original form or with such revisions as it may deem proper within ninety (90) days after the receipt of a Certificate of Resources from the County Auditor or from the beginning of the fiscal year, whichever shall last occur. The Council may amend or supplement said appropriation ordinance after its passage. Council may make one or more preliminary appropriations for current expenses until the annual appropriation ordinance is in effect.

SECTION 3. TRANSFERS AND BALANCES.

The Council may transfer any part of an unencumbered balance of an appropriation of any fund allowed by law to any purpose or object for which the appropriation for the current year has proven insufficient, except that no transfer shall be of monies raised or appropriated for the payment of any bond or note of the City until all indebtedness, interest and other obligations which must lawfully be paid from such monies has been paid.

SECTION 4. PAYMENT OF CLAIMS.

No money shall be drawn from the treasury nor shall an obligation for expenditure be incurred except in accordance with appropriations made by Council. Claims shall be approved in writing by the head or acting head of the department for which the obligation was incurred. The Council may by ordinance provide for additional regulations or controls with respect to the payment of claims.

SECTION 5. CUSTODY AND DEPOSIT OF FUNDS.

The Council shall by Ordinance provide for the custody of all funds of the City and for the deposit of funds in a bank or banks. All funds received on behalf of the City by any officer, employee or agent thereof shall be promptly paid over to the Director of Finance and by him promptly placed in a depository bank, but the Council may authorize such sums as it deems proper to be kept in cash for the daily operation of any department or office. The Director of Finance shall invest monies of the City in bonds or notes of this City, or any other investment permitted by law, in such manner as is now or hereafter authorized by general law for such investment by cities. (Amended 11-4-69.)

SECTION 6. PUBLIC BIDDING.

The Council may authorize expenditures of the funds of the City in amounts exceeding that amount in Ohio Revised Code Chapter 735 for public bidding without public biddings, for the acquisition of real estate, for the discharge of non-contractual claims against the City, for personal services, for the joint use of facilities or exercise of powers with other political subdivision, or for the product or services of public utilities (including those municipally operated), but no other expenditures of more than that amount in Ohio Revised Code Chapter 735 for public bidding shall be made except pursuant to contract made with the lowest and best bidder after public advertising and receipt of bids in the manner provided by ordinance.

No expenditure of more than fifteen thousand dollars ($15,000.00) shall be made, whether by public bid or otherwise, unless approved by ordinance of Council.
(Amended 11-7-95; 11-2-99; 11-3-09)

SECTION 7. PUBLIC IMPROVEMENTS.

Public improvements of all kinds may be made by the appropriate department either by the direct employment of the necessary labor and purchase of supplies and materials, with a separate account as to each improvement so made, or by contract let as provided in the preceding section either for a closed price or upon a unit basis.

SECTION 8. TAXATION.

(a) The aggregate amount of taxes that may be levied by the Council without a vote of the people on property in the City assessed and listed for taxation according to value shall not exceed in any one year the sum of (i) the amount of taxes which the Council is now or hereafter authorized to levy under the Constitution of laws of the State of Ohio, plus (ii) the amounts of taxes which may be levied by the Council pursuant to paragraphs (b) and (c) of this Section 8. All taxes levied pursuant to paragraphs (b) and (c) of this Section 8 shall be outside of all limitations now or hereafter provided by the Constitution of the State of Ohio.

(b) The Council may, by a majority plus one affirmative vote of the members elected to Council, without a vote of the people, levy annually taxes for the current operating expenses of the City, commencing with a levy on the 1959 tax duplicate for collection in 1960, at the rate of not over five (5) mills per dollar of valuation in said City as listed and assessed for taxation according to value.

(c) The Council may, by a majority plus one affirmative vote of the members elected to Council, levy annually, commencing with a levy on the 1994 tax list and duplicate for collection in calendar year 1995, a tax at a rate of not over nine-tenths (.9) of one mill per dollar of valuation on all property in the City as listed and assessed for (i) acquiring, constructing, reconstructing, rehabilitating, renovating, remodeling, adding to, enlarging, installing, equipping and improving municipal buildings and facilities and their sites; and (ii) costs of acquiring equipping, rehabilitating, renovating and otherwise improving fire apparatus and equipment for the City's Division of Fire; and (iii) costs of acquiring, equipping, rehabilitating, renovating and otherwise improving alarm and other communications for the City's Division of Fire and Division of Police; and (iv) costs of acquiring new motor vehicles for use in providing City services and performing City functions; and (v) debt charges on general obligation bonds and bond anticipation notes issued to pay costs of improvements identified in clauses (i) through (iv) of this paragraph. All such permanent improvements shall have an estimated life or period of usefulness of at least five years as certified by the Director of Finance. (Amended 5-3-94; 11-3-09.)

(d) Council may, by a majority plus one affirmative vote of the members elected to Council, levy annually, commencing with a levy on the 1996 tax list and duplicate for collection in calendar year 1997, a tax at a rate of not to exceed one (1) mill per dollar of valuation on all property in the City as listed and assessed for municipal recreational programs, including the purchase of equipment, the payment of salaries and benefits in the City Recreation Department, for the construction, acquisition, operation and maintenance of gymnasiums, indoor recreation centers and community centers to be owned and operated by the City, and the equipment therefore, for the extension, enlargement, improvement, operation and maintenance of existing land, facilities, buildings and structures belonging to or operated by the City and used for parks, playgrounds, play fields, gymnasiums, indoor recreation centers and community centers, and the equipment therefore, and for the debt charges on general obligation bonds and bond anticipation notes issued to pay the cost of the improvements specified herein.
(Added November 5, 1996; 11-3-09.)

SECTION 9. SUBMISSION OF EXTRA LEVY.

The Council may at any time at least sixty (60) days prior to a November election, or the date of the special election designated in the resolution herein provided, declare by resolution, adopted by a vote of a majority plus one of the members elected to Council, that the amount of taxes which may be raised within the limitations of this Charter will be insufficient to provide an adequate amount for the necessary requirements of the City for current operating expenses, and other expenses payable from the general fund of the City, and such permanent improvements and equipment as shall have an estimated useful life of five (5) years or more, and that it is necessary to levy taxes in excess of such limitations, in addition to the levies authorized and limited by this Charter, for the municipal purpose or purposes specified in such resolution. Such resolution shall specify the additional sum which it is necessary to levy, the purpose or purposes thereof, the

additional rate estimated to be required therefor and the date of any proposed election thereon. Such resolution shall be effective upon its adoption and shall be certified within five (5) days thereafter to the election authorities, who shall place such question upon the ballot at the next succeeding November election or at such special election specified in the resolution. If a majority of those voting thereon vote for the approval of such additional levy, the Council shall immediately make such levy, or such part thereof as it finds necessary, pursuant to such approval and certify the same to the County Auditor, to be placed on the tax list and collected as other taxes.

The authority of the Council to submit additional levies to a vote of the people or to levy taxes upon such other subjects and for such other purposes as may be lawful under the Constitution or laws of this State shall not be deemed impaired or abridged by reason of any provision in this Charter contained.

SECTION 10. DEBT LIMITATION.

The net indebtedness of the City created or incurred without a vote of the electors shall never exceed the debt limitation as prescribed by State law which will be on the total value of all property in the City as listed and assessed for taxation. As used in this section, the term net indebtedness shall have the same meaning and shall be calculated in the manner provided by the laws of the State of Ohio, as the same may be amended from time to time, for the issuance of notice and bonds of municipal corporations.
(Amended 11-4-69.)

ARTICLE IX
NOMINATIONS AND ELECTIONS

SECTION 1. MUNICIPAL ELECTIONS.

A general election for the choice of elective officers provided for in this Charter shall be held on the first Tuesday after the first Monday in November in odd numbered years. Elections so held shall be known as regular municipal elections. Such other elections shall be held as may be required by law, or provided for in this Charter.
(Amended 11-6-79.)

SECTION 2. NOMINATIONS.

Each petition for the nomination of a candidate for the office of Mayor shall be signed by not fewer than one hundred (100) electors of the municipality. Each petition for the nomination of a candidate for an office, other than that of Mayor, filled by election at large shall be signed by not fewer than twenty-five (25) electors of the municipality. Each petition for the nomination of a candidate for an office filled by election from a ward shall be signed by not fewer than ten (10) electors from such ward. (Amended 11-6-79.)

SECTION 3. PRIMARY ELECTION.

Candidates for all offices to be voted for at any municipal election under the provisions of this Charter shall be nominated at a non-partisan primary election to be held on the second Tuesday in September.

The number of candidates for the office of Mayor, President of Council and Ward Councilmen at any regular municipal election in the City shall be the two candidates on the primary election ballot receiving the highest number of votes at the primary election. The number of candidates for the office of Council-at-large at any regular municipal election in the City shall be the two (2) candidates on the primary election ballot receiving the highest number of votes at the primary election.

In case there shall not be more than two persons who shall have filed petitions for the office of Mayor, President of Council and Ward Councilmen as provided for in this Charter, then said persons shall be the candidates at the regular municipal election and the primary for the particular office shall not be held. In case there shall not be more than six (6) persons who shall have filed petitions for the office of Council-at-large as provided for in this Charter, then said persons shall be the candidates at the regular Municipal election and the primary for the particular office shall not be held.

Anyone who has not filed a petition for this primary election shall be ineligible as a candidate in the regular municipal election. (Amended 11-6-79; 11-4-08; 11-3-09.)

SECTION 4. ELECTIONS.

The regular municipal election shall be held on the first (1st) Tuesday after the first (1st) Monday in November of odd numbered years, commencing in 1977, for the Mayor, the President of Council and all members of Council.

Council may, by resolution order a special election to be held at any time, the purpose and date of which shall be set forth in the resolution, to be conducted in the manner provided by law. Except as otherwise noted in the Charter, the laws of Ohio applicable to election shall govern. (Amended 11-6-79.)

SECTION 5. GENERAL PROVISIONS.

Where no special provision is made in this Charter governing general, or special elections, registration and the conduct of such elections the provisions of the general law of the State of Ohio shall control. (Added 11-6-79.)

ARTICLE X
INITIATIVE, REFERENDUM, RECALL

SECTION 1. INITIATIVE.

The electors shall have the power to propose any ordinance or resolution except an ordinance appropriating money or authorizing the levy of taxes, and to adopt or reject the same at the polls, such power being known as the initiative. An initiated ordinance or resolution shall be submitted to Council by a petition signed by at least ten percent (10%) of the electors voting at the last Regular Municipal Election. When so submitted, the Clerk of the Council shall determine the sufficiency and if sufficient the Council shall take final action, either enacting, amending, or rejecting the proposed ordinance, within forty (40) days after submission. If Council fails to pass such proposed ordinance or resolution or passes it in some form different from that set forth in the petition therefor, the petitioners through the committee named on such petition may be the next regular meeting of Council request in writing that it be submitted to a vote of the electors. Thereupon, Council shall provide for submitting the petitioned ordinance or resolution to the electors at the next general or Regular Municipal Election occurring more than ninety (90) days after the filing of such petition, but if such petition is signed by at least twenty percent (20%) of such electors, the date of the election may be fixed therein, which may be a special election to be held at any time more than ninety (90) days after the filing of such petition.

SECTION 2. REFERENDUM.

(a) The electors of this Municipality shall have the power to approve or reject at the polls any ordinance, resolution, or other action passed or adopted by the Council, whether legislative or administrative in nature, except as hereinafter provided.

Within forty (40) days after the final passage by Council or approval by the Mayor, whichever is later, of an ordinance, resolution, or other action, whether legislative or administrative in nature, a petition, signed by at least that number of electors which equals ten percent (10%) of the electors voting at the last preceding general Municipal election, may be filed with the Clerk of Council, requesting that such ordinance, resolution or other action, whether legislative or administrative in nature, be either repealed or submitted to a vote of the electors. If said petition is signed by that number of electors which equals twenty percent (20%) or more of such electors, the date of the election may be fixed therein, which shall be not less than ninety (90) days from the time of filing thereof. When said petition is filed, the Clerk shall first ascertain the sufficiency of the petition and if found sufficient, the Council shall thereupon, within thirty (30) days of the filing of such petition, reconsider such ordinance, resolution or other action. If, upon such reconsideration, the ordinance, resolution or other action is not repealed, the Council shall submit it to a vote of the electors on the date fixed in the petition or, if no date be so fixed, at the first general election in any year occurring more than ninety (90) days after the filing of such petition. No such ordinance, resolution or other action shall go into effect until approved by a majority of those voting thereon.

Ordinances and resolutions providing for a tax levy or for improvements petitioned for by the owners of a majority of the front footage of the property benefited and to be specially assessed therefor, and appropriation ordinances and resolutions limited to the subject of appropriations shall not be subject to referendum. Further, whenever the Council is required to pass more than one ordinance, resolution or other action necessary to complete the financing and assessment of the cost of any public improvement previously finally approved, only the first resolution, ordinance or other action relating to said financing and assessment shall be subject to referendum, and any subsequent resolution, ordinance or other action relating to the financing and assessment of the cots of said public improvement as previously finally approved shall not be subject to referendum.

If, when submitted to a vote of the electors, an emergency ordinance, resolution or other action be not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder, but such ordinance, resolution or other action shall be deemed sufficient authority for payment, in accordance with the ordinance, of any costs or expense actually incurred previous to the referendum vote thereon, but not for any in future costs or expenses allegedly incurred or obligated with respect thereto.

(b) Each contract, consent agreement, compact or other means by which the City of Fairview Park cooperates with, is or becomes a member of any type of, or contributes to the operation, in any way, of any other governmental unit, agency or association, including a regional government or agency or group of governmental units, shall be terminable by the people at any time by a referendum as provided in Article X, Section 2 (a) and in no future obligations with respect thereto shall be binding upon City or its citizens if said referendum passes.

(c) All ordinances, resolutions, proclamations, motions, and Charter provisions inconsistent with this section are hereby repealed.

(d) This section shall be severable and if any subsection, part, word or application thereof is held invalid for any reason, such holding, shall not invalidate or affect the force and effect of any other subsection, part, word or application thereof.
(Amended 11-4-75.)

SECTION 3. RECALL.

Electors shall have the power to remove from office by recall election, any elected official of the City. After an elected official has served six months of his term, a petition demanding his recall and removal, may be filed with the Clerk of Council. Such petition shall be signed by at least twenty-five percent (25%) of the total electors voting at the last preceding Regular Municipal Election, provided, however, the petition for recall of a councilperson elected from a ward shall be signed by at least that number of electors of the councilperson's ward equal to twenty-five percent (25%) in number of the electors of such ward who voted at the last preceding regular Municipal Election. If the Clerk shall find the petition sufficient he shall promptly so certify to the Council, shall deliver a copy of such certificate to the official whose removal is sought and make a record of such delivery. If such official shall not resign within five (5) days after the day on which such delivery shall have been made, the Council shall fix a day for holding a recall election not less than thirty (30) days, nor more than forty-five (45) days from the date of delivery. If a majority of the votes cast shall be voted affirmatively, such official shall remain in office. If a majority of the votes cast shall be voted negatively, such official shall be considered as removed, his office shall be deemed vacant and such vacancy shall be filled as provided in this Charter. The official removed by such recall election shall not be eligible for appointment to the vacancy created thereby. (Amended 11-5-91.)

SECTION 4. GENERAL PROVISIONS.

The manner of signing, the method of circulating, the form and requirements as to the affidavit, and the other requirements of the general law regulating initiative and referendum petitions, shall apply in the case in initiative, referendum and recall in this City, except as otherwise provided in this Charter.

ARTICLE XI
FRANCHISE

The Council may by ordinance grant a non-exclusive franchise to any person, firm or corporation to construct or operate a public utility on, across, under, over or above any public street or real estate within the City for a period not in excess of twenty-five (25) years; and it may prescribe in the ordinance the kind or quality of service or product to be furnished, the rate or rates to be charged therefor, and such other terms as Council shall deem conducive to the public interest. Such franchise may be amended or renewed in the manner and subject to the provisions established by this Charter for original grants. No consent of the owner of property abutting on any public street or real estate shall be necessary to the effectiveness of any such grant, amendment or renewal.

All such grants, amendments and renewals shall be made subject to the continuing right of the Council to provide reasonable regulations for the operation of such utilities with reference to such streets and public real estate, including the right to require such reconstruction, relocation, alteration or removal of structures and equipment used in such streets or public realty as shall, in the opinion of Council, be necessary in the public interest.

ARTICLE XII
AMENDMENTS TO CHARTER

This Charter may be amended by either of two methods. The Council may, by an affirmative vote of at least a majority plus one of its members, submit to the electors any proposed amendment or amendments to this Charter; or upon petition signed by not less than ten percent (10%) of the registered electors of the City setting forth any proposed amendment or amendments to this Charter, the Council shall forthwith submit such proposed amendment or amendments to the electors in accordance, in each instance, with the provisions of the Constitution and laws of Ohio now or hereafter in effect. The Council shall determine the manner of submission of any proposed amendment or amendments to the electors to the extent that such submission is not governed by this Charter or the Constitution or the laws of the State of Ohio.

If any such proposed amendment or amendments shall be approved by a majority of the electors voting thereon, it or they shall become a part of this Charter; except that if two (2) or more inconsistent proposed amendments on the same subject shall be submitted at the same election, only the one of such amendments receiving the largest affirmative vote, not less than a majority, shall become a part of the Charter.

ARTICLE XIII
GENERAL PROVISIONS

SECTION 1. EFFECTIVE DATE OF CHARTER.

For the purpose of nominating and electing officers of this City and fixing the compensation of those to be elected in 1959, this Charter shall be in effect from and after the date of its approval by the electors and for all other purposes the Charter shall be in effect on and after the first day of January, 1959.

SECTION 2. SAVING CLAUSE.

The determination that any part of this Charter is invalid shall not invalidate or impair the force or effect of any other part hereof except to the extent that such other part is wholly dependent for its operation upon the part declared invalid.

SECTION 3. EFFECT OF THE CHARTER UPON EXISTING LAWS AND RIGHTS.

The adoption of this Charter shall not affect any pre-existing rights of the City, or any right or liability or pending suit or prosecution, either on behalf of or against the City or any officer thereof, nor any franchise granted by the City, nor pending proceedings for the authorization of public improvements or the levy of assessments therefor. Except as a contrary intent appears herein, all acts of the Council of the City shall continue in effect until lawfully amended or repealed.

SECTION 4. INTERPRETATION OF THE CHARTER.

The Article and Section headings herein have been inserted for convenient reference and are not intended to define or limit the scope of, or otherwise affect any provision of this Charter.

SECTION 5. GENDER NEUTRAL.

Whenever the male gender is used in this Charter it shall include the female gender.
(Added 11-3-09.)

ARTICLE XIV
CHARTER REVIEW COMMISSION

On August 15, 1988, and each ten (10) years thereafter, the Mayor shall appoint a Commission of nine (9) qualified electors of the City holding no other office or appointment in this City, as members of a Charter Review Commission. The Mayor shall also appoint a Secretary to the Charter Review Commission who shall record the proceedings of the meetings and serve in any other secretarial capacity. Sufficient funds should be appropriated by Council for the compensation of the Secretary and other expenses of the Charter Review Commission. The appointees to such Commission shall be approved by Council. Such Commission shall review the City Charter, and within nine (9) calendar months after such appointment, recommend to Council such alterations, revisions and amendments, if any, to this Charter as in its judgment are desirable. The Council shall review the recommendations of the Charter Review Commission and approve or disapprove each individual recommendation. The Council thereafter shall submit to the electors any such proposed alterations, revisions, or amendments of this Charter it has approved by an affirmative vote of at least a majority plus one of its members pursuant to Article XII of this Charter at the next General Election.

The members appointed to said Commission shall serve without compensation. Meetings of the Charter Review Commission shall be open to the public.
(Amended 11-6-90; 11-3-09.)

ARTICLE XV
EXECUTIVE SESSIONS

Notwithstanding any other provision of this Charter, all meetings, whether regular or special, of the Council, and of all boards, commissions and other public bodies whether established by ordinance or resolution of Council, by administrative action, or by this Charter, as well as any committee of any of the foregoing, shall be open to the public except that an executive session may be held, in compliance with State statutes, after Council, the board, the commission, or other public body determines, by a roll call vote in a meeting open to the public to hold such executive session for the sole purpose of the consideration of any of the following matters:

(1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of his official duties or for his removal from office. If a public body holds an executive session pursuant to division (1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (1) of this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

(2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use this division as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers. If the minutes of the public body show that all meetings and deliberations of the public body have been conducted in compliance with this section, any instrument executed by the public body purporting to convey, lease, or otherwise dispose of any right, title, or interest in any public property shall be conclusively presumed to have been executed in compliance with this section insofar as title or other interest of any bona fide purchasers, lessees, or transferees of the property is concerned.

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

(4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;

(5) Matters required to be kept confidential by Federal law or rules or State statutes;

(6) Specialized details of security arrangements where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law. If a public body holds an executive session to consider any of the matters listed in divisions (2) to (6) of this section, the motion and vote to hold that executive session shall state which one or more of the approved matters listed in those divisions are to be considered at the executive session. (Added 11-5-91.)

CODIFIED ORDINANCES OF FAIRVIEW PARK

PART ONE - ADMINISTRATIVE CODE

TITLE ONE - General Provisions
Chap. 101. Codified Ordinances.
Chap. 103. Official Standards.
Chap. 105. Wards and Boundaries.
Chap. 106. Elections.
Chap. 107. Continuity of Government.
Chap. 109. Conflict of Interest.
Chap. 110. Open Meetings.

TITLE THREE - Legislative
Chap. 111. Council.
Chap. 113. Ordinances, Resolutions and Contracts.

TITLE FIVE - Administration
Chap. 121. Mayor.
Chap. 123. Department of Law.
Chap. 125. Department of Finance.
Chap. 127. Department of Public Service and Development.
Chap. 129. Police Department.
Chap. 131. Fire Department.
Chap. 133. Division of Building.
Chap. 135. Parks and Recreation Commission.
Chap. 136. Department of Recreation.
Chap. 137. Planning and Design Commission.
Chap. 141. Civil Service Commission.
Chap. 143. Employment Provisions.
Chap. 147. Senior Life Office.
Chap. 149. Fairview Park Youth Commission.
Chap. 150. Shade Tree Advisory Committee.
Chap. 151. Residential Child Day Care Services Resource Registry.
Chap. 153. Airport Environmental Commission.

TITLE SEVEN - Taxation
Chap. 171. Admissions Tax.
Chap. 173. Income Tax.
Chap. 174. Income Tax Effective January 1, 2016.
Chap. 175. Motor Vehicle License Tax.

CODIFIED ORDINANCES OF FAIRVIEW PARK

PART ONE - ADMINISTRATIVE CODE

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Chap. 109. Conflict of Interest.
Chap. 110. Open Meetings.

CHAPTER 101
Codified Ordinances

101.01 Designation; citation; headings.
101.02 General definitions.
101.03 Rules of construction.
101.04 Revivor; effect of amendment or repeal.
101.05 Construction of section references.
101.06 Conflicting provisions.
101.07 Determination of legislative intent.
101.08 Severability.
101.99 General penalty.

CROSS REFERENCES

See sectional histories for similar State law
Codification in book form - see Ohio R.C. 731.23
Imprisonment until fine and costs are paid - see Ohio R.C. 1905.30, 2947.20
Standard of time - see Ohio R.C. 1. 04
Ordinances and resolutions - see ADM. Ch. 113
Rules of construction for offenses and penalties - see GEN. OFF. 501.04
Statute of limitations on prosecutions - see GEN. OFF. 501.06

101.01 DESIGNATION; CITATION; HEADINGS.

(a) All ordinances of a permanent and general nature of the Municipality as revised, codified, rearranged, renumbered and consolidated into component codes, titles, chapters and sections shall be known and designated as the Codified Ordinances of Fairview Park, 1996, for which designation "Codified Ordinances" may be substituted. Code, title, chapter and section headings do not constitute any part of the law as contained in the Codified Ordinances. (ORC 1.01)

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

101.02 GENERAL DEFINITIONS.

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

(a) "And" may be read "or", and "or" may be read "and", if the sense requires it. (ORC 1.02 (F))

(b) "Another" when used to designate the owner of property which is the subject of an offense, includes not only natural persons but also every other owner of property. (ORC 1.02 (B))

(c) "Bond" includes an undertaking and "undertaking" includes a bond. (ORC 1.02 (D), (E))

(d) "Council" means the legislative authority of the Municipality.

(e) "County" means Cuyahoga County, Ohio.

(f) "Keeper" or "proprietor" includes all persons, whether acting by themselves or as a servant, agent or employee.

(g) "Land" or "real estate" includes rights and easements of an incorporeal nature. (ORC 701.01(F))

(h) "Municipality" or "City" means the City of Fairview Park, Ohio.

(i) "Oath" includes affirmation and "swear" includes affirm. (ORC 1.59(B))

(j) "Owner", when applied to property, includes any part owner, joint owner or tenant in common of the whole or part of such property.

(k) "Person" includes an individual, corporation, business trust, estate, trust, partnership and association. (ORC 1.59(C))

(1) "Premises", as applied to property, includes land and buildings.

(m) "Property" means real and personal property. (ORC 1.59(E))
"Personal property" includes all property except real.
"Real property" includes lands, tenements and hereditaments.

(n) "Public authority" includes boards of education; the Municipal, County, State or Federal government, its officers or an agency thereof; or any duly authorized public official.

(o) "Public place" includes any street, sidewalk, park, cemetery, school yard, body of water or watercourse, public conveyance, or any other place for the sale of merchandise, public accommodation or amusement.
(p) "Registered mail" includes certified mail and "certified mail" includes registered mail. (ORC 1.02(G))
(q) "Rule" includes regulation. (ORC 1.59(F))
(r) "Sidewalk" means that portion of the street between the curb line and the adjacent property line intended for the use of pedestrians.
(s) "This State" or "the State" means the State of Ohio. (ORC 1.59(G))
(t) "Street" includes alleys, avenues, boulevards, lanes, roads, highways, viaducts and all other public thoroughfares within the Municipality.
(u) "Tenant" or "occupant", as applied to premises, includes any person holding a written or oral lease, or who actually occupies the whole or any part of such premises, alone or with others.
(v) "Whoever" includes all persons, natural and artificial; partners; principals, agents and employees; and all officials, public or private. (ORC 1.02(A))
(w) "Written" or "in writing" includes any representation of words, letters, symbols or figures. This provision does not affect any law relating to signatures. (ORC 1.59(J))

101.03 RULES OF CONSTRUCTION.

(a) Common and Technical Usage. Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly. (ORC 1.42)

(b) Singular and Plural; Gender; Tense. As used in the Codified Ordinances, unless the context otherwise requires:
(1) The singular includes the plural, and the plural includes the singular.
(2) Words of one gender include the other genders.
(3) Words in the present tense include the future.
(ORC 1.43)

(c) Calendar; Computation of Time.
(1) Definitions.
A. "Week" means seven consecutive days.
B. "Year" means twelve consecutive months.
(ORC 1.44)
(2) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month. (ORC 1.45)

(3) The time within which an act is required by law to be done shall be computed by excluding the first and including the last day, except that when the last day falls on Sunday or a legal holiday, then the act may be done on the next succeeding day which is not a Sunday or a legal holiday. When a public office, in which an act required by law is to be performed, is closed to the public for the entire day which constitutes the last day for doing such act or before its usual closing time on such day, then such act may be performed on the next succeeding day which is not a Sunday or a legal holiday. If any legal holiday falls on Sunday, the next succeeding day is a legal holiday.
(ORC 1.14)

(4) When legislation is to take effect or become operative from and after a day named, no part of that day shall be included. (ORC 1.15)

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

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

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

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

101.04 REVIVOR; EFFECT OF AMENDMENT OR REPEAL.

(a) The repeal of a repealing ordinance does not revive the ordinance originally repealed nor impair the effect of any saving clause therein. (ORC 1.57)

(b) An ordinance which is re-enacted or amended is intended to be a continuation of the prior ordinance and not a new enactment, so far as it is the same as the prior ordinance. (ORC 1.54)

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

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

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

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

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

(d) If the penalty, forfeiture or punishment for any offense is reduced by a re-enactment or amendment of an ordinance, the penalty, forfeiture or punishment, if not already imposed, shall be imposed according to the ordinance as amended.
(ORC 1.58)

101.05 CONSTRUCTION OF SECTION REFERENCES.

(a) A reference to any portion of the Codified Ordinances applies to all re-enactments or amendments thereof. (ORC 1.55)

(b) If a section refers to a series of numbers or letters, the first and the last numbers or letters are included. (ORC 1.56)

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

References in the Codified Ordinances to action taken or authorized under designated sections of the Codified Ordinances include, in every case, action taken or authorized under the applicable legislative provision which is superseded by the Codified Ordinances.
(ORC 1.23)

101.06 CONFLICTING PROVISIONS.

(a) If there is a conflict between figures and words in expressing a number, the words govern. (ORC 1.46)

(b) If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail. (ORC 1.51)

(c) (1) If ordinances enacted at different meetings of Council are irreconcilable, the ordinance latest in date of enactment prevails.

(2) If amendments to the same ordinance are enacted at different meetings of Council, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each. If the amendments are substantively irreconcilable, the latest in date of enactment prevails. The fact that a later amendment restates language deleted by an earlier amendment, or fails to include language inserted by an earlier amendment, does not of itself make the amendments irreconcilable. Amendments are irreconcilable only when changes made by each cannot reasonably be put into simultaneous operation.
(ORC 1.52)

101.07 DETERMINATION OF LEGISLATIVE INTENT.

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

(1) Compliance with the constitutions of the State and of the United States is intended;
(2) The entire ordinance is intended to be effective;
(3) A just and reasonable result is intended;
(4) A result feasible of execution is intended. (ORC 1.47)

(b) An ordinance is presumed to be prospective in its operation unless expressly made retrospective. (ORC 1.48)

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

(1) The object sought to be attained;
(2) The circumstances under which the ordinance was enacted;
(3) The legislative history;
(4) The common law or former legislative provisions, including laws upon the same or similar subjects;
(5) The consequences of a particular construction;
(6) The administrative construction of the ordinance.
(ORC 1.49)

101.08 SEVERABILITY.

If any provision of a section of the Codified Ordinances or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.
(ORC 1.50)

101.99 GENERAL PENALTY.

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

CHAPTER 103
Official Standards

103.01 Fairview Park Cemetery declared a City landmark.

103.02 Bain Park and Cabin declared City landmarks.

CROSS REFERENCES
State standard of time - see Ohio R.C. 1.04
State legal holidays - see Ohio R.C. 1.14, 5.20 et seq.
State flag - see Ohio R.C. 5.01
Designation of landmarks - see P. & Z. Ch. 1155

103.01 FAIRVIEW PARK CEMETERY DECLARED A CITY LANDMARK.

(a) Effective Memorial Day 1982, the Fairview Park Cemetery shall be designated a historical landmark.

(b) The dedication of the Cemetery as a historical landmark shall take place on Memorial Day 1982.

(c) The Director of Public Service and Development shall be authorized to secure a plaque designating the Cemetery a historical landmark.
(Ord. 82-26. Passed 4-19-82.)

103.02 BAIN PARK AND CABIN DECLARED CITY LANDMARKS.

(a) Effective September 15, 1985, the portion of Bain Park, hereinafter described as follows and the Bain Park Cabin shall be designated as City historical landmarks.

(1) East boundary: from the intersection of West 210th Street and North Park Drive south to a line drawn 10' - 0" south of the southeast corner of the Cabin foundation, east to West 210th Street.

(2) South boundary: from an established southeast point, as described in "A" above, to a point due west to 10' - 0" from the southwest corner of the Cabin and then following a line 5' - 0" from the north bank of Coe Creek until it reaches a point 5' - 0" north from the northeast corner of the first stone bridge west of the Cabin.

(3) West boundary: from the point 5' - 0" at the northeast corner of the bridge as previously described, to a point 120' - 0" from the southerly side of the driveway and running along the park side of North Park Drive.

(4) North boundary: from an established point 120' - 0" from the drive, as previously described, running along the park side of North Park Drive, to the northeasterly point established at West 210th Street.

(b) The dedication of Bain Park and Bain Park Cabin as City historical landmarks shall take place on September 15, 1985.

(c) The Director of Public Service and Development shall be authorized to secure a plaque designating Bain Park and Bain Park Cabin as City historical landmarks.
(Ord. 85-64. Passed 9-3-85.)

CHAPTER 105
Wards and Boundaries

105.01 Division into five wards.
105.02 Ward 1.
105.03 Ward 2.
105.04 Ward 3.
105.05 Ward 4.
105.06 Ward 5.

CROSS REFERENCES
Name and boundaries - see CHTR. Art. I
Division into wards - see Ohio R.C. 731.06

105.01 DIVISION INTO FIVE WARDS.

The City is hereby subdivided into five wards, to be known as Wards 1, 2, 3, 4 and 5 as provided by Ohio R.C. 731.06.
(Ord. 01-36. Passed 7-16-01.)

105.02 WARD 1.

Beginning at the intersection of the northerly corporation boundary and the centerline of Wooster Road, (81.80870 W Longitude, 41.457492 N Latitude); thence southerly along the centerline of Wooster Road, following the corporation boundary, to the intersection of the centerline of Carolyn Avenue; thence westerly along the centerline of Carolyn Avenue; and a line extended to the centerline of West 204th Street; thence southerly along the centerline of West 204th Street to the centerline of Lorain Road; thence easterly along the centerline of Lorain Road to a point of intersection of the lot line between 20201 Lorain Road and 20123 Lorain Road extended; thence southerly along said lot line about 600 feet to the rear line of said lot; thence easterly along the rear lot line of about 400 feet to the westerly lot line between 20011 Lorain Road and 20005 Lorain Road; thence northerly along said lot line to the centerline of Lorain Road; thence easterly along the centerline of Lorain Road to the centerline of Cleveland Metro Park Road; thence southerly along the centerline of Cleveland Metro Park Road to the centerline of Mastick Road; thence easterly along the centerline of Mastick Road to a point on the corporation boundary; thence northerly and easterly along the corporation boundary following the abandoned course of the Rocky River to a point where the boundary rejoins the river; thence in a generally northern and western direction along the corporation boundary and the course of the Rocky River to a point at (81.832108 W Longitude, 41.464605 N Latitude); thence southerly along the corporation boundary to the centerline of Story Road (81.831487 W, 41.459796 N); thence westerly along the centerline of Story Road to a point at (81.832204 W, 41.459597 N); thence southerly along the corporation boundary to a point at (81.832209 W, 41.457109 N); thence westerly along the corporation boundary to the point of origin.
(Ord. 01-36. Passed 7-16-01.)

105.03 WARD 2.

Beginning at the intersection of the northern corporation boundary and the centerline of West 219th Street extended; thence southerly along the centerline of West 219th Street extended to the centerline of Westwood Avenue; thence easterly along the centerline of Westwood Avenue to the centerline of West 217th Street; thence southerly along the centerline of West 217th Street to the centerline of Lorain Road; thence northeasterly along the centerline of Lorain Road to the centerline of West 204th Street; thence northerly along the centerline of West 204th Street to intersection with the northern corporation boundary (81.846004 W. 41.453701 N); thence westerly along the corporation boundary to a point at (81.849133 W, 41.453849 N); thence northerly along the corporation boundary to the centerline of Center Ridge Road (81.848959 W, 41.462909 N); thence southwesterly along the centerline of Center Ridge Road to a point at (81.858663 W, 41.459613 N); thence southerly along the corporation boundary to a point at (81.859197 W, 41.449716 N); thence westerly along the corporation boundary to the point of origin.
(Ord. 01-36. Passed 7-16-01.)

105.04 WARD 3.

Beginning at the intersection of the centerline of Lorain Road and the centerline of West 223rd Street; thence southerly along the centerline of West 223rd Street to the centerline of Morton Avenue; thence westerly along the centerline of Morton Avenue to the centerline of West 227th Street; thence southerly along the centerline of West 227th Street to the centerline of Marleen Drive; thence easterly along the centerline of Marleen Drive to the centerline of Sharon Lane; thence southwesterly along the centerline of Sharon Lane to the centerline of Sandy Lane; thence easterly along the centerline of Sandy Lane to the centerline of West 220th Street; thence northerly along the centerline of West 220th Street to the centerline of Cromwell Avenue; thence easterly along the centerline of Cromwell Avenue to the centerline of West Park Drive; thence southerly along the centerline of West Park Drive to the intersection of the centerlines of West Park Drive, Seabury Avenue and South Park Drive; thence northerly along the centerline of South Park Drive to the centerline of Cromwell Avenue; thence easterly along the centerline of Cromwell Avenue to the centerline of West 213th Street; thence northerly along the centerline of West 213th Street to the centerline of Cromwell Avenue; thence easterly along the centerline of Cromwell Avenue to the centerline of West 210th Street; thence southerly along the centerline of West 210th Street to the centerline of Mastick Road; thence along a line extended from West 210th Street to a point of intersection with the southeast corporation boundary (81.853515 W, 41.430377 N); thence in an easterly direction along the corporation boundary to the centerline of the Rocky River; thence in a northeasterly direction along the centerline of the Rocky River and the corporation boundary to the centerline of Mastick Road; thence westerly along the centerline of Mastick Road to the centerline of Cleveland Metro Park Road; thence northerly along the centerline of the Cleveland Metro Park Road to the centerline of Lorain Road; thence westerly along the centerline of Lorain Road to the westerly lot line between 20011 Lorain Road and 20005 Lorain Road; thence southerly along the said westerly line about 600 feet rear line of said lots; thence westerly about 400 feet to the lot line between 20201 Lorain Road and 20123 Lorain Road; thence northerly along said lot line to the centerline of Lorain Road; thence westerly along the centerline of Lorain Road to the point of beginning. (Ord. 01-36. Passed 7-16-01.)

105.05 WARD 4.

Beginning at a point on an exterior corner of the corporation boundary located at (81.874880 W, 41.449802 N); thence southerly along the western corporation boundary to the centerline of Macbeth Avenue; thence easterly along the centerline of Macbeth Avenue to the centerline of West 229th Street; thence northerly along the centerline of West 229th Street to the centerline of Macbeth Avenue; thence easterly along the centerline of Macbeth Avenue to the centerline of West 227th Street; thence northerly along the centerline of West 227th Street to the centerline of Morton Avenue; thence easterly along the centerline of Morton Avenue to the centerline of West 223rd Street; thence northerly along the centerline of West 223rd Street to the centerline of Lorain Road; thence northeasterly along the centerline of Lorain Road to the centerline of West 217th Street; thence northerly along the centerline of West 217th Street to the centerline of Westwood Avenue; thence westerly along the centerline of Westwood Avenue to the centerline of West 219th Street; thence northerly along the centerline of West 219th Street extended to the northern corporation boundary; thence westerly along the northern corporation boundary to the point of beginning. (Ord. 01-36. Passed 7-16-01.)

105.06 WARD 5.

Beginning at the intersection of the centerline of Macbeth Avenue and the westerly corporation boundary; thence southerly along the corporation boundary to a point (81.875494 W, 41.417751 N) on the exterior corner on the corporation boundary; thence easterly along the southern corporation boundary to a point in the centerline of the Brookpark Road Bridge over the Rocky River, above the centerline of the Rocky River; thence northerly along the centerline of the Rocky River and the corporation boundary to a point located at (81.853954 W, 41.426539); thence northerly along the corporation boundary to a point (81.853472 W. 41.430920 N) at the intersection of the centerlines of Mastick Road and West 210th Street; thence northerly along the centerline of West 210th Street to the centerline of Cromwell Avenue; thence westerly along the centerline of Cromwell Avenue to the centerline of West 213th Street; thence southerly along the centerline of West 213th Street to the centerline of Cromwell Avenue; thence westerly along the centerline of Cromwell Avenue to the centerline of South Park Drive; thence southerly along the centerline of South Park Drive to the intersection of the centerlines of South Park Drive, Seabury Avenue and West Park Drive; thence northerly along the centerline of West Park Drive to the centerline of Cromwell Drive; thence westerly along the centerline of Cromwell Drive to the centerline of West 220th Street; thence southerly along the centerline of West 220th Street to the centerline of Sandy Lane; thence westerly along the centerline of Sandy Lane to the centerline of Sharon Lane; thence northeasterly along the centerline of Sharon Lane to the centerline of Marleen Drive; thence westerly along the centerline of Marleen Drive to the centerline of West 227th Street; thence southerly along the centerline of West 227th Street to the centerline of Macbeth Avenue; thence westerly along the centerline of Macbeth Avenue to the centerline of West 229th Street; thence southerly along the centerline of West 229th Street to the centerline of Macbeth Avenue; thence westerly along the centerline of Macbeth Avenue to the west corporation line and the point of beginning. (Ord. 01-36. Passed 7-16-01.)

CHAPTER 106
Elections

106.01 Filing deadlines.

CROSS REFERENCES
Nominations and elections - see CHTR. Art. IX

106.01 FILING DEADLINES.

Any person desiring to become a candidate for election to any office to be voted for at the next regular municipal election shall, not later than 4:00 p.m. of the seventy-fifth (75th) day before the day of the primary election, file with the Cuyahoga County Board of Elections a petition for nomination as required by Article IX of the Charter of the City of Fairview Park, Ohio.
(Ord. 08-69. Passed 12-15-08.)

CHAPTER 107
Continuity of Government

107.01 Definitions.
107.02 Designation, status, qualifications of successors.
107.03 Assumption of powers and duties by successor.
107.04 Recording and effective date.
107.05 Formalities of taking office.
107.06 Quorum and vote requirements.

CROSS REFERENCES
Vacancy in office of Mayor - see CHTR. Art. III, §4
Continuity of local government in event of enemy attack - see Ohio R.C. Ch. 161

107.01 DEFINITIONS.
As used in this chapter, unless the context otherwise clearly indicates:

(a) "Unavailable" means either that a vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office, or that the lawful incumbent of the office, including any deputy exercising the powers and discharging the duties of an office because of a vacancy, and his duly authorized deputy are absent or unable, for physical, mental or legal reasons, to exercise the powers and discharge the duties of the office.

(b) "Attack" means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner, by sabotage or by the use of bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological or biological means, or other weapons or processes.

(c) "Duly authorized deputy" means a person who is presently authorized to perform all of the functions, exercise all of the powers and discharge all of the duties of an office in the event the office is vacant or at such times as it lacks administration due to the death, absence or disability of the incumbent officer.

(d) "Emergency interim successor" means a person designated, pursuant to this chapter, for possible temporary succession to the powers and duties, but not the office, of a City officer in the event that such officer or any duly authorized deputy is unavailable to exercise the powers and discharge the duties of the office.

(Ord. 62-38. Passed 5-21-62.)

107.02 DESIGNATION, STATUS, QUALIFICATIONS OF SUCCESSORS.

(a) Elective Officers. Within thirty days following the effective date of this section, and thereafter within thirty days after first entering upon the duties of his office, the Mayor and each member of Council shall, in addition to any duly authorized deputy, designate such number of emergency interim successors to his office and specify their rank in order of succession after any duly authorized deputy, so that there will be not less than three duly authorized deputies or emergency interim successors, or combination thereof, for the office.

(b) Appointive Officers. The Mayor shall, within the time specified in subsection (a) hereof, in addition to any duly authorized deputy, designate for all appointive officers such number of emergency interim successors to these officers and specify their rank in order of succession after any duly authorized deputy, so that there will be not less than three duly authorized deputies or emergency interim successors, or combination thereof, for each officer.

(c) Review of Designations. The incumbent, in the case of those elective officers specified in subsection (a) hereof, and the Mayor, in the case of those appointive officers specified in subsection (b) hereof, shall review and, as necessary, promptly revise the designations of emergency interim successors to insure that at all times there are at least three such qualified emergency interim successors or duly authorized deputies, or any combination thereof, for each officer specified.

(d) Qualifications. No person shall be designated or serve as an emergency interim successor unless he may, under the Constitution and statutes of this State and the Charter or ordinances of this City, hold the office of the person to whose powers and duties he is designated to succeed, but no provision of any ordinance prohibiting an officer or employee of this City from holding another office shall be applicable to an emergency interim successor.

(e) Status of Emergency Interim Successor. A person designated as an emergency interim successor holds that designation at the pleasure of the designator, provided that he must be replaced if removed. He retains this designation as emergency interim successor until replaced by another appointed by the authorized designator.
(Ord. 62-38. Passed 5-21-62.)

107.03 ASSUMPTION OF POWERS AND DUTIES BY SUCCESSOR.

If, in the event of an attack, any officer named in subsections (a) and (b) of Section 107.02 and any duly authorized deputy is unavailable, his emergency interim successor highest in rank in order of succession who is not unavailable shall, except for the power and duty to appoint emergency interim successors, exercise the powers and discharge the duties of such officer. An emergency interim successor shall exercise these powers and discharge these duties only until such time as the lawful incumbent officer or any duly authorized deputy or an emergency interim successor higher in rank in order of succession exercises, or resumes the exercise of, the powers and discharge of the duties of the office, or until, where an actual vacancy exists, a successor is appointed to fill such vacancy or is elected and qualified as provided by law.
(Ord. 62-38. Passed 5-21-62.)

107.04 RECORDING AND EFFECTIVE DATE.

The name, address and rank in order of succession of each duly authorized deputy shall be filed with the City Clerk, and each designation, replacement or change in order of succession of an emergency interim successor shall become effective when the designator files with the City Clerk the successor's name, address and rank in order of succession. The City Clerk shall keep on file all such data regarding duly authorized deputies and emergency interim successors, and it shall be open to public inspection.
(Ord. 62-38. Passed 5-21-62.)

107.05 FORMALITIES OF TAKING OFFICE.

At the time of their designation, emergency interim successors shall take such oath and do such other things, if any, as may be required to qualify them to exercise the powers and discharge the duties of the office to which they may succeed.
(Ord. 62-38. Passed 5-21-62.)

107.06 QUORUM AND VOTE REQUIREMENTS.

In the event of an attack, quorum requirements for Council shall be suspended, and where the affirmative vote of a specified proportion of members for approval of an ordinance, resolution or other action would otherwise be required, the same proportion of those voting thereon shall be sufficient. (Ord. 62-38. Passed 5-21-62.)

CHAPTER 109
Conflict of Interest

109.01 Declaration of policy.
109.02 Responsibilities of public office.
109.03 Dedicated service.
109.04 Fair and equal treatment.
109.05 Conflict of interest.
109.06 Disclosure of private interest in legislation.
109.07 Applicability of Code.
109.08 Board of Ethics; creation, composition and term.
109.09 Complaints, hearings and procedure; oaths and subpoenas.
109.99 Penalty.

CROSS REFERENCES
Unlawful interest in public contract - see GEN. OFF. 525.10
Soliciting or receiving improper compensation - see GEN. OFF. 525.11

109.01 DECLARATION OF POLICY.

The proper operation of democratic government requires that all public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in proper channels of governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals there is hereby established this Code of Ethics for all public officials and employees, whether elected or appointed, paid or unpaid. Accordingly, this Code shall apply to, and regulate the conduct of, all members of Council, the Mayor, all officers and employees of the City, and all members of any board, commission or advisory committee or council or the City, to all of whom the phrase "officials and employees", as used in this Code, shall be deemed to apply. The purpose of this Code is to establish ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the City. The provisions and purpose of this Code and such rules and regulations as may be established are hereby declared to be in the best interest of the City.
(Ord. 91-13. Passed 5-6-91.)

109.02 RESPONSIBILITIES OF PUBLIC OFFICE.

The public officials and public employees of the City are agents of public purpose and hold office for the benefit of the public only. They are bound to uphold the Constitution and laws of the United States, the Constitution and laws of the State of Ohio and the Charter and laws of the City; and to carry out impartially the laws of the United States, the State of Ohio and the City and thus foster respect for government. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest shall be their primary concern. Their conduct in their official affairs should be above reproach.
(Ord. 91-13. Passed 5-6-91.)

109.03 DEDICATED SERVICE.

All public officials and public employees of the City should be loyal to the objectives expressed by the electorate and the programs developed to attain and maintain those objectives. Appointive officials and employees shall adhere to the rules of work and performance established for their positions by the appropriate authority.

Officials and employees should not exceed their authority or breach the law, or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from so doing by law or by the officially recognized confidentiality of their work.
(Ord. 91-13. Passed 5-6-91.)

109.04 FAIR AND EQUAL TREATMENT.

No official or employee of the City shall request, use or permit the use of City owned, leased or controlled vehicles, equipment, materials or property for personal convenience or profit, except when such services are available to the public generally or are provided as municipal policy adopted pursuant to ordinance for the use of such official or employee in the conduct of official business. No official or employee of the City shall grant any special consideration, treatment or advantage to any person beyond that which is available to every other person.
(Ord. 91-13. Passed 5-6-91.)

109.05 CONFLICT OF INTEREST.

No member of Council, the Mayor or other public official or public employee of the City, whether paid or unpaid, shall engage in any business or transaction or have a financial or personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties in the public interest or which would tend to impair his independence of judgment or action in the performance of his official duties, without first making a public disclosure thereof. Personal interest, as distinguished from financial interest, includes an interest arising from blood, adoption, guardianship or marriage or close business or political association.

Specific conflicts of interest are enumerated herein for the guidance of all public officials and public employees:

(a) Holding, engaging in or accepting private employment or rendering services for or on behalf of private interests where such employment or service is incompatible with the proper discharge of the official public duties of the official or employee or which would tend to impair the independence of judgment or action in the performance of the official duties of the public official or public employee.

(b) Disclose, without appropriate authorization, any information acquired by the public official or public employee in the course of his official duties which is confidential because of statutory or ordinance provisions, or when clearly designated as confidential to him when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is clearly necessary to the proper conduct of government business, or use such information to advance the financial or private interest of the public official or public employee or others.

(c) Solicit, receive, accept or agree to receive or accept or use or authorize the use of the authority or influence of his office or employment to secure anything of value or the promise or offer of anything of value for or in connection with his public service or public employment including, but not limited to, any gift, service, loan, gratuity, compensation, favor, thing or promise from any person, partnership, trust, business trust, corporation or association which to the knowledge of the public official or public employee is interested, directly or indirectly, in any manner whatsoever in business dealings with the City or that may tend to manifest an influence upon the public official or employee in the proper discharge of public duties; nor shall any public official or employee grant in the discharge of public duties any improper favor, service or thing of value.

(d) Engage in the practice of law or represent or otherwise appear in behalf of a person, partnership, trust, business trust, corporation or association before any court or administrative agency in which the City is a party except on behalf of the City as an official or employee; or volunteer opinion evidence against the interests of the City in any litigation or proceeding in which the City is a party; or accept a retainer or other compensation that is contingent upon a specific action by a City agency, including Council, administrative department, division or office, board or commission; or appear before any board, commission or other public body of the City except in the performance of public obligations or official duties.

The provisions of this subsection (d) shall not prohibit:

(1) An appearance at or participation by a public official or employee before any department, division, office, board, commission or other City agency in the discharge of his duties as such public officer or employee and without private compensation for such appearance or participation, including appearance or participation on behalf of constituents as a representative of the electorate.

(2) An appearance at or participation by a public official or employee, on his own behalf, or on behalf of partnership, trust, business trust, corporation, association or business in which he is a proprietor, partner, officer or employee before an agency of the City of which he is not a member, with respect to a matter which is not in conflict with duties as such official or employee of the City.

(e) Acting, directly or indirectly, as attorney, agent, broker or employee or in any other representative capacity on behalf of any private person, partnership, trust, business trust, corporation or association interested, directly or indirectly, in any manner whatsoever in any contract, work or service, or the sale or acquisition by the City of any property, the cost of which is payable by City funds or to the City, or, directly or indirectly, be interested in the profits of any contract, work or service with the City or in the sale or acquisition by the City of any property, the cost of which is payable by City funds or to the City. No official or employee of the City shall, directly or indirectly, have any interest other than his fixed compensation and reimbursable expenses in any expenditures of funds by the City. A public official or employee shall not be deemed interested in any contract, work or service, or the sale or acquisition by the City of any property, or the profits of any contract, work or service, or the sale or acquisition by the City of any property unless such is approved, authorized, awarded or entered into by the public official or public employee in his official capacity.

(f) Within one year after termination of public service or employment, no public official or employee shall represent a client or act in a representative capacity or accept private employment or receive private compensation for services, whether as attorney, agent, broker or employee with respect to any matter, case, proceeding, application, determination, issue or question in which he personally participated through decision, approval, disapproval, recommendation, the rendering of advice, investigation or other substantial exercise of administrative discretion or which was under his charge during the period of his service as such official or employee.

(g) Use of public position for personal gain.

(h) Holding (possession of) investments which interfere with or tend to interfere with the proper discharge of public duty. This shall include participation in transactions as a public representative with a person, partnership, trust, business trust, corporation or association in which the public official or employee has a direct or indirect financial or other personal interest.

(i) Personal interest in legislation to the extent that private interest takes precedence over public interest or duty.

(j) Entering into contracts or other conduct of business by a person, partnership, trust, business trust, corporation or association in which the public official or employee has a controlling or other substantial financial interest and when the public official or employee can influence such contract or business because of his public position. "Substantial financial interest" includes any of the following interests in a business entity: proprietor, member of a partnership, officer or director of a corporation or association, trustee of a trust or a shareholder in a corporation whose shares are not obtainable on a recognized public stock exchange.

(k) Soliciting employment with a person, partnership, trust, business trust, corporation or association doing business with the City over which the public official or employee had some control in his official capacity within one year of the termination of public service.

(l) Promising any person appointment to any municipal position as a reward for any political activity.

(Ord. 91-13. Passed 5-6-91.)

109.06 DISCLOSURE OF PRIVATE INTEREST IN LEGISLATION.

A member of Council or the City administration including any official or employee who participates in discussion of or who gives an official opinion to Council shall publicly disclose on the official records of Council the nature and extent of any direct or financial interest or other personal or private right he may have in any legislation pending before Council immediately after its introduction and prior to passage, provided, however, that such disclosure shall not deprive the member of Council of his right to vote on such legislation. A member of Council who elects to abstain regarding such legislation shall not participate in the consideration of, or take any official action with respect to such legislation, and shall make the same disclosure as otherwise required herein. This section shall not be interpreted as permitting any interest in contracts with the City or in City expenditures prohibited by Section 109.05.

(Ord. 91-13. Passed 5-6-91.)

109.07 APPLICABILITY OF CODE.

When an official or employee of the City has doubt as to the applicability to a particular situation of a provision of this Code or the City Charter or any law which establishes ethical standards or otherwise regulates the conduct of officials or employees of the City, the official or employee should apply to the Board of Ethics for an advisory opinion and be guided by that opinion when given. The official or employee shall have the opportunity to present his interpretation of the facts at issue and of the applicable provisions of this Code, Charter and law before such advisory decision is made.

This Code shall be operative in all instances covered by its provisions except when superseded by an applicable statutory or Charter provision and the statutory or Charter action is mandatory, or when the application of a statutory or Charter provision is discretionary but determined to be more appropriate or desirable.

(Ord. 91-13. Passed 5-6-91.)

109.08 BOARD OF ETHICS; CREATION, COMPOSITION AND TERM.

(a) There is hereby established a Board of Ethics, consisting of three members who shall be residents of the City and appointed by the Mayor with the approval of Council. Such members shall serve without compensation for three-year terms except that of the original appointment, one member shall be appointed for a three-year term, one shall be appointed for a two-year term, and one shall be appointed for a one-year term. The Board shall select its own chair and, subject to the provisions of Section 109.09, set its own rules of procedure.

(b) It shall be the duty of the Board to render advisory opinions with respect to matters dealing with conflict of interest as set forth in the Codified Ordinances and to hear complaints against persons as set forth in Section 109.09. Advisory opinions shall be rendered pursuant to a written request of a member of Council, or any officer or employee of the City.
(Ord. 91-13. Passed 5-6-91.)

109.09 COMPLAINTS, HEARINGS AND PROCEDURE; OATHS AND SUBPOENAS.

(a) The Board of Ethics shall receive complaints against persons subject to this chapter concerning conduct alleged to be in violation of any provision of the Ohio Constitution, Ohio statutory law, the City Charter or ordinance of the City which establishes ethical standards for or otherwise regulates the conduct of such persons. All complaints shall be filed by affidavit made on personal knowledge, subject to the penalties of perjury. The Board shall investigate complaints and charges presented to it.

(b) If the Board finds that a complaint is not frivolous, and that the facts alleged in a complaint, if true, would constitute a violation of any of the provisions enumerated in this chapter, it shall hold a hearing to determine whether there is reasonable cause to believe that the facts alleged in the complaint are true. If the Board does not so find, it shall dismiss the complaint.

(c) The person against whom the complaint is directed shall be given not less than ten days notice of the date, time and place of the hearing, a statement of the charges and the law directly involved, and shall be given the opportunity to be represented by counsel, to examine the evidence against him, to produce evidence and to call and subpoena witnesses, to confront his accuser, and to cross-examine witnesses. The Board shall have a stenographic record made of the hearing. The hearing shall be open to the public except as otherwise provided by law.

(d) If upon the basis of such hearing, the Board finds, based upon a preponderance of the evidence, that the facts alleged in the complaint are true and constitute a violation of any provision of the Ohio Constitution, Ohio statutory law, the City Charter or ordinance of the City which establishes ethical standards for or otherwise regulates the conduct of persons subject to the provisions of this chapter, it shall report its findings by written report to the Mayor, each member of Council and to the accused person.

(e) If the Board does not find based upon a preponderance of the evidence that the facts alleged in the complaint are true and constitute any of the aforementioned violations, it shall dismiss the complaint and make the report of that finding public.

(f) The Board, or a member of the Board, may administer oaths, and the Board may issue subpoenas to any person within the State compelling the attendance of witnesses, and the production of relevant papers, books, accounts, and records. The Board shall issue any such subpoena upon request of the accuser or the accused. The provisions of Ohio R.C. 705.21, insofar as applicable, shall govern the issuance of such subpoenas. Upon refusal of any person to obey a subpoena or to be sworn or to answer as a witness, the Board may apply Ohio R.C. 705.21 to enforce compliance. The Board or the accused person may take depositions of witnesses within or without the state in the same manner as prescribed by law for the taking of depositions in civil actions.

(g) The Board shall schedule a hearing within ninety days after a complaint is filed if the Board determines that the facts alleged in a complaint, if true, would constitute a violation of any of the provisions of this chapter. The complaint shall be disposed of within ninety days after it has been heard.

(h) All papers, records, affidavits and documents upon any complaint, inquiry or investigation relating to the proceedings of the Board shall be open to the public, except as otherwise provided by law.

(i) Any complaint regarding a member of Council concerning an alleged violation of this chapter may, at the option of the accuser, be filed with the Clerk of Council. Should such a complaint be so filed, the President of Council or the Presiding Officer shall appoint a special select committee to investigate the complaint, conduct a hearing, and make findings as required of the Board with the same powers and duties as the Board.
(Ord. 91-13. Passed 5-6-91.)

109.99 PENALTY.

(a) Whoever knowingly violates any provision of Section 109.04 through 109.06 is guilty of a misdemeanor of the first degree.

(b) Except as provided in subsection (c) hereof, and in addition to the penalty prescribed in subsection (a) hereof, whoever knowingly violates any provision of Section 109.04 through 109.06 shall be cause for suspension of the public official or public employee, removal from office or employment, written reprimand, or other disciplinary action.

(c) In addition to the penalty prescribed in subsection (a) hereof, whoever willfully conceals a substantial financial interest or otherwise violates the requirements of Section 109.05(e) or (j) shall be guilty of malfeasance in office or position and shall, subject to any applicable provision of the Charter, forfeit his office or position. Violation of such subsection with the knowledge, express or implied, of the business entity shall render the contract void.
(Ord. 91-13. Passed 5-6-91.)

CHAPTER 110
Open Meetings

110.01 Liberal construction.
110.02 Definitions.
110.03 Required; minutes.
110.04 Posting of meetings.
110.05 Notification of news media.
110.06 Notification of individuals.
110.07 Executive sessions.
110.08 Invalidity of any action contrary to this chapter.
110.09 Compliance with certificate.

CROSS REFERENCES
Meetings of public bodies to be open - see Ohio R.C. 121.22
Disturbing lawful meeting - see GEN. OFF. 509.04

110.01 LIBERAL CONSTRUCTION.

This chapter shall be liberally construed to require public bodies to take official action and to conduct all deliberations upon official business only in open meetings, unless the subject matter is specifically excepted by law.
(Ord. 89-59. Passed 3-5-90.)

110.02 DEFINITIONS.

As used in this chapter certain terms are defined as follows:

(a) "Public body" means Council, any board, commission and any other public body of the City, including, but not limited to a citizen advisory committee, agency, council or authority, and whether established by ordinance or resolution of Council, by administrative action, or by the Charter, as well as any committee of any of the foregoing.
(Ord. 91-14. Passed 4-15-91.)

(b) "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members.
(Ord. 80-22. Passed 5-5-80.)

(c) "Clerk" means, in the case of Council, the Clerk of Council, or, in the case of another public body, the person designated by the public body to post written notice of meetings and to transmit the personal notification of meetings on specific subject matter to the necessary persons or organizations.
(Ord. 89-59. Passed 3-5-90.)

(d) "Day" means calendar day.
(Ord. 80-22. Passed 5-5-80.)

(e) "Post" means to post in an area accessible to the public during the usual business hours at the office of the Clerk and at the following locations:
(1) City Hall, front entrance bulletin board.
(2) City Hall, back entrance bulletin board.
(3) Reception desk, bulletin board.
All regular and special meetings of Council, other than committee meetings thereof, shall be posted on the front yard bulletin board, City Hall. All regular and special meetings of any other public body and committee meetings of Council may be posted thereon.
(Ord. 89-59. Passed 3-5-90.)

(f) "Published" means published once in a newspaper having a general circulation in the City.

(g) "Special meeting" means a meeting which is neither a regular meeting nor an adjournment of a regular (or special) meeting to another time or day to consider items specifically stated on the original agenda of such regular (or special) meeting.

(h) "Public hearing" means a meeting wherein the general public is invited to give its opinion or statements concerning the specific matters to be considered at such hearing.
(Ord. 80-22. Passed 5-5-80.)

(i) "Committee meeting" means a meeting of those committees enumerated in Chapter 111 and such other committees, including citizens advisory committees, as Council may from time to time approve. "Committee" shall also include any committee of any other public body.
(Ord. 89-59. Passed 3-5-90.)

(j) "Written notification" means notification in writing mailed, telegraphed or delivered to the address of the person for whom such notification is intended as shown on the records kept by the Clerk under this chapter, or in any way delivered to such person.

(k) "Oral notification" means notification given orally either in person or by telephone directly to the person for whom notification is intended or by leaving an oral message for such person at the address or if by telephone at the telephone number of such person as shown on the records kept by the Clerk under this chapter.

(l) Any notification provided herein to be given by the Clerk may be given by any person acting in behalf of or under the authorization of the Clerk. (Ord. 80-22. Passed 5-5-80.)

110.03 REQUIRED; MINUTES.

(a) Except as may otherwise be provided by law, all meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

(b) The minutes of a regular or special meeting of any public body except committee meetings shall be recorded and minutes timely and accurately prepared thereafter. The minutes shall be open to public inspection at all reasonable times. The minutes of any special or regular meeting of a public body shall include an accurate and brief summary of the discussions by any member of the public body or public official on any resolution, ordinance, motion or other matter before the public body, the complete text of any written committee report and, where applicable, shall also include the reports, announcements, remarks and communications from the administration and members of the public body. Any person may obtain from the Clerk of the public body a copy of the minutes of the public body at minimal cost as established by Council. The general subject matter of all committee meetings and executive sessions shall be reported at the next meeting of the public body at which the subject matter of the report is considered or the next regular meeting of the public body, whichever is earlier, and shall become part of the minutes thereof. (Ord. 89-59. Passed 3-5-90.)

110.04 POSTING OF MEETINGS.

(a) The Clerk of the public body shall post a statement of the time(s) and place(s) of regular meetings of each public body for each calendar month in a calendar of meetings not later than the third day preceding the day of the first regular meeting (other than the organizational meeting) of the calendar month of that public body at all locations mentioned in Section 110.02(e) other than the bulletin board. The Clerk of the public body shall check at reasonable intervals to insure that such statement remains so posted during such calendar month. If at any time during the calendar month the time or place of regular meetings, or of any regular meeting, is changed on a permanent or temporary basis, a statement of the time and place of such changed regular meeting shall be so posted by the Clerk of the public body at least twenty-four hours before the time of the first changed regular meeting. Should such time or day of a regular meeting be changed on a permanent basis, the Clerk of the public body shall cause same to be published. Upon the adjournment of any regular or special meeting to another day, the Clerk of the public body shall promptly post notice of the time and place of such adjourned meeting.

(b) The Clerk of the public body shall post a statement of time and place of any organizational meeting of a public body at least twenty-four hours prior to such organizational meeting.

(c) Except in the case of a public hearing, the Clerk of the public body shall, no later than twenty-four hours before the time of a regular meeting or a special meeting or a committee meeting of a public body, post a statement of the time and place of such meeting. The posting shall state such specific or general purpose or purposes then known to the Clerk to be intended to be considered at such regular or special meeting or committee meeting and may state, as an additional general purpose, that any other business as may properly come before such public body or committee thereof at such meeting may be considered and acted upon.

(d) The Clerk of the public body shall, no later than seventy-two hours before the time of a public hearing of a public body, including an investigation of charges or complaints against a licensee, franchisee or regulated individual, post a statement of the time, place and purpose of such public hearing. The posting shall state such specific or general purposes then known to the Clerk to be intended to be considered at such public hearing. The Clerk shall further, no later than seventy-two hours before the time of a public hearing, cause the time, place and purposes of same to be published.

(e) Nothing contained herein shall be construed as prohibiting any public body from adopting a rule in accordance with this chapter to provide for notification to the general public of regular or special meetings or committee meetings, by causing the time, place and purpose of such meetings to be published.

(f) In addition to the posting of statements as provided in subsections (a) and (b) hereof, the Clerk of the public body shall cause to be published once a statement of the time(s) and place(s) of regular meetings for the calendar year of each public body. Such publication shall occur no later than the day preceding the day of the first such regular meeting.
(Ord. 89-59. Passed 3-5-90.)

110.05 NOTIFICATION OF NEWS MEDIA.

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

Except in the event of an emergency requiring immediate official action as referred to in subsection (d) hereof, a special meeting or committee meeting shall not be held unless at least twenty-four hours advance notice of the time, place and purposes of such special meeting or committee meeting is given to the news media that requested such advance notification in accordance with subsection (b) hereof.
(Ord. 89-59. Passed 3-5-90.)

(b) News media requests for such advance notification of special meetings or committee meetings shall specify: the public body that is the subject of such request; the name of the media; the name and address of the person to whom written notifications to the media may be mailed, telegraphed or delivered; the names, addresses and telephone numbers (including addresses and telephone numbers at which such notifications may be given either during or outside of business hours) or at least two persons to either one of whom oral notification to the media may be given.

Any such request shall be effective for one year from the date of filing with the Clerk or until the Clerk receives written notice from such media cancelling or modifying such request, whichever is earlier. Each requesting news media shall be informed of such period of effectiveness at the time it files its request. Such requests may be modified or extended only by filing a complete new request with the Clerk. A request shall not be deemed to be made unless it is complete in all respects, and such request may be conclusively relied on by the City, the public body that is the subject or such request and the Clerk.

(c) The Clerk shall give such oral notification or written notification, or both, as the Clerk determines, to the news media that have requested such advance notification in accordance with subsection (b) hereof, of the time, place and purposes of each special meeting, or committee meeting, at least twenty-four hours prior to the time of such special meeting.

(d) In the event of an emergency requiring immediate official action, a special meeting may be held without giving twenty-four hours advance notification thereof to the requesting news media. The persons calling such meeting, or any one or more of such persons or the Clerk on their behalf, shall immediately give oral notification or written notification, or both, as the person or persons giving such notification determine, of the time, place and purposes of such special meeting to such news media that have requested such advance notification in accordance with subsection (b) hereof. The minutes or the call, or both, of any such special meeting shall state the general nature of the emergency requiring official action.
(Ord. 80-22. Passed 5-5-80.)

110.06 NOTIFICATION OF INDIVIDUALS.

(a) Any person, group or organization, upon written request and as provided herein, may obtain reasonable advance notification of all meetings at which any specific type of public business is scheduled to be discussed. Such a person shall file a written request, upon the form provided, with the Clerk of the public body specifying:

(1) The person's name and the address(es) and telephone number(s) at or through which the person can be reached during any outside business hours;

(2) The specific type of public business the discussion of which the person is requesting advance notification of; and

(3) The public body that is the subject of the request.
(Ord. 89-59. Passed 3-5-90.)

(b) A request shall not be deemed to be made unless it is complete in all respects, and such request may be conclusively relied on by the City, public body that is the subject of such request and the Clerk. Such request may be cancelled by written request from such person to the Clerk.

(c) Each such written request shall also be accompanied by cash, or a check or money order payable to the City in the amount of fifteen dollars ($15.00) per year which amount has been determined by Council to represent a reasonable fee to cover costs of providing such advance notification for twelve calendar months commencing with the month in which the request is made.

Additionally, each request shall be accompanied by self-addressed envelopes sufficient to cover the number of regular meetings of the public body, or bodies, which are the subject of the request for twelve months. Each request shall be renewed at the expiration of twelve months.

(d) The Clerk shall give such advance notification under this section by written notification; further provided that the Clerk may give oral notification of all special meetings if the circumstances so dictate. Written notification may be accomplished by providing copies of the agenda.
(Ord. 80-22. Passed 5-5-80.)

(e) This section does not require separate or additional notice of notification to be given of the contines portion of a meeting following a recess or adjournment of not more than seventy-two hours to a time and place announced publicly at the meeting prior to the recess or adjournment.
(Ord. 80-97. Passed 1-5-81.)

110.07 EXECUTIVE SESSIONS.

(a) Except as provided in subsection (b) hereof, any public body may only in accordance with and subject to the provisions of the Charter, hold an executive session.

(b) Any committee of a public body may hold an executive session only if authorized to do so by the public body in accordance with and subject to the provisions of the Charter. Any member of the public body may attend an executive session of a committee of the public body.
(Ord. 91-14. Passed 4-15-91.)

110.08 INVALIDITY OF ANY ACTION CONTRARY TO THIS CHAPTER.

(a) An ordinance, resolution, rule or formal action of any kind is invalid and void unless adopted in an open meeting of the public body. An ordinance, resolution, rule or formal action of any kind that results from deliberations in a meeting not open to the public is invalid and void unless the deliberations were for a purpose specifically authorized by the Charter and conducted at an executive session held in compliance with the Charter and this chapter.

(b) Any person may bring an action to enforce the provisions of this section. Upon proof of a violation or threatened violation of this section in an action brought by any person, the Court of Common Pleas shall issue an injunction to compel the members of the public body to comply with its provisions. If the Court of Common Pleas issues an injunction pursuant to this section, the court may award to the person that sought the injunction all court costs and reasonable attorney's fees and also shall order the public body that it enjoins to pay a civil forfeiture of one hundred dollars ($100.00). If the Court of Common Pleas does not issue an injunction pursuant to this section and the court determines at that time that the bringing of the action was frivolous conduct as defined in Ohio R.C. 2323.51(A), the court may award to the public body all court costs and reasonable attorney's fees. Irreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebuttably presumed upon proof of a violation or threatened violation of this section.

(c) A member of a public body who knowingly violates an injunction issued pursuant to this section may be removed from office by an action brought in the Court of Common Pleas for that purpose by the Law Director, his designee or by the Attorney General of the State of Ohio.
(Ord. 91-14. Passed 4-15-91.)

110.09 COMPLIANCE CERTIFICATE.

(a) A certificate shall be made part of each and every ordinance, rule, resolution and regulation, and any other action taken by any public body as defined in Section 110.02 by the Clerk demonstrating compliance with this chapter.

(b) Such certificate shall be conclusive upon this City and the public body involved.
(Ord. 80-22. Passed 5-5-80.)

TITLE THREE - Legislative

Chap. 111. Council.
Chap. 113. Ordinances, Resolutions and Contracts.

CHAPTER 111
Council

111.01 Office of Council.
111.02 Clerk; appointment; hours; duties.
111.03 Rules of Council.
111.04 Charter amendment proposed by Council; preparation and dissemination of arguments.

CROSS REFERENCES

Legislative powers of Mayor - see CHTR. Art. III, Sec. 5
The Council - see CHTR. Art. IV
Code of Ethics - see ADM. Ch. 109
Quorum requirements suspended in emergency - see ADM. 107.06
Open meetings - see ADM. Ch. 110
Requirements for legal publication in newspaper - see ADM. 113.01

111.01 OFFICE OF COUNCIL.

There is hereby established the Office of Council, which shall be under the direct supervision of the Clerk of Council and shall consist of the Clerk and such assistant full-time and part-time clerks and assistants as shall, from time to time, be authorized by Council.

The Office of Council shall be located in the City Hall at such place, and shall be equipped with such furniture and equipment, files and other accessories as Council may, from time to time, authorize. (Ord. 89-7. Passed 12-18-89.)

111.02 CLERK; APPOINTMENT; HOURS; DUTIES.

(a) The Clerk of Council shall be elected by a majority of the members elected to Council present and voting within seven days from the commencement of their term.

(b) The Clerk of Council shall, once elected, serve the entire term of Council unless such person dies, resigns or unless removed from such office in accordance with the provisions of this subsection. No Clerk of Council shall be removed from office except for gross misconduct, or misfeasance, malfeasance or nonfeasance in or disqualification for office, or for the conviction while in office of a crime involving moral turpitude, or for persistent failure to abide by the Rules of Council, or for absence without justifiable excuse from three consecutive regular meetings of Council, further provided that such removal shall not take place without the concurrence of two-thirds of all the members elected to Council nor until the Clerk so accused shall have been notified in writing at least ten days in advance of any hearing upon such charge, and the Clerk or the Clerk's counsel has been given the opportunity to be heard, present evidence or examine any witness appearing in support of such charge or charges.

(c) The Clerk of Council, except as provided in subsection (g) hereof, shall not hold any elective office within the City or be a candidate for any elective office while serving as Clerk of Council.
(Ord. 89-7. Passed 12-18-89.)

(d) The office hours of the Clerk of Council shall be determined by Council.
(Ord. 93-35. Passed 6-7-93.)

(e) The Clerk of Council shall receive such various benefits as set forth for employees in Chapter 143 and shall also be subject to all general rules and regulations governing City employees not otherwise inconsistent herewith.

(f) The position of the Clerk of Council involves responsible administrative and clerical work. The requirements of the work shall include:

Considerable experience in full-time secretarial work of a progressively responsible nature; graduation from high school including or supplemented by courses in business and secretarial subjects, or any equivalent combination of experience and training which provides the following knowledges, abilities and skills:

(1) Knowledge of modern office practices, systems and procedures;
(2) Knowledge or ability to acquire such knowledge within a reasonable period of training, of the functions, purposes, duties and operations of municipal government;
(3) Ability to maintain complex official records;
(4) Ability to establish office procedures and priorities and to supervise personnel;
(5) Ability to read and comprehend moderately complex laws, ordinances, rules and regulations;
(6) Ability to make minor decisions in accordance with laws, ordinances, rules and regulations;
(7) Ability to prepare routine correspondence and other items;

(8) Skill in the taking and transcribing of dictation and the use of a dictaphone;
(9) Skill in the use of a typewriter, recording equipment, word processor and other general office equipment;
(10) Skill in shorthand/speedwriting or comparable ability;
(11) Skill in typing (not less than sixty words per minute);
(12) Ability to initiate and carry out research projects; and
(13) Ability to deal with people.

(g) If the Clerk of Council is unable to attend any regular or special meeting of Council, a temporary acting Clerk of Council shall be designated by the President of Council, or in the absence of the President, by the Presiding Officer. In the event the Clerk of Council is unable due to injury, illness, disease or other justifiable cause to attend regular or special meetings of Council or otherwise perform the duties and functions of the position for an extended period, Council shall designate a temporary acting Clerk of Council.

(h) In the case of death, resignation or removal from office of the Clerk of Council, Council shall by motion declare the office of Clerk of Council vacant and shall appoint a new Clerk provided, however, that a new Clerk shall not be appointed until after the Council advertises the availability of the position not less than once a week for two consecutive weeks in a newspaper of general circulation in the City and have interviewed all persons who have made written application by the date specified in the advertisement.

(i) The functions, duties and job classification of the Clerk of Council shall encompass the following items:
(1) Serve as office manager of the Office of Council;
(2) Attend all regular and special meetings of Council, and act as recording secretary thereat;
(3) Maintain, or cause to be maintained, accurate, timely and complete records of all official Council documents;
(4) Prepare, or supervise the preparation of, timely and accurate records and minutes of all regular and special Council meetings and proceedings, and public hearings if requested by Council or a committee thereof;
(5) Receive, sort and accept on behalf of the Council and the members thereof, all communications which may necessitate Council deliberation and consideration;
(6) Prepare, or supervise the preparation of, the Agenda for Council meetings under the direction of the President of Council, and cause to be delivered to each member of Council, the Mayor and each department and division head a copy thereof;
(7) Attend all public hearings conducted by Council or a committee thereof and record the minutes for same if requested by Council or a committee thereof;
(8) Answer all inquires directed to ordinances, resolutions, Council proceedings and official Council records, or direct such inquiries to the proper City official for answer;

(9) Be responsible for the custody, maintenance, distribution and sale, pursuant to instructions of Council, of all copies of the Codified Ordinances, and the sale of copies of the City Charter, ordinances, resolutions and other public documents of Council where no provision for the sale is otherwise made by ordinance or resolution;

(10) Be responsible for the preparation of all transcripts of Council meetings, and other documents, when such transcript and documents relate specifically to appropriations, notes, bonds and tax levies;

(11) Be responsible for the posting, publishing, advertising and certification of ordinances, resolutions, other actions, approved minutes of regular and special meetings of Council, notices, hearings and other documents as required by the Municipal Ordinances, the City Charter or statutory law including any public notice of hearings on applications authorized by and filed pursuant to the Zoning Code on matters before Council, and to all property owners of land adjacent and abutting such area proposed for public hearing on matters submitted to and before Council, pursuant to the City Charter, ordinance or resolution;

(12) Prepare regular and special reports of various Council committee meetings when requested by the committee, and attend same as recording secretary when requested by the committee and cause to be kept minutes of each such committee meeting so attended which shall be kept in report form;

(13) Transmit to other City officials, department and division heads, copies of all ordinances, resolutions or related information pertaining to the respective departments or divisions;

(14) Have the duty of ensuring that all Council and committee meetings are held in accordance with law and ordinance and that appropriate notices thereof are posted and published as required by the City Charter and ordinances;

(15) Compose and attend to all correspondence relative to the office and to assist Council or any member thereof by obtaining information upon the request of Council or any member thereof necessary to the formulation of an ordinance, resolution or other matter to be promptly proposed for consideration by Council and action by Council;

(16) Provide each member of Council a summary of all matters referred to a committee of Council and/or member of the Administration within a reasonable time following each regular Council meeting and shall post a summary list in the Council Chamber prior to the next regular meeting of Council. The summary shall include the subject matter referred, the date of referral, the name and members of the committee and/or member of the Administration to which the matter has been referred, the author/sponsor of the communication, ordinance, resolution or other matter so referred, previous action, if any, by the Council, and a brief statement of its then present status;

(17) Shall be responsible for the recording of regular and special meetings of Council, and public hearings if requested by Council or a committee thereof, and the care and custody of the tapes, which shall be kept for one year after acceptance by Council of printed minutes. The audio tapes shall be stored in the Council Office and shall not be released from the office;

(18) Prepare for distribution at the end of each year a cumulative index and report of the adopted legislation and summary of the proceedings of Council.

A copy of the cumulative index and report shall be furnished to any resident of the City who has requested same and has paid the fee therefore as has been set by ordinance or resolution of Council;

(19) Receive and furnish to all members of Council a copy of the reports, minutes and proceedings of all boards and commissions;

(20) Serve as custodian of all ordinances, resolutions, motions and other actions adopted by Council and all papers and documents kept by Council;

(21) Type legislation when requested by any member of Council; and

(22) Perform such other and further duties as may be required by formal action of Council.

(j) The Clerk of Council shall work directly under the general direction and supervision of the President of Council and the Clerk's methods of performance is the Clerk's sole responsibility as long as such performance is accomplished within the established policies, rules and regulations as established by Council. Any decision of the President of Council relating to the direction and supervision of the Clerk of Council shall be subject to subsection (i)(22) hereof. (Ord. 89-7. Passed 12-18-89.)

111.03 RULES OF COUNCIL.

(a) The following Rules of Order shall govern the procedure of Council and the conduct of its members:

I. MEETINGS; PLACE, TIME OF CONVENING, QUORUM, ORDER OF BUSINESS.

(1) Rule 1. Meetings: Place. All meetings of Council shall be held in the Council Chamber in the City Hall unless otherwise ordered by Council.

(2) Rule 2. Meetings: Public. Except as otherwise provided by law, all meetings of Council or its committees thereof shall be public. Any citizen may appear and be heard by Council during the public session. Any person desiring to address Council shall first secure the permission of the Presiding Officer to do so. Priority in speaking shall be given to those presenting to the Clerk of Council a written request to address Council.

Each person addressing Council shall rise, give their name and address in an audible tone of voice for the record and, unless further time is granted by Council, shall limit their address to five minutes. All remarks shall be addressed to Council as a body, to any member thereof or to the administration or any member thereof. Speakers shall be courteous in their language and avoid personalities. No person, other than Council, the administration and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of Council, without the permission of the Presiding Officer. No questions shall be asked of a member of Council or by a member of Council except through the Presiding Officer.

Persons, including members of Council not a member of the committee and other City officials, desiring to be heard by any committee of Council shall be given an opportunity to be heard thereat. All minutes and the record of Council and its committees shall be open to the public at all reasonable times except as otherwise provided by law as applicable to executive sessions.

(3) Rule 3. Regular Meetings. Regular meetings of Council shall be held in the Council Chamber of the first and third Monday evenings at 7:00 p.m., unless otherwise ordered by motion, resolution or ordinance. Whenever the regular meeting falls on a legal holiday or a special election day, the Council shall meet in regular session on a day and at the place and hour as set by Council at a previous meeting. As used in this Rule, "legal holiday" shall have the same meaning as set forth in Ohio Revised Code. Section 1.14.

(4) Rule 4. Summer Schedule. During the months of July and August, Council may be on recess and shall meet at such times as a special meeting as may be called in accordance with the provisions of Rule 5.

(5) Rule 5. Special Meetings. Special meetings of Council may be called by a vote of Council taken at any regular or special meeting thereof shall be called by the Clerk of Council on written request of the Mayor, the President of Council or any three members of Council. Any written request for a special meeting shall state the subject or subjects to be considered at the special meeting and no other subject or subjects shall be considered. Notice in writing of each special meeting called at the written request of the Mayor, the President of Council or three members of Council shall state the date, time, place and subject or subjects of the special meeting and shall be posted on the bulletin boards at the City Hall and served on the Mayor and each member of Council, either personally, by leaving a copy of such notice at his/her usual place of residence or transmitting by electronic means. Such posting and service shall be accomplished not less than twenty-four hours preceding the time for the special meeting. If a special meeting is called by a vote of Council taken at any regular or special meeting from which the Mayor or any member of Council is absent, written notice of such special meeting shall be posted and given each absentee in the manner herein described. Service of notice of any special meeting shall be deemed conclusively to have been waived by the Mayor or by any member of Council who shall be present thereat. In addition to the subject or subjects to be considered, the order of business shall include items 1, 2, 3, 4, 7 (if related to the subject or subjects to be considered), and 14 of Rule 8A.

(6) Rule 6. Adjourned Meetings. Regular and special meetings may be adjourned from day to day, but if the regular or special meeting is adjourned to a day other than the day immediately succeeding the regular or special meeting day, any member of Council, or the Mayor, absent from the regular or special meeting shall be given at least twelve hours' notice of such adjournment and the date and hour of such adjourned meeting.

(7) Rule 7. Quorum. A majority of all the members elected to Council shall be a quorum to do business, but a lesser number may adjourn from day to day and compel the attendance of absent members in the manner and under such penalties as shall be prescribed by ordinance or resolution.

(8) Rule 8. Order of Business:

A. The business of the regular meetings of Council shall be transacted in the following order, unless Council by a majority vote of its members present and voting shall suspend the rules and change the order.

1. Call to order.
2. Moment of silent prayer.
3. Pledge of Allegiance.
4. Roll call of members; report on absent members. (Members absent for cause shall be excused by motion).
5. Presentation of Resolutions (if any)
6. Dispose of minute journal.
7. Written communications, petitions and claims.
8. Reports of committees.
9. Reading of legislation (ordinances and resolutions) by Clerk of Council.
   a. First reading and referral to standing committee.
   b. Second reading.
   c. Audience input on legislation up for passage (3 minutes max per person)
   d. Third reading.
   e. Reading and passage of legislation under suspension of the Rules and without readings on three different days.
10. Reports and communications from the Mayor, the Directors of Departments, and other City officials.
11. Appointments and confirmations.
12. Public session.
13. Miscellaneous business and comments by members of Council.
14. Adjournment.

B. The President of Council may at any time permit a member of Council to introduce a motion, ordinance or resolution out of the regular order, unless objection is made thereto by any member present or unless otherwise provided by these Rules.

(9) Rule 9. The Agenda

A. It shall be the duty of the Clerk, under the supervision and direction of the President of Council, to have a Council meeting agenda prepared. Under this title the Clerk shall arrange and have printed in consecutive order by title all by-laws, ordinances or resolutions to be entertained, considered, introduced, read, acted upon or enacted in accordance with the following format: The Agenda of the Council Meeting of (Date)

1. Legislation be read and referred to Committee.
   a. First reading.
   b. Second reading.

2. Legislation on for passage.
   a. Second reading suspension of the Rules.
   b. Third reading.
   c. On for passage under suspension of the rules and without readings on three different days. "The Agenda" and a copy of any legislation shall be delivered to each member of Council or left at the usual place of residence or transmitted by electronic means, at least two days prior to the regular meeting for which "The Agenda" is prepared and at least twenty-four hours prior to a special meeting.

B. No by-law, ordinance or resolution shall be entertained, considered, read, acted upon or enacted at any meeting unless its title is printed upon "The Agenda" for each meeting, except as follows:
   1. Council amends the agenda by a vote of a majority plus one of the members elected to Council.
   2. When action upon legislation appearing on "The Agenda" of a previous meeting is postponed to a day certain, whether or not it appears on "The Agenda" of the day certain.
   3. Action upon the Mayor's veto of any legislation.

II. OFFICERS AND EMPLOYEES OF COUNCIL.

(10) Rule 10. Presiding Officer. The President of Council and, in that person's absence, the President of Council Pro Tempore, shall preside over the meetings of the Council. In the absence of the President of Council and the President of Council Pro Tempore, the Clerk of Council shall call the Council to order; and, if after the roll call is called a quorum shall be present, Council shall choose one of its members to act as temporary chair, who shall preside until the President of Council or the President of Council Pro Tempore appears, but in no event beyond such meeting, and that person shall discharge all the duties and be clothed of all the powers of the President of Council as such Presiding Officer during the President's absence. The Presiding Officer shall call all meetings of Council to order at the hour appointed and shall proceed with the order of business. If a quorum be present, the Presiding Officer shall give the members an opportunity for correcting the Journal of the previous meeting(s), a copy of which shall have been delivered to each member of the Council. In the absence of any objections or corrections, a motion to approve the minutes as submitted without a reading thereof shall be in order. The Presiding Officer shall preserve order and decorum, may in common with any other member call any member to order who shall violate any of the rules, prevent personalities or the impugning of members' motives, confine members in debate to the question under discussion, and shall decide all points of order subject to an appeal to Council as set out in Rule 27. Prior to the first meeting of Council following a regular municipal election, the President of Council shall call an organizational meeting of the Council for the purpose of establishing the naming of a Chair and Vice-Chair of each committee. At such meeting, the President of Council shall submit to the members of Council his or her choices for the Chair and Vice-Chair of each committee, which choices shall be subject to, and effective only after

approval by a majority of the voting members of Council present, unless otherwise ordered by Council (See Rule 14 for Subcommittees), coordinating the work of the various committees. The President of Council shall have all the powers, duties, functions, obligations and rights of any other member of Council.

When the Mayor is absent or inaccessible, or is unable for any cause or reason to perform his or her duties, the President of Council shall become the acting Mayor, but he or she shall not thereby cease to be President of Council. In the event the office of Mayor shall become vacant for any reason, the President of Council shall thereupon become the Mayor and serve for the unexpired term or until the beginning of the term of a successor duly elected as provided in Article III, Section 4(d) of the Charter, and the office of President of Council shall become vacant. In case of a vacancy in the office of President of Council, the President of Council shall be elected by Council from among its members, and the one so elected shall vacate his office as Councilman and shall serve for the unexpired term of such President of Council.

(11) Rule 11. The Selection of a President of Council Pro Tempore The Vote Necessary for Election of President Pro Tempore. The members of Council, within seven days from the commencement of their term shall elect a President of Council Pro Tempore. No candidate for President Pro Tempore shall be declared elected unless they shall have received a majority vote of the members elected to Council. While presiding over and acting as President Pro Tempore of Council during the temporary absence of the President, such President Pro Tempore shall and he hereby is declared to retain all his rights as an individual member of Council and he shall be entitled to vote on all legislation and other matters before Council to the same extent and purpose as if he were not acting as such President Pro Tempore, but serving in the capacity of member of Council alone.

(12) Rule 12. Roll Call Upon Election of President Pro Tempore. Upon the roll call for the election of President Pro Tempore, each member shall respond by stating the name of the candidate of their choice eligible for such office or appointment, which candidate shall not be required to be a person duly nominated and seconded.

(13) Rule 13. Sergeant-at-Arms. Council shall have the authority to appoint a Sergeant-at-Arms who, under the direction of the Presiding Officer, shall preserve order and compel the attendance of absent members in the manner to be prescribed by ordinance or resolution

III. COMMITTEES OF THE COUNCIL.

(14) Rule 14. Committee of the Whole and Standing Committees. All Regular Standing Committees shall be comprised of the Council of the Whole; namely, the President of Council, five (5) Ward Councilmembers and the (1) Council member at Large. Prior to the first meeting of Council following a regular municipal election, the President of Council shall call an organizational meeting of the Council for the purpose of establishing the membership of the Standing Committees of Council, including the naming of a Chair and Vice-Chair of each committee. At such meeting, the President of Council shall submit to the members present his or her choices for Chair and Vice-Chair of each committee, which choices shall be subject

to, and effective only after approval by a majority of the voting members of Council present. Not later than the first regular meeting of Council, the President of Council shall appoint standing committees for the term of Council and shall designate for the term of Council a Chair and a Vice-Chair thereof. In the absence of the Chair, the Vice-Chair shall preside until the Chair appears and shall discharge all the duties and be clothed with all the powers of the Chair during such absence. In the absence of the Chair and the Vice-Chair, a quorum being present, a temporary Chair shall be selected by a majority vote of the members present who shall preside until the appearance of the Chair or Vice-Chair and he shall be clothed with the powers of the Chair during such absence. The standing committees shall be styled as follows:

A. COMMITTEE ON FINANCE: To which shall be referred all ordinances, resolutions and other matters relating to municipal finance; assessments; the budget; insurance; municipal indebtedness and the payment of moneys not otherwise provided for by previous legislation; appropriations for existing and proposed municipal departments, divisions, offices, boards and commissions; Civil Service and the Civil Service Commission; wages, salaries, pensions and other employee benefits; conditions of municipal employment; the creation of positions in the classified or unclassified service; the personnel and composition of the various City departments, divisions, and offices; the Clerk of Council; the purchase, lease or sale of real property or personal property by or from the City; taxation; concessions, licenses and permit fees; long-term financial planning; and, financial co-ordination of all committees.

B. COMMITTEE ON ENVIRONMENT, AND PUBLIC WORKS, PLANNING, ZONING AND DEVELOPMENT: To which shall be referred all ordinances, resolutions and other matters relating to natural watercourses, streams, creeks, brooks and the pollution thereof; water supply and the pollution thereof; air pollution; all other environmental nuisances; the improvement, repair, construction, maintenance and cleaning of streets and sidewalks, including any fees or charges relating thereto; transportation; the use of streets and sidewalks; street lighting; surface and storm water drainage; the construction, maintenance, repair and cleaning of storm and sanitary sewers including any fees or charges relating thereto; sewage disposal; the collection and disposal of refuse and other waste; public parks, public playgrounds, existing and proposed municipal buildings; the use of City property and land for public or private purpose including any fees or charges for the use thereof; recreational buildings and facilities; the location, maintenance and repair of public buildings and real properties; and, rates to be paid by the City or its residents for public utility services, all matters relating to City planning; the recommendations of the Planning & Design Commission; zoning and land use regulations and building, housing and property maintenance regulations, amendment to the Zone Map; business regulation; community and economic development; the Fire Prevention Code; existing or proposed franchises; and, annexation.

C. COMMITTEE ON LOCAL GOVERNMENT AND COMMUNITY SERVICES: To which shall be referred all ordinances, resolutions and other matters relating to initiative, recall and referendum petitions; Charter proposals or amendments; redistricting; the Rules of Council; intergovernmental relations with the United States, State of Ohio or Cuyahoga County Governments, the Board of Education, or any public or quasi-public body of any of the foregoing, including any act, bill, proposal, rule, regulation, policy or practice as may affect the City and/or the residents of the City; Rocky River Municipal Court; recreation programs, social services, senior citizen programs and services, youth activities and other human services and programs; the Traffic Code; and the imposition of fines, penalties, forfeiture, imprisonment or otherwise regulating conduct not within the jurisdiction of another standing committee including offenses against persons or property or in the operation of vehicles. No member of Council shall serve as Chair or Vice-Chair of more than one standing committee of Council except as provided in subsection I. hereof. The President of Council shall serve as an ex-officio member of all Council committees with the same powers, duties, functions, obligations and rights as any other member.

D. Council shall appoint a Chair and a Vice-Chair of all other committees which Council shall authorize and the President of Council shall appoint one member of Council to serve as a member of the Planning and Design Commission for such term and as approved by Council. Council shall appoint one member of Council as a member of the Parks and Recreation Commission for a term of two years.

E. Any member of Council shall continue as such member of each committee for the term of Council, but may be removed therefrom by the President of Council upon the recommendation of the remaining members of the committee for failure to attend the meetings of the committee without just cause or excuse, malfeasance, nonfeasance, misfeasance, gross misconduct or for other cause provided, however, that any Council member so removed from a committee may appeal such removal order to Council, not later than at its next regular meeting, who may overrule such removal order by a majority vote of the other members of Council eligible to vote.

F. Any member of Council appointed to or designated as a member of or representative to any board or commission of the City, however such appointment or designation was made by the President of Council or by Council, itself, may be removed therefrom by a majority vote of the other members of Council eligible to vote for gross misconduct, malfeasance, nonfeasance, misfeasance, failure to attend the meetings of the board or commission without just cause or excuse, or for other cause. Prior to the removal, the member of Council shall be given an opportunity to be heard and present evidence thereon.

G. The Director of Law, when requested by the Chair of a committee to which any ordinance or resolution has been referred, shall assist in the examination of such ordinance or resolution to assure such ordinance or resolution comports with law.

H. In the event of death, resignation, expulsion or removal of a member of Council from Council who serves as a committee chair, the vice chair shall become the Chair and the person appointed to the Council vacancy shall assume the vacated committee vice chairmanship; otherwise the person appointed to the Council vacancy shall assume the vacated committee assignments. In the event of the removal of a Chair from a committee, but not from Council, the Chair and the President of Council shall designate another member of the committee to serve as Vice-Chair for the balance of the term of Council. In the event of the removal of the Vice-Chair from a committee, the Council shall designate another member of the committee to service as Vice-Chair for the balance of the term of Council.

I. SUBCOMMITTEES:

J. A Chair may appoint subcommittees consisting of members of the Committee of the Whole.

(15) Rule 15. Committee Meetings. A majority of the members of the Committee of the Whole shall constitute a quorum for the transaction of business. Committees shall meet at the call of the Chair or upon the call of a majority of the other members thereof. General notice of committee meetings is to be given to the newspapers, elected officials and directors, and in accordance with Ohio law. Except as otherwise provided by law, all committee meetings shall be open to the public and a record of the attendance of members of the committee and the action taken thereat shall be kept by the Chair of the committee in a report provided for that purpose. Such report shall be kept on file with the Clerk of Council and open to public inspection as other public records but a report of attendance shall not be included in the report made pursuant to Rule 17. Legislation may be amended while in committee and it shall be the duty of the committee to recommend to Council the approval, disapproval or amendment of any legislation pending before the committee. A majority of the members present and voting shall be necessary for the recommendation of approval, disapproval or amendment of any legislation, motions or other matter pending before a committee. Except as otherwise determined by the Committee of the Whole, committee meetings shall be held in the caucus room or Council Chamber.

(16) Rule 16. Rules of Committees. Except in case of obvious inconsistency or inapplicability, committee meetings shall be governed by the rules applicable to Council proceedings. Any person may tape a committee meeting provided the person has first notified the committee. The Chair or, in the absence of the Chair, the Vice-Chair shall preside at the committee meeting, shall maintain order and decorum thereat, and shall have the authority to re-arrange the order in which business shall be considered at the committee meeting.

(17) Rule 17. Reports. No ordinance, resolution, communication, petition or other matter referred to a committee for action shall be approved or disapproved and reported out or placed before Council for further reading or consideration until it shall have first been considered at a committee meeting regularly called as provided for herein, and no committee, except as provided in Rule 58, Rule 67 and Rule 73, shall consider or hold a meeting on any proposed ordinance, resolution, communication, petition or other matter until it has been introduced in or presented to Council and referred to the committee.

The question of the recommendation of approval or of approval when amended, shall be put by the Chair upon motion of any member, which shall not require a second. If a majority of the members of the Committee of the Whole present and voting vote affirmatively, such ordinance, resolution, communication, petition or other matter shall be reported forthwith to Council as recommended for passage or adoption but if a majority of the members of the Committee of the Whole present and voting vote negatively on such question, such ordinance, resolution or other matter shall be reported forthwith to Council as a recommendation of rejection of such legislation or matter. The vote on all matters before the committee shall be recorded in the minutes of the meeting. When a majority of a committee present and voting has reported, recommending, with or without amendment, or not recommending the passage, adoption or approval of the ordinance, resolution, communication, petition or other matter under consideration, the minority may present a minority report. Council may accept or reject any committee report or recommendation in whole or in part. The committee to which any ordinance, resolution, communication, petition or other matter has been referred for consideration shall report to Council the status of such referral by the third next regular Council meeting from such reference and at each third next regular meeting thereafter until final report. Such status report shall be given by the Chair of the Committee, or in the absence of the Chair by the Vice-Chair, and shall be written. Notwithstanding the provisions of Rule 55, any ordinance, resolution, communication, petition or other matter which has been referred to a Council committee shall be automatically discharged from the committee at the adjournment of the eighteenth regular Council meeting after the date referred to Council committee and shall be deemed as recommended by the committee. In such event, such ordinance, resolution, communication, petition or other matter shall be placed on the agenda of the next succeeding regular meeting of Council, unless prior to adjournment Council postpones consideration thereof to a day certain. Any committee or status report shall be given orally at the next regular meeting of Council following the committee meeting provided that such committee report shall be given at a special meeting of Council when the report concerns a subject to be considered at the special meeting. Committee or status reports submitted in writing shall be set forth verbatim in the minutes of the meeting.

(18) Rule 18. Undisposed of Legislation Pending in Committee. Ordinances and resolutions, which at the date of the first day in January have not been acted upon by the committee or committee(s) to which referred within a period of one year from the date of introduction in Council, shall be reassigned to Committee by the President of Council.

(19) Rule 19. Committee of the Whole. When Council shall decide to go into Committee of the Whole, without objection the regular officers shall continue to serve, otherwise, Council shall appoint a Chair to preside, and the Presiding Officer of Council shall leave the chair. The Rules of Council, insofar as practicable, shall be observed in the Committee of the Whole, except that no limit shall be placed on the frequency of speaking, that the "yes" and "no" votes shall not be taken except as provided in Rule 66, and that a motion to rise and report progress shall always be in order and shall be decided without debate. Except as may otherwise be provided in the Rules of Council or in the ordinance or resolution creating same, interviews of private citizens to be considered for appointment by Council to any advisory group or commission shall be conducted by the Committee of the Whole in such manner as is determined by the Committee of the Whole; the Committee of the Whole shall also determine the manner of evaluation to be used.

IV. DUTIES, PRIVILEGES AND DECORUM OF MEMBERS.

(20) Rule 20. Roll Call of Council. Every member shall be in his/her seat at the time of roll call; otherwise, he/she shall not be recorded as present except upon special order of Council. The Clerk shall record the names of the members present and absent.

(21) Rule 21. Duty of Vote. Every member present shall vote on all questions upon the call of the "yes" and "no" vote, except that any member may abstain from voting on any question in which that member has any direct or financial interest or which in any way involves that member's personal or private rights. Any member present, unless excepted as above, who refuses to vote upon any question relating to the City government, upon which they may vote, when the "yes" and "no" votes are being taken, shall be guilty of contempt of Council, and may, for such contempt, be censured by a majority vote of all the members of Council, or may be expelled from Council by a vote of a majority plus one of all the members of Council. If a member of Council shall abstain from voting "yes" or "no", the President of Council shall ask the member the reason for the abstention. The member's reason for the abstention shall be recorded in the journal. On the passage of every ordinance, resolution or motion and on the appointment of every officer or other person, the vote shall be taken by "yes" and "no", and entered in full upon the journal. On any other question, the "yes" and "no" shall likewise be entered upon the journal. Upon the call of the "yes" and "no", the Clerk shall call the roll on the members and record the vote. When once begun, voting shall not be interrupted.

(22) Rule 22. Codified Ordinance Book and City Property. Within five days of assumption of office, a member of Council shall be provided a Codified Ordinance book or the Codified Ordinances in electronic format. Any City property that contains the documents of Council shall, at all times, remain the property of the City. Within five days of leaving office, any City property shall be returned to the Clerk of Council. The Director of Law shall have the authority to enforce the provisions of this Rule by appropriate legal action.

(23) Rule 23. Change of Vote. Before the announcement of the vote of any question, the Clerk shall read the vote of each member so taken upon the demand of any member, at which time any member of Council, on account of error or for any other reason, may change their vote; but no member of Council shall be permitted to change their vote as recorded after the roll call has been verified and the result declared.

(24) Rule 24. Right of Floor. When any member is about to address Council, that member shall respectfully address themselves to the Presiding Officer and, when recognized by the Presiding Officer, shall confine themselves to the question under debate, avoid personalities and refrain from impugning the motives of any other member's argument or vote. When two or more members ask recognition at the same time, the Presiding Officer shall name the member who was first to speak and the exercise of such discretion by the Presiding Officer shall not be subject to appeal under Rule 27.

(25) Rule 25. Time Limitation of Speaking. No member of Council, public official or other person shall be allowed to speak more than once on the same matter until every other member desiring to speak on that matter shall have had an opportunity to do so, nor more than twice on any subject, not for a time longer than five minutes without permission of Council.

(26) Rule 26. Members Called to Order. If any member in speaking or otherwise transgresses the Rules of Council, the President shall call the offending member to order. The member so called to order shall immediately cease speaking unless permitted by the President to explain. Any member may, by raising the point of order, call the attention of the President to such transgression. The point of order shall be decided by the President without debate. Every such decision of the President shall be subject to appeal to Council by any two members.

(27) Rule 27. Right of Appeal. Any member may appeal to Council from a ruling of the Presiding Officer. The member making the appeal may briefly state their reasons for the appeal, and the Presiding Officer may briefly explain the ruling, but there shall be no debate on the appeal and no other member shall participate in the discussion. The Presiding Officer shall then put the question; "Shall the decision of the Chair be sustained?" If a majority of the members present and voting vote "yes" the ruling of the Chair is sustained; otherwise it is overruled.

(28) Rule 28. Division of Question. If the question contains two or more divisible propositions, the Presiding Officer may, and upon request of a member shall, divide the same; but a motion to strike out a provision and insert a substitute is not divisible. No question shall be divided unless it comprehends a question so distinct that if one is taken away, the other shall stand as an entire question for decision.

(29) Rule 29. Personal Privilege. Any member may rise to explain a matter personal to themselves, and on stating that it is a matter of personal privilege, they shall be recognized by the Presiding Officer, but shall not discuss a question or issue in such explanation. Such explanation shall not consume more than five minutes of time unless extended by consent of the Council. Matters of personal privilege shall yield only to a motion to recess or adjourn.

(30) Rule 30. Verbatim Transcript. Any member of Council or other City Official desiring specific remarks to be included verbatim in the minutes of any regular or special meeting of Council shall make such request therefore at the meeting in which the remarks were made and shall also submit such remarks in writing to the Clerk of Council.

V. MOTIONS.

(31) Rule 31. Purpose and Form. Motions shall be used only to expedite the orderly transaction of the business of Council and shall not be substituted for resolutions or ordinances. The form of all motions shall be "I move that" followed by the substance of the motion. A second shall be required for any motion except as specifically provided for in these Rules and upon demand of any member; any motion shall be reduced to writing. Any motion may be withdrawn by the makers before it has been amended or voted upon. When a motion is made, it shall be stated by the Presiding Officer before any debate shall be in order. All motions which have been entertained by the Presiding Officer shall be entered upon the minutes.

(32) Rule 32. Precedence of Motions.

A. When a resolution, ordinance, motion or other proposition is before Council or under debate, no motion shall be entertained except the following:

1. To fix the time to which to adjourn.
2. To adjourn.
3. To recess.
4. To lay on the table.
5. For the previous question.
6. To postpone to a day certain.
7. To refer to committee.
8. To amend.
9. To postpone indefinitely.

B. These motions shall have precedence in the order indicated. Motions to adjourn, or to lay on the table, or for the previous question or to recess, shall be put to a vote without debate; the motion to fix the time to which to adjourn shall be debatable only as to the time of such adjournment; and all other motions shall be debatable. These motions shall always be in order until the clerk has started the call of the roll.

(33) Rule 33. The Previous Question, The motion for the previous question shall require a majority plus one of the members elected to Council present and voting; shall be considered only once; may be renewed after intervening business; shall take precedence over all debatable questions and shall be in order to prevent amendment of undebatable questions. If the previous question is demanded and seconded on an amendment, it shall apply only to the amendment. When the previous question is demanded and seconded on the main question, it shall be put as follows: "Shall the main question be now put?" If the motion for the previous question is carried as to the main question, there shall be no further amendment or debate, but pending amendments shall be put in their order before the main question. If the question, "Shall the main question be now put?" or "Shall the amendment be now put?" be decided in the negative, the main question or the amendment remains before Council.

(34) Rule 34. Motion to Lay on the Table. The motion to lay on the table shall, subject to the provisions of Rule 41, dispose finally of the legislation or other matter against which it is invoked, but a motion to lay a pending amendment to an ordinance, resolution or motion shall not carry the ordinance, resolution or motion with it. A motion to lay on the table shall require a majority vote of the members elected to Council present and voting. A motion to lay on the table may not be reconsidered.

(35) Rule 35. Motion to Postpone to Day Certain. A motion to postpone to a day certain shall require a majority vote of the members elected to Council present and voting; shall be subject to reconsideration; may be renewed after intervening business; shall be debatable as to the propriety of the postponement, but not upon the merits of the legislation or other matter; may be amended by changing the date; and shall be subject to the previous question. Upon the arrival of the date to which postponed, the legislation or other matter shall be considered in the regular order of business of that day.

(36) Rule 36. Motion to Postpone Indefinitely. The motion to postpone indefinitely shall have the same effect as a motion to lay on the table, and shall require a majority vote of the members elected to Council present and voting. A motion to postpone indefinitely may be reconsidered only if decided in the affirmative, shall be debatable and shall open the legislation or other matter to debate; may be renewed after intervening business and may not be amended or laid on the table, and shall be subject to previous question.

(37) Rule 37. Motion to Reconsider. A motion to reconsider a subject, including legislation, that may have been acted upon favorably shall be made before adjournment of that meeting of Council. A motion to reconsider any other subject may be made not later than the next regular meeting after such action was taken. A motion to reconsider may be made only by any member who voted with the prevailing side. A motion to reconsider shall be in order at any time except when a motion on some other subject is standing. A motion to reconsider, being laid on the table, may be taken up and acted upon at any time in accordance with this Rule when Council is engaged in the transaction of new or miscellaneous business. No motion to reconsider shall be made more than once on any matter or subject, and the same number of votes shall be required to reconsider the action of Council as was required to pass or adopt the same. A motion to reconsider may not be applied to a motion to adjourn, a motion to suspend the rules or a motion to lay on the table.

(38) Rule 38. Motion to Amend. A motion to amend may be amended only once. An amendment once rejected may not be moved again in the same form.

(39) Rule 39. Motion on Question of Privilege. First: Those affecting the rights of Council collectively, its safety, dignity and the integrity of its proceedings. Second: The rights, reputation and conduct of the members of Council individually, in their capacity as such members. A question of privilege shall have precedence over all questions except a motion to adjourn. A question of privilege shall not require a second and shall be decided by the President of Council subject to a right of appeal as set forth in Rule 27.

(40) Rule 40. Motion that Matter be Taken From Committee. When any ordinance, resolution or other matter has been referred to a committee, and the committee to which such has been referred fails by the third next regular Council meeting from the date of referral to report, or to offer a valid reason for its failure to report, any member of Council shall have the right to make a motion that such ordinance, resolution or other matter be taken from the committee to which such ordinance, resolution or other matter has been referred and that the same may be laid before Council for action. Such motion shall be decided without debate, provided that the member making the motion may state briefly the reasons for the motion.

(41) Rule 41. Motion to Take From Table. A motion to take from the table shall be in order when that order of business is being transacted in which such matter to be taken up was laid upon the table, or under the head of new or miscellaneous business. Such motion shall be decided without debate, provided the mover may be permitted to state briefly the reasons for the motion.

(42) Rule 42. Motion to Adjourn. A motion to adjourn shall always be in order unless Council is engaged in voting on an ordinance, resolution or motion.

VI. ORDINANCES AND RESOLUTIONS.

(43) Rule 43. Introduction. Ordinances and resolutions shall be introduced only by members of Council, with the name of the sponsor or sponsors endorsed on the face of such ordinance or resolution, except such ordinances and resolutions as may be presented to Council upon written recommendation of some committee of Council. Ordinances and resolutions as may be presented to Council upon written recommendation of some committee of Council shall have endorsed thereon as sponsors the names of the members thereof who assent thereto. Ordinances submitted by the Initiative shall have endorsed thereon "Submitted by Initiative Petition". Any ordinance or resolution shall, when introduced, be placed on first reading unless objection is made thereto by a majority plus one the members of Council.

(44) Rule 44. Preparation of Legislation. In order that adequate time may be given to the preparation of legislation, any requests for legislation to be prepared by the Director of Law shall be submitted to the Director of Law not later than 5:00 p.m. on the Friday following the last regular Council meeting preceding the meeting at which such legislation is to be introduced for first reading, and not later than 5:00 p.m. on the Monday preceding the meeting at which such legislation is to be introduced for passage under suspension of the rules. The exception to either of the foregoing shall be such legislation where investigation and/or unavoidable circumstances exist and an adequate time for preparation would not otherwise be provided or where a sudden and unforeseen emergency affecting or likely to affect the public health, safety or welfare arises subsequent to the aforementioned days and times. Any legislation and accompanying exhibits and/or attachments except as hereinafter stated, shall be delivered to the Clerk of Council no later than the close of business on Tuesday prior to the regular meeting; otherwise it shall not be included on the agenda. The exception to this requirement shall be the same as applicable to the preparation of legislation by the Director of Law provided, however, that any such legislation within such exception shall be delivered to the Clerk of Council no later than 12:00 noon the Friday preceding the regular meeting of Council. All legislation shall be timely reviewed for form and legality of content by the Director of Law prior to adoption. Violations of any of the provisions of this Rule shall not invalidate any resolution or ordinance duly adopted according to the other provisions of these Rules and the Charter.

(45) Rule 45. Legislation. All legislation shall comply with the following rules:

A. Any legislation originating from a member or members of Council shall have indicated thereon the name or names of the members of Council requesting or originating same following the words "Requested by:"

B. Any legislation originating from an administrative division, shall have indicated thereon the name and position of the person requesting or originating same following the words "Requested by". All ordinances or resolutions shall state the name or names of the member or members of Council who is sponsoring same, following the words "Sponsored by:"

C. No legislation requested or originated under subsection (a) (45) B. hereof shall be introduced in Council unless a member of Council has consented to introduce the legislation.

D. All ordinances and resolutions introduced in Council shall be identified and numbered as follows: The first two numbers shall represent the last two numbers of the respective calendar year during which such ordinance or resolution was introduced and which numbers shall be followed by a dash (-), after which shall appear a number as shall represent the numerical order in which the ordinance or resolution was introduced during the calendar year.

E. Any member of Council may submit a request, in writing, to the Clerk of Council to add his/her name to any legislation as a cosponsor. Upon receipt of such written or oral request, the Clerk of Council shall insert the name or names of the members of Council in the order received after the words "Co-sponsored by" on the legislation. During a vote on adoption of legislation, if a member of Council votes "no" or "abstains", that member's name shall be removed by the Clerk of Council as sponsor or co-sponsor of the legislation prior to posting.

(46) Rule 46. Legislation on for Passage Under Suspension of the Rules. In arranging "The Agenda", the Clerk shall not include any introductory legislation in the "On For Passage Under Suspension of Rules and Without Readings on Three Different Days" portion of "The Agenda", unless the member of Council, committee of Council, official or department head originating or requesting such legislation provides the Clerk with a written statement setting forth in detail the reasons requiring immediate action thereon. A copy of such statement shall be attached to the legislation and delivered in accordance with Rule 9 hereof. In the event that such written statement shall not be timely provided, the Clerk shall include such legislation in the "First Reading" portion of "The Agenda." Any legislation included in the "First Reading" portion may not be passed without the unanimous consent of all members elected to Council present.

(46-1) Rule 46-1. Legislation on for Passage Second Reading Suspension of the Rules. In arranging "The Agenda", the Clerk shall not include any legislation in the "Second Reading Suspension of the Rules" portion of "The Agenda", unless the committee of Council to which the legislation was referred has so recommended and the Administrative Department Head or the Mayor has also provided the Clerk with a written statement setting forth in detail the reasons requiring immediate action thereon, said statement to be agreed to by a roll call vote by the majority of members present voting in favor of the recommendation. A copy of such statement shall be attached to the legislation and delivered in accordance with Rule 9 hereof. In the event such written statement shall not be timely provided, the Clerk shall include such legislation in the "Second Reading" portion of "The Agenda".

(47) Rule 47. Form of Ordinances and Resolutions. The enacting clause of all ordinances and resolutions shall be "Be it ordained (resolved) by the Council of the City of Fairview Park, County of Cuyahoga, and State of Ohio". No ordinance or resolution or section thereof shall be revised or amended unless the new ordinance or resolution contains the entire ordinance or resolution, or section revised or amended, and the original ordinance, resolution, section or sections so amended shall be repealed. No ordinance or resolution shall contain more than one subject, which shall be clearly stated in its title. The determination as to whether the ordinance or resolution contains more than one subject shall be that of Council alone.

(48) Rule 48. Emergency Ordinances and Resolutions. If an emergency ordinance or resolution fails to receive an affirmative majority plus one vote of all members elected to Council, such measure shall cease to be before Council as an emergency measure and shall have the standing that a measure would have had if it had not been read as an emergency measure.

(49) Rule 49. Voting. and Form of Legislative Action.

A. Any action of Council shall be by ordinance, resolution or motion, and the voting upon such ordinance, resolution or motion shall be by roll call, and the vote of each member of Council shall be entered upon the journal.

B. All legislative action by Council shall be by ordinance or resolution introduced in written or printed form. An affirmative vote of at least a majority of the members of Council elected to Council shall be required for the passage or enactment of every ordinance or resolution. Unless otherwise provided herein, every ordinance or resolution shall be read at three different Council meetings, unless a majority plus one of the members elected to Council dispense therewith in which event such ordinance or resolution shall be read at least once before passage. Every ordinance or resolution shall be deemed to have been read on the first reading thereof if the title of the ordinance or resolution is fully and distinctly read if a written or printed copy of the ordinance or resolution shall have been furnished to each member of Council prior to its introduction unless two or more members of Council request the ordinance or resolution be read in full. Every ordinance or resolution shall be deemed to have been read on the second and third readings thereof if the title of the ordinance or resolution is fully and distinctly read unless two or more members of Council request the ordinance or resolution be read in full. Should any member of Council request that the ordinance or resolution be read in full, such request to be made after the Clerk of Council has read the title of the ordinance or resolution, the President of Council shall forthwith and prior to the consideration of further business, inquire as to whether any other member of Council concurs in the request. If any other member of Council concurs in the request, the Clerk of Council shall read the ordinance or resolution in full prior to the consideration of further business. If no other member of Council concurs in the request, the ordinance or resolution shall not be read in full and Council may proceed to the consideration of further business including the question of adoption of the ordinance or resolution.

(50) Rule 50. Effective Date of Ordinances and Resolutions. Each ordinance or resolution providing for the appropriation of money, for an annual tax levy or for improvements petitioned for by the owners of a majority of the front footage of property to be benefited and specially assessed therefor, and any emergency ordinance or resolution necessary for the immediate preservation of public peace, health or safety, shall take effect, unless a later date be specified therein, upon its approval by the Mayor, or upon the expiration of the time within which it may be vetoed by the Mayor, or upon its passage after veto by the Mayor, as the case may be. No other ordinance or resolution shall become effective until forty (40) days after its approval by the Mayor or upon the expiration of the time within which it may be vetoed by the Mayor, or upon its passage after veto by the Mayor, as the case may be.

Each emergency measure shall contain therein a statement of the necessity for such emergency action, and shall require the affirmative vote of a majority plus one of the members elected to Council for its enactment. No action of Council authorizing the surrender or joint exercise of any of its powers, or in granting any franchise, or rezoning ordinance or amendment or repeal of any zoning ordinance, shall be designated an emergency measure or enacted under a suspension of rules.

(51) Rule 51. Enactment of Zoning Ordinances. Enactment of Zoning ordinances and regulations and notice thereof shall be in accordance with the applicable provisions of the Charter and applicable provisions of the Codified Ordinances of the City.

(52) Rule 52. Roll Call; Seating Order. For all roll calls in matters before Council, the Clerk of Council shall call the roll of members in order from the member of Council seated to the furthest right of the President of Council to the furthest left. The seating order of the members of Council and the Clerk of Council shall be in the following order beginning with the seat to the furthest right of the President of Council: Council Wards 1 through 3, the Clerk of Council, the President of Council, Council Wards 4 and 5 and Council-at-Large. Reports of committees (Rule 8 A.7.) and Miscellaneous Business and Comments (Rule 8 A. 12.) shall be given or made in the same order except that such from the President of Council shall be given or made after all other members of Council.

(53) Rule 53. Reference to Committee. All ordinances, resolutions, communications or other matters shall be read on the day introduced or presented except as provided in Rule 43 and shall be referred to committee by the President of Council, which reference shall be forthwith announced. The committee to which reference is made, after due consideration and at least one meeting which shall be open to the public, except as otherwise provided by law, shall report the same back with or without proposed amendments and with recommendation for approval or disapproval. When so reported, such ordinance, resolution, communication or other matter shall be read a second time and, except as provided in Rule 56, laid over until the next meeting of Council when it shall be read a third time and a vote taken thereon. No ordinance, resolution, communication or other matter shall be enacted or otherwise adopted or further action taken thereon without first having been referred to committee and reported upon, except for a resolution of condolence or congratulations or an ordinance, resolution or other matter included in the "On For Passage Under Suspension of the Rules and Without Readings on Three Different Days" portion of "The Agenda."

(53-1) Rule 53-1. Re-reference to Committee. Any pending legislation, communication or other matter may, by the President of Council or by a vote of a majority of the members elected to Council present and voting, be re-referred to any committee to which previously referred under these rules, or to any appropriate committee with jurisdiction over the subject matter designated in the motion to re-refer. When referred back to Council, such legislation, communication or other matter shall have the same standing as it had at the time when re-referred. Such legislation, communication or other matter shall be subject to the provisions of Rule 17 and Rule 55.

(54) Rule 54. Reference to More Than One Committee. Whenever any pending matter is referred to more than one committee for consideration and report, such committees may consider the same in joint session as a Joint Committee, if the Chair of the committees concerned consent thereto. The Chair of the committee first named shall preside at such joint sessions, and each member of the Joint Committee shall have one vote for each committee of which they are a member composing the Joint Committee. A majority of the members of each of the separate committees shall constitute a quorum of such committee and the vote shall be taken by roll call of each of the separate committees constituting the Joint Committee. Its report shall be made in the same manner and under the same rules as reports are made by standing committees.

(55) Rule 55. Relieving Committees.

A. Any committee or committees to which an ordinance, resolution, communication or other matter has been referred by the Presiding Officer under Rule 53, without specific motion to commit, may be relieved of further consideration of such legislation, communication or other matter by a motion duly made and adopted by a majority plus one vote of the members elected to Council; provided a majority vote of the members elected to Council present and voting shall be sufficient to relieve a committee if notice of the intention to relieve such committee or committees of further consideration of said legislation, communication or other matter has been made at the meeting preceding the meeting at which such motion is made.

B. Any committee to which an ordinance, resolution, communication or other matter has been referred by motion to commit or recommit may be relieved of further consideration of such legislation, communication or other matter at the next meeting following the meeting at which such legislation was referred by a motion to reconsider the vote to commit or recommit as the case may be, which motion shall require only a majority vote of the members elected to Council present and voting; and at any time subsequent to the meeting next succeeding the meeting at which such legislation, communication or other matter has been committed or recommitted, the procedure to relieve the committee shall be as provided in subsection (a)(55)A. hereof.

C. In the event any committee is relieved of further consideration pursuant to either subsection (a)(55)A. or B. hereof, such ordinance, resolution, communication or other matter shall be placed on the Calendar Agenda at the next succeeding regular meeting of Council, unless otherwise directed by Council.

(56) Rule 56. Three Readings. Copies of all first reading legislation to be introduced for passage under suspension of the Rules and without reading on three different days shall be delivered to each member of Council either personally or at their residence address, or transmitted by electronic means, at least two days prior to the date of introduction. No motion to suspend the Rule that first reading legislation be read on three different days shall be entertained unless the reason for the suspension is set forth in accordance with Rule 46 by the member making such motion or the official or the Director of the department involved. When it is desired to suspend Rule 49 and Rule 53, in order to permit the passage of legislation upon introduction, the question on the motions for suspension shall be as follows:
"Shall the Charter provision and Rule 49 requiring reading on three different days be dispensed with?" If a majority plus one of the members elected to Council, vote "yes", the Charter and the Rule provisions requiring reading on three different days shall be suspended and the question on the motion to suspend Rule 53 shall be as follows: "Shall Rule 53 requiring reference to Committee be dispensed with and (Ordinance No. -) (Resolution No. -) be placed on final passage?" If a majority plus one of the members of Council present and voting vote "yes", the Rule requiring reference to Committee shall be suspended. Both motions set forth in this paragraph shall be debatable as to the propriety of same but not upon the merits of the legislation. Copies of all second reading legislation to be placed for passage under suspension of the Rules and without reading on three different days shall be delivered to each member of Council either personally, or at their residence address, or transmitted by electronic means, two days prior to the date of second reading. No motion to suspend the rule that second reading legislation be read on three different days shall be entertained unless the reason for the suspension is set forth in accordance with Rule 46-1 by the committee recommending such motion. When it is desired to suspend Rule 49, in order to permit the passage of legislation upon second reading, the question on the motion for suspension shall be as follows: "Shall the Charter provision and Rule 49 requiring reading on three different days be dispensed with?" If a majority plus one of the members elected to Council, vote "yes", the Charter and Rule provisions requiring reading on three different days shall be suspended. The motion set forth in this paragraph shall be debatable as to the propriety of same but not upon the merits of the legislation.

(57) Rule 57. Appropriation Ordinances and Resolutions. Ordinances or resolutions making appropriations shall be confined to the subject of appropriations and must include a fund number from which it will be paid. No money shall be appropriated except by ordinance or resolution. All ordinances or resolutions for fixing a tax rate, the appropriation of money, the issuance of bonds, the transfer of money to any fund, or the payment of claims, and all resolutions and ordinances whereby the City shall become liable for the payment of any money, shall be referred without debate to the Committee on Finance for consideration and report.

(58) Rule 58. Substitute Legislation. Legislation dealing with the same subject matter may be substituted for any pending ordinance or resolution by a majority vote of the members elected to Council present and voting, upon the recommendation of any committee to which such legislation has been referred. Substitute legislation shall be subject to all the provisions of the Charter, ordinances and rules applying to ordinances or resolutions to be placed on first reading, and the legislation for which such substitute is offered shall be laid upon the table permanently as a final disposition thereof. Before accepting for introduction any substitute legislation, the sponsor or sponsors of the original legislation shall be given written notice thereof by the Clerk of Council.

(59) Rule 59. Ordinances Fixing Fines and Penalties. All ordinances imposing fines, penalties, forfeiture or imprisonment shall be referred to the appropriate standing committee of Council as provided for in Rule 14, and the Director of Law shall be asked to give an opinion thereon.

(60) Rule 60. Approval of Ordinances and Resolutions. Every ordinance passed or resolution adopted shall be signed by the President of Council or other Presiding Officer and presented promptly to the Mayor by the Clerk of Council. If the Mayor approves such ordinance or resolution, the Mayor shall sign and return it to the Clerk of Council within ten days after its passage or adoption by Council, but if the Mayor does not approve it, he the Mayor shall return it to Council within such ten days with his or her written objections by delivery to the Clerk of Council. The Mayor's objections shall be read at the next Council meeting and be entered in full on the journal of Council. The Mayor may approve or disapprove the whole or any item of an ordinance or resolution appropriating money, but otherwise his or her approval or disapproval shall be addressed to the entire ordinance or resolution. If the Mayor does not return an ordinance or resolution within the time limited in this Rule, it shall take effect in the same manner as if he or she had signed it. When the Mayor disapproves an ordinance or resolution or any part thereof, and returns it to the Council with his or her objections, Council shall, not later than the next regular meeting, reconsider it and, if such ordinance, resolution or item, upon such reconsideration, is approved by the vote of at least a majority plus one members elected to Council, it shall take effect at the time of the vote of approval or at such later time as may be specified in such ordinance, resolution or item.

(61) Rule 61. Adoption of Ordinances by Reference. Council may adopt standard ordinances and codes prepared by public or private agencies on such matters as fire prevention, building construction, electric wiring, plumbing, heating, ventilating and air conditioning by reference to the date and source of the code without reproducing the same at length in the ordinance. In all such cases, publication of the code at length by the City shall not be required. In any such instance at least ten copies of such code shall be kept in the Building Department for reference by interested parties, and copies shall be available for sale by the Clerk of that division.

VII. ADMINISTRATIVE OFFICERS.

(62) Rule 62. Attendance Required. The Mayor, the Directors of all departments and the City Engineer should attend the regular and special meetings of Council and shall be provided with seats on the floor of the Council Chamber. They shall, subject to the provisions of Rule 5, answer such questions relating to the affairs of the City under their respective supervision and control as may be put to them by any member of Council. The Mayor shall make such recommendations in writing to Council for the welfare of the City as seem wise. The Mayor, the Directors of all departments, Building Commissioner, City Engineer, the Police Chief and the Fire Chief, or their respective designees, should be available to attend committee meetings as required by Council.

(63) Rule 63. Reports of City Officers. All ordinances, resolutions and communications pertaining to matters that come under the supervision and control of the Mayor and the Directors of departments shall, in addition to being referred to the proper committees, be also referred to such respective administrative officers for recommendation and report. No later than thirty days after reference to the administrative officer or officers, as the case may be, each ordinance, resolution or communication so referred shall be returned to the Clerk of Council with the endorsement of each administrative officer's approval, disapproval or recommended changes of such matter so referred; if response is not received within thirty days, Council shall assume that approval is granted. It shall be the duty of the President of Council to enforce this rule rigidly. The Clerk shall use all diligence in seeing that departments, commissions and boards to which measures are referred, return them to the Clerk's office within the time fixed herein or the time fixed by Charter should a longer period of time be allowed therein.

(64) Rule 64. Report or Status on Pending Measures. The Clerk of Council shall keep the members of Council informed regarding the status of pending ordinances and resolutions. All ordinances and resolutions to be acted upon by committees or the Council shall be in the hands of the Clerk as prescribed in Rule 44.

(65) Rule 65. Approval of Council of Appointments by Mayor. Whenever the approval of Council is required for appointments by the Mayor, the President of Council, upon written request of the Mayor for approval of any appointment, shall forthwith refer the name of each person whose appointment is submitted for approval of Council to the Committee of the Whole. Not later than the next regular meeting of Council following such reference, the committee shall report to Council its recommendation thereon. Thereupon Council, as part of the appropriate order of business, shall proceed to vote upon the approval of each appointment, the question being "Shall the Council approve the appointment by the Mayor?" Except as provided by the Charter or an ordinance or resolution specifically applicable to the appointment in question, if a majority of all the members elected to Council eligible to vote, vote "yes", the Council shall approve such appointment.

(66) Rule 66. Reports from Mayor and City Officials. All reports from the Mayor and City officials suggesting or recommending action by Council on any matter not referred to the source of such report by Council, or not otherwise provided for by the Rules of Council, shall be submitted in writing to the President of Council, who shall refer the same to the standing committee to which such suggestion or recommendation is most closely related. Such standing committee shall consider the suggestion or recommendation thus referred to it and report thereon to Council without unnecessary delay. Such consideration shall be subject to the provisions of Rule 17, Rule 53 and Rule 55.

VIII. COUNCIL CHAMBER.

(67) Rule 67. Use of Council Chamber. The Council Chamber shall be used only for meetings of Council or committees thereof, except where the President of Council authorizes its use by persons other than City Officials, when the Chamber is not in use by Council or its committees. The Clerk, with the written approval of the President of Council, may permit the other public officials to use the Council Chamber on public business, when not in use by the Council or its committees. The Clerk of Council shall notify all members of Council when the Council Chamber shall be used by persons or other City officials pursuant to this Rule.

(68) Rule 68. Privileges of Floor. While Council is in session, no person except members of Council, officers named in the Rules, and persons invited by the President of Council, or by vote of Council, shall be admitted within the bar of the Council Chamber, and the Presiding Officer shall cause this Rule to be rigidly enforced.

IX. RULES - SUSPENSION - AMENDMENT AND OTHER.

(69) Rule 69. Suspension of Rules. Any provision of these Rules may be suspended at any meeting of Council, by a majority vote of the members of Council present and voting, except when a greater number is required by law, by the Charter or by the Rules. The vote on any such suspension shall be taken by "yes" and "no" and entered upon the journal. In case Council takes action on any measure or in the case any Rule shall not have been adhered to by Council the same shall be regarded as having been suspended.

(70) Rule 70. Other Rules. Except as herein otherwise provided, the proceedings of Council shall be governed by the Charter and the Codified Ordinances of the City of Fairview Park, the Ohio Revised Code, and Robert's Rules of Order, and it shall be the duty of the Presiding Officer to adhere to and enforce such Rules. In case of conflict or questions as to the powers of Council, or any member thereof, the Charter shall prevail, any provision to the contrary notwithstanding herein.

(71) Rule 71. Investigations. Council may with or without notice cause the affairs of any department, division or office or the conduct of any officer or employee of the City to be examined. Council shall have the power to compel the attendance of witnesses, the production of books, papers and other evidence, and to cause witnesses to be punished for contempt as is conferred by law. Council may, by ordinance or resolution duly adopted, retain the services of such experts as it deems necessary and appropriate to assist it or any committee thereof in the discharge of legislative duties and powers. Council may, by ordinance or resolution duly adopted, authorize the creation of advisory groups and commissions composed in whole or in part of private citizens as it deems necessary and appropriate to assist it or any committee thereof in the discharge of legislative duties and powers, the composition, term and purpose of which shall be specified in the ordinance or resolution. Any committee of Council may determine to conduct an investigation of any matter or subject within the jurisdiction of the committee as set forth in Rule 14 without there having first been a reference of same to the committee by either the President of Council or by a duly adopted motion of Council to refer provided the matter or subject had not been previously referred to another committee.

(72) Rule 72. Vacancy in Office.

A. Whenever any office of Councilman becomes vacant, the vacancy shall be filled for the unexpired term by majority vote of the remaining members of Council. If the vacancy is not so filled within thirty days, the Mayor shall fill it by appointment.

B. When there is a vacancy in the office of Councilman which has not been filled in accordance with subsection (a)(73)A. hereof, a quorum shall consist of a majority of all the remaining members of Council.

(73) Rule 73. Resignation.

A. The resignation of a member of Council shall not take effect until the same has been accepted by a vote of the majority of the members of Council eligible to vote, exclusive of the person tendering the resignation, unless otherwise in effect by law.

B. If a vacancy shall occur as a result of the foregoing contingency, it shall then be filled as other vacancies in Council, in accordance with Article IV, Section 5 of the Charter.

(74) Rule 74. Removal. Council shall be the judge of the election and qualifications of its own members, including the President of Council. Council may, by at least majority plus one vote of the members elected to Council, expel or remove any member, including the President of Council, for gross misconduct, malfeasance, nonfeasance, misfeasance in or disqualification for office; for violation of his or her oath of office; for the conviction while in office of a crime involving moral turpitude; for persistent failure to abide by the rules of Council, or for absence without justifiable excuse from three consecutive regular meetings. Prior to any such action by Council, the accused member shall be notified in writing of the charge against him or her at least ten days in advance of any hearing upon such charge, and he or she and his or her counsel shall be given an opportunity to be heard, present evidence or examine under oath any witness appearing in support of such charge.

(75) Rule 75. Amending Rules. These Rules may be amended, or new Rules adopted, by a majority vote of all the members elected to Council, on the report of the appropriate standing committee of Council as provided for in Rule 14 for such purpose, provided the proposed amendments or new Rules shall have been referred to such committee in a preceding regular meeting.

(76) Rule 76. Continuity of Rules. These Rules shall constitute and serve as the Rules of Council for Council unless amended or new Rules adopted. (Ord. 15-21. Passed 6-15-15.)

111.04 CHARTER AMENDMENT PROPOSED BY COUNCIL; PREPARATION AND DISSEMINATION OF ARGUMENTS.

(a) When the Council adopts an ordinance or resolution proposing an amendment to the Charter of the City, it shall by resolution designate a group of members who voted in support of or voiced support of the ordinance or resolution to prepare arguments for the proposed amendment, and a group of members who voted in opposition to or voiced opposition to the ordinance or resolution to prepare arguments against the proposed amendment. If no members voted in opposition to or voiced opposition to the ordinance or resolution, Council shall designate a group of persons known to oppose the amendment to prepare such arguments. All arguments shall be filed with the Clerk of Council no later than forty-five days before the date of election. No argument shall exceed two hundred words.

(b) The Clerk of Council shall disseminate information, which may include part or all of the official explanation and which shall include the arguments concerning the proposed amendment, by means of written publication, direct mail or such other means, or combination of means, as the Council may direct, in order to inform the voters as fully as possible concerning proposed amendments to the Charter of the City. The cost of such dissemination shall be paid by the Director of Finance out of funds appropriated for that purpose upon receipt of a voucher from the Clerk of Council. The voucher shall verify that the cost was incurred in fulfillment of the duty imposed by this section.

(c) The provisions of this section shall not be applied or construed so as to prevent or prohibit any member of Council or any other person from disseminating information and arguments regarding amendments to the Charter proposed by Council at the cost of the member of Council or any other person provided such information and arguments otherwise comply with law. (Ord. 91-12. Passed 4-15-91.)

(Editor's Note: The next printed page is page 71.)

CHAPTER 113
Ordinances, Resolutions and Contracts

113.01 Requirements for legal publication in newspaper.
113.02 Preference for American-made products.
113.03 Participatory and cooperative purchase agreements.
113.04 Purchase of recycled paper.
113.045 Purchase of products with recycled content; preference.
113.05 Award of contracts to lowest responsive and responsible bidders.

CROSS REFERENCES

Contract interest - see CHTR. Art. IV, §2; ADM. Ch. 109
Form and publication of legislative action - see CHTR. Art. IV, §11
Effective dates - see CHTR. Art. IV, §12
Advertising contracts - see CHTR. Art. IV, §13
Enactment of zoning ordinances - see CHTR. Art. IV, §14; P. & Z. Ch. 1157

113.01 REQUIREMENT FOR LEGAL PUBLICATION IN NEWSPAPER.

Whenever any legal publication or notice is required by the Charter, City Ordinances, or by virtue of the laws of the State to be made in a newspaper of general circulation in the City, such legal publication or notice shall be made in either the Plain Dealer, the Sun-Herald, the West Life or any other newspaper of general circulation in the City.
(Ord. 89-8. Passed 3-6-89.)

113.02 PREFERENCE FOR AMERICAN-MADE PRODUCTS.

(a) The purpose of this section is to require the procurement of domestic source end products for public use except as otherwise provided in this section. This section shall not be construed so as to impair the ability of the City to reject all bids, offers and proposals, award partial bids, offers and proposals, and rebid, re-request and resolicit if it is deemed in the best interest of the City to do so.

(b) Unless the Board of Control when public bidding, public solicitation for offers or public request for proposals is required shall determine it to be inconsistent with the public interest, or the price to be excessive, only such unmanufactured end products as have been mined or produced in the United States, and only such manufactured end products as have been manufactured in the United States substantially all from components mined, produced or manufactured, as the case may be, in the United States shall be acquired for public use by the City. The requirements of this section shall not apply if the end products of the class or kind to be used or the components from which they are manufactured are not mined, produced or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities or of a satisfactory quality or where there is not sufficient competition in the United States.

(c) Bids or offered prices shall first be evaluated to determine that a bid or offered price is for a domestic source end product. Any bid, proposal or offer that does not meet this requirement shall be rejected, except in those circumstances where the Board determines that certain end products, or any component thereof, are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities or of a satisfactory quality or where there is not sufficient competition in the United States. Where the preliminary analysis by the Board identifies the apparent lowest and best bid, proposal or offer as one other than a domestic source end product bid, proposal or offer, the Board shall consider:

(1) Whether the end product can be acquired in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
(2) Whether the lowest and best domestic bid, proposal or offer offers an excessive price;
(3) Whether a domestic bid, proposal or offer has been submitted to the City;
(4) Whether the lowest and best domestic bid, proposal or offer offers an end product of an unsatisfactory quality; and
(5) Whether there is sufficient competition within the United States.

Where the Board determines that selection of the lowest and best domestic source end product bid, proposal or offer will not result in an excessive price to the City or the acquisition of an end product of an unsatisfactory quality, and that the exceptions to the requirements of this section as hereinbefore set forth do not apply, the contract shall be awarded to the lowest and best bidder or offeror of a domestic source end product. Where the Board determines that selection of the lowest and best domestic source end product bid, proposal or offer will result in an excessive price to the City or the acquisition of an end product of an unsatisfactory quality or that one or more of the exceptions to the requirements of this section as hereinbefore set forth do apply, the Board shall award the contract to the lowest and best bidder or offeror without regard to the provisions of this section.

(d) All invitations to bid, requests for proposals and solicitations for offers shall require the bidder or offeror to complete and attest to the following:

> "The bidder (or offeror) hereby certifies that each end product, except the end products listed below, is a domestic source end product and that components of an unknown origin have been considered to have been mined, produced or manufactured outside the United States."

(e) In any case in which it is determined that the acquisition of domestic source end products would be inconsistent with the public interest, or the price to be excessive, the Board shall submit a written report of the facts of each case in which such determination is made within ten days thereafter to Council.

(f) If the Board which has authorized any contract containing the requirements of this section finds that in the performance of such contract there has been a failure to comply with such requirements, the Board shall make public its findings, including therein the name of the obliger under such contract, and no other contract for the acquisition of end products shall be awarded to such obliger or to any person with which the obliger is associated or affiliated within a period of three years after such finding is made public.

(g) As used in this section:

(1) "Components" means those articles, materials and supplies which are directly incorporated in end products.

(2) "Domestic bid" means a bid or offered price for a domestic source end product, including transportation to destination.

(3) "Domestic source end product" means an unmanufactured end product which has been mined or produced in the United States, or an end product manufactured in the United States if the cost of its components which are mined, produced or manufactured in the United States exceeds fifty percent (50%) of the cost of components. The cost of components shall include the transportation costs to the place of incorporation into the end product and, in the case of components of foreign origin, duty. A component shall be considered to have been mined, produced or manufactured in the United States if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind:

A. Determined by the Board to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities or of satisfactory quality; or

B. As to which the Board has determined that it would be inconsistent with the public interest to require.

(4) "End products" means articles, materials, supplies and equipment to be acquired for public use, as specified in the contract, including articles, materials, supplies and equipment to be acquired for public use in connection with service contracts, whether of a manufactured or of an unmanufactured nature, and whether to be acquired by purchase, lease or lease with an option or agreement to purchase. In determining whether an end product is a "domestic source end product" only the end product and its components, if any, shall be considered.

(5) "Excessive price" means a price that exceeds by more than five percent (5%) of the sum or offered price, including duty, of end products of foreign origin. When more than one line item is offered in response to an invitation to bid, request for proposals or solicitation for offers, the factor of five percent (5%) may be applied to any item or group of items as to which the invitation to bid, request for proposals or solicitation for offers specifically provides that award is to be made on a particular item or group of items.

(6) "Foreign bid" means a bid or offered price for a foreign end product, including transportation to destination and duty.
(7) "Foreign end product" means an end product other than a domestic source end product.
(8) "Inconsistent with the public interest" means the end product offered is of an unsatisfactory quality, or can not be acquired in sufficient and reasonably available quantities or there is not sufficient competition within the United States.
(9) "Scrap" generated in, collected in and prepared for processing in the United States shall be considered as a domestic source end product/component.
(10) "Sufficient competition" means two or more qualified bids or offered prices from bidders or offerors not owned or controlled, directly or indirectly, by the same interests, that offer domestic source end products.
(11) "United States" means any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legislative authority of the United States of America.
(Ord. 86-21. Passed 5-4-87.)

113.03 PARTICIPATORY AND COOPERATIVE PURCHASE AGREEMENTS.

(a) State. Subject to Section 113.02, the Mayor is hereby authorized to participate in contracts with the Department of Administrative Services, Office of State Purchasing, of the State of Ohio for the purchase, lease or lease with an option or agreement to purchase articles, supplies, services, materials and equipment as may be required for municipal use under such contract terms and conditions as may be prescribed by the Department. The City shall directly pay the vendor or lessor under each such purchase contract for items it receives pursuant to the contract.

(b) County. Subject to Section 113.02, the Mayor is hereby authorized to participate in contracts with the Regional Planning Commission of Cuyahoga County for the purchase, lease or lease with an option or agreement to purchase articles, supplies, services, materials and equipment as may be required for municipal use by the City under such contract terms and conditions as may be prescribed by the Commission. The City shall directly pay the vendor or lessor under each such purchase contract for items it receives pursuant to the contract. As used in this subsection, the term services includes the purchase of liability insurance.

(c) Other Municipalities and School Districts. Subject to Section 113.02, the Mayor is hereby authorized to participate in contracts with other cities, villages and townships and with school districts for the purchase, lease or lease with an option or agreement to purchase articles, supplies, services, materials and equipment as may be required for municipal use by the City under such contract terms and conditions as may be agreed to. The City shall directly pay the vendor or lessor under each such purchase contract for items it receives pursuant to the contract. As used in this subsection, the term services includes the purchase of liability insurance.
(Ord. 86-21. Passed 5-4-87.)

(d) Westshore Council of Governments.

(1) Subject to Section 113.02, the Mayor is hereby authorized to join with the Westshore Council of Governments in issuing invitations to bid and request for proposals, as determined by the appropriate officials of the Westshore Council of Governments for vehicles, equipment, operating supplies, materials, services and such other equipment and supplies as may be deemed beneficial by the Westshore Council of Governments and the Mayor for collective bidding.

(2) Subject to Section 113.02, the Mayor is hereby authorized to sign invitations to bid or requests for proposals in the name of the City and to be bound by all contract terms and conditions as the Westshore Council of Governments shall prescribe in such collective procurement procedures and any contracts or agreements resulting from such procedures.

(3) The Mayor is hereby authorized to agree, in the name of the City, to pay directly the vendor or through the Westshore Council of Governments under each such collective purchasing agreement in which it participates, for items or services it received pursuant to such contracts or agreements, and the Director of Finance is hereby authorized to make such payments.

(e) Any and all participatory or cooperative contract or purchasing agreement authorized by this section shall be subject to the approval of Council by individual resolution of Council. (Ord. 90-91. Passed 10-1-90.)

113.04 PURCHASE OF RECYCLED PAPER.

(a) As used in this section:

(1) "Recycled paper" means a paper product with not less than fifty percent (50%) of its total weight consisting of secondary and postconsumer waste and with not less than twenty-five percent (25%) of its total weight consisting of postconsumer waste.

(2) "Postconsumer waste" means a finished material, including paper, paperboard and other fibrous wastes generated by a household, business or other consumer, which would normally be disposed of as solid waste having completed its life cycle as a consumer item or having served its intended end use.

(3) "Secondary waste" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and including postconsumer waste and other material generated after completion of the papermaking process such as envelope cuttings, bindery trimmings, printing waste, cutting and other converting waste, butt rolls and mill wrappings, but not including mill broke, wood slabs, chips, sawdust or other wood residue from the manufacturing process. "Secondary waste" also includes finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, wholesalers, dealers, merchants, printers and convertors. (Ord. 91-87. Passed 10-7-91.)

(4) "Reasonably" competitive means a comparable recycled product with a cost premium of no greater than five percent (5%) over the lowest bid of price quoted by suppliers offering nonrecycled paper products.

(b) When purchasing or otherwise obtaining paper products, the City shall, whenever the price is reasonably competitive and the quality is that intended, purchase the recycled paper. (Ord. 91-87. Passed 10-7-91.)

(c) Information on the recycled content shall be requested on all bids or quotes for paper products issued by the City and on other bids or quotes for products which could have recycled contents such as oil, plastic products, compost materials, aggregate, solvents and rubber products. (Ord. 89-5. Passed 6-19-89.)

113.045 PURCHASE OF PRODUCTS WITH RECYCLED CONTENT; PREFERENCE.

(a) In addition to the provisions of Section 113.04, the Board of Control shall adopt procurement procedures and contract specifications that:

(1) Eliminate discrimination against the procurement of equipment, materials and supplies with recycled content;

(2) Encourage the procurement of equipment, materials and supplies with recycled content;

(3) Ensure, to the maximum extent economically feasible, that equipment, materials and supplies procured by the City may be recycled or reused after having served its intended end use;

(4) Require equipment, materials and supplies to contain a specified minimum percentage of recycled content to the extent that such equipment, materials and supplies are commercially reasonably available;

(5) To the maximum extent possible, procure equipment, materials and supplies with recycled content from vendors and suppliers who agree to purchase recyclable materials from the City for recycling or reuse.

(b) The Board of Control shall prescribe criteria and procedures that give preference to recycled content which shall include:

(1) Information to be submitted by bidders as to the percentage of recycled content;

(2) Waivers on a contract by contract basis when a preference for equipment, materials or supplies with a recycled content requirement would result in the payment of a price which is not reasonably competitive or the procurement of a disproportionately inferior product.

(c) Any contract specification that requires the procurement of equipment, materials or supplies with a minimum percentage of recycled content shall require the Board of Control to evaluate the bids received in accordance with the provisions of subsections (a) and (b) hereof. In calculating the lowest responsive and responsible bid, the Board of Control shall reduce a bidder's actual bid price by one percent (1%) for every ten percent (10%) of recycled content in excess of the minimum recycled content required by the contract specifications. Any bidder who is awarded a contract following the calculation set forth herein shall be paid the actual bid price.

(d) As used in this section:

(1) "Recyclable materials" means materials that have served their intended end use which are to be subsequently collected, separated or processed for re-use as raw materials or finished products.

(2) "Recycled content" means that portion of equipment, materials and supplies that consist of recyclable materials.

(3) "Reasonably competitive" means a comparable recycled product with a cost premium of no greater than five percent (5%) over the lowest bid of price offering nonrecycled products or products which do not have the recycled content required by the contract specifications.

(e) When purchasing or otherwise obtaining equipment, materials and supplies, the City shall, whenever the price is reasonably competitive and the quality is that intended, purchase the equipment, materials and supplies with the recycled content.
(Ord. 91-87. Passed 10-7-91.)

113.05 AWARD OF CONTRACTS TO LOWEST RESPONSIVE AND RESPONSIBLE BIDDERS.

(a) Subject to Section 113.02, any expenditure required to be made pursuant to contract by Article VIII, Section 6 of the Charter shall be made with the lowest responsive and responsible bidder. A bidder on a contract shall be considered as responsive if the bid responds to bid specifications in all material respects and contains no irregularities or deviations which would affect the amount of the bid or otherwise give the bidder a competitive advantage. In determining whether a bidder on a contract is responsible, the experience, financial condition, conduct and performance on prior contracts, facilities, management skills and the ability to execute the contract of the bidder shall be considered. An apparent low bidder found not to be responsive and responsible shall be notified by the Board of Control of that finding and the reasons for it. The notification shall be given in writing and by certified mail.

(b) Where the Board determines to award a contract to a bidder or bidders other than the apparent low bidder or bidders it shall meet with the apparent low bidder or bidders upon the filing of a timely written protest. The written protest shall be received by the Board within five days of the notification required by subsection (a) hereof. No final award shall be made until the Board either affirms or reverses its earlier determination.

(c) The provisions of this section shall apply to all contracts required to be made pursuant to contract by Article VIII, Section 6 of the Charter including, but not limited to, the construction, reconstruction, improvement, enlargement, alteration, repair, painting or decoration of a public improvement.
(Ord. 90-105. Passed 12-3-90.)

TITLE FIVE - Administration

Chap. 121. Mayor.
Chap. 123. Department of Law.
Chap. 125. Department of Finance.
Chap. 127. Department of Public Service and Development.
Chap. 129. Police Department.
Chap. 131. Fire Department.
Chap. 133. Division of Building.
Chap. 135. Parks and Recreation Commission.
Chap. 136. Department of Recreation.
Chap. 137. Planning and Design Commission.
Chap. 141. Civil Service Commission.
Chap. 143. Employment Provisions.
Chap. 147. Senior Life Office.
Chap. 149. Fairview Park Youth Commission.
Chap. 150. Shade Tree Advisory Committee.
Chap. 151. Residential Child Day Care Services Resource Registry.
Chap. 153. Airport Environmental Commission.

CHAPTER 121
Mayor

121.01 Stenographer - recording secretary.
121.02 Authority to appoint employees.
121.03 Operating budget.
121.04 Annual inventory.
121.05 Secretary.
121.06 School guards.
121.07 Secretarial help.
121.08 Department directors to take an oath of office.

CROSS REFERENCES
Mayor - see CHTR. Art. III
Planning and Design Commission member - see CHTR. Art. VII, §2
Ex-officio president of Board of Control - see CHTR. Art. VII, §4

121.01 STENOGRAPHER - RECORDING SECRETARY.

There is hereby created the position of stenographer - recording secretary, which position shall be filled by an appointment by the Mayor, to serve at the pleasure of the Mayor.
(Ord. 64-8. Passed 2-17-64.)

121.02 AUTHORITY TO APPOINT EMPLOYEES.

The Mayor and Director of Public Service and Development are authorized and directed to appoint such employees as are necessary for the proper operation of the municipal departments of the City, in accordance with the rules and regulations of the Civil Service Commission and the City Charter. (Ord. 64-18. Passed 2-17-64.)

121.03 OPERATING BUDGET.

The Mayor shall submit a proposed operating budget for each fiscal year which shall contain at least the following:

(a) A statement of estimated revenues from all sources, including fund balances from the preceding year;

(b) A statement of proposed expenditures, shown by department office, board and commission, and by activity, character and object; and

(c) A summary of the contents of the proposed operating budget, including any proposals for and the reasons of major changes in financial policies and in expenditures, appropriations and revenues as compared with the preceding fiscal year and the reasons therefor.

(Ord. 80-101. Passed 1-5-81.)

121.04 ANNUAL INVENTORY.

(a) The head of every operating division, department and office of the City shall provide an inventory of all the City's personal property, valued or at a cost of two hundred dollars ($200.00) or more, to Council on or before March 1 of each year commencing with the year 1984.

(b) The inventory list above shall be detailed and of sufficient description. The inventory shall include, date of acquisition and cost, date of disposal and revenue received, if applicable, the condition of such equipment at the time of inventory, (good, fair or bad) and registration numbers. If a registration number is not provided, an identification number shall be placed on such property.

(c) Any of the City's personal property not assigned to any of the departments of the City, shall be listed under the title of "Miscellaneous Property" and fall under the office of the Director of Public Service and Development.

(Ord. 83-31. Passed 6-20-83.)

121.05 SECRETARY.

Council does hereby create the position of Secretary to the Mayor and Director of Public Service and Development, who shall be appointed by the Mayor and shall be compensated at a rate fixed by Council. (Ord. 84-18. Passed 3-28-84.)

121.06 SCHOOL GUARDS.

The Mayor is authorized to employ school guards for the purpose of assisting school children at dangerous crossings during school hours.

(1954 Code §2-41)

121.07 SECRETARIAL HELP.

The Mayor is hereby authorized to hire part-time secretarial help for the various boards and commissions of the City of Fairview Park with authority to establish their hours.

(Ord. 69-8. Passed 2-17-69.)

121.08 DEPARTMENT DIRECTORS TO TAKE AN OATH OF OFFICE.

(a) All directors of City departments appointed by the Mayor and confirmed by City Council shall take an oath of office that such director will support the constitution of the United States and of the State of Ohio and of the Charter and ordinances of the City of Fairview Park; will not be influenced by any consideration except that of merit and fitness in the employment or discharge of employees; will not make or authorize any expenditure of public money otherwise than for adequate consideration and efficient service to the Municipal Corporation; and will faithfully in all other respects discharge the duties of the position or office.

(b) Any director that refuses to take such oath of office is subject to removal from office by the appointing authority. (Ord. 99-76. Passed 11-1-99.)

CHAPTER 123
Department of Law

123.01 Assistant Director of Law/ Prosecutor and Assistant Director of Law/Boards and Commissions.
123.02 Legal action to recover confinement costs.
123.03 Legal action to recover investigation and prosecution costs.
123.04 Employment of special counsel.

CROSS REFERENCES
Director of Law - see CHTR. Art. V, Sec. 2
Powers and duties - see Ohio R.C. 733.51 et seq.

123.01 ASSISTANT DIRECTOR OF LAW/PROSECUTOR AND ASSISTANT DIRECTOR OF LAW/BOARDS AND COMMISSIONS.

(a) Positions Created. There is hereby created the positions of Assistant Director of Law/Prosecutor and Assistant Director of Law/Boards and Commissions who shall be appointed by the Mayor and who shall serve at the pleasure of the Mayor. They shall be Attorneys at Law admitted to practice before the Courts of Ohio. (Ord. 91-8. Passed 5-6-91.)

(b) Assistant Director of Law/Prosecutor. The Assistant Director of Law/Prosecutor shall serve in the capacity of police prosecutor and represent the City as the prosecutor of all criminal and traffic cases before the Rocky River Municipal Court and all other courts having criminal and traffic wherein the City is a party and, if such cases are appealed, before the reviewing courts. He shall represent the City in any civil case assigned to him by the Director of Law. He shall attend all meetings of City Council in the absence of the Law Director and Assistant Director of Law/Boards and Commissions. He shall perform such other duties as may be assigned or directed by the Director of Law.

(c) Assistant Director of Law/Boards and Commissions. The Assistant Director of Law/Boards and Commissions shall attend all meetings of the Planning and Design Commission and the Board of Zoning and Building Appeals. He shall serve and give legal advice and opinions to such Boards and Commissions in the manner prescribed by the Director of Law. He shall represent the City in any civil or criminal case assigned to him by the Director of Law. He shall attend Council meetings in the absence of the Director of Law. He shall perform such other duties as may be assigned or directed by the Director of Law. Any person appointed to serve as Assistant Director of Law/Boards and Commissions shall have not less than three years substantive experience in municipal zoning. (Ord. 98-60. Passed 10-19-98.)

(d) The Assistant Director of Law/Prosecutor and the Assistant Director of Law/Boards and Commissions shall be attorneys licensed to practice law in the State of Ohio who have a minimum of four years experience in the practice of law, with one prior year of experience in municipal law or a related field. (Ord. 99-97. Passed 11-15-99.)

123.02 LEGAL ACTION TO RECOVER CONFINEMENT COSTS.

(a) Any person convicted of any offense other than a minor misdemeanor and who is thereafter confined to a workhouse, prison, station house or county jail shall reimburse to the City of Fairview Park its expenses incurred by reason of such confinement, including but not limited to, the provision of food, clothing and shelter. The amount of reimbursement shall be determined by a court of competent jurisdiction in an amount and manner provided by law.

(b) The Director of Law is hereby authorized and directed to institute an appropriate civil action in the name of the City in a court of competent jurisdiction to recover from the convict reimbursement for the expenses of confinement in a workhouse, prison, station house or county jail, as may be determined by the court in accordance with law.

(c) All amounts recovered for reimbursement of expenses of confinement shall be paid into the General Fund of the City.
(Ord. 84-55. Passed 11-5-84.)

123.03 LEGAL ACTION TO RECOVER INVESTIGATION AND PROSECUTION COSTS.

(a) Any person who is convicted of or pleads guilty to committing, attempting to commit or complicity in committing a violation of any provision of Chapter 513 or of Section 537.02 of the Codified Ordinances if the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, shall reimburse the City for its costs, including the reasonable value of the time of employees or officials of the City and the fair market value of all resources, that were expended or used by the City in connection with the investigation or prosecution of the offender as shall be determined by a court of competent jurisdiction in the manner provided by law.
(Ord. 89-37. Passed 12-4-89.)

(b) Any person who is convicted of or pleads guilty to committing, attempting to commit or complicity in committing a violation of Section 333.01 or of any provision of Chapter 529 of the Codified Ordinances shall reimburse the City for its costs, including the reasonable value of the time of employees or officials of the City and the fair market value of all resources, that were expended or used by the City in connection with the investigation or prosecution of the offender as shall be determined by a court of competent jurisdiction in the manner provided by law. (Ord. 95-50. Passed 8-21-95.)

(c) The Director of Law is hereby authorized and directed to institute an appropriate civil action in the name of the City in a court of competent jurisdiction to recover from an offender the costs of investigation and prosecution as set forth in subsections (a) and (b) hereof as may be determined by the court and in a manner as may be prescribed by the court.
(Ord. 89-37. Passed 12-4-89.)

(d) All amounts recovered for reimbursement of the costs of investigation and prosecution shall be paid into the Fairview Park Civil Reimbursement Fund to be used by the Department of Police with the approval of Council to assist in the arrest, investigation and prosecution of violators of Chapter 513, Section 537.02, Chapter 529 and Section 333.01. (Ord. 95-50. Passed 8-21-95.)

123.04 EMPLOYMENT OF SPECIAL COUNSEL.

(a) When the cost of such services is or will be in excess of the amounts provided in Article VIII, Section 6 of the Charter, the Mayor is hereby empowered and authorized to employ special legal counsel, who may be one or more, or a firm of attorneys at law for the purpose of assisting the Director of Law and the Assistant Director of Law or for the purpose of, under the supervision of the Director of Law or Assistant Director of Law, representing the City in the handling of litigation, including trial preparation and the conduct of trials or other proceedings in court or before any administrative body, for advisory opinions, and for specialized legal services in a particular branch of law subject to and in accordance with the provisions of this section.

(b) Special legal counsel may be employed by the Mayor only under the following circumstances:

(1) The Director of Law has first certified in writing to the Mayor and Council that neither he nor the Assistant Director of Law should, for a stated specific reason as is consistent with the Code of Professional Responsibility applicable to lawyers and the Disciplinary Rules thereunder, handle the legal matter without employing special legal counsel to assist in or to represent the City in a specific legal matter.

(2) Council approves the employment of special legal counsel by ordinance.

(c) Any ordinance of Council authorizing and approving the employment of special legal counsel shall indicate:

(1) The name of the person or persons or firm of attorneys at law who shall be employed as special legal counsel;

(2) The nature of the specific legal services to be provided by the special legal counsel including whether the special legal counsel is to assist the Director of Law or the Assistant Director of Law or is to represent the City under the supervision of the Director of Law or Assistant Director of Law;

(3) The fees to be paid to the special legal counsel for legal services including both the hourly rate and the maximum amount to be paid for such services;

(4) Whether the City or the special legal counsel shall be responsible for the payment of the costs and expenses, other than the fees for legal services, associated with and related to the specific legal services and if the City is to be responsible, a description of such costs and expenses and the approximate amount thereof; and

(5) The anticipated duration of such employment.

(d) The special legal counsel shall submit, not less than every thirty days, to both the Mayor and the Clerk of Council, a statement reflecting the legal fees earned and a report detailing the progress of the specific legal matter.

(e) The City and its officers, employees, agents, officials and representatives shall not be liable for or obligated in any manner to pay legal fees to the special legal counsel except as set forth in the duly adopted and approved ordinance employing the special legal counsel.
(Ord. 90-113. Passed 12-17-90.)

CHAPTER 125
Department of Finance

125.01 Assistant Director of Finance.
125.02 Withdrawing funds; authorized signatures.
125.03 Fees for photographic and photostatic work.
125.04 Fees for publications.
125.05 Tax Auditor.
125.06 Anti-recession Fiscal Assistance Fund.
125.07 Federal General Revenue Sharing Trust Fund.
125.08 Emergency Cash Purchasing Fund.
125.09 Sidewalk Fund.
125.10 Cumulative Reserve Public Works Preservation Fund.
125.11 Beautification Trust Fund.
125.12 Cable Television Franchise Fee Trust Fund.
125.13 S.A.V.E. Fund.
125.14 Fire insurance proceeds transferred to City.
125.15 Reports.
125.16 Gilles Sweet Community Center Enterprise Fund.
125.17 Law Enforcement Mandatory Drug Fine Fund.
125.18 Payment procedures for City contractors.
125.19 General Reserve Fund.
125.20 Manager of Information Systems.
125.21 Redevelopment Fund.

CROSS REFERENCES

Director of Finance - see CHTR. Art. V, §3
Finance Director may be Clerk of Council - see ADM. 111.02(a)
Admissions tax duties - see ADM. Ch. 171
Income tax duties - see ADM. 173.2301 et seq.

125.01 ASSISTANT DIRECTOR OF FINANCE.

The office of Assistant Director of Finance is hereby established, who shall be appointed pursuant to the Charter, and shall perform such duties as are directed by the Director of Finance. In the absence or disability of the Director, the Assistant Director shall perform the duties of the Director. (Ord. 59-109. Passed 12-7-59.)

125.02 WITHDRAWING FUNDS; AUTHORIZED SIGNATURES.

In accordance with the Charter, City funds in depository accounts, which have been heretofore authorized and maintained by the City, may be withdrawn from such accounts by checks and/or other instruments issued in the name of this Municipality upon the signatures of the following officers or employees of the City: The Director of Finance or the Assistant Director of Finance, and the Mayor or the Director of Public Service and Development.
(Ord. 59-114. Passed 12-7-59.)

125.03 FEES FOR PHOTOGRAPHIC AND PHOTOSTATIC WORK.

(a) From time to time, the Director of Finance is authorized and directed to establish reasonable charges or rates for photographic and photostatic work performed by any department or division of the City, and any funds collected therefrom shall be paid to the City.

(b) The various departments or divisions of the City are authorized to furnish photographs and photostats of reports to any person entitled to the same by law upon payment of the aforesaid charges or rates established by the Director.
(Ord. 65-36. Passed 7-19-65.)

125.04 FEES FOR PUBLICATIONS.

The Director of Finance is hereby authorized and directed to establish certain fees to be paid by any person desiring or obtaining from the City a copy of any Fairview Park publication, including the Codified Ordinances of such City. Any fees collected under authority of this section shall be paid into the General Fund of the City.
(Ord. 80-23. Passed 4-7-80.)

125.05 TAX AUDITOR.

The position of Tax Auditor in the Department of Finance is hereby created. The Director of Finance shall set forth the duties of the Tax Auditor which will include, but not be limited to, supervision of the income tax records, files and compliance notices of the City.
(Ord. 71-58. Passed 12-20-71.)

125.06 ANTI-RECESSION FISCAL ASSISTANCE FUND.

There is established under Ohio R. C. 5705.12, and subject to the approval of the Bureau of Inspection and Supervision of Public Offices of the State of Ohio, an Antirecession Fiscal Assistance Fund. Such fund is to receive moneys from the U. S. Department of Treasury under the Public Works Employment Act of 1976, (Title II, Public Law 94-369). Expenditures may be made from such fund for those purposes enumerated in Public Law 94-369, Section 204.
(Ord. 76-69. Passed 12-20-76.)

125.07 FEDERAL GENERAL REVENUE SHARING TRUST FUND.

There is hereby established a special fund to be known as the Federal General Revenue Sharing Trust Fund under the provisions of Ohio R. C. 5705.12. All moneys paid to the City under the State and Local Fiscal Assistance Act of 1972 shall be credited to such Fund and expended in accordance with the terms and provisions of such Federal Act.
(Ord. 72-67. Passed 11-6-72.)

125.08 EMERGENCY CASH PURCHASING FUND.

The Finance Director is authorized to establish an Emergency Cash Purchasing Fund, with the initial amount of two hundred dollars ($200.00) and to be replenished from time to time so that the Fund is maintained at a balance not to exceed two hundred dollars ($200.00).
(Ord. 74-29. Passed 4-15-74.)

125.09 SIDEWALK FUND.

The Finance Director is hereby authorized to set up a fund to be designated as Sidewalk Fund. The Director shall send a certified copy of this section to the Cuyahoga County Auditor. (Ord. 74-51. Passed 7-15-74.)

125.10 CUMULATIVE RESERVE PUBLIC WORKS PRESERVATION FUND.

(a) There is hereby created and established a Cumulative Reserve Public Works Preservation Fund. Such fund shall be used only for such public works projects as determined by the majority of the members of Council eligible to vote and approved by the Mayor. The Cumulative Reserve Public Works Preservation Fund shall be financed by at least twenty-five percent (25%) and not more than fifty percent (50%) of any revenues received by the City from any industrial development, industrial park, or the inclusion of new land area to the City, and any balance remaining in such Cumulative Reserve Public Works Preservation Fund from the previous fiscal year.

(b) Public works projects as used in this section shall be maintenance, rehabilitation, repair, renovation or replacement of existing municipal public works facilities, including streets, storm sewers, culverts, parks and public buildings.

(c) In the appropriation of funds for specific public works projects, Council and the Mayor shall consider documented condition information, maintenance standards, engineering standards, intensity of use, safety factors, project feasibility, cost-effectiveness and other relevant factors.

(d) Moneys credited to the Cumulative Reserve Public Works Preservation Fund shall be applied to the lump sum or installment payment of public works projects or to the payment of the principal or interest or premium on any bonds or notes issued by the City to finance public works projects. (Ord. 84-36. Passed over veto 12-31-85.)

125.11 BEAUTIFICATION TRUST FUND.

(a) The Finance Director is hereby authorized to set up a fund to be designated as a Beautification Trust Fund to be used for the following purposes:

(1) To receive any and all deposits of moneys from any participating residents of the beautification program.

(2) To hold such deposits in a Beautification Trust Fund.

(3) To pay out of such Fund such sums as may be needed for the staking and planting of trees, other beautification projects and any incidental costs required for such tree planting or other landscaping.

(b) A donor to the Fund shall be able to designate the location to which the donor desires the contribution to be used. Such location shall be subject to the approval of the Director of Public Service and Development. If not approved, the donor shall be entitled to receive his contribution. (Ord. 80-44. Passed 6-16-80.)

125.12 CABLE TELEVISION FRANCHISE FEE TRUST FUND.

The franchise fee provided to be paid into the City, pursuant to Chapter 733 or pursuant to any other grant of a television franchise as authorized by Article XI of the City Charter, shall be placed into a special fund entitled, Cable Television Franchise Fee Trust and shall be subject to disbursement, only by Ordinance or Resolution, by further action of Council.
(Ord. 99-54. Passed 7-19-99.)

125.13 S.A.V.E. FUND.

(a) The Director of Finance is hereby authorized and directed to establish a special fund, to be identified as the S.A.V.E. Fund, and such Fund shall be used solely and exclusively for the purpose of receiving and disbursing all moneys related to the S.A.V.E. program.

(b) The Director is authorized to receive donations or contributions made by individuals, businesses and public or private organizations or groups to support the program and all such donations or contributions shall be deposited in the Fund.

(c) Expenditures from the Fund for operation, administration and rewards shall be made by the Director upon receipt of an authorization of payment signed by the Chief of Police and any one other member of the Rewards Committee.

(d) The Director is hereby authorized and directed to transfer from the General Funds of the City the sum of five hundred dollars ($500.00) to the Fund to provide the initial moneys necessary to commence the program.
(Ord. 80-47. Passed 6-16-80.)

125.14 FIRE INSURANCE PROCEEDS TRANSFERRED TO CITY.

(a) The City hereby adopts and implements the provisions and procedures set forth in Ohio R.C. 3929.86, particularly paragraphs (C) and (D) thereof, providing for the transfer and receipt of portions of fire insurance proceeds as set forth in such section.

(b) The Finance Director is hereby designated as the officer of the City to carry out the duties under Ohio R.C. 3929.86.

(c) The Clerk of Council is hereby directed for forward a certified copy of this section to the Superintendent of Insurance, State of Ohio, as provided for in Ohio R.C. 3929.86 (C).
(Ord. 81-88. Passed 9-21-81.)

125.15 REPORTS.

(a) The Director of Finance shall report by the third Monday after the end of each fiscal month to Council, to other administrative officials and to the public the recorded facts in such summaries with such analytical schedules in detailed support thereof, as shall be necessary, to show the full effect of expenditures, transactions and investments for each fiscal year or part thereof upon the finances of the City and in relation to each department of the City.

(b) The Director of Finance shall annually prepare and submit to the Mayor and Council by March 1 of each year a recommended two year financial plan for the City's operating and capital needs. The financial plan shall indicate the estimated cost and the proposed or established method of financing each capital program and permanent improvement. The Director of Finance's recommended plan shall be prepared after consultation with the Mayor and the heads of other City departments affected thereby, and such recommended financial plan shall be advisory only and need not be followed in the adoption of the City's tax budget, annual, temporary or supplemental appropriation measures or ordinances, resolutions or other actions concerning capital programs or permanent improvements.
(Ord. 82-61. Passed 2-7-83.)

125.16 GILLES SWEET COMMUNITY CENTER ENTERPRISE FUND.

(a) The Director of Finance is hereby authorized and directed to create the Gilles-Sweet Community Center Enterprise Fund as a special fund in the City Budget. This fund shall be maintained as a separate account on the books of the City and shall, in detail, state all revenues and receipts including source thereof, all transfer including the source thereof, all expenditures including the purpose thereof, and such other information as necessary to indicate the status of the Fund.

(b) The Director of Finance shall provide, in writing to Council, at the end of each fiscal quarter a report which indicates the status of the fund, including the information required in the first paragraph hereof. (Ord. 82-91. Passed 2-7-83.)

125.17 LAW ENFORCEMENT MANDATORY DRUG FINE FUND.

(a) The Director of Finance is hereby authorized to accept all mandatory drug fines and forfeited bail imposed for violations of Ohio R.C. 2925.03.

(b) In accordance with Ohio R.C. 2925.03, there is hereby established the Law Enforcement Mandatory Drug Fine Fund. All money forfeited to the City pursuant to Ohio R.C. 2925.03 shall be credited to the Fund.

(c) The revenues in the Law Enforcement Mandatory Drug Fine Fund shall be allocated from the Fund only to the Police Department, and only to pay the costs of investigations or prosecutions pertaining to drug offenses.

(d) The Chief of Police shall annually, on or before the tenth day of January, file with the Director of Finance an itemized statement, verified by the Chief as to the manner in which the Law Enforcement Mandatory Drug Fine Fund has been expended during the preceding calendar year. (Ord. 87-45. Passed 2-1-88.)

125.18 PAYMENT PROCEDURES FOR CITY CONTRACTORS.

(a) The Director of Finance, in consultation with the City Engineer and the City Architect, is hereby authorized to enact payment procedures for authorized contractors doing business with the City.

(b) The Director of Finance shall submit monthly to the Chairman of Council's Finance Committee a report detailing the following for each contract for building or improvements: contractor's name, project title, total contract amount, contract start date, amount paid-to-date and estimated completion date.
(Ord. 94-106. Passed 12-19-94.)

125.19 GENERAL RESERVE FUND.

There is hereby established under Ohio R.C. 5705.12 and subject to the approval of the Bureau of Inspection and Supervision of Public Offices of the State of Ohio, a General Reserve Fund. Said fund is established for budget stabilization. The total amount in said fund shall not exceed five percent (5%) of the general fund's revenue for the preceding fiscal year. Funds on deposit in the General Reserve Fund shall be withdrawn only upon the affirmative vote of not less than two-thirds (2/3) of the voting members of Council. (Ord. 06-05. Passed 4-3-06.)

125.20 MANAGER OF INFORMATION SYSTEMS.

There is hereby created the position of Manager of Information Systems, who shall be appointed pursuant to the Charter, and who shall perform such duties as are directed by the Director of Finance, including, but not limited to, planning and direction of all computer functions within the City; planning for improvements and maintenance of the City computer and informational system. (Ord. 99-53. Passed 7-19-99.)

125.21 REDEVELOPMENT FUND.

There is hereby established under the Ohio R.C. 5705.121 and subject to the approval of the Bureau of Inspection and Supervision of Public Offices of the State of Ohio, a Redevelopment Fund. Said fund is established for segregating Redevelopment Expenditures and Revenue. (Ord. 00-65. Passed 9-18-00.)

CHAPTER 127
Department of Public Service and Development

127.01 Assistant Director in charge of Public Works.
127.02 Division of Signals and Signs.
127.03 Clerk.

CROSS REFERENCES
Director's responsibilities - see CHTR. Art. V §4
Director's authority to appoint employees - see ADM. 121.02
Traffic powers - see TRAF. Ch. 305
Unlawful interest in public contract - see GEN. OFF. 525.10
Assistant Director to control sewers - see S. U. & P. S. 911.01

127.01 ASSISTANT DIRECTOR IN CHARGE OF PUBLIC WORKS.

(a) The Director of Public Service and Development is authorized, subject to the rules and regulations of the Civil Service Commission, to employ an Assistant Director of Public Service and Development in charge of public works, to assist in the management and supervision of all public works and undertakings of the City.

(b) Under the direction of the Director, the Assistant Director in charge of public works shall assist in the supervision of improvements and repair of streets, avenues, alleys, lands, lanes, bridges, viaducts, sidewalks, playgrounds, sewers, drains, ditches, culverts, streams and watercourses, the lighting, sprinkling and cleaning of public places, the construction of public improvements and public works, except those having reference to the Police or Fire Departments.

(c) Under the direction of the Director, the Assistant Director shall assist in the management of municipal water, lighting, garbage and other undertakings of the City, parks, baths, playgrounds, cemeteries and sewage disposal plants, and shall make and preserve surveys, maps, plans, drawings and estimates in cooperation with the City Engineer. He shall assist in supervising the construction and maintenance of public buildings and other property of the City not otherwise herein provided.
(1954 Code §§2-29, 2-30; Ord. 68-78. Passed 9-16-68.)

127.02 DIVISION OF SIGNALS AND SIGNS.

There is hereby created a Division of Signals and Signs in the Department of Public Service and Development under the direction of the Director. The Director is hereby authorized to hire a qualified signal technician and to hire such other seasonal part-time staff as are deemed necessary by the Director.

(Ord. 74-63. Passed 12-2-74.)

127.03 CLERK.

There is hereby created the position of Clerk in the Department of Public Service and Development, which position shall be filled by an appointment by the Director. Such Clerk shall be bonded. The duties of such Clerk shall be prescribed by the Assistant Director of Public Service and Development in charge of public works.

(Ord. 68-77. Passed 9-16-68.)

CHAPTER 129
Police Department

129.01 Composition and eligibility age.
129.02 Work week.
129.03 Appointment and term.
129.04 Police clerk.
129.05 Police Matron.
129.06 Auxiliary police officers.
129.07 Private policemen.
129.08 Compulsory retirement; exceptions.
129.09 Emergency alarms.
129.091 Automated teller machines; surveillance cameras.
129.10 Crime Prevention Bureau.
129.11 S.A.V.E. Rewards Program.
129.12 Law Enforcement Trust Fund.
129.13 Jail fees.
129.14 Animal Control Officer.
129.15 Administrative towing fees.

CROSS REFERENCES

Auxiliary police unit - see Ohio R.C. 737.051, 737.06
Police and Firemen's Disability and Pension Fund - see Ohio R.C. Ch. 742
Paid vacations - see ADM. 143.01
Compliance with lawful order of police officer - see TRAF. 303.01
Impersonation - see GEN. OFF. 525.03
Obstructing official business - see GEN. OFF. 525.07
Enforcement of park rules - see S.U. & P.S. 921.05

129.01 COMPOSITION AND ELIGIBILITY AGE.

(a) The Police Department shall be composed of a Chief of Police, four Lieutenants of Police, three Sergeants of Police and not more than twenty-one patrol or police officers.

(b) The Police Chief may designate one of the members of the Police Department to serve as Juvenile Public Relations Officer and Crime Prevention Officer.

(c) No person shall be eligible for an original appointment as a police officer unless he/she has attained the age of twenty-one years. No person shall be eligible to have his/her name certified for original appointment to the position of police officer in the City of Fairview Park if such person has reached his/her forty-first birthday on the date of the entrance examination.
(Ord. 18-59. Passed 12-17-18.)

129.02 WORK WEEK.

Except in case of necessary appearances in court and emergency special duty assignments, the policemen's work week shall not exceed forty hours.
(Ord. 64-53. Passed 10-5-64.)

129.03 APPOINTMENT AND TERM.

The appointment and term of the members of the Police Department shall be in accordance with the civil service rules and regulations adopted by the Civil Service Commission of the City and the laws of the State pertaining to the members of the Police Department under civil service. (1954 Code Sec. 18-2)

129.04 POLICE CLERK.

There is hereby established the position of full-time clerk in the office of the Police Department. Such full-time clerk shall do clerical and stenographic work as directed by the Police Chief. (Ord. 67-22. Passed 3-20-67.)

129.05 POLICE MATRON.

There is hereby created the position of Police Matron in the Police Department. The Police Chief shall appoint the Police Matron to serve at the hours specified by the Chief. (Ord. 69-13. Passed 2-17-69.)

129.06 AUXILIARY POLICE.

(a) Appointment of Members. There is hereby created within the Police Department an auxiliary police unit to consist of not more than twenty-five persons, the members of which shall be appointed by the Mayor.

(b) Term of Service. Auxiliary police officers shall serve as long as the Police Chief may direct, or until a resignation submitted by a member shall be accepted by the Chief

(c) Qualification of Members. The members of the auxiliary police unit may not be under the age of twenty-one years at the time of their appointment, and shall meet such other requirements as provided by rules and regulations provided for in subsection (e) hereof. (Ord. 81-118. Passed 1-4-82.)

(1) Exception: Qualified students enrolled in a Criminal Justice Program at an accredited college or university may become members at age nineteen. (Ord. 05-04. Passed 2-22-05.)

(d) Control of Unit. The Police Chief shall be the executive officer of the auxiliary police unit. The Chief shall be the commanding officer and shall have control of the assignment, training, stationing and the direction of work. The auxiliary police unit shall have only such police powers and shall perform only such police duties as assigned by the Chief, and shall act only when in prescribed uniform or portion of uniform. The Mayor or Police Chief shall prescribe the time and place such uniforms or portions thereof shall be worn. Such auxiliary members shall obey the chain of command of the Police Department and shall take orders from all regular appointed members thereof.

(e) Rules and Regulations. The Police Chief shall prescribe the rules and regulations for the organization, administration, conduct and control of the auxiliary police unit.

(f) Uniform. The Police Chief is authorized to prescribe by rules and regulations the type of uniform or part thereof which shall be worn by members of the auxiliary police unit. (Ord. 81-118. Passed 1-4-82.)

(g) Compensation; Where Services Performed.

(1) All services performed by auxiliary police shall be within the City.

(2) Auxiliary police shall be compensated for their services in an amount determined by Council.

(3) Auxiliary police shall be entitled to any benefits of any relief or pension funds of the City or the State of Ohio, or any other similar benefit, except as may otherwise be provided by law.

(Ord. 82-15. Passed 5-3-82.)

(h) Nonliability. This section is declared by Council as an exercise by the City of its police powers for the protection of the public peace, health, property, safety and general welfare. Neither the City, or agent or representative of the City, an officer appointed under the provisions of this section, or any individual, firm, partnership, corporation or the receiver, trustee or any agent thereof, who in good faith executes any executive order, rule or regulation promulgated pursuant to the provisions of this section, shall be liable for injury or damage sustained to person or property as the direct proximate result of such action. In addition to any other responsibilities or immunities, the members of the auxiliary police unit shall bear the same responsibilities and the same immunities as any other regularly employed member of the Police Department, except as herein provided. (Ord. 81-118. Passed 1-4-82.)

129.07 PRIVATE POLICEMEN.

(a) Authority to Issue Private Police Commissions. The Police Chief pursuant to Ohio R.C. 737.05 is hereby authorized to commission private policemen and private policewomen not in the classified services of the City, under such rules and regulations as Council shall grant.

(b) Rules and Regulations. The Police Chief is hereby authorized to prescribe rules and regulations, and the uniform which shall be worn by such private policemen and private policewomen wherever and whenever their services are conducted. Such private policemen and private policewomen shall each give bond by a bonding company authorized by law in the State of Ohio in the sum of one thousand dollars ($1,000) to the satisfaction of the Police Chief and the Director of Law, and shall pay an annual fee in the sum of twenty-five dollars ($25.00).

(c) Official Uniform not to be Copied. No person not a member of the Police or Fire Departments shall wear a uniform, cap, badge or buttons similar to, or in imitation of the official uniform, cap, badge or buttons at the time in use by the members of the Police and Fire Departments.

(d) Uniform Approval. Any person, firm or corporation desiring to provide special police, watchmen or detective service, either for itself or for hire to others, shall use no distinctive uniform, cap, badge or buttons, to be worn by such person or any employees of such person, firm or corporation, engaged for such purpose, until the form, design and color thereof have first been submitted to and approved by the Police Chief, and a record thereof sufficient to identify the users thereof shall have been made by the Police Chief.
(Ord. 70-28. Passed 6-15-70.)

(e) Duration of Commission. No commission as such private policeman and/or private policewoman shall be valid for a greater period of time than one year from the date of issuance and no person shall be commissioned as such private policeman and/or private policewoman who is not a citizen of the United States of America. The issuance of a private police commission shall not in itself constitute authority to carry firearms. Applicants shall comply with the laws of the State of Ohio regarding the carrying of firearms. The Police Chief shall prescribe such uniform, badge and/or other distinguishing uniform marks for such private policemen or private policewomen as he may see fit in order to distinguish such private police officers from regular police officers of the Police Department.
(Ord. 81-100. Passed 11-16-81.)

(f) Application for Commission; Qualifications. No person shall be commissioned as private policeman and/or private policewoman unless he is licensed to do so. An applicant for such commissions shall:

(1) Be at least twenty-one years of age or over, an American citizen or have declared his intention to become a citizen.

(2) Be of sound physique, with good eyesight and not subject to vertigo, heart trouble or any other infirmity of body or mind, which might render him unfit for the safe carrying out of the duties of such commission. Each applicant shall supply an affidavit to the Police Chief for his application for a commission that he is free from any and all of the infirmities mentioned in this section.

(3) Be able to read, write and speak the English language.

(4) Be clean in dress and person, of good moral character and not addicted to the use of intoxicating liquors and drugs.

(5) Produce, on forms to be provided by the Police Chief, affidavits of his good character from two reputable citizens of the City or Cuyahoga County, who have known him personally, and a further testimonial on a form provided for that purpose, from his last employer, unless, in the estimation of the Police Chief sufficient reason is given for its omission.

(6) Fill out, upon a form to be provided by the Police Chief, a statement giving his full name, residence, places of residence for ten years previous to moving to his present address, age, color, height, color of eyes and hair, place of birth, length of time he has resided in Cuyahoga County, whether a citizen of the United States, place of previous employment, whether single or married, whether he has ever been arrested or convicted of a felony or misdemeanor, whether he has been summoned to court, whether his driving license has ever been revoked, and if so, for what cause. Such statement shall be signed and sworn to by the applicant, and filed with the Police Chief as a permanent record. The Police Chief is hereby authorized and empowered to establish additional rules and regulations covering the issuance of such commission of private policemen or private policewomen, not inconsistent herewith, as may be necessary and reasonable.

(g) Photograph and Police Check on Applicant. Each applicant for a commission as private policeman or private policewoman shall file with his application three unretouched color photographs of himself or herself, in such position as the Police Chief may specify, taken within thirty days preceding the filing of his application. Photographs shall be of a size which may be easily attached to his commission, one of which shall be attached to the commission when issued, the others shall be filed with the application in the office of the Police Chief. The photograph shall be so attached to the commission that it cannot be removed and another photograph substituted without detection. Where the application for a commission is denied, two copies of the photograph shall be returned to the applicant by the Police Chief. Each commissioned private policeman or private policewoman shall, upon demand of an inspector of licenses, or a policeman of the Police Department, exhibit his license and photograph for inspection. All applications for such commission as private policemen and/or private policewomen shall be notarized, and failure to list arrests, and/or any other information desired by the Police Chief, would be considered falsifying the application, and the applicant shall be subject to arrest. All applicants for special police work as such private policemen and private policewomen shall be fingerprinted and the Police Chief through his Police Department shall cause a complete record check made of the applicant's character, or obtain any other information he may desire.

(h) Identification. An identification card, with a photograph attached, as outlined in subsection (g) hereof shall be carried by such private policeman and/or private policewoman at all times while on duty in the City, in order to identify him, or her, to our Police Department, showing that he has been qualified to the satisfaction of the Police Chief and the City.
(Ord. 70-28. Passed 6-15-70.)

129.08 COMPULSORY RETIREMENT; EXCEPTIONS.

(a) Effective January 1, 1974, no full-time members of the City Police Department shall be employed or continue to serve as a member of the police, after attaining the age of sixty-five except those full-time members who shall be permitted to continue their employment past age sixty five until completion of twenty-five years of continuous service contingent upon the individual member passing an annual physical examination given by a physician selected by the City.

(b) Any officer or member of the Police Department compelled to retire under this section, having accumulated overtime upon attaining his sixty-fifth birthday, shall be paid for overtime at the regular rate of compensation that he has received at his attained rank on the date of retirement.

(c) This section shall not apply to school guards or auxiliary police.
(Ord. 73-45. Passed 6-18-73.)

129.09 EMERGENCY ALARMS.

(a) Authority to Install Alarm; Definitions. Any residence or lawful business located within the City may be equipped with an alarm system for the purpose of detecting and signaling the presence of smoke, fire or unauthorized intrusion upon compliance with this section. Existing installations shall be subject to the requirements of this section including those pertaining to permits.

As used in this section "automatic dialing service" means an alarm system which automatically sends over the telephone switching network a prerecorded voice message or coded signal indicating the existence of smoke, fire or an unlawful act to which Fire and/or Police Department response is requested.

As used in this section "alarm system" means an assembly of equipment and devices, mechanical or electrical (or a single device such as a solid state unit) which is arranged, designed or used for the detection and signaling the presence of a hazard requiring urgent attention and to which police or firefighter/paramedic response is expected. The term "alarm system" shall include:

(1) "Automatic hold-up alarm system" means an alarm system in which a signal transmission is initiated by the action of a robber.

(2) "Burglar alarm system" means an alarm system signaling an entry or attempted entry into the area protected by the system.

(3) "Hold-up alarm system" means an alarm system signaling a robbery or attempted robbery.

(4) "Manual hold-up alarm system" means an alarm system in which the signal transmission is initiated by the direct action of the person attacked or by an observer of the attack.

(5) "Fire alarm system" means an alarm system which monitors temperature, humidity or other condition of a fire hazard nature, and not directly related to the detection of an unauthorized intrusion into a premises or an attempted robbery at the premises.

The term "alarm system" does not include audible alarms on motor vehicles unless the vehicle is permanently located at a site or an alarm designed to alert the inhabitants of a premises only.

(b) Automatic Dialing Devices.

(1) The City may subscribe to one or more telephone lines for burglar alarms, hold-up alarms, occurrence of fire or for similar purposes; and when any line is designated as provided for in subsection (a) hereof, persons may, upon proper application and compliance with applicable laws, be granted a permit to install a device or devices which automatically select the designated telephone line for purpose of playing a recorded message or to otherwise report an intrusion or other emergency.

(2) Except as otherwise provided herein, no person shall install, operate, maintain, use or otherwise cause any telephone device or telephone attachment that automatically selects any telephone line allocated by the telephone company to the City or any of its departments or divisions except a telephone line which may be specifically designated by the Police Chief for such purpose. Such designated telephone line or lines shall terminate at the police station communication center.

(3) No person shall install, operate, maintain, use or otherwise cause any telephone device or attachment that automatically selects the number 9-1-1 to report a recorded message or coded signal.

(4) For alarms of the type described in subsection (a) hereof, the message shall comply with the following:

A. Length of message shall be fifteen seconds maximum;

B. The message shall not be repeated more than three times for each dialing;

C. Contents of the message shall first state: "This is a recording". The balance of the message shall be appropriate to the purpose for which the alarm is installed and shall be subject to the approval of the Chief of Police. The entire message shall be intelligible.

(5) For alarms of the type described in subsection (b)(2) hereof, each such device shall be programmed to first dial the Division of Police using an unlisted number assigned for that purpose. The device shall next dial a number selected by the applicant, such second number being that at which a person having a key to the building where the alarm is installed can normally be found. A third number subject to the approval of the Chief of Police may be programmed for the next dialing. No more than three such dialings may be programmed except under unusual circumstances and upon approval of the Chief of Police. No enforcement agency other than the City Police Department may be selected.

(6) The cost of providing the service described above, including any fee or payment charged by the telephone company, shall be paid by the applicant.

(7) The fee to be charged by the City under subsection (b)(6) hereof, shall be determined on an annual basis by dividing the cost of telephone service to the City by the number of holders of permits for alarms, as described in subsection (b)(1) hereof, adding fifteen percent (15%) for administration and rounding it off to the next dollar, except that the minimum charge shall be five dollars ($5.00) per month, payable in advance. Delinquency in excess of ten days shall result in cancellation of the permit or permits.

(c) Police Signal Alarm Connection; Fee and Noncompliance.

(1) There is hereby established a tie-in charge fee of ninety dollars ($90.00) for each connection to be collected from all persons or firms connecting a police alarm signal to a central electronic panel alarm signal installed and located at the Police Department. There shall also be established an annual charge in the amount of ninety dollars ($90.00) for each tie-in connection payable at the beginning of each calendar year or prorated from the date of the connection for that year.

(2) Each person or firm connecting to such system shall be responsible for the maintenance and operation of their respective signal line. If any signal line becomes inoperative or in a state of disrepair, the party maintaining such a line shall be given notice of such disrepair and shall from that point be given thirty days to either repair such line or give the Chief of Police notice of a good faith attempt to repair such line and intentions for any further action.

(3) If payment, as outlined in subsection (c)(1) hereof is not made in compliance with that subsection, noncompliance regarding subsection (c)(4) hereof shall be deemed to have taken place.

(4) Whoever does not comply with subsections (c)(2) or (3) hereof shall be deemed to have waived their privilege to use the system, and any line related to such noncompliance shall be disconnected.

(5) The Chief of Police shall be given the authority to determine which persons or firms are entitled to the privilege of use of such system, such determination to be made in good faith and with reasonable application.

(d) Local Alarms. A permit for the installation of a local alarm which, when activated, sounds a horn, bell, buzzer, siren or other type of audible alarm, and/or visual signaling device shall be required if the sound created by the alarm is audible beyond the premises being served. The Police Chief or his authorized representative shall issue a permit for such an alarm, provided the intensity of sound does not exceed sixty-five decibels at any location outside the premises being served, and such alarms shall have an automatic cut-off device as provided herein.

(1) Each such local alarm shall be equipped with an automatic cut-off device which deactivates the alarm noise within ten minutes of the first noise emitted by the alarm.

(2) Each violation of this section shall constitute an accidental/false alarm.

(e) Accidental/False Alarms.

(1) Except as provided in subsection (e)(3) hereof, a charge of twenty-five dollars ($25.00) shall be assessed for each accidental/false alarm received through equipment described above, or for each accidental/false alarm received through any other alarm service which the City has given permission to be installed. Such fee shall be assessed against the owner, agent or person in charge of or in possession of the premises from which the accidental/false alarm has emanated.

(2) Except as provided in subsection (e)(3) hereof, a charge of twenty-five dollars ($25.00) shall be assessed for each accidental/false alarm received by telephone from a central station system or alarm company answering service. Such fee shall be assessed against the owner, agent or other person in charge of or in possession of the premises from which the accidental/false alarm has emanated. As used in this section "central station system" means a system in which the operation of electrical protection circuits and devices are signaled to, recorded in, maintained and supervised from a central station, or any combination of the foregoing, having trained operators and/or personnel therein.

(3) No charge shall be assessed for the first accidental/false alarm nor shall there be any charge assessed for an accidental false alarm to which there is no response from the Fire and/or Police Departments.

(4) As used in this section, accidental/false alarm means the activation of an alarm system through mechanical failure, malfunction, improper installation, improper operation or through the negligence of or misuse by the owner, lessee, employee or agency whereby the Fire and/or Police Departments are summoned when there is no incident occurring or having occurred as reported by the alarm. Alarms attributable to tornadoes, earthquakes and other similar comparable abnormal conditions are not included within the scope of this provision provided that the burden of proof of such exception shall be upon the alarm subscriber and/or alarm business.

(f) General Maintenance Requirements.

(1) All equipment used in installations for which a permit is required shall meet the applicable standards of the Underwriters' Laboratory and/or other recognized testing laboratory. An applicant shall be required to submit evidence of the reliability and suitability of the equipment to be installed.

(2) The sensory mechanism used in connection with any alarm system shall be maintained to suppress false indications of heat, fire, smoke or intrusion so that the alarm system will not be activated by impulses due to transient pressure change in water pipes, short flashes of light, wind noises, vehicular noise or other forces unrelated to a genuine alarm. The sensitivity of an alarm system shall not be such that the simple vibration or motion of a protected door or window shall cause the activation of the alarm system without the actual breaking or opening leading to forcible entry.

(3) All components comprising any alarm system shall be maintained by the owner and/or lessee in good repair to assure reliability of operation.

(4) Every alarm business that sells or leases to any person any alarm system which is installed on such person's residence or place of business shall furnish such person with instructions as to the manner in which the alarm system operates, along with the maintenance instructions. "Alarm business" means and includes any business engaged in any of the activities of selling, leasing, leasing with an option to purchase, installing, servicing, altering, repairing, maintaining, replacing, moving, monitoring, responding to a fire, burglary, hold-up or other similar alarm systems, or causing any of such of the foregoing activities to take place.

(5) Every alarm business as described in subsection (f)(4) shall also furnish the Chief of Police with a copy of the instructions as to the manner in which the alarm system operates. If the Chief finds such to be incomplete, unclear or inadequate, he shall require the alarm business to have same revised to meet his approval and then promptly have copies distributed to persons for whom installations of such systems are made.

(6) No person shall manually activate an alarm system for any reason other than the occurrence of an event for which such alarm system was installed and intended.

(7) Any alarm business that sells or leases to any person an alarm system which is installed on such person's residence or business shall provide for the receiving of calls for service, maintenance or repairs, whether directly or through an agent, on a twenty-four hour, seven day a week basis and shall respond to such calls within four hours of the time such are received. Such alarm system shall be installed in accordance with all applicable laws of the City.

(8) At the time of installation of any alarm system, the alarm business shall furnish to the person for whom the alarm system has been installed, written information as to how service, maintenance or repair can be obtained at any time, including the telephone number to call for such service, maintenance or repair. Such person shall be responsible for having the alarm system serviced, maintained or repaired after it is learned from any source, including the City, that the alarm system is not operating properly.

(9) All alarm systems shall be maintained in good operating condition, in the manner for which such system was designed and in compliance with City building and electrical codes. The Chief of Police shall require that repairs be made when the Chief determines such are necessary to assure proper operation.

(10) For a violation of this section, for failure to properly maintain any installation, or when the number of accidental/false alarms reaches six in any twelve month period, or three in any sixty day consecutive period, the Chief of Police shall serve written notice upon a permit holder of intent to revoke their permit. Such notice shall be given not less than seven days prior to revocation. Such notice shall state the right of the permit holder to appeal to the Mayor. If an appeal is filed in writing, the Mayor shall hold a hearing on the matter and shall render a decision on the basis of the facts presented. The Mayor's decision shall be final. No person shall operate an alarm system during the period in which the permit for such alarm system has been revoked.

(g) Liability of City. The issuance of any permit or permits in conjunction with this section shall not constitute acceptance by the City of any liability to maintain any equipment, to answer alarms or for anything in connection therewith.

(h) Rules and Regulations. The Police Chief or his authorized representative shall make and enforce such rules and regulations as he may deem necessary for the enforcement of the provisions hereof, and for the proper determination and collection of the fees and charges herein provided.

(i) Permit and Inspection Fee. A fee of fifty dollars ($50.00) shall be paid to the City for each permit issued as provided herein, to cover administrative and inspection costs. A separate permit and fee shall be required for an intrusion alarm and a fire alarm emanating from the same premises. Such permit shall not be transferable or assignable.

(j) Financial Institutions.

(1) Any financial institution required to have an alarm system pursuant to Federal or State law, rule or regulation, may install any such specialized equipment thus mandated, and such costs of installation, maintenance, repair and operation shall be borne solely by the institution installing the same.

(2) In the event that the specialized equipment permitted in subsection (j)(1) is installed over or upon City property, the Police Chief shall have full, complete and final authority to mandate the placement of such specialized equipment, the continuous inspection of the same as may be necessary, and the repair or replacement of inoperative or damaged equipment, the same being at the sole expense of the financial institution placing such specialized equipment.

(3) A financial institution which places specialized alarm equipment over or upon property of the City may, at any reasonable time, remove such specialized equipment from City property, but no fee previously charged for such installation or permit, or portion of such fee, shall be refundable to such financial institution.

(4) All financial institutions coming within the purview of this subsection (j) shall remain amenable to all other provisions of this chapter and shall make whatever application, receive whatever permits, and pay whatever fees which may be applicable to the ownership and operation of any other alarm system within the City by any other person.
(Ord. 87-61. Passed 4-4-88.)

(k) Penalty. Whoever violates any provision of this section shall be guilty of a minor misdemeanor for the first offense. Whoever violates any provision of this section shall be guilty of a fourth degree misdemeanor for the second offense or subsequent offense.
(Ord. 94-31. Passed 5-2-94.)

129.091 AUTOMATED TELLER MACHINES; SURVEILLANCE CAMERAS.

(a) Surveillance Cameras. Effective July 1, 1997 all banks and other financial institutions in the City of Fairview Park providing access to an Automated Teller Machine which is located outside of a building or other structure shall have installed and have functioning for the safety of all users of Automated Teller Machines cameras capable of photographing the general area around the ATM as well as the areas of ingress and egress to the ATM.

(b) Inspection and Approval. The location of the cameras required by this ordinance must be inspected and approved by the Chief of Police or his designated representative.

(c) Penalty. Whoever violates any provision of this section shall be guilty of a first degree misdemeanor. (Ord. 96-89. Passed 1-21-97.)

129.10 CRIME PREVENTION BUREAU.

(a) The Police Chief is hereby authorized and directed to establish a Crime Prevention Bureau within the Police Department which shall be operated under the day to day supervision of the Chief of the Department. The person in charge of the Bureau shall be referred to and known as the Crime Prevention Officer and shall be designated on the basis of training, experience and other qualifications related to crime prevention. The Chief may designate such other officers and members of the Department as he may, from time to time deem necessary or appropriate, as crime prevention officers for duties incident to the operation of the Bureau.

(b) The duties of the Bureau, on behalf of the City and of all residents, shall include the following:

(1) To develop methods and systems for the prevention of crime;

(2) To conduct and implement education programs and activities designed to advise, recommend and assist the general public of and in measures which may be taken to assist in the prevention of crime or assist in the solution of crime;

(3) To advise all persons upon request relative to home and personal security;

(4) To advise all residents, apartment owners and tenants, and business owners and tenants relative to the installation and maintenance of security systems, alarms, locks, lighting and other safeguards;

(5) To review plans for the construction of all structures within the City to ascertain hazards relating to crime prevention and to suggest a means to cause the elimination thereof as may be required by ordinance or State law;

(6) To review the investigation and circumstances of all crimes in order to evaluate crime prevention measures and devices which may be established in the future and determine the feasibility and propriety of existing crime prevention measures and devices;

(7) To advise other members of the Police Department, not in the Bureau, relative to various crime prevention practices and measures;

(8) To establish procedures for the security and transportation of sums of money and other valuables;

(9) To establish procedures for the security of public officials and other dignitaries while in the City;

(10) To coordinate neighborhood block watch, park patrol and neighborhood patrol programs within the guidelines as established by the Police Chief; and

(11) To enforce all ordinances of the City relative to crime prevention.

The Bureau shall have such powers and perform such other duties as may be conferred and imposed from time to time by law. This delegation of duty shall not relieve any other division, department, officer or employee of the City of any power or duty conferred by law or ordinance.

(c) The members of the Bureau may, at all reasonable hours with the consent of the owner, enter any building or premises within their jurisdiction for the purpose of inspecting same to ascertain whether there exists any hazard to crime prevention which is required to be corrected by law or ordinance. (Ord. 91-101. Passed 12-2-91.)

129.11 S.A.V.E. REWARDS PROGRAM.

(a) The Chief of Police is hereby authorized and directed to establish a rewards program within the City to be known as S.A.V.E. (Stop A Vandal Easily).

(b) The Program shall be administered and conducted in the manner and form set forth and described in detail in the rules and regulations attached to the original Ordinance 80-46, passed June 16, 1980, made a part hereof and marked Exhibit "A".

(c) The Mayor, the Police Chief and the Chairman of the Safety Committee of Council shall constitute the Rewards Committee and shall be solely responsible for determining when a reward is appropriate and determining the amount of such reward.

(d) There shall be established a special fund account to be identified as the S.A.V.E. Account, and such Account shall be used solely for the purpose of receiving and disbursing funds related to the Program. (Ord. 80-46. Passed 6-16-80.)

129.12 LAW ENFORCEMENT TRUST FUND.

(a) Pursuant to Ohio R.C. 2933.43(D), Council hereby establishes a Law Enforcement Trust Fund which shall consist of the proceeds of the sale of contraband, lawfully seized and forfeited to the Police Department, pursuant to the provisions of Ohio R.C. 2933.43(C).

(b) Proceeds distributed to the Fund shall be allocated from the Fund by Council and shall only be expended for the following purposes:

(1) To pay the costs of protracted or complex investigations or prosecutions;
(2) To provide reasonable technical training or expertise;
(3) To provide matching funds to obtain Federal grants to aid law enforcement;
(4) For such other law enforcement purposes as Council determines to be appropriate.

(c) Pursuant to Ohio R.C. 2933.43(D) the Fund shall not be used to meet operating costs of the City that are unrelated to law enforcement.
(Ord. 86-58. Passed 11-3-86.)

129.13 JAIL FEES.

(a) Other governmental entities using the Fairview Park City Jail shall be charged at the rate of eighty-five dollars ($85.00) per day plus reimbursement for medical expenses with the exception that the City of Cleveland be charged with the same amount per day that the City of Cleveland charges the City of Fairview Park for the use of its facilities.
(Ord. 91-97. Passed 8-19-91.)

(b) The Chief of Police shall report to Council annually setting forth the costs which the City pays other governmental entities for the housing of Fairview Park prisoners.

(c) The Chief of Police, or his designee, shall keep an accurate record of the use of the City Jail by other governmental entities and shall promptly invoice the governmental entity using such City Jail and forward a copy thereof to the Director of Finance of the City of Fairview Park.
(Ord. 90-123. Passed 1-22-91.)

129.14 ANIMAL CONTROL OFFICER.

The Police Chief is authorized to appoint and employ a part-time Animal Control Officer who shall enforce Section 505 specifically, and perform such other duties as are specified by the Chief. (Ord. 99-102. Passed 11-15-99.)

129.15 ADMINISTRATIVE TOWING FEES.

An administrative towing fee is hereby established and the Police Department is hereby authorized to charge an administrative towing fee in the amount of twenty-five dollars ($25.00) to the owner of any vehicle seeking release of the vehicle from impound. The administrative towing fee shall not be applicable in the event that the vehicle is not returned to or claimed by the owner and shall be in addition to any fee that is charged by any agency that contracts with the City of Fairview Park for police ordered tows. Such fee may be increased from time to time by the Chief of Police to reflect the actual increase in costs associated with processing the police ordered tow of a vehicle. The Chief of Police shall notify Council of such increases not less than thirty days prior to the effective date of the increase.
(Ord. 12-48. Passed 12-17-12.)

CHAPTER 131
Fire Department

131.01 Composition and duties.
131.02 Appointment, advancement, vacancies.
131.03 Fire Prevention Bureau Officer.
131.04 Special fire investigations.
131.05 Fire protection outside City.
131.06 Compulsory retirement.

CROSS REFERENCES

Fire protection contracts - see Ohio R.C. 307.05, 505.44, 717.02
Emergency alarms - see ADM. 129.10
Traffic direction in emergencies - see TRAF. 303.02
Following and parking near emergency or public safety vehicle - see TRAF. 331.27
Fire Prevention Bureau annual report - see FIRE PREV. 1501.02

131.01 COMPOSITION AND DUTIES.

(a) The Fire Department shall be composed of the following:
One Fire Chief.
Three Captains.
Three Lieutenants.
Fire fighter first grade.
Firefighter second grade.
Firefighter probationary.
(Ord. 06-12. Passed 4-17-06.)

(b) Two extra firefighters shall relieve regular firefighters on vacation or absent through disability or other emergency, but no such extra firefighter shall be employed unless needed for the purpose herein set forth, nor for a period of more than three consecutive months at a time. The total number of firefighters in grades 1, 2 and 3 shall not exceed twenty-four. (Ord. 75-67. Passed 12-8-75.)

(c) The Fire Department shall be charged with the prevention of fire, the protection of life and property against fire, the operation and staffing of the City ambulance and Emergency Paramedic Unit and shall under day to day authority and direction of the Chief of the Department:

(1) Be responsible for the maintenance, improvement and care of all properties, apparatus, tools, vehicles, equipment and fire alarms and signals used by the Department in accordance with the directions of the Fire Chief.

(2) Make and maintain a record of all fire, ambulance, mutual aid and Emergency Paramedic Unit calls and maintain a dispatch center and perform such other communications duties as may be required.

(3) Perform various miscellaneous public services of an emergency and nonemergency nature, including but not limited to, rescue, ambulance, emergency medical, the suppression of unfriendly fire, the abatement of hazardous conditions, disaster services and paramedic services.

(4) Inspect potential fire hazards and other conditions unsafe to life safety and abate existing fire hazards and other conditions unsafe to life safety.

(5) Conduct an educational fire safety and fire prevention program.

(6) Inspect and maintain fire hydrants.

(7) Provide such training programs to Department personnel as may be required consistent with effective operation and services.

(8) Conduct such investigations as may be required by the Fire Chief.

(9) Perform such other duties as are directed by the Fire Chief, which are not inconsistent with the duties of the Fire Department.

Upon recommendation of the Fire Chief the requirement that members of the Fire Department maintain the paramedic and/or emergency medical technical qualification may be waived for an indefinite or specified period by the appointing authority if the appointing authority determines that such waiver is consistent with the maintenance of the highest level of paramedic, emergency medical and fire fighting service to the City and its citizens. Although professional judgment should be exercised in each case, such judgment shall be based upon:

A. The occurrence of a medically certified change in the physical or emotional abilities of the individual which prevents the performance of the duties of a paramedic and/or emergency medical technician; or

B. The failure to pass the recertification testing requirements provided the individual continues to make good faith efforts to regain paramedic certification and does regain such certification within six months.

C. A job change which, due to the responsibilities thereof, does not require paramedic and/or emergency medical technician certification as determined by the appointing authority.

(Ord. 83-5. Passed 12-19-83.)

131.02 APPOINTMENT, ADVANCEMENT, VACANCIES.

(a) All officers and firemen shall be appointed by the Fire Chief, and shall be under the rules and regulations of the Civil Service Commission of the City.

(b) A fireman shall serve as a fireman third grade for the first six months next following his original appointment to the Fire Department, and thereafter he shall automatically advance to the rank of fireman second grade and shall serve in that grade for the next twelve months. Thereafter, he shall automatically advance to the position of fireman first grade.

(c) Any vacancies in the above classes shall be filled under the rules and regulations of the Civil Service Commission.
(Ord. 64-56. Passed 11-16-64.)

131.03 FIRE PREVENTION BUREAU OFFICER.
In accordance with the provisions of the Fire Prevention Code, the Fire Chief is hereby authorized and directed to assign and detail one officer to the Bureau of Fire Prevention, to perform such duties as shall be consistent with such office. Notwithstanding the provisions of Section 131.02, the work week for such officer assigned and detailed to the Bureau of Fire Prevention shall consist of an average of forty hours per week.
(Ord. 64-40. Passed 6-15-64.)

131.04 SPECIAL FIRE INVESTIGATIONS.
The Fire Chief is authorized and directed to employ members of the Fire Department for such specialized fire investigations and services and for maintaining the special fire alarm or warning system at his sole discretion and when he deems it advisable.
(Ord. 62-73. Passed 12-3-62; Ord. 65-34. Passed 7-6-65.)

131.05 FIRE PROTECTION OUTSIDE CITY.
(a) Effective October 8, 1965, in accordance with Ohio R.C. 717.021, Council hereby grants authority to the Fire Department to render its services to another municipal corporation or political subdivision in times of emergency.

(b) The Mayor, the Fire Chief and/or any officer in charge of the Fire Department may order and authorize such emergency fire service to be furnished to another municipal corporation or political subdivision in times of emergency.
(Ord. 65-39. Passed 7-26-65.)

131.06 COMPULSORY RETIREMENT.
(a) Effective January 1, 1974, no full-time members of the City Fire Department shall be employed or continue to serve as a member of the Department after attaining the age of sixty-five, except those full-time members of the Department who shall be permitted to continue their employment past age sixty-five until completion of twenty-five years of continuous service contingent upon the individual member passing an annual physical examination given by a physician selected by the City.

(b) Any officer or member of the Fire Department compelled to retire under this section having accumulated overtime upon attaining his sixty-fifth birthday, shall be paid for such overtime at the regular rate of compensation that he has received at his attained rank on the date of retirement. (Ord. 73-44. Passed 6-18-73.)

CHAPTER 133
Division of Building

133.01 Building Commissioner.
133.011 Engaged professional Class I (CBO) Building Official services.
133.012 Engaged professional inspection services.
133.02 Assistant Building Commissioner.
133.021 Building/Electrical/Plumbing Inspector residential/commercial.
133.03 City Architect.
133.04 Clerk-Secretary.
133.05 Clerk-Recording Secretary for boards and commission.
133.051 Assistant Clerk-Secretary.
133.06 Property Maintenance Officer.
133.07 Administrator of Community Development.
133.08 Annual report.

CROSS REFERENCES

Zoning Code enforcement - see P.& Z. 1149.07
Administration and enforcement of Building Code - see BLDG. Ch. 1303
Examination of buildings - see BLDG. 1323.02
Exterior Property Maintenance Code enforcement - see BLDG. 1345.01

133.01 BUILDING COMMISSIONER.

There is hereby established the position of Building Commissioner for the City, which office shall be under the supervision of the Director of Public Service and Development. The Mayor shall, subject to the ordinances of the City and laws of the State of Ohio, appoint a Building Commissioner.

(a) The Building Commissioner shall be responsible for the administration and enforcement of the Planning and Zoning, Building Codes, Residential Code of Ohio, Housing and Property Maintenance Codes with regard to original construction, alteration, erection, reconstruction, addition or repair of all buildings and structures within the City and to the use, maintenance and occupancy thereof and pursuant to such responsibility shall:

(1) Administer and enforce the ordinances of the City relating to the use of land;

(2) Cause inspections to be made regularly in order to determine compliance with the codes of the City pertaining to such buildings, structures and uses;

(3) Cause the issuance of all building permits and supervise the inspection of all work done pursuant to such permits;

(4) Cause the issuance and service upon the owner or violator of orders requiring the repair or removal of all buildings, structures or conditions not in compliance with the codes pertaining thereto and all requirements of law or ordinance relating to the maintenance, use or occupancy thereof;

(5) Cause the initiation of proceedings to compel compliance with such codes and requirements;

(6) Cause the issuance of all certificates of occupancy and inspection as authorized and required by law;

(7) Maintain a register of all building permits and a record of all compliance orders;

(8) Review and make recommendations to the Mayor, Council and the appropriate Boards and Commission on proposals for changes or amendments to the Planning and Zoning, Building, Housing and Exterior Property Maintenance Codes;

(9) Review plans and specifications for compliance to the Planning and Zoning Code, Building Code and Residential Code of Ohio; and

(10) Issue rules and regulations for the operation of the Division of Building consistent with the Charter, applicable rules and regulations of the Director of Public Service and Development, ordinances of the City and laws of the State of Ohio.

(b) The Building Commissioner shall perform such other duties, consistent with his office, as may be required by the Charter, by ordinance of Council, or as directed by the Mayor or the Director of Public Service and Development.

(c) Whenever the phrases "Building Commissioner", "Building Inspector" or "Building Official" appear in the Charter or in any ordinance of the City, such phrases shall, for the purpose of construing the Charter or such ordinance, be deemed to mean each of the other phrases enumerated herein.

(d) The Building Commissioner is hereby designated as the Building Official responsible for the overall administration of the Division of Building and the enforcement of the Ohio Building Code and the Residential Code of Ohio. The Building Commissioner shall hold Certificates of Building Official and Residential Building Official as required by the Ohio Administrative Code.

(Ord. 87-46. Passed 4-4-88; Ord. 08-66. Passed 1-19-09.)

133.011 ENGAGED PROFESSIONAL CLASS I (CBO) BUILDING OFFICIAL SERVICES.

Effective March 1, 2001, the Mayor may engage a professional Class I Building Official to provide backup inspection services in the event of the unavailability of the City's full time Class I Building Official; and to pay for such services the fixed rate of one hundred dollars ($100.00) per day. The cost of such services shall be paid from account 100.520.5234.000.
(Ord. 01-21. Passed 5-7-01.)

133.012 ENGAGED PROFESSIONAL INSPECTION SERVICES.

Effective March 1, 2001 the Mayor may engage professional back-up inspection services when necessary; and to pay for such services the fixed rate of thirty-five dollars ($35.00) per inspection. The cost of such services shall be paid from account 100.520.5234.000.
(Ord. 01-22. Passed 5-7-01.)

133.02 ASSISTANT BUILDING COMMISSIONER.

(a) There is hereby established in the Division of Building the position of Assistant Building Commissioner to be filled by appointment by the Mayor to serve at the pleasure of the Mayor.

(b) The duties of the Assistant Building Commissioner shall be as directed and prescribed by the Director of Public Service and Development and the Building Commissioner or as may be required by ordinance of Council. In the absence of the Commissioner, he shall perform any and all duties required to be performed by the Commissioner by virtue of any law or ordinance applicable and effective in the City.
(Ord. 87-46. Passed 4-4-88.)

(c) The Assistant Building Commissioner shall hold a valid Certificate of Building Official, and Residential Building Official, Electrical Safety Inspector, Plumbing Inspector, Building Inspector or any combination of the foregoing.
(Ord. 08-66. Passed 1-19-09.)

133.021 BUILDING/ELECTRICAL/PLUMBING INSPECTOR RESIDENTIAL/COMMERCIAL.

(a) There is hereby established in the Division of Building, the position of Building, Electrical or Plumbing Inspector to be filled by appointment by the Mayor to serve at the pleasure of the Mayor.

(b) The inspector shall hold at least one valid certificate issued by the Board of Building Standards to execute the duties required to enforce the rules of the board.

(c) The duties of the Inspector shall be as directed and prescribed by the Director of Public Service and Development and the Building Commissioner.

The Inspector shall perform any and all duties by virtue of any law or ordinance applicable and effective in the City. (Ord. 08-66. Passed 1-19-09.)

133.03 CITY ARCHITECT.

(a) When so authorized by Council, a City Architect shall be employed to assist and advise the Division of Building and the various boards and commissions of the City in architectural, planning and building matters, if such assistance is deemed advisable, with the exception that such architect shall not be employed or his assistance solicited with respect to any matters relating to the construction or alteration of single-family residences.

(b) Any additional cost and expense of employing the architect, which is directly attributable to an applicant or any other person submitting plans, drawings and specifications to the City, which the City deems advisable to have the architect renew and obtain his approval thereof, shall be paid by the applicant or other person.
(Ord. 65-60. Passed 12-6-65.)

133.04 CLERK-SECRETARY.

(a) There is hereby established in the Division of Building the position of Clerk-Secretary to be filled by appointment by the Mayor to serve at the pleasure of the Mayor.

(b) The duties of the Clerk-Secretary shall be as directed and prescribed by the Director of Public Service and Development and the Building Commissioner or as may be required by ordinance of Council. (Ord. 87-46. Passed 4-4-88.)

133.05 CLERK-RECORDING SECRETARY FOR BOARDS AND COMMISSION.

(a) There is hereby established in the Division of Building the position of Clerk-Recording Secretary whose duties shall include responsibility as Secretary for the Board of Zoning and Building Appeals and the Planning and Design Commission to be filled by appointment by the Mayor to serve at the pleasure of the Mayor.

(b) The duties of the Clerk-Recording Secretary for the Board of Zoning and Building Appeals and the Planning and Design Commission shall be as directed and prescribed by the Director of Public Service and Development and the Building Commissioner or as may be required by ordinance of Council. In addition thereto, the Clerk-Recording Secretary shall be responsible for the taking and preparation of meeting minutes, for the providing of such notice of meetings of the Boards and Commission as required by law and for the preparation of all communications from the Boards and Commission; to attend the meetings of such Boards and Commission; and to perform such other duties as may be required by such Boards and Commission in the discharge of their respective responsibilities and duties.
(Ord. 87-46. Passed 4-4-88.)

133.051 ASSISTANT CLERK-SECRETARY.

(a) There is hereby established in the Division of Building, the position of Assistant Clerk-Secretary to be filled by appointment by the Mayor to serve at the pleasure of the Mayor.

(b) The duties of the Assistant Clerk-Secretary shall be as directed and prescribed by the Director of Public Service and Development and the Building Commissioner or as may be required by ordinance of Council.
(Ord. 08-66. Passed 1-19-09.)

133.06 PROPERTY MAINTENANCE OFFICER.

(a) There is hereby established in the Division of Building the position of Property Maintenance Officer to be filled by appointment of the Mayor to serve at the pleasure of the Mayor.
(Ord. 87-46. Passed 4-4-88.)

(b) The duties of the Property Maintenance Officer shall be as directed and prescribed by the Director of Public Service and Development and the Building Commissioner or as may be required by ordinance of Council. In addition thereto, the Property Maintenance Officer shall enforce the Zoning and Property Maintenance Codes in the course of the Property Maintenance Officer's duties.

(c) The Property Maintenance Officer shall have knowledge and practical experience in conducting exterior property maintenance inspections or hold a valid Certificate of Competency as an electrical safety inspector, residential plumbing inspector, or residential building inspector.
(Ord. 08-66. Passed 1-19-09.)

133.07 ADMINISTRATOR OF COMMUNITY DEVELOPMENT.

(a) There is hereby established in the Division of Building the position of Administrator of Community Development to be filled by appointment of the Mayor to serve at the pleasure of the Mayor.

(b) The duties of the Administrator of Community Development shall be as directed and prescribed by the Director of Public Service and Development and the Building Commissioner or as may be required by ordinance of Council. In addition thereto, the Administrator of Community Development shall develop and promote plans, programs and recommendations to assure economic and community development, redevelopment and improvement in a properly balanced and orderly manner and for such purposes shall:

(1) Prepare and administratively process applications for Federal, State, private or other financial grants and assistance in connection with programs and projects the purpose of which are to foster and promote economic and community development, redevelopment and improvement within the City, and the administration of such programs and projects for the City;

(2) Assemble, analyze and disseminate information, data and other materials which may be helpful to persons, business, industry and the City, including the commercial, educational, cultural, recreational and other advantages, assets and attractions of the City;

(3) Develop and implement policies, programs and strategies for the retention, expansion and relocation of existing business and industry and for the attraction of new business and industry;

(4) Coordinate, monitor and evaluate all municipal programs and procedures relating to economic and community development, redevelopment and improvement; and

(5) Serve as liaison for the City to and between persons, business, industry and other public and private agencies, institutions, organizations and associations related to the economic and community development, redevelopment and improvement of the City, including providing technical assistance to business, industry, persons and neighborhood organizations.

(c) The Mayor may designate the Building Commissioner, or the Assistant Building Commissioner, or both, to discharge the duties of the Administrator of Community Development. (Ord. 87-46. Passed 4-4-88.)

133.08 ANNUAL REPORT.

The Building Commissioner shall prepare or cause to be prepared an annual report detailing the programs and activities of the Division of Building, providing an evaluation thereof and making such recommendations therefor as may be deemed necessary. The annual report shall be submitted to Council on or before March 1 of each year.
(Ord. 87-46. Passed 4-4-88.)

CHAPTER 135
Parks and Recreation Commission

135.01 Powers and duties.

135.02 Limitation of other powers and duties.

CROSS REFERENCES
Charter provisions - see CHTR. Art. VII, Sec. 3
Power to regulate speed in parks - see Ohio R.C. 4511.07(E)
Park land regulations - see GEN. OFF. 541.09
Parks - see S.U. & P.S. Ch. 921
Recreation facilities - see S.U. & P.S. Ch. 923

135.01 POWERS AND DUTIES.

The Parks and Recreation Commission established in accordance with Article VII, Section 3 of the City Charter shall have the following powers and duties:

(a) To initiate and make periodic recommendations to the Administration as to dedicated parks, other parks, parkways, playgrounds and public recreation areas, improved or unimproved, whether owned or under the control of the City, covering their nature, function, use, utilization, maintenance, beautification, control, regulation, acquisition, sale or other alienation, or their rental or lease;

(b) To provide for its own organization;

(c) To select its own chair and all other necessary officers;

(d) To adopt rules and regulations for the conduct of all business within its jurisdiction;

(e) To hold at least ten regularly scheduled meetings each year at a designated time and place, and may hold such additional meetings as may be called by the chair or upon the request of at least two members of the Commission or as provided in the Charter;

(f) To advise the Director of Recreation with respect to the planning, organizing and establishing of policies to provide, within the limitations of available funds, year-round recreation and leisure time activities and programs for the residents of all ages of the City, which promote the health, welfare, and physical and mental well-being of all residents, and provides an opportunity for wholesome utilization of leisure time, not only to accommodate present needs, but also to provide for expansion of such activities and programs to serve the future;

(g) To recommend to the Director reasonable fees and charges for participation in the various recreation and leisure time activities and programs;

(h) To act as advisors to the Board of Education, Mayor, Council and the Director with regard to the short and long-range planning and implementation of acquiring, developing, equipping, maintaining and improving existing physical park and recreation equipment, facilities and properties including playgrounds, playfields, gymnasiums, swimming pools and indoor and outdoor recreation centers;
(Ord. 89-85. Passed 4-2-90.)

(i) To assist the Director in the preparation of a proposed budget for recreation and leisure time activities and programs prior to the submission of same to the Mayor and Council. To the extent that any such budget so prepared appropriates revenues derived from any tax levied for recreation purposes or revenues derived from fees and charges imposed for participation in recreation and leisure time activities and programs, such budget may be amended, changed or modified only after review and recommendation by the Commission and, after such review and recommendation by the Commission, approval by the majority of Council. Any action or recommendation of the Commission relating to the amendment, change or modification of a proposed or adopted budget shall be jointly submitted to both the Mayor and Council.
(Ord. 91-80. Passed 8-19-91.)

(j) To assist in the coordination of all recreation and leisure time activities and programs under the auspices of the Board of Education with the Board and the City;

(k) To assist volunteer organizations and groups conducting recreation and leisure time activities and programs in the preparation and implementation of their activities and programs;
(Ord. 89-85. Passed 4-2-90.)

(l) To approve the appointment of the Director by the Mayor and to recommend to the Director and Mayor the employment or removal of persons as play leaders, supervisors, superintendents or employees for recreation purposes provided that any such recommendation shall not be considered as binding upon the Director or Mayor nor shall any such recommendation to the Director or Mayor be considered as a prerequisite to such employment or removal;

(m) To review any ordinance or resolution concerning the nature, function, use, utilization, maintenance, beautification, control, sale or other alienation, or the rental or lease in excess of one year of dedicated parks, other parks, parkways, playgrounds or public recreation areas, or any part of any such dedicated park or other public place, whether improved or unimproved, and whether owned by the City or controlled by the City, and to make a recommendation thereon; and
(Ord. 90-108. Passed 2-4-91.)

(n) To review and make recommendations regarding all ordinances and resolutions proposing changes and improvements to park and recreation facilities.
(Ord. 89-85. Passed 4-2-90.)

135.02 LIMITATION OF OTHER POWERS AND DUTIES.

No provision of Section 135.01 shall be construed or interpreted to abrogate, diminish or impair the legislative powers and duties of Council or of any member thereof or the executive powers and duties of the Mayor or of the Director of Public Service and Development pertaining to and regarding park and recreation facilities and properties.
(Ord. 89-85. Passed 4-2-90.)

CHAPTER 136
Department of Recreation

136.01 Department established.
136.02 Director of Recreation.
136.03 Secretary-Program Coordinator.
136.04 Appropriation of funds.

CROSS REFERENCES
Dedication of parks, vacation, use, disposition or rental - see CHTR. Art. IV, Sec. 15
Parks and Recreation Commission - see ADM. Ch. 135
Park land regulations - see GEN. OFF. 541.09
Parks - see S.U. & P.S. Ch. 923

136.01 DEPARTMENT ESTABLISHED.
There is hereby established a Department of Recreation for the City.
(Ord. 89-86. Passed 4-2-90.)

136.02 DIRECTOR OF RECREATION.
There is hereby created and established the position of Director of Recreation. The Mayor shall, subject to the provisions of the Charter, appoint a Director of Recreation. The Director shall, subject to the provisions of the Charter, serve at the pleasure of the Mayor. The salary of the Director shall be fixed by Council. On the first day of January next following the election of the Mayor, the term of the Director shall expire. The Director shall have the following specific duties and powers:

(a) To issue all rules and regulations for the operation of the Department of Recreation consistent with the Charter, applicable rules and regulations of the Mayor, ordinances of the City and laws of the State of Ohio;
(b) To develop, organize and administer all policies, activities and programs relating to municipal recreation and leisure time programs and activities within the limitation of available funds;
(c) To supervise and exercise control over all employees, including play leaders, supervisors, superintendent and employees of the Department;
(d) To supervise playgrounds, playfields, gymnasiums, swimming pools and indoor and outdoor recreation centers within the operational jurisdiction of the City;

(e) To make the Mayor and Council such recommendations as deemed necessary or appropriate concerning the development of year-round recreation and leisure time activities and programs for residents of all ages of the City;

(f) To recommend to the Mayor, the Director of Finance and Council, on or before the fifteenth day of February each year, a proposed line item Recreation budget, together with a projected recreation and leisure time program, for the ensuing year;

(g) To assist volunteer organizations and groups conducting recreation and leisure time activities and programs in the preparation and implementation thereof;

(h) To meet and consult with the Parks and Recreation Commission and to provide information thereto;

(i) To prepare and submit on or before March 1 of each year, an annual report for the Parks and Recreation Commission, the Mayor and Council, which report shall include an evaluation of existing recreation and leisure time activities and programs as well as anticipated future goals, plans and needs of the Department;

(j) To establish all fees and charges for participation in the various activities and programs within the operational jurisdiction of the Department, subject to approval by the Mayor;

(k) To enter into cooperative agreements, subject to the approval of the Mayor and Council, between the City and the cities of Bay Village, North Olmsted, Olmsted Falls, Rocky River and Westlake or with the appropriate boards or commissions thereof as are deemed necessary and appropriate to provide recreation and leisure time activities and programs for residents of all ages of the City;

(l) To advise the Mayor and Council relating to the acquisition, development, planning, equipping and operation of park and recreation facilities and properties; (Ord. 90-109. Passed 12-3-90.)

(m) To cooperate and coordinate with the Director of Public Service and Development regarding the improvement, repair and maintenance of dedicated parks, other parks, playgrounds, playfields, gymnasiums, swimming pools and indoor and outdoor recreation centers;
(Ord. 91-82. Passed 6-17-91.)

(n) To publicly solicit and utilize the services of volunteers to the maximum extent possible in all recreation and leisure time activities and programs;

(o) To establish and maintain a Recreation office within the City, subject to the approval of the Mayor and Council. The hours of the Recreation office shall be as determined by the Director; and

(p) To perform such other duties, consistent with his office, as may be required by the Charter, by ordinance of Council, or as directed by the Mayor.
(Ord. 90-109. Passed 12-3-90.)

136.03 SECRETARY-PROGRAM COORDINATOR.

There is hereby created and established the position of Secretary-Program Coordinator of the Recreation Department whose salary shall be fixed by Council, which position shall be filled by an appointment of the Mayor to serve at the pleasure of the Mayor and under the day to day authority and direction of the Director of Recreation. The Program Coordinator shall have the following specific duties and powers:

(a) To prepare and maintain such records as required by the Director in a manner prescribed by the Director;

(b) To devise and promote booklets and materials pertaining to recreation and leisure time activities and programs as required by the Director;

(c) To assist the Director in the preparation of the proposed line item budget, the annual report and the development of year-round recreation and leisure time activities and programs for residents of all ages of the City;

(d) To serve as Secretary to the Parks and Recreation Commission; and

(e) To perform such office and other duties as may be required by the Director.

(Ord. 89-86. Passed 4-2-90.)

136.04 APPROPRIATION OF FUNDS.

Council shall appropriate such funds as it deems necessary and appropriate to carry out the functions and duties of the Department of Recreation. Any tax revenues levied for recreational purposes shall be used solely and exclusively for those purposes and shall be appropriated in accordance with Section 135.01.

(Ord. 91-80. Passed 8-19-91.)

CHAPTER 137
Planning and Design Commission

137.01 Powers and duties.
137.02 Notice of Commission meetings.
137.03 Quorum and vote.

CROSS REFERENCES
Charter provisions - see CHTR. Art. VII, Sec. 2
Commission review of all building permits - see P. & Z. 1149.05
Designation of landmarks - see P. & Z. Ch. 1155
Commission review of proposed zoning amendments - see P. & Z. 1157.02
Commission review of subdivision plans - see P. & Z. 1187.01, 1191.01

137.01 POWERS AND DUTIES.

In addition to the powers and duties conferred on the Planning and Design Commission by Section 2, Article VII of the City Charter, the Commission shall have such further powers and duties as now or hereafter may be imposed upon planning commissions by the Constitution or the general laws of the State, and especially as provided in Ohio R.C. 713.02.
(Ord. 94-64. Passed 7-5-94.)

137.02 NOTICE OF COMMISSION MEETINGS.

The Secretary of the Planning and Design Commission is hereby directed to send notification by regular U.S. mail of the date, time, place and subject matter of Commission meetings and of the fact that the detailed plan or amendment thereto to be considered is on file in the Division of Building and available for inspection to any person, firm or corporation owning premises located within 300 feet of the lot line of the premises which are the subject matter of any Commission meeting at least seven days, but not more than fourteen days before the date of such meeting, and to publish such notification at least three days prior thereto in a newspaper of general circulation in the City. Such 300 feet shall be measured from the lot line nearest the affected person, firm or corporation as their interest appears in the current real estate records located in the Division of Building.
(Ord. 94-64. Passed 7-5-94.)

137.03 QUORUM AND VOTE.

(a) A quorum of the Planning and Design Commission shall consist of four members, and the concurring vote of four members of the Commission shall be required for approval of any matter referred to it for consideration.

(b) A member of the Commission shall not be qualified to vote if such member has not attended the public meeting at which such matter was considered or if a member has a direct or indirect interest in the matter. The Commission shall establish a procedure in its rules for the replacement of the registered architect or of the person skilled in or engaged in the business of landscape architecture who has a direct or indirect interest in the matter with the alternate therefore.

(Ord. 94-64. Passed 7-5-94.)

CHAPTER 141
Civil Service Commission

141.01 Secretary.
141.02 Division into unclassified and classified service.
141.03 Retention of classified service classification.
141.04 Examination application fee.
141.05 Examinations adopted and approved by Commission.

CROSS REFERENCES
Civil service - see Ohio Const.,Art. XV, Sec. 10
Members and duties - see CHTR. Art. VI
Civil Service Law - see Ohio R.C. Ch. 124
Civil Service Commission - see Ohio R.C. 124.40
Applicability to police and fire personnel - see Ohio R.C. 737.051, 737.10, 737.11

141.01 SECRETARY.

The position of secretary of the Civil Service Commission is hereby established. The secretary shall act as ex-officio chief examiner and shall have such other duties as the Commission may direct.

141.02 DIVISION INTO UNCLASSIFIED AND CLASSIFIED SERVICE.

The civil service of the City is hereby divided into the unclassified service and the classified service:

(a) Unclassified Service. The unclassified service shall include the following positions, which positions shall be exempt from all examination requirements:
  (1) All officers elected by popular vote or persons appointed to fill vacancies in such offices;
  (2) The members of all boards and commissions appointed by the Mayor or Council;
  (3) All directors, commissioners and heads of departments and divisions and their assistants, except the Police Division and the Fire Division;
  (4) All secretarial and clerical positions;
  (5) All assistants to the Director of Law;
  (6) Any office or position requiring peculiar or exceptional qualification;

(7) The Clerk of Council and all other employees of Council as are engaged in legislative duties;
(8) Any recording secretary or clerk for all boards and commissions;
(9) School crossing watchmen;
(10) Members of the auxiliary police unit;
(11) Temporary, part-time and/or seasonal employees; and
(12) The unskilled labor class which shall include ordinary unskilled laborers

(b) Classified Service.
(1) The classified service shall include the regular members of the Police Department, except members of the auxiliary police unit and the school crossing watchmen as provided in subsection (a) hereof; the regular members of the Fire Department, except volunteer firemen; and any employees not specifically included in the unclassified service.
(2) The competitive class shall include all positions for which it is practicable to determine the merit and fitness of applicants by competitive examination. Appointments shall be made to all positions in the competitive class that are not filled by promotion, reinstatement, transfer or reduction.
(Ord. 81-116. Passed 1-4-82.)

141.03 RETENTION OF CLASSIFIED SERVICE CLASSIFICATION.

Any employee who is promoted from a position in the classified service to a position in the unclassified service shall, for a period of five years, retain his rights to the position in the classified service. (Ord. 81-116. Passed 1-4-82.)

141.04 EXAMINATION APPLICATION FEE.

Due to the rising costs of administration, it is in the best interests of the City to establish an application fee chargeable to applicants for civil service examinations for positions with the Police and Fire Departments. Such fee shall be in an amount determined by the Civil Service Commission, payable at the time an application is submitted by an applicant for admissions to the civil service examinations for positions on the Police and Fire Departments.
(Ord. 81-116. Passed 1-4-82)

141.05 EXAMINATIONS ADOPTED AND APPROVED BY COMMISSION.

(a) The Civil Service Commission is hereby authorized to adopt and approve entrance level and promotional examinations consisting of one or more tests in any combination of written, oral and/or physical tests, demonstrations of skill and/or an evaluation of training and experience, designed to fairly test the relative capacity of the persons examined to discharge the particular duties of the position to which such person has made application or to which such person seeks to be promoted.

(b) Subsection (a) hereof is specifically intended to supersede State code limitations on the design and content of civil service entrance and promotional examinations.
(Ord. 95-12. Passed 4-3-95.)

CHAPTER 143
Employment Provisions

143.01 Definitions.
143.02 Employees covered.
143.03 Objectives.
143.04 Compensation of classification plan.
143.05 Class specifications.
143.06 Use of the plan.
143.07 Maintenance of the plan.
143.08 Amendments to position classification plan.
143.09 Allocation appeals.
143.10 Development and maintenance of compensation ranges.
143.11 Appointment rate.
143.12 Within-range increase.
143.13 Pay rates and transfer, promotion or demotion.
143.14 Part-time employees.
143.15 Permitting overrun or underrun on salaries as required for computer payroll methods; deductions from pay.
143.16 Hours of work.
143.17 Overtime defined; overtime premiums.
143.18 Longevity premium.
143.19 Uniform allowance.
143.20 Travel expenses and mileage allowance.
143.21 Insurance premium payments.
143.22 Sick leave.
143.23 Vacation leave.
143.24 Holiday leave.
143.25 Funeral leave.
143.26 Military leave.
143.27 Jury leave.
143.28 Personal leave of absence.
143.29 Unauthorized leave.
143.30 Payment upon separation.
143.31 Training.
143.32 Physical examination.
143.33 Transfer of benefits.
143.34 Surety bonds.
143.35 Bi-weekly compensation payment.
143.36 Voluntary deferred compensation plan.
143.37 Incentive compensation.
143.38 Pick-up of employee contributions to PERS by salaried employees and administrators.
143.39 Pick-up of employee contributions to PERS and PFDPF by service employees, policemen and firemen.

CROSS REFERENCES

Workers' compensation - see Ohio Const., Art. II, Sec. 35; Ohio R.C. Ch. 4115
Deductions for dues and savings - see Ohio R.C. 9.41, 9.43
Public Employees Retirement System - see Ohio R.C. Ch. 145
Expenses for attendance at conference or convention - see Ohio R.C. 733.79

143.01 DEFINITIONS.

For purposes of this chapter:

(a) "Director" means the Director of the Administrative Department to which an employee is assigned, or the Mayor with respect to an employee assigned to the administrative control of the Mayor and members of boards and commissions, or the President of Council with respect to an employee of Council, including the Clerk of Council.

(b) "Position" means a group of currently assigned duties and responsibilities whether occupied or vacant requiring the full or part-time employment of one person.

(c) "Class" means a group of positions (or one position) that:

(1) Has similar duties or responsibilities;

(2) Requires like qualifications; and

(3) Can be equitably compensated in the same salary range.

(d) "Class title" means the official designation or name of the class as stated in the class specification. It shall be used on personnel records and actions. Working or office titles may be used for purposes of internal administration.

(e) "Employee" means any incumbent of a position.

(f) "Regular full-time" employee means an employee who is employed on a regular and continuing basis and for whom there is a reasonable expectancy that such employment will continue in excess of six (6) months and excluding overtime is in employment two thousand eighty (2080) or more hours per calendar year or an average of forty (40) or more hours a week. The phrase "regular full-time" employee does not include elected officials, members of any board or commission, the Director of Law, attorneys in the Department of Law, and any person providing services pursuant to contract, except as otherwise provided in this chapter.

(g) "Regular part-time" employee means an employee who is employed on a regular and continuing basis and for whom there is a reasonable expectancy that such employment will continue in excess of six (6) months and excluding overtime is in employment less than two thousand eighty (2080) hours per calendar year and averages less than forty (40) hours per week.

(h) "Temporary full-time" employee means an employee who is employed on a regular and continuous basis and for whom there is no reasonable expectancy of regular and continuous employment with the City for a period in excess of six (6) months and who averages forty (40) or more hours per week excluding overtime.

(i) "Temporary part-time" employee means an employee for whom there is no reasonable expectancy of regular and continuous employment with the City for a period in excess of six (6) months and excluding overtime is in employment less than two thousand eighty (2080) hours per calendar year and averages less than forty (40) hours per week.

(j) "Active employment" means the actual doing of the work which is a part of the employee's position description and shall include the time periods which the employee is on paid vacation leave, holiday leave, jury service and leave for training. Active employment shall not include any time period during which an employee is on sick leave, military leave, leave without pay, authorized leave, receiving disability pay or under suspension.

(k) "Salary" means the rate of compensation per year.
(l) "Hourly" means the rate of compensation per hour.
(m) "Regular work day" means the number of hours in an employee's work day as established pursuant to this chapter.
(n) "Regular work week" means the number of hours in an employee's work week as established pursuant to this chapter.
(o) "Overtime" means work in addition to the established schedule of hours of work in the regular work day or regular work week.
(p) "Retirement" means disability or service retirement under any State or Municipal retirement system in this State.
(Ord. 89-10. Passed 6-17-91.)

143.02 EMPLOYEES COVERED.

The provisions of this chapter shall be applicable to all non-elected employees of the City who are not beneficiaries of collective bargaining agreements executed by the City and the various employee organizations, and who are regular full-time, regular part-time, temporary full-time or temporary part-time employees of the City as defined in Section 143.01.

All beneficiaries of collective bargaining agreements are specifically excluded from the operation of the provisions of this chapter with the exception of Sections 143.15, 143.20, 143.21(b), 143.31, 143.32, 143.34, 143.35, 143.36, 143.37, 143.38 and 143.39.
(Ord. 89-10. Passed 6-17-91.)

143.03 OBJECTIVES.

The employee classification plan shall include the classification schedule and a complete inventory of all positions in the City Service, and accurate descriptions and specifications for each class of employment. No person shall be appointed to or employed in a position in the City under a title not included in the employee classification plan. In the plan, position titles shall be standardized and each of them shall have the same meanings throughout the City Service.
(Ord. 89-10. Passed 6-17-91.)

143.04 COMPENSATION OF CLASSIFICATION PLAN.

The classification plan shall consist of all of the following:
(a) A grouping into classes of similar positions which are approximately equal in difficulty and responsibility, which call for the same general qualifications and which can be compensated equitably within the same range of pay under similar working conditions.
(b) Class titles, descriptive of the work of the class, will identify each class, which may be designated by a numerical class code.
(c) Written specifications for each class of positions containing a description of the nature of work and relative responsibility of the positions in the class: illustrative examples of work performed in the class; requirements in terms of knowledges, abilities and skills necessary in performance of the work; and a statement of the type of experiences and training generally providing these knowledges, abilities and skills.
(d) A list showing the class to which each position in the City service is allocated.
(Ord. 89-10. Passed 6-17-91.)

143.05 CLASS SPECIFICATIONS.

The specifications of the classes of positions in the employee classification plan and their various parts shall be used as a guide in the classification of positions and have the following force and effect:

(a) The specifications are descriptive and not restrictive. They are intended to indicate the kinds of positions that are allocated to the several classes as determined by their duties and responsibilities and shall not be construed as declaring to any extent or in any way what the minimum or maximum duties or responsibilities of any position shall be or as limiting or in any way modifying the power of any appointing authority or administrative officer to assign, direct and control the work of employees under his/her supervision. The use of a particular expression or illustration shall not be held to exclude others not mentioned that are of a similar kind or quality.

(b) In determining the class to which any position should be allocated, the specifications of each class shall be considered as a whole. Consideration shall be given to the duties, specific tasks, responsibilities, qualification requirements and relationships to other classes as together affording a statement of the employment that the class is intended to embrace.

(Ord. 89-10. Passed 6-17-91.)

143.06 USE OF THE PLAN.

The employee classification plan shall be used:

(a) In preparing public announcements of vacancies.

(b) As a guide in preparing examinations which may be used to appraise the qualifications of applicants in specific classes.

(c) In determining promotional sequence and developing employee training programs.

(d) In determining compensation to be paid for various types of work and establishing and maintaining an equitable compensation plan.

(e) In determining personnel service items in the budgets for the various organizational units of the City government.

(f) In providing uniform job terminology.

(g) In setting up appropriate employment lists from which personnel may be certified to fill vacancies.

(Ord. 89-10. Passed 6-17-91.)

143.07 MAINTENANCE OF THE PLAN.

The directors of the various administrative departments, together with the Mayor, and in the case of the Clerk of Council and other employees of Council, the President of Council, shall be responsible for the proper maintenance of the Employee Classification Plan so that it will reflect continuously the duties currently being performed by each employee in the City in the class to which each person is allocated. Each director of an administrative department shall propose to the Mayor necessary amendments to the Employee Classification Plan, including the addition of new classes, revision of existing classes, deletion of obsolete classes, and changes in class specifications as follows:

(a) The director of an administrative department shall, within sixty (60) days of the creation of a new position in the department, complete or approve a written position description of the duties and responsibilities of such position to be forwarded to the office of the Mayor. The Mayor shall allocate the position to one of the classes in the Classification Plan. If a suitable class does not exist, he shall establish a new class and allocate the position to it.

(b) Changes in the duties and responsibilities of a position involving the addition, reduction, modification of assignments shall be reported to the Mayor by the director of the administrative department concerned. If the changes are determined to be permanent and are sufficiently significant to justify re-allocation to a different classification, the Mayor shall assign the position to the class which is appropriate under the modified circumstances.

(c) The director of each administrative department shall periodically review or cause to be reviewed the classification of positions and shall audit duties and responsibilities of each change in the class specifications as required and shall recommend to the Mayor such changes as are necessary to keep the Employee Classification Plan current.

(d) The Mayor may require administrative departments or employees to submit position descriptions on a periodic basis or anytime he has reason to believe there has been a change in the duties and responsibilities of any position. The Mayor shall direct the grading and classifying of all positions of the City's service at least once every five (5) years on a cyclical basis.

(e) Any employee may request in writing a classification review of his/her position at any time providing the position has not been reviewed within the previous twelve (12) months. The director of the administrative department shall forward the request to the Mayor within ten (10) days of receipt. The Mayor shall act on any request involving an individual position within sixty (60) days and on any request involving several positions, as promptly as possible after receipt of such request. Changes in duty assignments must be more than temporary in nature and the incumbent must be performing the duties for the duration of not less than one month to warrant investigation.

(f) The assignment of duties to a position whether the duties are temporary or permanent, incidental or essential, the location of work, the type of equipment and tools to be used and the scheduling of shift assignments shall be wholly the responsibility of the Director, the Police or Fire Chief in the case of those Departments, and the President of Council with respect to employees of Council, including the Clerk of Council. The classification plan shall in no way operate or be construed to operate, to limit or interfere with his/her responsibility for the assignment of duties.

(g) With reference to employees of Council, including the Clerk of Council, the President of Council shall discharge the duties and obligations imposed upon directors of administrative departments by subsections (a) through (e) hereof and the Council shall discharge the duties and obligations imposed upon the Mayor in such subsections.

(Ord. 89-10. Passed 6-17-91.)

143.08 AMENDMENTS TO POSITION CLASSIFICATION PLAN.

The establishment of a new class of positions or the abolishment of a current class of positions shall be made by amendment to the Classification Plan. When a filled position is re-allocated, the action shall be administered as though the original position was abolished and a new position with a different classification established.
(Ord. 89-10. Passed 6-17-91.)

143.09 ALLOCATION APPEALS.

If an administrative employee believes his/her position has been improperly allocated or re-allocated to a class, the employee may appeal to the Civil Service Commission. The procedure for such appeals shall be as follows:

(a) A written appeal shall be prepared and filed with the Secretary of the Civil Service Commission within thirty (30) days of the date upon which the employee was notified of this class allocation or re-allocation.

(b) The appeal shall set forth the reasons therefore.

(c) The Civil Service Commission shall consider all appeals and shall provide reasonable opportunity for the appellant and appellee to be heard.

(d) The Civil Service Commission shall notify the appellant and appellee in writing of its decision which shall be final. Any decision of the Civil Service Commission under this provision which allocates a position of an employee to a different class in the Employee Classification Plan shall be retroactive to the date the appeal was filed unless otherwise ordered by the Civil Service Commission. (Ord. 89-10. Passed 6-17-91.)

143.10 DEVELOPMENT AND MAINTENANCE OF COMPENSATION RANGES.

The compensation range for each position shall be determined by Council with due regard for ranges of pay of other position classes, relative difficulty and responsibility of each position in each class, availability of employees in particular occupational categories, prevailing rates of similar employment in private establishments in the Fairview Park area and the municipal service of other public jurisdictions in the general area, cost of living factors, the financial policies of the City and other economic considerations.

The Mayor shall make comparative studies of factors affecting the level of salary ranges as often as necessary and shall submit his/her recommendations to Council for its action.
(Ord. 89-10. Passed 6-17-91.)

143.11 APPOINTMENT RATE.

The minimum rate established for a class shall be paid upon appointment except that appointment rates above or below the minimum rate may be authorized by the Mayor upon the written request of a Director of a Department, or in the case of an employee of Council, including the Clerk of Council, may be authorized by action of Council.

(a) Appointments above the minimum rate.

Approval for appointments above the minimum rate shall be based upon exceptional qualifications of the appointee or inability to employ eligible candidates at the minimum rate.

(b) Appointments below the minimum rate.
Approval for appointments below the minimum rate may be made where the candidate possesses less than the minimum acceptable qualifications for a classification. Such appointments shall be made on a trainee basis. When it is determined by the Mayor, the director of the employing administrative department or the President of Council that the trainee is able to function on a full performance basis, he/she may be advanced to the regular minimum rate.
(Ord. 89-10. Passed 6-17-91.)

143.12 WITHIN-RANGE INCREASE.

Salary adjustments within an established range shall not be automatic but shall be dependent upon formal recommendation of the director of the employing administrative department to the Mayor, or in the case of an employee of Council, the Council. Any employee whose job performance is satisfactory shall be advanced within the steps in his/her assigned pay range and shall be based on the performance rating given pursuant to standards of performance established by the Mayor for administrative department employees and the President of Council for employees of Council, including the Clerk of Council. The employee shall be informed of the reasons for withholding an increase and the improvement in performance required to obtain a satisfactory rating. General increases or decreases resulting from the adjustment of the basic compensation schedules shall not prevent within-range increases in accordance with this section.
(Ord. 89-10. Passed 6-17-91.)

143.13 PAY RATES AND TRANSFER, PROMOTION OR DEMOTION.

If an employee is transferred, promoted or demoted upon the recommendation of the director of the employing administrative department and approval by the Mayor, or, in the case of an employee of Council, including the Clerk of Council, upon the recommendation of the President of Council and approval of Council, the employee's pay for the new position shall be determined as follows:

(a) If the rate of pay in the former class is less than the minimum rate established for the class of the new position, the rate of pay shall be advanced to the minimum for the class.

(b) If the rate of pay in the former class is more than the maximum rate established for the new class, the pay shall be reduced to the maximum rate or an intermediate rate of the new range.

(c) If the rate of pay in the former class falls within the new rate of pay, the salary rate shall remain the same in the case of transfer and shall be increased in the case of a promotion and shall remain the same or adjusted to a lower step in case of a demotion.
(Ord. 89-10. Passed 6-17-91.)

143.14 PART-TIME EMPLOYEES.

(a) Employees of the City, except as provided in subsection (b) hereof, who were hired on a part-time basis, shall be paid only such part of the rate of full-time employees in the same position class as is proportionate to the amount of time actually worked by such employee during any pay period to the amount of time regularly worked by a full-time employee in the same position class during a regular pay period. Part-time employees may be paid on an hourly or salary basis as shall be determined by the director of the department in which such employee is hired. The hourly rate of a part-time employee shall be determined by the director of the department in which such person is employed by dividing the regular number of work week hours for full-time employees in the appropriate classification into the weekly equivalent for the annual salary of such full-time position.

(b) As to employees assigned to their respective control, the President of Council, and the director of any administrative department with the approval of the Mayor, or the Mayor may determine that an employee does not fit any existing position classification for full-time employment in which case the President of Council or the Mayor may recommend to Council that a separate position classification be established for such part-time work together with a specific rate of pay schedule which position schedule classification shall be designated as part-time. For a separate position classification for which a rate of pay is established for a specific part-time position, the provisions of subsection (a) hereof shall not apply.
(Ord. 89-10. Passed 6-17-91.)

143.15 PERMITTING OVERRUN OR UNDERRUN ON SALARIES AS REQUIRED FOR COMPUTER PAYROLL METHODS; DEDUCTIONS FROM PAY.

(a) In order to facilitate the handling of entries for computer payroll methods and to eliminate the necessity for adjustments for overruns and underruns which may occur through this method and to take care of overruns and underruns resulting in bi-weekly pay periods, the Director of Finance is authorized to adjust and pay overruns and underruns not to exceed one dollar ($1.00) per employee per year.

(b) The Director of Finance is authorized to deduct or withhold from an employee's wages or salary such sums of money as specifically authorized in writing by such employee, and apply or remit such funds, so withheld in accordance with such employee's written instructions.
(Ord. 89-10. Passed 6-17-91.)

143.16 HOURS OF WORK.

Other than the Clerk of Council whose schedule is established by the Council or its Presiding Officer, the regularly-assigned work week and the regularly assigned work-day for all employees of the City who are amenable to the provisions of this chapter shall be established by the directors of the various departments and approved by the Mayor. Each employee shall be advised, in writing, as to what constitutes a regular work week and a regular work day for such employee.
(Ord. 89-10. Passed 6-17-91.)

143.17 OVERTIME DEFINED; OVERTIME PREMIUMS.

(a) Any work in excess of the regular work week and the regular work day shall be compensated at the overtime premium as set forth herein. For the purpose of calculating overtime, all leave with pay granted elsewhere in this chapter, with the exception of sick leave and jury leave, shall be included as work actually physically performed.

(b) Overtime work may be authorized in cases of emergency absolutely necessitating such overtime work and, in such event, may be authorized by an administrative director, subject to the approval of the Mayor, or by the President of Council as to employees of Council.

(c) The directors of departments, the Secretary to the Mayor, secretaries to the directors of departments, secretaries to boards and commissions, Clerk of Council and attorneys in the Department of Law shall not be entitled to compensation in money or time off for hours worked on a holiday, or each hour worked in excess of eight (8) hours per day or for each hour worked in excess of forty (40) hours during any work week.

(d) Any employee of the City not engaged in fire protection or law enforcement activities and exempt from the overtime provisions of the Fair Labor Standards Act of 1938, as amended, may receive at the discretion of the Director of the employee's Department, or the appointing authority of those employees not in a Department administered by a Director:

(1) Compensation in money at a rate not to exceed one and one-half (1.5) times the rate of hourly pay established for such employee for all hours worked on a holiday and for each hour worked in excess of eight (8) hours per day or in excess of forty (40) hours in any work week; or

(2) Time off from the performance of duty during regular hours of work at a rate not to exceed one hour for each hour worked on a holiday and for each hour worked in excess of eight (8) hours per day or in excess of forty (40) hours during any work week. The time off shall be used within thirty (30) days after it was earned or it shall be forfeited. The director of the employee's department or the appointing authority of those employees not in a department administered by a director shall determine when an employee may use such time off.

(e) An employee of the City not exempt from the overtime provisions of the Fair Labor Standards Act of 1938, as amended, shall be entitled to overtime compensation of a rate of one and one-half (1.5) his/her regular hourly rate times the hours worked in excess of eight (8) hours per day or in excess of forty (40) hours per week or for all hours worked on a holiday either in money or time off in accordance with the Fair Labor Standards Act of 1938, as amended. Accrued time off for such employees shall not be forfeited at any time.

(f) The Chief of Police and the Fire Chief shall not be entitled to compensation in money or time off for hours worked on a holiday, for each hour worked in excess of eight (8) hours per day or for each hour worked in excess of forty (40) hours during any work week.

(g) The employees of the City engaged in fire protection or law enforcement activities, employed in a bona fide executive, administrative or professional capacity, other than the Chief of Police and Fire Chief, and not covered by a collective bargaining agreement with an employee organization representing employees may receive overtime compensation in accordance with subsection (d) hereof.
(Ord. 89-10. Passed 6-17-91.)

143.18 LONGEVITY PREMIUM.

(a) Effective January 1, 2003, all non-elected full-time employees shall receive an additional compensation for length of full-time, continuous service with the City according to the following schedule:

One hundred dollars ($100.00) for each year of consecutive full-time service with this City commencing on the employee's fifth anniversary date of such service with the City. At that time the employee will become entitled to a sum of five hundred dollars ($500.00), which will be paid in a lump sum in the first pay period of December of that year. Employees with more than five (5) years of consecutive full-time service with the City shall be entitled to one hundred dollars ($100.00) per year of service up to a maximum of twenty-five hundred dollars ($2,500). Longevity will continue to be awarded on the employee's successive anniversary dates of consecutive full-time service to the City according to the procedure hereinbefore provided.

(b) All sums payable to any employee by virtue of this section shall be prorated in the year of separation to the date of such separation.

(c) Elected officials, attorneys in the Department of Law, the City Engineer, members of any board or commission, any person providing services pursuant to contract and seasonal employees shall not be eligible for longevity compensation hereunder.

(d) No individual employed by the City in more than one capacity shall be entitled to the benefits of this section other than the primary Department of such employee.

(e) Except as provided in subsection (b) and subsection (f), termination of employment, for any reason, either voluntary or involuntary, shall terminate all rights and accrued benefits and eligibility under this section. Any employee who retires and is re-hired full-time by another Department of the City shall accrue benefits hereunder as if the employee were a new employee and prior service with the City shall not be counted.

(f) In the event an employee leaves the employment of the City under the disability provisions of a pension program or dies while still on the active payroll of such department, then the longevity benefits payable under this section shall be prorated for such period of time. Such prorated longevity benefits shall be payable in a lump sum within thirty (30) days after disability commences or death of such employee and shall be paid to such member or surviving wife or husband, dependent children or heirs designated in the estate of the employee, in the order hereinbefore named.

(g) In each calendar year the anniversary date of the employment shall be the first day of the month in which the employee commenced his continuous full-time employment with the City. In calculating length of an employee's continuous employment, full-time service in all Departments of the City shall be included.
(Ord. 03-46. Passed 12-1-03.)

143.19 UNIFORM ALLOWANCE.

(a) For those employees required to wear special uniforms in carrying out their duties, the City will pay an annual allowance, as and for a uniform purchase, maintenance and repair allowance according to the following schedule:

(1) To the Foreman, the Assistant Foreman and the Traffic Signal Technician of the Department of Public Service and Development, the same sum as is paid to other employees of such Department.

(2) To the Chief and Assistant Chief of the Fire Department, the same sum as is paid to other employees of the Fire Department.

(3) To the Chief and Captain of the Police Department, the same sum as is paid to other employees of the Police Department.

(b) The aforesaid allowances shall be paid on a semi-annual basis. Any uniform required to be worn by any of the aforementioned employees, or any portion thereof, which may be damaged or destroyed in the line of duty, ordinary wear and tear excepted, shall be replaced by the City.

(c) The aforesaid mentioned uniform allowances shall be prorated to the date of resignation or retirement of such employee. If such uniform allowance account is overdrawn, the overdrawn amount shall be prorated and deducted from the final salary payment of such employee. If an employee is due a uniform allowance payment at the time of termination of employment, the amount so due shall be paid on a prorated basis based upon the applicable annual allowance and shall be added to the final payment.
(Ord. 89-10. Passed 6-17-91.)

143.20 TRAVEL EXPENSES AND MILEAGE ALLOWANCE.

(a) The travel expenses of any City official or employee attending meetings, conferences or conventions relating to municipal affairs outside the City or while engaged in any official business, including travel, lodging, meals, fees, tips and gratuities, and other business related expenses shall be paid by the City or such person shall be properly reimbursed for the expense so incurred if the travel is first authorized by the Mayor and the director of the department to which the employee is assigned or in the case of a member of Council by the President of Council and if the Director of Finance certifies that funds are appropriated and available for such purposes. The maximum reimbursement for meals shall be twenty dollars ($20.00) per day proportioned as follows - breakfast, five dollars ($5.00), lunch, six dollars ($6.00) and dinner, nine dollars ($9.00).

(b) Any City official or employee required to travel outside the City in the performance of their duties or on official business on behalf of the City shall be compensated for the use of such personal automobile at the maximum rate as permitted by Internal Revenue Service Regulation.

(c) An application for payment of travel expenses and mileage allowance pursuant to this section shall be accompanied by a detailed expense account and shall be promptly submitted after the expense has been incurred.
(Ord. 89-10. Passed 6-17-91.)

143.21 INSURANCE PREMIUM PAYMENTS.

Insurance premium payments shall be provided for employees as follows:

(a) Hospitalization and/or Health Plan Insurance. Each regular full-time employee of the City may elect to participate in one of the following plans:

(1) A group policy or contract, approved by the Board of Control, providing health, medical, hospital, surgical benefits or any combination thereof covering employees for which the City shall provide full premium payments; or

(2) A contract or contracts approved by the Board of Control providing health care services with a health maintenance organization, organized under the Ohio Revised Code, for which the City shall pay up to, but not exceed, the sum the City would otherwise pay for the insurance contract(s) available to the employee under subsection (a)(1) hereof with the balance to be paid by the employee through payroll deduction.
No amounts hereunder shall be paid directly to any employee which shall be credited against the cost to the employee of such insurance coverage. No employee shall receive the benefit of this provision in more than one employment capacity with the City. An election to participate in the group shall be made only at such times as permitted by the insurance carrier or health maintenance organization.

(3) In lieu of the provisions of subsections (a)(1) and (a)(2) hereof, the City may self-fund health, medical, hospital and surgical benefits and acquire umbrella or stop-loss insurance for such benefits if approved by ordinance of Council.

(b) The City shall provide full premium payment for the group liability insurance contract applicable to employees as may specifically be designated by the Board of Control.
(Ord. 89-10. Passed 6-17-91.)

143.22 SICK LEAVE.

All regular full-time employees of the City shall receive sick leave according to the following terms and conditions:

(a) Sick leave is defined as an absence from duty with pay necessitated by:
  (1) Illness or injury to an employee claiming such sick leave.
  (2) Exposure by an employee claiming sick leave to a contiguous disease communicable to other employees.
  (3) The maternity confinement of an employee or spouse of an employee or for illness or injury to a person related to an employee in the first degree by consanguinity or affinity.

(b) All employees shall earn sick leave at the rate of four and six-tenths (4.6) hours per weekly pay period during which the employee actually worked or was absent by reason of leave granted elsewhere in this chapter with the exception of leave without pay. (Ord. 89-10. Passed 6-17-91.)

(c) Administrative and nonbargaining unit employees may accumulate sick leave to an unlimited amount and shall use such leave in segments of not less than one hour. Upon the retirement or death of any such employee who has not less than ten years of continuous employment with the City and who has qualified for retirement benefits from a State of Ohio Public Employee Retirement System, such employee shall be entitled to receive a cash payment equal to the employee's hourly rate of pay at the time of retirement multiplied by one-half the total number of accumulated but unused sick hours earned by such employee, provided, however, that such resulting number of sick hours to be paid shall not exceed 1307 hours. In the case of a deceased employee, accumulated sick leave is payable as provided in Section 143.30. (Ord. 95-120. Passed 2-20-96; Ord. 08-38. Passed 6-2-08.)

(d) There will be no reduction of sick leave time when an employee is absent due to a job related injury or disease if such employee shall authorize the Industrial Commission of Ohio and/or the Bureau of Workers' Compensation to mail his/her warrants for compensation in care of the City in order that the City may be reimbursed to the extent of the advancements made to the employee or any portion thereof. Attendance and credit records shall be maintained by the Director of the employing department and submitted to the Department of Finance with each pay period.

(e) An employee, who, without resigning or retiring, transfers from one Department of the City to another Department of the City shall be credited with the unused balance of the employee's accumulated sick leave.

(f) The director of the employing department may require an employee to furnish a satisfactory written, signed statement to justify the use of sick leave. If medical attention is required, a certificate stating the nature of the illness from a licensed physician may be required to justify the use of sick leave. Falsification of either a written, signed statement or a physician's certificate shall be grounds for disciplinary action, including dismissal. No sick leave shall be granted an employee upon or after retirement or termination of employment.

(g) An employee from the State or any of its political subdivisions to the City shall be credited with the unused balance of accumulated sick leave up to the maximum permitted in this section provided proof of such sick leave credit is furnished in writing by the employee's former employer and further provided that there shall be no cash payment for such sick leave credit transferred upon termination of employment.

(h) Employees laid off for more than one (1) year will receive accumulated sick leave based upon the last day worked and paid in accordance to the provisions of this section after lapse of one (1) year if not recalled.

(i) Employees who are discharged for cause forfeit all rights to payment under this subsection.

(j) The department head shall require the employee to furnish a satisfactory written statement to the effect that the absence was caused by illness or injury.

(k) Employees who have been absent for three (3) days or more, due to illness or injury, shall be required to present a statement from a physician validating that they are physically able to resume their regular duties on a regular basis.

When an employee has been absent for less than three (3) days, the department head, at his/her discretion, may request a statement from the employee from his/her physician before the employee may return to work.

(l) In the event any employee has been off duty for a serious injury or disease or any employee has suffered loss of limb or sight or physical or mental disability or if any such employee is unable to perform the duties performed prior to disability, the director or Mayor, or the President of Council in the case of employees of Council, may deem it necessary to have the employee approved by the City physician before such employee returns to work.

(m) Sick leave shall not be used for retirement purposes, as for example, an early retirement.

(Ord. 89-10. Passed 6-17-91.)

143.23 VACATION LEAVE.

Each regular full-time employee is entitled to annual vacation leave with pay according to the following schedule:

(a) After one year full-time service, two weeks (ten work days);
After five years full-time service, three weeks (fifteen work days);
After ten years full-time service, four weeks (twenty work days);
After fifteen years full-time service, five weeks (twenty-five work days);
After twenty-three years full time service, six weeks (thirty work days).

(b) An employee shall become eligible for leave on or after the employee's anniversary date and vacation leave shall be taken by the employee within twelve months thereafter, except that no more than one year's vacation may be taken in any calendar year, provided however, that the Mayor as to an employee of an Administrative Department or the President of Council as to an employee of Council shall have the authority to permit an employee to use vacation hours during the first two months of the following year due to staffing or other unforeseen circumstances which prevent the employee from otherwise using the vacation leave as provided herein.

For the purpose of calculating vacation leave, only such time as the employee has in continuous service with the City shall be utilized and, except as provided in Ohio R.C. 9.44, no credit for previous employment other than with the City shall be given provided, however, that any part-time service with the City shall be credited toward vacation leave on a pro-rata basis.

(c) The Director of each Department shall designate the time when each employee may take vacation leave.

(d) Except as provided in subsection (b) every employee shall use the employee's full vacation allowances each year. Vacation time is not cumulative from one year to another. No employee shall be paid salary in lieu of vacation.

(e) No officer or employee of the City shall receive the benefit of the provisions of this section in more than one employment capacity with the City. The period of vacation for Clerk of Council shall be designated by its Presiding Officer.

(f) If an employee is terminated, voluntarily or involuntarily, prior to taking his/her vacation, he/she shall receive the prorated portion of any fully earned but unused vacation leave at the time of separation.

If a recognized holiday falls within an employee's vacation leave, the employee shall receive an additional paid holiday vacation day in lieu of the holiday either at the beginning or at the end of the vacation leave.

(g) In the last calendar year of any person's employment with the City, the vacation pay to which the employee will be entitled in addition to any unused vacation leave will depend of the amount of time worked since the last anniversary date of employment of the employee. The number of days elapsing between the last anniversary date and the end of the last day of employment, divided by the number of days in the calendar year multiplied by the number of normal vacation days for that person will determine the number of vacation days for which the employee is paid. A terminal fraction of five-tenths (.5) or more will be raised to a full day and a terminal fraction of less than five-tenths (.5) will be dropped.

(Ord. 03-46. Passed 12-1-03.)

143.24 HOLIDAY LEAVE.

(a) Each regular full-time and regular part-time employee shall receive holiday pay at regular compensation on the following work days:

New Years Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day
Employee's birthday
Four floating holidays as approved by the director of the administrative department or the President of Council for employees of Council, including the Clerk of Council.

(b) Should holiday leave granted herein occur on a Sunday, the following Monday shall be observed as the holiday. Should holiday leave granted herein occur on a Saturday, the preceding Friday shall be the holiday. Should an employee be regularly scheduled for work on a day defined hereinbefore as holiday leave, such employee shall be entitled to take such holiday leave at another time as may be approved by the director of the employing department. Refusal on the part of an employee to work on a holiday when requested to do so shall constitute a forfeiture of all benefits of holiday pay under this section. Failure of an employee to work on a scheduled work day preceding and the scheduled work day succeeding the holiday, unless excused by the Mayor or department or division head or President of Council, or unless on vacation shall constitute a forfeiture of all benefits of holiday pay under this section.

(c) Holiday pay shall not apply to temporary, seasonal or per diem personnel.

(d) No employee shall receive the benefit of this section in more than one (1) employment capacity with the City.
(Ord. 89-10. Passed 6-17-91.)

143.25 FUNERAL LEAVE.

All regular full-time and regular part-time employees shall be granted funeral leave according to the following schedule:

In the event of the death of spouse, mother, father, child, brother, sister, grandparents, grandchild, parents-in-law, son-in-law, daughter-in-law, sister and brother-in-law or person who has been in loco parentis to the employee, a maximum of three (3) work days which shall not be deducted from sick leave. In a death in the immediate family as hereinbefore occurs while the employee is on duty, the employee shall be excused for the remainder of the work day and such time shall not be charged to leave of any kind.
(Ord. 89-10. Passed 6-17-91.)

143.26 MILITARY LEAVE.

(a) All employees who are members of the Ohio National Guard, the Ohio Military Reserve, the Ohio Naval Militia, or other reserve components of the Armed Forces of the United States of America, shall be entitled to military leave from their respective duties for such times as they are on field training or active duty for a cumulative period not to exceed thirty-one (31) days in any calendar year. Application for military leave shall be submitted to the director of the employing department at least thirty (30) days in advance of the proposed leave.

(b) If compensation by any military authority given during the period of leave is less than the regular compensation which would have been given by the City for such period, the employee shall be paid by the City the difference in cash money between the regular pay and the military pay. Should the military compensation exceed the regular compensation from the City, the employee shall not be required to reimburse the City with such differential in cash money. Reimbursed expenses, travel and subsistence pay and all other similar allowances shall not be considered in determining the amount of pay received for such service, training, or active duty. The provisions of this section shall not apply if such military service, field training or other active duty is less than seventy-two (72) consecutive hours or longer than thirty-one (31) consecutive days. Any City employee, at the election of the employee, may credit all or any portion of such military leave against the employee's regular annual vacation and for such period so charged the employee shall receive regular vacation pay without deduction for pay received for such service, training or active duty.
(Ord. 89-10. Passed 6-17-91.)

143.27 JURY LEAVE.

(a) All City employees shall receive their regular wages for time lost from their work with the City while serving as a member of a Municipal, Common Pleas or Federal Court jury panel, without deduction for any amount as they may receive from the court for such service.

(b) In order to qualify for such pay, the employee shall notify the director of the employing department of such service in advance and upon completion of such service present proof satisfactory to the Finance Director from the court as to the time spent in such service.

(c) No time spent in such service shall be counted or used for purposes of determining eligibility for overtime pay or compensatory time off.
(Ord. 89-10. Passed 6-17-91.)

143.28 PERSONAL LEAVE OF ABSENCE.

(a) The President of Council with the approval of Council as to an employee of Council, including the Clerk of Council, and the Mayor as to an administrative employee in the classified or unclassified service may grant a leave of absence on account of sickness, disability, educational development or other reasons found to be in the mutual interest of the City and the employee. An employee shall request, in writing, all leaves of absences without pay. The request shall state reasons for taking a leave of absence and dates for which such leave is being requested. A personal leave of absence is subject to the following provisions:

(1) Length of leave. Personal leaves of absence may be granted for a maximum duration of six (6) months.

(2) Abuse of leave. If it is found that a leave of absence is not actually being used for the purpose for which it was granted, the Mayor, or the President of Council, may cancel the leave and direct the employee to report for work by giving written notice to the employee.

(3) Failure to return. An employee who fails to return to work within three (3) working days of the completion of, or the valid cancellation of a leave of absence without pay, may be removed from his or her position in accordance with the Ohio Revised Code if a classified employee, or at the discretion of the Mayor if an unclassified employee, or Council, if an employee of Council, including the Clerk of Council. An employee who timely fails to return from a leave of absence without pay and is subsequently removed from his or her position is deemed to have a termination date corresponding to the starting date of the leave of absence without pay.

(4) Return to service. Upon completion of a leave of absence without pay, the employee shall be returned to the same or similar position with the employee's former classification. If the employee's former classification no longer exists, the employee shall, with the approval of the Mayor, or the President of Council with the approval of Council as to employees of Council, including the Clerk of Council, be assigned to a position in a classification similar to that formerly occupied. The employee may be returned to active pay status prior to the original scheduled expiration of the leave if such earlier return is agreed to by both the employee and the Mayor or the President of Council.

(5) Civil service examinations. A provisional employee who is on leave of absence without pay is responsible for obtaining information about and participation in any test for the employee's classification during such leave and may be replaced from an eligibility list.

(6) Service credit. Authorized leaves of absence, without pay, shall not count as service credit for annual step increases, layoff purposes, and for computing the amount of vacation leave.

(7) Reporting leaves. The Mayor shall report to the Civil Service Commission the name of the classified employee who is on any leave of absence without pay which extends for one (1) pay period or longer and the subsequent return from such leave. Any leave of absence without pay shall be reported for an employee serving a probationary period.

(8) Probationary period of an employee on a leave of absence without pay. The period during which an employee is on a leave of absence without pay shall not be counted towards an employee's original or promotional probationary period.

(9) An employee on a leave of absence without pay shall not be entitled to earn credits toward sick time, vacation time and/or holidays.

(b) Pregnancy, Childbirth and Related Medical Conditions and Disabling Illness, Injury or Condition Not Covered by the Workers' Compensation Laws of the State of Ohio. Upon written request to the Mayor by an administrative employee or upon written request to the President of Council by an employee of Council including the Clerk of Council, a pregnant employee or a disabled employee with an illness, injury or condition not governed by the Workers' Compensation Laws of the State of Ohio shall be granted a leave of absence without pay subject to the following provisions:

(1) Length of leave. Leaves of absence shall be limited to the period of time that the pregnant or disabled employee is unable to perform the substantial and material duties of the employee's position but not to exceed six (6) months. This period may include predelivery, delivery and recovery time for the pregnant employee and recovery time for the disabled employee, as certified by a physician, which shall not in any case exceed six (6) months.

(2) Physicians certificate. A pregnant or disabled employee requesting a leave of absence without pay must present, at the time the request is made, a certificate stating that the probable period for which the employee will be unable to perform the substantial and material duties of the employee's position due to pregnancy, childbirth and related medical conditions or due to such disabling illness, injury or condition.

(3) Sick leave usage. Upon request, a pregnant or disabled employee shall be permitted to use any or all of the employee's accumulated sick leave credit for the period of time that the employee is unable to work as a result of pregnancy, childbirth or related medical conditions or as a result of such disabling illness, injury or condition.

(4) Vacation leave usage. Upon request, a pregnant or disabled employee shall be permitted to use any and all of the employees accumulated vacation leave at any reasonable time prior to or following childbirth or for the recovery time of the disabled employee.

(5) All of the terms, conditions and provisions of subsections (a)(2) through (a)(9) hereof shall apply to a pregnant or disabled employee in the classified service and all of the terms, conditions and provisions of such subsection (a) except subsections (a)(5) and (a)(7) hereof shall apply to a pregnant or disabled employee in the unclassified service.

(c) Medical Coverage. If requested by the employee, in writing, before the leave of absence is started, the City shall continue in effect any medical coverage for an employee during the period of a leave of absence permitted hereunder. However, an employee on a personal leave of absence shall reimburse the City for all medical coverage premiums paid for by the City during the leave of absence period permitted hereunder. An employee who is on a leave of absence as a result of a job related injury or illness and who is receiving Workers' Compensation temporary total disability benefits shall continue to receive medical coverage for a period not to exceed six (6) months.

(Ord. 89-10. Passed 6-17-91.)

143.29 UNAUTHORIZED LEAVE.

Employees absent from work without authorization shall be considered on unauthorized leave. An unauthorized leave for a period of three (3) or more assigned working days shall be considered as an automatic resignation from service with the City.
(Ord. 89-10. Passed 6-17-91.)

143.30 PAYMENT UPON SEPARATION.

Upon the separation of an employee from service, all sums earned and accrued and pursuant to this chapter, together with those sums resulting from pro-rations to the date of such separations shall be paid to:

(a) The employee;
(b) The next of kin of the deceased employee;
(c) Beneficiaries designated by an employee; or
(d) The estate of such employee.
(Ord. 89-10. Passed 6-17-91.)

143.31 TRAINING.

The City may pay directly or by reimbursement to an employee the direct or indirect cost for additional training as follows:

(a) Classes, seminars, training sessions or other learning experiences related to job performance, job efficiency or improved abilities of a City employee to perform his work which are authorized by the Mayor on recommendation of the director of the employing department or in the case of an employee of Council, including the Clerk of Council, which are authorized by the President of Council.
(b) Reimbursement shall include the cost of all tuition, books, study aids, and other required and necessary items pertaining to the class, seminar, training session or other learning experience shall be paid in full by the City upon presentation of a documented voucher indicating requirement of such expenditure.
(Ord. 89-10. Passed 6-17-91.)

143.32 PHYSICAL EXAMINATION.

(a) Every new employee of the City shall submit to a physical examination when required by division or department rule or regulation to determine fitness for the position.

(b) The Mayor shall designate the person who is to perform such physical examinations and the expenditure of the City funds from the correct account is hereby authorized.
(Ord. 89-10. Passed 6-17-91.)

143.33 TRANSFER OF BENEFITS.

Except for the credit allowed for the unused balance of accumulated sick leave provided for by Section 143.22 and the credit allowed for vacation leave provided in Section 143.23, no other benefits earned by a City employee while working for the State of Ohio or any of its political subdivisions can be transferred with such employee.
(Ord. 89-10. Passed 6-17-91.)

143.34 SURETY BONDS.

The official surety bond of the Finance Director and the Assistant Director of Finance is fixed at ten thousand dollars ($10,000) separately which is ordered procured and the premium therefor shall be paid by the City. A blanket surety bond is also ordered to protect the City in case of default by any other City employee, such bond being in the amount of twenty-five thousand dollars ($25,000) and the premium for which shall be paid for the City.
(Ord. 89-10. Passed 6-17-91.)

143.35 BI-WEEKLY COMPENSATION PAYMENT.

All salaries, wages and compensation of all employees, officials and members of boards and commissions and employees thereof shall be payable on a bi-weekly basis.
(Ord. 89-10. Passed 6-17-91.)

143.36 VOLUNTARY DEFERRED COMPENSATION PLAN.

Council hereby authorizes the Mayor and Finance Director to enter into a deferred compensation plan in substantially the form marked Exhibit "A" and attached to Ordinance 99-46 and made a part thereof as if fully rewritten therein. (Ord. 99-46. Passed 5-17-99.)

143.37 INCENTIVE COMPENSATION.

(a) The Director of Finance shall establish and institute an incentive compensation program for the purpose of encouraging the submission by all salaried officers, employees and regular hourly employees other than Directors, Commissioners and heads of the various departments, divisions and offices, and the assistants of the various Directors, Commissioners and heads of the various departments, divisions and offices of such suggestions as relate to the operations of the department, division or office to which an officer or employee is assigned which will reduce the cost of, without a reduction in the quality of, such City operations, or which will improve the quality of such City operations.

(b) Incentive compensation paid to a City employee shall be based upon the demonstrated cost savings for the twelve month period following the implementation of such suggestion. The Director shall provide, in writing, all information to the Board of Control which demonstrates the cost savings. The Board shall determine the amount, if any, of such incentive compensation which will be paid, provided that the amount, if any, of such incentive compensation to be paid for such suggestion shall not exceed twenty percent (20%) of the demonstrated cost savings, or two hundred fifty dollars ($250.00), whichever is less. The determination of the Board is final and not appealable.

(c) Incentive compensation shall be paid in one lump sum and shall be in addition to all other compensation paid to a City employee. The amount of incentive compensation as determined by the Board pursuant to subsection (b) hereof, shall be divided share and share alike for any suggestions submitted by two or more City employees either jointly or severally, but dated and submitted to the Director prior to the implementation thereof.
(Ord. 86-29. Passed 11-17-86.)

143.38 PICK-UP OF EMPLOYEE CONTRIBUTIONS TO PERS BY SALARIED EMPLOYEES AND ADMINISTRATORS.

(a) The City's method of payment of salary and the provision of fringe benefits to the classes of employees who are salaried employees or administrators and participants in the Ohio State Public Employees Retirement System ("PERS") are hereby modified as follows, in order to provide for a salary reduction pickup of employee contributions to PERS.

(b) The total annual salary and salary per pay period for each such employee shall be the salary otherwise payable under the applicable contracts and applicable City policies. Such total annual salary and salary per pay period of each employee shall be payable by the City in two parts: (1) deferred salary and (2) cash salary. An employee's deferred salary shall be equal to that percentage of such employee's total annual salary or salary per pay period which is required from time to time by PERS to be paid as an employee and shall be paid by the City to PERS on behalf of such employee as a pick-up and in lieu of the PERS employee contribution otherwise payable by such employee. An employee's cash salary shall be equal to such employee's total annual salary or salary per pay period less the amount of the pick-up for such employee and shall be payable, subject to applicable payroll deductions, to such employee. The City shall compute and remit its employer contributions to PERS based upon an employee's total annual salary or salary per pay period, including the aforesaid pick-up. The City's total combined expenditures for such employees' total salaries otherwise payable under their contracts and applicable City policies (including pick-up amounts) and its employer contributions to PERS shall not be greater than the amounts it would have paid for those items had this provision not been in effect.

(c) The pick-up shall be included in the employee's total annual salary for the purpose of computing daily rate of pay, for determining paid salary adjustments to be made due to absence, or for any similar purpose.

(d) Any pick-up by the City of an employee's contributions to PERS shall be mandatory for all of the employees previously described who are members of the PERS. No such member shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the City to PERS.

(e) The City shall fulfill its income tax reporting and withholding responsibilities for each employee in such manner as is required by applicable Federal, State and local laws and regulations as they may exist at the time of such reporting and withholding, it being the City's understanding that Federal and Ohio income tax laws and regulations presently require it to report as an employee's gross income his total annual salary less the amount of the pick-up while applicable municipal income tax laws require it to report as an employee's gross income his total annual salary including the amount of the pick-up.

(f) The Mayor, or his designee, is hereby directed to take all acts necessary and appropriate to initiate implementation of the provisions of this section, including but not limited to making applications to the board administering the PERS program to determine the requirements of that board in connection with such pick-up plan.

(g) The pick-up plan shall apply to all eligible employees who qualify under this section and the plan shall commence once the Internal Revenue Service has ruled that the City's plan meets the qualifications of Section 414(h)(2) of the Internal Revenue Code and Revenue Regulations 81-35 and 81-36.
(Ord. 86-39. Passed 7-14-86.)

143.39 PICK-UP OF EMPLOYEE CONTRIBUTIONS TO PERS AND PFDPF BY SERVICE EMPLOYEES, POLICEMEN AND FIREMEN.

(a) The City's method of payment of salary and the provisions of fringe benefits to all employees who are:

(1) Employed in the Department of Public Service and Development of the City and are members of PERS; and

(2) Employed as policemen or firemen and are members of PFDPF or PERS are hereby modified as follows, in order to provide for a salary reduction pick-up of employees contributions to PERS or PFDPF.

(b) The total annual salary and salary per pay period for each such employee shall be the salary otherwise payable under the applicable contracts and applicable City policies. Such total annual salary and salary per pay period of each employee shall be payable by the City in two parts: (1) deferred salary and (2) cash salary. An employee's deferred salary shall be equal to that percentage of such employee's total annual salary or salary per pay period which is required from time to time by PERS or PFDPF to be paid as an employee and shall be paid by the City to PERS or PFDPF on behalf of such employee as a pick-up and in lieu of the PERS or PFDPF employee contribution otherwise payable by such employee. An employee's cash salary shall be equal to such employee's total annual salary or salary per pay period less the amount of the pick-up for such employee and shall be payable, subject to applicable payroll deductions, to such employee. The City shall compute and remit its employer contributions to PERS or PFDPF based upon an employee's total annual salary or salary per pay period, including the aforesaid pick-up. The City's total combined expenditures for such employees' total salaries otherwise payable under their contracts and applicable City policies (including pick-up amounts) and its employer contributions to PERS or PFDPF shall not be greater than the amounts it would have paid for those items had this provision not been in effect.

(c) The pick-up shall be included in the employee's total annual salary for the purpose of computing daily rate of pay, for determining paid salary adjustments to be made due to absence, or for any similar purpose.

(d) Any pick-up by the City of an employee's contributions to PERS or PFDPF shall be mandatory for all of the employees previously described who are members of the PERS or PFDPF. No such member shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the City to PERS or PFDPF.

(e) The City shall fulfill its income tax reporting and withholding responsibilities for each employee in such manner as is required by applicable Federal, State and local laws and regulations as they may exist at the time of such reporting and withholding, it being the City's understanding that federal and Ohio income tax laws and regulations presently require it to report as an employee's gross income his total annual salary less the amount of the pick-up while applicable municipal income tax laws require it to report as an employee's gross income his total annual salary including the amount of the pick-up.

(f) The Mayor, or his designee, is hereby directed to take all acts necessary and appropriate to initiate implementation of the provisions of this resolution, including but not limited to making applications to the Internal Revenue Service and the Board administering the PERS or PFDPF programs to determine the requirements of the boards in connection with such pick-up plan.

(g) The pick-up plan shall apply to all eligible employees who qualify under this section and the plan shall commence with the first pay period following the passage and approval of this section.
(Ord. 88-53. Passed 11-7-88.)

CHAPTER 147
Senior Life Office

147.01 Director.
147.02 Advisory council.
147.03 Rules and regulations.
147.04 Reports to Council.

CROSS REFERENCES
Senior Life Director - see Chtr. Art. 5, §5A
Meals at cost for elderly - see Ohio R.C. 3313.81
Medical assistance program - see Ohio R.C. 5101.51
Federal supplements to aid - see Ohio R.C. 5101.53
Senior Citizen Housing District - see P. & Z. Ch. 1139

147.01 DIRECTOR.

A Director of the Fairview Park Senior Life Office shall be appointed by the Mayor. The Director shall have executive authority over the programs and activities. Under the authority and direction of the Mayor and Council, the Director shall:

(a) Be responsible for the development and adoption of all policies and rules governing the operation of the Senior Life Office and its services, provided that these do not conflict with provisions herein stated;

(b) Evaluate, initiate and co-ordinate City programs, services and activities for senior citizens;

(c) Determine the needs of senior citizens and actively pursue the fulfillment and satisfaction of those needs by responsible levels of government within the community;

(d) Determine that services and facilities provided, operated, contracted for or supported by the City for senior citizens are being operated in conformity with the rules and regulations established by the City;

(e) Disseminate information concerning senior citizens and establish and maintain a central clearinghouse of information at all levels of government that would be of interest or benefit to senior citizens;

(f) Preside over all meetings, including those of the advisory council provided for in Section 147.02. The Director shall schedule and preside at a general meeting open to the general public not less than once a month. Such meeting shall be for the purpose of discussing the activities, programs, requirements and needs of senior citizens;

(g) Encourage, promote and aid in the establishment of programs and services on a local level for the betterment of the living conditions of senior citizens by making it possible for them to enjoy and participate in family and community life; and

(h) Encourage senior citizens to maintain adequate physical, social and emotional regimens so that they can live dignified and independent lives.

(Ord. 80-32. Passed 6-16-80.)

147.02 ADVISORY COUNCIL.

There is hereby created a senior citizens advisory council to consist of seven members to be appointed by the Mayor for the following terms: two for a term expiring December 31, 1981; two for a term expiring December 31, 1982; and three for a term expiring December 31, 1983. Subsequent appointments to the council shall be for terms of three years each. Vacancies shall be filled for the remainder of an unexpired term in the same manner as the original appointments. The members of the council shall include representation of each duly-organized and existing senior organization in the City provided such member is a resident. All members of the council shall meet regularly with the Director of the Senior Life Office, who shall preside at all such meetings and have an active voice and vote in all matters that come before it. The advisory council shall make recommendations and proposals for programs, services and similar activities for the Senior Life Office. (Ord. 80-32. Passed 6-16-80.)

147.03 RULES AND REGULATIONS.

Council hereby establishes the following rules and regulations of the Senior Life Office:

(a) All programs and services offered or provided by the Senior Life Office shall be open and available to all residents, who are fifty-five years of age or older, except where legal requirements of a service or program mandate other age limits.

(b) No person shall be denied participation in or use of the facilities or services of any program authorized and approved by the Director of the Senior Life Office.

(c) No membership, affiliation or association shall be a prerequisite or condition precedent to participate in programs or facilities.

(d) All funds, including but not limited to program or activity receipts, gifts, income or donating received, delivered or paid to the Director shall be subject to the authority of the Director of Finance and shall be accounted for in a manner provided by law. (Ord. 80-32. Passed 6-16-80.)

(e) The Senior Life Office shall be open weekdays at such times as may be determined by the Director with the approval of the Mayor.

(Ord. 95-83. Passed 9-18-95.)

147.04 REPORTS TO COUNCIL.

The Director of the Senior Life Office shall report to Council twice annually, once in June and once in December, concerning the programs and activities of the Senior Life Office and provide an evaluation thereof and make such recommendations as deemed necessary therefore. (Ord. 80-32. Passed 6-16-80.)

CHAPTER 149
Fairview Park Youth Commission

149.01 Establishment.
149.02 Powers and duties.
149.03 Rules and regulations.
149.04 Reports.

149.01 ESTABLISHMENT.

There is hereby established a Fairview Commission on Youth Development which shall consist of six members, all residents of the City, to be appointed by the Mayor with the advice and consent of Council. Such members shall consist of three men and three women who shall serve for a term of two years, except that for original appointments implementing this section, three members shall serve for two-year terms and three members shall serve for one-year terms. Any vacancy shall be filled in the same manner as for an original appointment. Further, the Mayor shall designate the Juvenile Officer to serve as Advisory Officer who shall serve as personal representative of the Mayor. The Advisory Officer shall have no vote on the Commission except to break a tie vote, if necessary. All members of the Commission shall serve without compensation. (Ord. 84-69. Passed 5-6-85.)

149.02 POWERS AND DUTIES.

The Fairview Park Youth Commission shall meet as necessary, at least once a month, for the purpose of hearing and determining cases referred to it by the Police Department consistent with rules and regulations of the Commission. It shall advise the Police Chief of any action regarding cases which it deems appropriate by majority vote of the members. The meetings of the Commission shall not be subject to the provisions of Chapter 110 nor shall the records of the Commission be subject to public disclosure.
(Ord. 84-69. Passed 5-6-85.)

149.03 RULES AND REGULATIONS.

The Fairview Park Youth Commission shall adopt rules and regulations with respect to the conducting of meetings which shall be consistent with the purpose and intent of the powers and duties set forth in this chapter. The rules and regulations and any change therein shall not be effective unless and until approved by Council. The parents, guardian or person in local parentis of the minor and the minor must consent to the alternative procedure. Notification to and cooperation of the victim of the offense shall be secured by the Police Department. A president, recording secretary and public relations person of the Commission shall be elected by a majority of the members provided for at the first meeting of each calendar year.
(Ord. 84-69. Passed 5-6-85.)

149.04 REPORTS.

The Fairview Park Youth Commission shall file a written annual report with the Mayor and Council no later than the fifteenth day of January of each and every year, setting forth such details as Council and the Mayor may require of its activities for the previous year.
(Ord. 84-69. Passed 5-6-85.)

CHAPTER 150
Shade Tree Advisory Committee

150.01 Creation, composition, terms and vacancy.
150.02 Powers and duties.

CROSS REFERENCES
Tree injury - see GEN. OFF. 547.01
Tree nuisances - see GEN. OFF. 547.02
Planting trees - see GEN. OFF. 547.03
Dutch elm disease - see GEN. OFF. 547.07
Tree regulations - see S.U. & P.S. Ch. 905

150.01 CREATION, COMPOSITION, TERMS AND VACANCY.

(a) The Fairview Park Shade Tree Advisory Committee is hereby established. It shall consist of six resident members who hold no other public office or appointment. Three members shall be appointed by Council and three members shall be appointed by the Mayor. These members shall serve uncompensated. The City Arborist shall also serve as a full fledged member of the Committee with voting rights. The Committee shall meet at least once a year or as required by Council or the Administration. (Ord. 01-34. Passed 6-25-01.)

(b) The terms of the first appointed members shall be of such length and so arranged that the term of one member shall expire each year, and the members thereafter shall be appointed and shall hold office for terms of five years. Any vacancy occurring other than by expiration of term shall be filled for the unexpired portion of the term in the same manner as provided for original appointment.
(Ord. 91-20. Passed 4-15-91.)

150.02 POWERS AND DUTIES.

The Shade Tree Advisory Committee shall:

(a) Formulate and recommend to Council a Master Shade Tree Program for all major thoroughfares;

(b) Encourage the placement of specific trees according to their relation to nearby buildings and roads;

(c) Review and make recommendations to Council and the Administration regarding the situation of trees in each of the municipal properties;
(d) Promote and encourage the planting of trees throughout the City;
(e) Create and implement activities to increase the residents' awareness of the importance of trees for the community;
(f) Make recommendations to Council and the Administration regarding the preservation of existing trees; and
(g) Make recommendations consistent with the City's annual appropriations.

(Ord. 91-20. Passed 4-15-91.)

CHAPTER 151
Residential Child Day Care Services Resource Registry

151.01 Residential Child Day Care Services Resource Registry established.
151.02 Minimum provider requirements.
151.03 Provider - child ratio.
151.04 Safety provisions.
151.05 Emergency preparedness.
151.06 Program plan of the provider.
151.07 References.
151.08 Contract.
151.09 Compliance with Zoning Code requirements.
151.10 Application.

151.01 RESIDENTIAL CHILD DAY CARE SERVICES RESOURCE REGISTRY ESTABLISHED.

(a) There is hereby established a Residential Child Day Care Services Resource Registry in and for the City which shall include therein the names, addresses and telephone numbers of persons that offer child day care service from a residential premises in the City provided the minimum standards and requirements set forth in this chapter are met. The provider of the child day care service may also include in the Registry any valid credentials or certifications possessed by the provider.

(b) The Residential Child Day Care Services Resource Registry shall be maintained in such locations at City Hall as shall be determined by the Mayor and shall be available for inspection by any person during business hours of the City. The Registry shall be maintained and updated by such administrative employee as is designated by the Mayor.

(c) Inclusion of any provider in the Residential Child Day Care Services Resource Registry shall not constitute, directly or indirectly, certification, approval, recommendation as to suitability, evaluation of adequacy or suitability, or assumption of responsibility for compliance, regulation or education of any day care provider, nor for any loss, injury or damages which may arise out of or relate to the placement of any child with a day care provider, by the City, its officials, officers, employees or its agents.
(Ord. 89-98. Passed 10-1-90.)

151.02 MINIMUM PROVIDER REQUIREMENTS.

(a) "Provider" shall have the same meaning as set forth in Section 1149.18 of the Codified Ordinances.

(b) The provider shall be at least eighteen years of age with a minimum of six months experience in caring for children fourteen years of age or younger. Such experience may be obtained either as a parent, from employment, day care center observation, volunteer service, eighteen hours of in-service training or from some other similar activity.

(c) The provider shall have available for review by parents, guardians or person in loco parentis a letter dated and signed by a licensed physician attesting that the provider is in good physical and mental health and is able, from the perspective of the physician to care for children. The letter shall also indicate that the provider is free from all communicable diseases. Any other person eighteen years of age or older who will have regular contact with the children shall also make available a physician's letter providing the same information as that required of the provider. The medical letters required by this subsection shall be updated at least once every three years, unless medical conditions then existing require closer monitoring.

(d) The provider or other member of the premises present where children are being cared for shall attest that they have never been convicted of a felony, child abuse, child neglect, child endangerment or found by a court to be the cause of a child needing protective custody, and shall also consent to a record check by the Division of Police.

(e) The provider shall attest that the provider and any other persons visiting, assisting or residing on the premises shall not ingest alcohol or medicine while providing child day care service in anyway that impairs the ability to provide child day care service. The provider shall also attest that neither the provider or any person residing on the premises has an alcohol or drug of abuse addiction.

(f) The provider shall not practice any form of discrimination against families or children on account of race, creed, national origin, religion or sex.
(Ord. 89-98. Passed 10-1-90.)

151.03 PROVIDER - CHILD RATIO.

The provider shall agree to care for no more children than the number permitted by Section 1149.18 of the Codified Ordinances.
(Ord. 89-98. Passed 10-1-90.)

151.04 SAFETY PROVISIONS.

(a) The provider shall permit parents, guardians or other person in loco parentis to inspect the home for safety precautions. The provider shall remove or correct any safety hazard from both indoor and outdoor areas of the premises accessible to children including, but not limited to, placing all toxic, poisonous and dangerous substances and materials out of reach, removing sharp or dangerous objects, surfaces and hazards, repairing loose flooring or floor boards, and removing peeling and/or accessible lead paint.

(b) The provider shall have operable smoke and fire detectors, cover all electrical outlets, provide operable fire extinguishers in the kitchen and other appropriate areas, provide flashlights or other emergency lighting, and an emergency evacuation plan with alternative routes.

(c) Outdoor play areas shall be protected from traffic and other hazards including glass, construction materials, dangerous or sharp objects or equipment, standing water, animals and insects, and shall be enclosed in accordance with Section 1149.18 of the Codified Ordinances. All play equipment shall be kept safe.

(d) The home of the provider shall be maintained in compliance with the Exterior Property Maintenance, Housing and Fire Prevention Codes.
(Ord. 89-98. Passed 10-1-90.)

151.05 EMERGENCY PREPAREDNESS.

The provider shall obtain from each family, for each child, all of the following:

(a) A medical release, signed by a parent, guardian or person in loco parentis, to permit emergency medical care;

(b) The name and phone number of the physician and dentist of the child and, if necessary, permission to dispense any required medication;

(c) The phone numbers where parents, guardians or other person in loco parentis can be reached;

(d) The names and phone numbers of at least two other persons authorized by the parents, guardians or other person in loco parentis to care for the child in the event of an emergency or illness;

(e) Verification from a licensed physician that the child has had the immunizations required by the Ohio Department of Health and that the child is free from all communicable disease. The licensed physician shall also state what allergies the child has, if any;

(f) The provider shall maintain at least one operable telephone on the premises posting next to the telephone the fire, police, paramedic and poison control numbers as well as 9-1-1;

(g) The provider shall maintain a written emergency plan for substitute care in the event of a provider emergency and shall advise the parents, guardians or person in loco parentis of this plan. The emergency plan required by this subsection shall include the name, address and telephone number of at least two persons eighteen years of age or older who have previously agreed to provide emergency care and who can be contacted immediately and who can arrive at the premises within a limited period of time if needed;

(h) At no time shall the provider leave any child unattended or in the care of a minor. The provider shall arrange to notify all parents, guardians or person in loco parentis of any change in day care arrangements or substitute provider;

(i) The provider shall be trained in basic first aid, communicable disease, child abuse, early childhood training and shall have first aid supplies on the premises.
(Ord. 89-98. Passed 10-1-90.)

151.06 PROGRAM PLAN OF THE PROVIDER.

(a) The activities and the environment provided shall be conducive to the physical, social, emotional, creative and intellectual (including language development) well-being and development of the children in care. The provider shall advise the parents, guardians or person in loco parentis of the program of activities for the children.

(b) Where parents, guardians or other person in loco parentis does not provide meal(s), the provider shall serve nutritious, balanced meals appropriate quantitatively to each respective child at intervals appropriate to the length of stay. The provider shall advise the parents, guardians or other person in loco parentis of the meal menu.

(c) The provider shall not use physical punishment or harsh discipline in handling behavior problems but rather shall discuss any problems or occurrences with the parents, guardians or person in loco parentis as soon as practicable.

(d) Parents, guardians or other person in loco parentis shall have unlimited access to all areas of the premises used for child day care service and shall be permitted by the provider to contact their children on the premises.
(Ord. 89-98. Passed 10-1-90.)

151.07 REFERENCES.

The provider shall have available for review by parents, guardians or other person in loco parentis at least two letters of recommendation from persons unrelated to the provider who know the provider or who have had the opportunity to observe the provider.
(Ord. 89-98. Passed 10-1-90.)

151.08 CONTRACT.

The provider shall utilize a written document specifying therein the responsibilities of the provider, the fees and payment schedule for the child day care service, and a checklist of required information provided to and by both the provider and the parents, guardians or other person in loco parentis.
(Ord. 89-98. Passed 10-1-90.)

151.09 COMPLIANCE WITH ZONING CODE REQUIREMENTS.

The provider shall comply with each and every requirement of Section 1149.18 of the Codified Ordinances, including, but not limited to, the number of children on the premises at any one time, the hours of operation, enclosure of outdoor play areas and the inspections of the Building Commissioner and the Chief of the Fire Prevention Bureau.
(Ord. 89-98. Passed 10-1-90.)

151.10 APPLICATION.

Any provider desiring to include their name, address and telephone number as well as any valid credentials or certifications in the Residential Child Day Care Services Resource Registry shall complete an application on a form prescribed by the Director of Law containing all of the information and verification required by this chapter attested to by the provider. Upon the Director ascertaining that the form contains the information, verification and attestation required and that the Police Department has ascertained that the provider has not been convicted of a felony, child abuse, child neglect, child endangerment or the cause of a child needing protective custody, the name, address and telephone number as well as any valid credentials or certifications of the provider shall be included in the Residential Child Day Care Services Resource Registry. Should the application not contain all the information, verification and attestation required by this chapter or should the Police Department ascertain that the provider has been convicted of a felony, child abuse, child neglect, child endangerment or the cause of a child needing protective custody, the provider shall not be included in the Resource Registry. Any false, misleading or deceptive statement contained in the application or should there be failure to comply with any provision of this chapter by the provider or should there be a conviction of the provider of a felony, child abuse, child neglect, child endangerment or if the provider is found by a court to be the cause of a child needing protective custody shall result in the provider being deleted from the Resource Registry.

(Ord. 89-98. Passed 10-1-90.)

CHAPTER 153
Airport Environmental Commission

153.01 Establishment; composition; vacancy.

153.02 Powers and duties.

153.01 ESTABLISHMENT; COMPOSITION; VACANCY.

There is hereby established an Airport Environmental Commission which shall consist of five members, two to be appointed by the Mayor and three to be appointed by Council. Each member shall be appointed for a term of two years, except that one of the members first appointed by the Mayor and one of the members first appointed by Council shall be appointed for a term of one year. Any vacancy shall be filled in the same manner as the original appointment. All members of the Commission shall serve without compensation. No person appointed to the Commission shall hold other municipal office or employment.
(Ord. 89-84. Passed 12-4-89.)

153.02 POWERS AND DUTIES.

The Airport Environmental Commission shall have the following powers and duties:

(a) Elect from their number a chair and such other officers as they may determine;

(b) Adopt, and thereafter amend, bylaws for the regulation and conduct of its affairs;

(c) Review, advise and make recommendations to the Mayor and Council on all applications, plans, proposals and policies of Cleveland Hopkins International Airport relating to the development, redevelopment, construction, reconstruction, improvement, runway usage, operational changes or flight reorientation thereat as may affect the health, safety or welfare of the residents of the City, its institutions or its schools and to assist the Mayor and Council in the formulation of any response thereto;

(d) Assist the Mayor and Council in developing plans and proposals for presentation to the operator of Cleveland Hopkins International Airport to reduce the noise related to airport and aircraft operations over the City;

(e) Assist the Mayor and Council in informing the residents of the City on all applications, plans, proposals and policies of Cleveland Hopkins International Airport relating to the development, redevelopment, construction, reconstruction, improvement, runway usage, operational changes or flight reorientation thereat as may affect the health, safety and welfare of the residents of the City, its institutions or its schools; and

(f) Evaluate plans or programs which may be submitted by residents concerning the reduction of noise related to airport and aircraft operations over the City.

(Ord. 89-84. Passed 12-4-89.)

TITLE SEVEN - Taxation

Chap. 171. Admissions Tax.
Chap. 173. Income Tax.
Chap. 174. Income Tax Effective January 1, 2016.
Chap. 175. Motor Vehicle License Tax.

CHAPTER 171
Admissions Tax

171.01 Definitions.
171.02 Levy of tax; amount.
171.03 Exemptions.
171.04 Collection and remittance of tax; returns.
171.05 Inspection of books, records and accounts.
171.06 Interest for nonpayment on due date.
171.07 Certificate of registration.
171.08 Temporary or transitory amusement.
171.09 Rules and regulations; compliance required.
171.99 Penalty.

171.01 DEFINITIONS.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them in this section, unless the context clearly indicates a different meaning:

(a) "Admission charge", in addition to its usual and ordinary meaning, includes a charge made for season tickets or subscriptions; a cover charge or a charge made for use of seats and tables, reserved or otherwise, and similar accommodations; a charge made for food and refreshments in any place where any free entertainment, recreation or amusement is provided; a charge made for rental or use of equipment or facilities for purposes of recreation or amusement and, where the rental or use of equipment or facilities is necessary to the enjoyment of the privileges for which a general admission is charged, the combined charge shall be considered as the admission charge; a charge made for vehicle parking where the amount of the charge is determined according to the number of passengers in the vehicle; and a charge made and collected for the use or operation of a mechanical or electrically operated amusement device, whether by the payment of a fee or other things of value, or by the insertion of a coin, plate, disc, slug, key or token which thereby causes any person or operator to secure amusement, enjoyment or relaxation by its use or operation.

(b) "Finance Director" means the Finance Director of the City.

(c) "Place" includes, but is not restricted to, theaters, dance halls, amphitheaters, auditoriums, stadiums, athletic pavilions and fields, baseball and athletic parks, circuses, side shows, swimming pools, outdoor amusement perks and such attractions as merry-go-rounds, Ferris wheels, dodge-ems, roller coasters and observation towers and any place of business which displays for public patronage or keeps for operation by the public a mechanical or electrically operated amusement device.

(d) "Person" means any individual, receiver, assignee, firm, co-partnership, joint venture, company, joint stock company, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise. (Ord. 81-80. Passed 6-29-81.)

171.02 LEVY OF TAX; AMOUNT.

There is hereby levied and imposed upon every person who pays an admission charge to any place, including a tax on persons who are admitted free of charge or at reduced rates to any place for which other persons pay a charge or a regular higher charge for the same or similar privileges or accommodations:

(a) A tax of three percent on the amounts received for admission to any public or private place, including admission by season ticket, subscription or membership dues;

(b) A tax of three percent on the excess of the amounts received for tickets or cards of admission to theaters, operas and other places of amusement, sold at newsstands, hotels and places of amusement other than the ticket offices of such theaters, operas or other places of amusement, over and above the amounts representing the established price therefor at such ticket offices, such tax to be returned and paid in the manner provided in Section 171.04 by the persons selling the ticket;

(c) A tax of three percent on the amount received for admission to any public performance for profit at any roof garden, cabaret or other similar entertainment, in case the charge for admission is in the form of a service charge, cover charge or other similar charge;

(d) A tax of three percent on the amount received as annual membership dues by every club or organization maintaining a golf course, and a tax of three percent on greens fees collected by golf courses, either under club or private ownership; and

(e) A tax of three percent (3%) on the amount received for the operation or use of a mechanical or electrically operated amusement device, at whatever place located. (Ord. 78-6. Passed 3-20-78; Ord. 81-79. Passed 6-29-81.)

171.03 EXEMPTIONS.

(a) No tax shall be levied under this chapter with respect to any admission, all the proceeds of which inure:

(1) Exclusively to the benefit of religious, educational or charitable institutions, societies or organizations, if no part of the net earnings thereof inure to the benefit of any private stockholder or individual;

(2) Exclusively to the benefit of persons in the military or naval forces of the United States, or of National Guard organizations, reserve officer associations or posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units or societies are organized in the State and if no part of their net earnings inure to the benefit of any private stockholder or individual;

(3) Exclusively to the benefit of persons who serve in the military or naval forces of the United States and are in need;

(4) Exclusively to the benefit of members of the police or fire departments of any municipal corporation, or the dependents or heirs of such members;

(5) Exclusively to the benefit of the general revenue fund of any municipal corporation or exclusively to the benefit of any fund of any municipal corporation under the control of a recreation commission. This exemption from the tax, however, shall not be allowed in cases wherein the admission price is forty-one cents (41¢) or more.

(b) The exemption from tax provided by this section shall, however, not be allowed in case of admissions to wrestling matches, prize fights or boxing, sparring or other pugilistic matches or exhibitions, nor in the case of admissions to any athletic game or exhibition, the proceeds of which inure wholly or partly to the benefit of any high school, academy, preparatory or other school, in cases wherein the admission price is forty-one cents (41¢) or more, or wholly or partly to the benefit of any college or university.

(c) The exemption from tax provided in this section shall not be allowed to any institution, society or organization which does not control the sale of admissions to the event for which the exemption is requested, nor shall any exemption be allowed where talent, services or other items are compensated for on a percentage basis if such percentage results in a payment in excess of the flat rate ordinarily charged for the same talent, services or other items.

(d) Immediately after the event for which an exemption from admission tax has been allowed, the treasurer of the institution, society or organization for whose benefit such event was held shall file an itemized statement with the Finance Director, setting forth the amount of money actually received by such treasurer, together with the expenses of promoting and conducting such event. Such statement shall be used as a basis of subsequent requests for exemption from admissions tax for the benefit of such institution, society or organization, and if such statement shows a disproportionate expenditure for promoting and conducting such event, in relation to the profits, if any, no such exemption shall thereafter be allowed to such institution, society or organization. (1954 Code §3-3)

171.04 COLLECTION AND REMITTANCE OF TAX; RETURNS.

(a) Every person receiving any payment on which a tax is levied under this chapter shall collect the amount of the tax imposed from the person making the admission payment. The tax required to be collected under this chapter shall be deemed to be held in trust by the person required to collect the same until paid to the Finance Director as herein provided.

(b) Any person required to collect the tax imposed under this chapter who fails to collect the same, or having collected the same, fails to remit the same to the Finance Director in the manner prescribed by this chapter, whether such failure is the result of his own act or the result of acts or conditions beyond his control, shall nevertheless be personally liable to the City for the amount of such tax and shall, unless the remittance is made as herein required, be guilty of a violation of this chapter.

(c) The tax imposed hereunder shall be collected at the time the admission charge is paid by the person seeking admission to any place and shall be reported and remitted by the person receiving the tax to the Finance Director in monthly installments on or before the tenth day of the month next succeeding the end of the monthly period in which the tax is collected or received. Payment or remittance of the tax collected may be made by check, unless payment or remittance is otherwise required by the Finance Director, but payment by check shall not relieve the person collecting the tax from liability for payment and remittance of the tax to the Finance Director unless the check is honored and is in the full and correct amount.

(d) The person receiving any payment for admission shall make out a return upon such forms and setting forth such information as the Finance Director may require, showing the amount of the tax upon admissions for which he is liable for the preceding monthly period, and shall sign and transmit the same to the Finance Director with a remittance for such amount.

(e) The Finance Director may, in his discretion, require verified annual returns from any person receiving admission payments, setting forth such additional information as he may deem necessary to determine correctly the amount of tax collected and payable.

(f) Whenever any theater, circus, show, exhibition, entertainment or amusement makes an admission charge which is subject to the tax herein levied, and the same is of a temporary or transitory nature, of which the Finance Director shall be the judge, the Finance Director may require the report and remittance of the admission tax immediately upon the collection of the same, at the conclusion of the performance or exhibition, or at the conclusion of the series of performances or exhibitions, or at such other times as the Finance Director shall determine.

(g) Failure to comply with any requirement of the Finance Director as to report and remittance of the tax as required shall be a violation of this chapter.
(1954 Code §3-4)

171.05 INSPECTION OF BOOKS, RECORDS AND ACCOUNTS.

The books, records and accounts of any person collecting a tax herein levied shall, as to admission charges and tax collections, be at all reasonable times subject to examination and audit by the Finance Director. (1954 Code §3-5)

171.06 INTEREST FOR NONPAYMENT ON DUE DATE.

If the tax imposed by this chapter is not paid when due, there shall be added, as part of the tax, interest at the rate of one percent per month from the time when the tax became due until paid. (1954 Code §3-6)

171.07 CERTIFICATE OF REGISTRATION.

Any person conducting or operating any place for entrance to which an admission charge is made shall, on a form prescribed by the Finance Director, make application to and procure from the Finance Director a certificate of registration, the fee for which shall be one dollar ($1.00), which certificate shall continue valid until December 31 of the year in which issued. Such certificate of registration, or duplicate original copies thereof to be issued by the Finance Director without additional charge, shall be posted in a conspicuous place in each ticket or box office where tickets of admission are sold.
(1954 Code §3-7)

171.08 TEMPORARY OR TRANSITORY AMUSEMENT.

(a) Whenever a certificate of registration is obtained for the purpose of operating or conducting a temporary or transitory amusement, entertainment or exhibition by persons who are not the owners, lessees or custodians of the building, lot or place where the amusement is to be conducted, the tax imposed by this chapter shall be reported and remitted as provided in Section 171.04 by the owner, lessee or custodian, unless paid by the person conducting the amusement.

(b) The applicant for a certificate of registration for such purpose shall furnish with the application therefor the name and address of the owner, lessee or custodian of the premises upon which the amusement is to be conducted, and such owner, lessee or custodian shall be notified by the Finance Director of the issuance of such certificate and the joint liability for collection and remittance of such tax.
(1954 Code §3-8)

171.09 RULES AND REGULATIONS; COMPLIANCE REQUIRED.

(a) The Finance Director shall have the power to adopt rules and regulations not inconsistent with the terms of this chapter for carrying out and enforcing the payment, collection and remittance of the tax herein levied. A copy of such rules and regulations shall be published by posting the same for fifteen days in City Hall as designated by Charter Article IV, Section 11, for the posting of ordinances and resolutions.

(b) Failure or refusal to comply with any such rules and regulations shall be deemed a violation of this chapter.

(c) Until such time as rules and regulations are promulgated under this section, the rules and regulations of the Department of Taxation of the State, relating to admission taxes in effect oh August 31, 1947, except as such may conflict with the provisions of this chapter, shall be deemed to be the rules and regulations hereunder.
(1954 Code §3-9)

171.99 PENALTY.

Whoever violates any provision of this chapter shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both. Each day's continued violation shall constitute a separate offense.

CHAPTER 173
Income Tax

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PURPOSE

173.0101 PURPOSE FOR THE TAX LEVY.

To provide funds for the purpose of general Municipal operations, procurement of fixed assets or permanent improvements, payment of debt charges and for all other lawful purposes of the City there is levied a tax on all salaries, wages, commissions and other compensation and on net profits as hereinafter provided.
(Ord. 89-21. Approved by Electors 5-2-89.)

173.0102 ADDITIONAL PURPOSES.

To provide funds for the purpose of acquiring, constructing, operating, maintaining and otherwise improving permanent improvements and their sites, including recreational facilities as an integral part of a cooperative project with the Fairview Park City School District, and paying debt charges related thereto. (Ord. 04-54. Passed 3-21-05.)

DEFINITIONS

173.0301 DEFINITIONS GENERALLY.
For purposes of this chapter certain terms, phrases, words and their derivatives have the meanings designated in Section 173.0302 through 173.0320. The singular includes the plural and the masculine includes the feminine and the neuter.
(Ord. 66-67. Passed 12-19-66.)

173.0302 DIRECTOR OF FINANCE.
"Director of Finance" means the individual designated to administer and enforce the provisions of the City Income Tax.
(Ord. 66-67. Passed 12-19-66.)

173.0303 ASSOCIATION.
"Association" means any partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.
(Ord. 66-67. Passed 12-19-66.)

173.0304 BOARD OF REVIEW.
"Board of Review" means the Board created by and constituted as provided in Section 173.2501. (Ord. 66-67. Passed 12-19-66.)

173.0305 BUSINESS.
"Business" means any enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity, excluding however, all nonprofit corporations which are exempt from the payment of Federal income tax.
(Ord. 66-67. Passed 12-19-66.)

173.0306 CORPORATION.
"Corporation" means a corporation or joint stock association organized under the laws of the United States, the State of Ohio or any other state, territory or foreign country or dependency.
(Ord. 66-67. Passed 12-19-66.)

173.0307 EMPLOYEE.
"Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.
(Ord. 66-67. Passed 12-19-66.)

173.0308 EMPLOYER.
"Employer" means an individual, partnership, association, corporation, government body, unit or agency or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other basis of compensation.
(Ord. 66-67. Passed 12-19-66.)

173.0309 FISCAL YEAR.
"Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31. (Ord. 66-67. Passed 12-19-66.)

173.0310 GROSS RECEIPTS.
"Gross receipts" means the total income from any source whatever.
(Ord. 66-67. Passed 12-19-66.)

173.0311 NET PROFITS.
"Net profits" means a gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes without deduction of taxes imposed by this chapter, Federal, State and other taxes based on income; and in the case of an association, without deduction of salaries paid to partners and other owners. (Ord. 66-67. Passed 12-19-66.)

173.0312 NONRESIDENT.
"Nonresident" means an individual domiciled outside the City.
(Ord. 66-67. Passed 12-19-66.)

173.0313 NONRESIDENT UNINCORPORATED BUSINESS ENTITY.
"Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the City.
(Ord. 66-67. Passed 12-19-66.)

173.0314 PERSON.
"Person" means every natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity, means the partners or members thereof, and as applied to corporations, the officers thereof. (Ord. 66-67. Passed 12-19-66.)

173.0315 PLACE OF BUSINESS.
"Place of business" means any bona fide office, other than a mere statutory office, factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance. (Ord. 66-67. Passed 12-19-66.)

173.0316 RESIDENT.
"Resident" means an individual domiciled in the City.
(Ord. 66-67. Passed 12-19-66.)

173.0317 RESIDENT UNINCORPORATED BUSINESS ENTITY.
"Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City.
(Ord. 66-67. Passed 12-19-66.)

173.0318 TAXABLE INCOME.

"Taxable income" means wages, salaries, and other compensation paid by an employer or employers before any deduction and/or net profits from the operation of a business, profession or other enterprise or activity, including income from gaming, wagering and lottery winnings in excess of one thousand dollars ($1,000) adjusted in accordance with the provisions of this chapter. Lottery winnings shall include but not be limited to the Ohio State Lottery (including all Ohio State Lottery games); and other state and multi-state lotteries.
(Ord. 04-11. Passed 2-17-04.)

173.0319 TAXABLE YEAR.

"Taxable year" means the calendar year, or the fiscal year, upon the basis of which the net profits are to be computed under this chapter, and in the case of a return for a fractional part of a year, the period for which such return is required to be made.
(Ord. 66-67. Passed 12-19-66.)

173.0320 TAXPAYER.

"Taxpayer" means a person, whether an individual, partnership, association or any corporation or other entity, required hereunder to file a return or pay a tax.
(Ord. 66-67. Passed 12-19-66.)

173.0321 MANAGER.

"Manager" means any of the employer's officers, responsible persons, employees having control or supervision, and employees charged with the responsibility of filing the return, paying taxes and otherwise complying with this chapter.
(Ord. 84-70. Passed 4-15-85.)

173.0322 FUNDAMENTAL CHANGE.

"Fundamental change" means any substantial alteration by an employer including liquidation, dissolution, bankruptcy and reorganizations such as merger, consolidation, acquisition, transfer or change in identity, form or organization.
(Ord. 84-70. Passed 4-15-85.)

IMPOSITION OF INCOME TAX

173.0501 RATE AND INCOME TAXABLE.

An annual tax for the purposes specified in Sections 173.0101 and 173.0102 shall be imposed on and after January 1, 2014, at the rate of two percent (2%) per annum until December 31, 2021, on which date the tax rate shall revert back to one and three-quarters percent (1.75%) upon the following: (Ord. 13-21. Passed 5-20-13.)

(a) On all salaries, wages, commissions and other compensation earned on or after July 1, 1989, by residents of the City;

(b) On all salaries, wages, commissions and other compensation earned on or after July 1, 1989, by nonresidents of the City for work done or services performed or rendered within the City;

(c) (1) On the portion attributable to the City on the net profits earned on and after July 1, 1989, of all resident unincorporated business entities or professions or other activities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City;

(2) On the portion of the distributive share of the net profits earned on and after July 1, 1989, of a resident partner or owner of a resident unincorporated business entity not attributable to the City and not levied against such unincorporated business entity by the City;

(d) (1) On the portion attributable to the City of the net profits earned on or after July 1, 1989, of all nonresident unincorporated business entities, professions or other activities, derived from sales made, work done, services performed or rendered and business and other activities conducted in the City, whether or not such unincorporated business entity has an office or place of business in the City;

(2) On the portion of the distributive share of the net profits earned on or after July 1, 1989, of a resident partner or owner of a nonresident unincorporated business entity not attributable to the City and not levied against such unincorporated business entity by the City;

(e) On the portion attributable to the City of the net profits earned on or after July 1, 1989, of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the City, whether or not such corporations have an office or place of business in the City.

(f) On the portion attributable to the City pursuant to the terms of this chapter and including:

(1) "Royalty income" means income earned by a taxpayer from a royalty interest in the production of an oil or gas well whether managed, extracted or operated by the taxpayer individually or through an agent or other representative, shall be included in the computation of net profits from a business activity to the extent that such royalty interest constitutes a business activity of the taxpayer.

Where the gross income received by a taxpayer from a royalty interest in the production of an oil or gas well in a taxable year exceeds three thousand dollars ($3,000), it shall be prima facie evidence that the income was derived from a business activity of such taxpayer and the net income from such royalty interest shall be subject to tax.

(2) The employer's income derived from finance and carrying charges associated with their consumer's accounts receivable.

(Ord. 04-54. Passed 3-21-05.)

173.0502 EFFECTIVE PERIOD.

The income tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of businesses, professions or other activities earned on and after January 1, 1967.

(Ord. 66-67. Passed 12-19-66.)

DETERMINATION OF ALLOCATION OF TAX

173.0701 METHOD OF DETERMINATION.

In the taxation of income which is subject to the City income tax, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of the City shall disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the City, then only that portion shall be considered as having a taxable situs in the City for the purposes of Municipal income taxation. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the City, in the absence of actual records thereof, shall be determined as follows:

Multiply the entire net profits by a business allocation percentage to be determined by a three-factor formula of property, payroll and sales, each of which shall be given equal weight as follows:

(a) The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City during the taxable period to the average net book value of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated;

As used in subsection (a) hereof, "real property" includes property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.

(b) Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the City to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed;

(c) Gross receipts of the business or profession, from sales made and services performed during the taxable period in the City to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

In the event that the above allocation formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such result.
(Ord. 66-67. Passed 12-19-66.)

173.0702 SALES MADE IN THE CITY DEFINED.

As used in subsection (c) of Section 173.0701 "sales made in the City" means:

(a) All sales of tangible personal property which is delivered within the City regardless of where title passes if shipped or delivered from a stock of goods within the City;

(b) All sales of tangible personal property which is delivered within the City regardless of where title passes even though transported from a point outside the City if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion;

(c) All sales of tangible personal property which is shipped from a place within the City to purchasers outside of the City regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.
(Ord. 66-67. Passed 12-19-66.)

173.0703 TOTAL ALLOCATION.

Add together the percentages determined in accordance with subsections (a), (b) and (c) of Section 173.0701 or such of the percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in deriving the total in order to obtain the business allocation percentage referred to in Section 173.0701.

A factor is applicable even though it may be allocable entirely in or outside the City. (Ord. 66-67. Passed 12-19-66.)

173.0704 RENTALS.

(a) Rental income received by a taxpayer shall be included in the computation of net profits from business activities under subsections (c) through (e) of Section 173.0501, only if and to the extent that the rental ownership, management or operation of the real estate from which such rentals are derived, whether so rented, managed or operated by a taxpayer individually or through agents or other representatives, constitutes a business activity of the taxpayer in whole or in part.

(b) Where the gross monthly rental of any and all real properties, regardless of number and value, aggregates in excess of two hundred fifty dollars ($250.00) per month, it shall be prima-facie evidence that the rental, ownership, management or operation of such properties is a business activity of the taxpayer, and the net income of such rental property shall be subject to tax; provided that in the case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds two hundred fifty dollars ($250.00) per month; and provided further that a person who operates a licensed rooming house shall be considered in business whether or not the gross income exceeds two hundred fifty dollars ($250.00) per month. (Ord. 72-10. Passed 4-17-72.)

173.0705 OPERATING LOSS-CARRY FORWARD.

(a) The portion of a net operating loss sustained in any taxable year subsequent to January 1, 1967, allocable to the City may be applied against the portion of the profit of succeeding tax years allocable to the City until exhausted but in no event for more than five taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

(b) The portion of net operating loss sustained shall be allocated to the City in the same manner as provided herein for allocating net profits to the City.

(c) The Director of Finance shall provide by rules and regulations the manner in which such net operating loss carry-forward shall be determined.
(Ord. 66-67. Passed 12-19-66.)

EXEMPTIONS

173.0901 SOURCES OF INCOME NOT TAXED.

The City income tax shall not be levied on the following:

(a) Pay or allowance of active members of the Armed Forces of the United States or income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property or tax-exempt activities;

(b) Poor relief, unemployment insurance benefits, old age pensions or similar payments including disability benefits received from local, state or Federal governments or charitable, religious or educational organizations;

(c) Proceeds of insurance paid by reason of the death of the insured; pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived;

(d) Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations;

(e) Alimony received;

(f) Personal earnings of any natural person under eighteen years of age;

(g) Compensation for personal injuries or for damages to property by way of insurance or otherwise;

(h) Interest, dividends and other revenue from intangible property;

(i) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State of Ohio from which the City is specifically prohibited from taxing, and income of a decedent's estate during the period of administration, except such income from the operation of a business;

(j) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce;

(k) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City to impose net income taxes. (Ord. 66-67. Passed 12-19-66.)

RETURNS

173.1101 WHEN RETURN REQUIRED TO BE MADE.

Each taxpayer, shall, whether or not a tax is due thereon, make and file a return on or before April 30 of the year following the effective date of this section and on or before April 30 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of the fiscal year or period.

Any person who has no taxable income need not file an annual return. Any person who has exempt income must file a return and declare to the Director of Finance the nature of his exemption. Any person who has taxable income must file a tax return with the Director of Finance. (Ord. 84-72. Passed 4-15-85.)

173.1102 FORM AND CONTENT OF RETURN.

The return shall be filed with the Director of Finance on a form furnished by or obtainable upon request from the Director setting forth:

(a) The aggregate amount of salaries, wages, commissions and other compensation earned and gross income from business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to this tax;

(b) The amount of the tax imposed by this chapter on such earnings and profits; and

(c) Such other pertinent statements, information returns or other information as the Director may require.

(Ord. 66-67. Passed 12-19-66.)

173.1103 EXTENSION OF TIME FOR FILING RETURNS.

The Director of Finance may extend the time for filing of an annual return upon the request of the taxpayer for a period of not to exceed six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal income tax returns. The Director may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended. (Ord. 66-67. Passed 12-19-66.)

173.1104 CONSOLIDATED RETURNS.

(a) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by the Director of Finance.

(b) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the City constituting a portion only of its total business, the Director shall require such additional information as he may believe necessary to ascertain whether net profits are properly allocated to the City. If the Director finds that net profits are not properly allocated to the City by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he shall make such allocation as he believes appropriate to produce a fair and proper allocation of net profits to the City.
(Ord. 66-67. Passed 12-19-66.)

173.1105 AMENDED RETURNS.

(a) Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements, limitations, or both, contained in Sections 173.1701, 173.1702, 173.1703 and 173.1902. The amended return shall be on a form obtainable on request from the Director of Finance. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

(b) Within three months from the final determination of any Federal tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City return showing income subject to the City tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.
(Ord. 66-67. Passed 12-19-66.)

PAYMENT OF TAX

173.1301 PAYMENT OF TAX ON FILING OF RETURNS.

(a) The taxpayer making a return shall, at the time of filing, pay to the Director of Finance the amount of taxes shown as due thereon; provided, however, that:

(1) Where any portion of the tax so due has been deducted at the source pursuant to the provisions of Section 173.1302; or

(2) Where any portion of the tax has been paid by the taxpayer pursuant to the provisions of Section 173.1303; or

(3) Where an income tax has been paid on the same income to another municipality, credit for the amount so deducted or paid, or credit to the extent provided for in Section 173.1902, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing the return.

(b) A taxpayer who has overpaid the amount of tax to which the City is entitled under the provisions of this chapter may have such overpayment applied against any subsequent liability hereunder or, at his election indicated on the return, such overpayment or part thereof shall be refunded, provided that no additional taxes or refunds of less than one dollar ($1.00) shall be collected or refunded.

(c) If any employer which is liable for tax obligations imposed by this chapter undergoes a fundamental change, then the employer and its manager shall be liable for taxes due up to the date of the fundamental change. Taxes and final returns shall be due immediately after the fundamental change. Any successor employer shall withhold from any purchase price that the successor owes to the predecessor an amount sufficient to pay all unpaid taxes, interest and penalty which the predecessor employer owes pursuant to this chapter. The successor employer shall make such withholding until such time that the predecessor employer has paid such taxes, interest and penalties. If the successor fails to withhold such amount, then the successor and, in a personal manner, the successor's manager shall be jointly and severally liable for the payment of such taxes, interest and penalty.
(Ord. 84-73. Passed 4-15-85.)

173.1302 COLLECTION AT SOURCE.

(a) In accordance with rules and regulations prescribed by the Director of Finance, each employer within or doing business within the City shall deduct at the time of the payment of such salary, wages, commissions or other compensation, the tax of one and one-quarter percent (1-1/4%) (unless a different tax rate is imposed in Section 173.0501) per year of the gross salaries, wages, commissions or other compensation due by the employer to the employee, and shall, on or before the last day of each month, make a return and pay to the Director the amount of taxes so deducted during the previous month. However, if the amount of the tax so deducted by any employer in any one month is less than one hundred dollars ($100.00), the employer may defer the filing of a return and payment of the amount deducted until the last day of the month following the end of the calendar quarter in which such month occurred.

(b) Returns shall be on a form or forms prescribed or acceptable to the Director and shall be subject to the rules and regulations prescribed by the Director. Such employer shall be liable for the payment of the tax required to be deducted and withheld whether or not such taxes have, in fact, been withheld.

(c) The employer in collecting the tax shall be deemed to hold the same until payment is made by such employer to the City as a trustee for the benefit of the City, and any such tax collected by such employer from his employees shall, until the tax is paid to the City, be deemed a trust fund in the hands of such employer.

(d) No person shall be required to withhold the tax on wages or other compensation paid domestic servants employed by him exclusively in or about such person's residence, even though such residence is in the City, but such employee shall be subject to all of the requirements of this chapter.

(e) Manager's Obligation.

(1) Every manager is deemed to be a trustee of the City in collecting and holding the tax required under this chapter to be withheld, and the funds so collected by such withholding are deemed to be trust funds. Every manager is liable directly to the City for payment of such trust, whether actually collected by such employer or not. Any tax deducted and withheld is to be considered paid to the City, whether or not the employer actually remits the tax to the City, for purposes of determining employee payments or credits.

(2) All managers shall be personally liable to the extent of the tax, interest and penalty, jointly and severally, for failure to file the employer's return or to pay the employer's tax, interest and penalty as required under this chapter.

(3) No change in structure by an employer, including a fundamental change, discharges its managers from liability for the employees' or managers' failure to remit funds held in trust, to file a tax return or to pay taxes.

(Ord. 84-74. Passed 4-15-85.)

173.1303 DECLARATION OF INCOME.

Except as provided in this chapter, every person shall file a declaration setting forth taxable income, including distributive shares of net profits of unincorporated business entities, estimated to be earned by the taxpayer during the current tax year, together with the estimated tax due thereon, less tax withheld within the City, less the tax credit allowed in Section 173.1902 hereof, unless such taxpayer anticipates that such tax will be fully withheld within the City, and any income earned outside of the City will be fully taxed at the same or higher rate of tax in another municipality. If the estimated tax for the current year, less the tax to be withheld and less such tax credit, amounts to not more than ten dollars ($10.00), no declaration or payment of estimated tax is required. (Ord. 73-81. Passed 11-19-73.)

173.1304 FILING OF DECLARATION.

(a) The declaration required by Section 173.1303 shall be filed on or before April 30 of each year during the effective period set forth in Section 173.0502 or within four months of the date the taxpayer becomes subject to the tax for the first time.

(b) Those taxpayers reporting on a fiscal year basis shall file a declaration within four months after the beginning of each fiscal year or period.

(Ord. 66-67. Passed 12-19-66.)

173.1305 FORM OF DECLARATION.

(a) The declaration required by Section 173.1303 shall be filed upon a form furnished by or obtainable from the Director of Finance. As provided in Section 173.1303, credit shall be taken for the City of Fairview Park tax to be withheld from any portion of such income and credit shall be taken for tax to be paid or withheld and remitted to another taxing municipality, in accordance with the provisions of Section 173.1902.

(b) The original declaration or any subsequent amendment thereof may be increased or decreased on or before any subsequent quarterly payment date as provided for herein.
(Ord. 71-54. Passed 12-6-71.)

173.1306 PAYMENT TO ACCOMPANY DECLARATION.

The declaration of estimated tax to be paid to the City shall be accompanied by a payment of at least one-fourth of the estimated annual tax and at least a similar amount shall be paid on or before the last day of the seventh and tenth months after the beginning of the taxable year, and on or before the last day of the first month of the succeeding year following the taxable year. However, in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment date.
(Ord. 73-81. Passed 11-19-73.)

173.1307 ANNUAL RETURN.

On or before the last day of the fourth month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City shall be paid therewith in accordance with the provisions of Section 173.1301. However, any taxpayer may file, on or before the last day of the first month of the year following that for which such declaration or amended declaration was filed, an annual return and pay any balance due at such time, in lieu of filing a declaration or an amended declaration, and in lieu of paying the final quarterly installment based upon a declaration or amended declaration of estimated tax. (Ord. 71-54. Passed 12-6-71.)

INTEREST AND PENALTIES

173.1501 INTEREST ON UNPAID TAX.

All taxes imposed and all moneys withheld or required to be withheld by employers and all installments of estimated taxes required to be paid under the provisions of this chapter and remaining unpaid after they become due shall bear interest at the rate of six percent (6%) per year.
(Ord. 71-54. Passed 12-6-71.)

173.1502 PENALTIES ON UNPAID TAX.

In addition to interest as provided in Section 173.1501, penalties based on the unpaid tax or installments of estimated tax are hereby imposed as follows:

(a) For failure to pay taxes or estimated taxes due, other than taxes withheld: ten percent (10%) per year, but not less than twenty-five dollars ($25.00).

(b) For failure to remit taxes withheld from employees: ten percent (10%) per month or fraction thereof, but accumulated penalty shall not exceed fifty percent (50%) of any unpaid amount and shall not be less than fifty dollars ($50.00) for the first offense and one hundred dollars ($100.00) for each offense thereafter.

(Ord. 84-75. Passed 4-15-85.)

173.1503 EXCEPTIONS.

A penalty shall not be assessed on any additional tax assessment against a taxpayer made by the Director of Finance when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Director. In the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, providing an amended return is filed and the additional tax is paid within three months after a final determination of the Federal tax liability.

(Ord. 66-67. Passed 13-19-66.)

173.1504 ABATEMENT OF INTEREST AND PENALTY.

Upon recommendation of the Director of Finance, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Director to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest, or both, for good cause shown. (Ord. 66-67. Passed 12-19-66.)

173.1505 VIOLATIONS AND PENALTY.

Any person who shall:

(a) Fail, neglect or refuse to make any return or declaration required by this chapter;

(b) Make any incomplete, false or fraudulent return;

(c) Intentionally or willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;

(d) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Director of Finance;

(e) Refuse to permit the Director, or any duly authorized agent or employee to examine his books, records, papers and Federal income tax returns relating to the income or net profits of a taxpayer;

(f) Fail to appear before the Director and to produce his books, records, papers or Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Director;

(g) Refuse to disclose to the Director any information with respect to the income or net profits of a taxpayer;

(h) Fail to comply with the provisions of this chapter or any order or subpoena of the Director authorized hereby;

(i) Give to any employer false information as to his true name, correct social security number and residence address or fails to promptly notify an employer of any change in residence address and date thereof;

(j) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and City tax withheld, or knowingly gives the Director false information; or

(k) Attempt to do anything to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter; shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both, for each offense.

(Ord. 84-76. Passed 4-15-85.)

173.1506 LIMITATION ON PROSECUTION.

All prosecutions under this chapter shall be commenced within the time prescribed by Ohio R.C. 718.06.

173.1507 FAILURE TO PROCURE FORMS NOT EXCUSE.

The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return, return or declaration, from filing such form or from paying the tax.

(Ord. 66-67. Passed 12-19-66.)

COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

173.1701 UNPAID TAXES RECOVERABLE AS OTHER DEBTS.

All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, of omission of a substantial portion of income subject to this tax, or of failure to file a return, an additional assessment shall not be made after three years from the time the return was filed, whichever is later. However, in those cases in which a Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitations, the period within which an additional assessment may be made by the Director of Finance shall be one year from the time of the final determination of the Federal tax liability.

(Ord. 66-67. Passed 12-19-66.)

173.1702 REFUNDS OF TAXES ERRONEOUSLY PAID.

Taxes erroneously paid shall not be refunded unless a claim for refund is made within the time prescribed by Ohio R.C. 718.06.

173.1703 AMOUNTS OF LESS THAN ONE DOLLAR.

Amounts of less than one dollar ($1.00) shall not be collected or refunded.

(Ord. 66-67. Passed 12-19-66.)

TAX RELIEF AND RECIPROCITY

173.1902 TAX CREDIT.

(a) Effective July l, 1989, when the taxable income of a resident of the City of Fairview Park is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such resident shall be allowed a credit of the amount of income tax paid on such taxable income to the other municipality, equal to seventy-five percent (75%) of the amount obtained by multiplying the lower of the tax rate of such other municipality or of the City of Fairview Park by the taxable income earned in or attributable to the municipality of employment or business activity, but in any event, such credit shall not be applied to a rate in excess of one and one-quarter percent (1.25%) of the taxable income earned or attributable to the municipality of employment or business activity. For the purposes of this section, "taxable income" includes the distributive share of net profits of a resident partner or owner of an unincorporated business entity.

(b) A claim for credit or refund under this section shall be made in such manner as the Director of Finance may by regulation provide. In the event such City resident fails, neglects or refuses to file an annual return or declaration on the form prescribed by the Director, he shall not be entitled to such credit or refund and shall be considered in violation of this chapter for failure to file a return. (Ord. 89-25. Passed 5-1-89.)

DISBURSEMENT OF RECEIPTS OF TAX COLLECTION

173.2101 DISBURSEMENT OF FUNDS COLLECTED.

The funds collected under the provisions of this chapter shall be disbursed in the following manner:

(a) First, such part of the funds as is necessary to defray all expenses of collecting the tax and of administering and enforcing the provisions of this chapter shall be paid.

(b) After payment of the expenses referred to in subsection (a) hereof, one hundred percent (100%) of the proceeds of the one and one-quarter percent (1.25%) income tax levy shall provide funds for the purpose of Section 173.0101. Until December 31, 2005, one hundred percent (100%) of the proceeds from the one-quarter percent (.25%) income tax levy shall be deposited in a special fund to be used primarily to pay the costs of the resurfacing and rehabilitation of City streets as determined by the City Engineer, the balance remaining in the special fund may be used for motor vehicle and equipment acquisitions, and to pay principal of and interest on general obligation bonds and bond anticipation notes issued by the City `to pay the costs of permanent improvements. One hundred percent (100%) of the proceeds of the one-half percent (.50%) income tax levy shall provide funds for the purpose of Section 173.0102.

(c) Funds reserved for the streets purposes as set forth in subsection (b) hereof shall not include any cost associated with or attributable to the compensation, salary, wages, benefits and all other terms, conditions and privileges of employment of any municipal employee.

(Ord. 04-54. Passed 3-21-05.)

DUTIES AND AUTHORITY OF DIRECTOR OF FINANCE

173.2301 DUTY TO RECEIVE TAX IMPOSED.

It shall be the duty of the Director of Finance to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers, to keep accurate records thereof and to report all moneys so received. (Ord. 66-67. Passed 12-19-66.)

173.2302 DUTY TO ENFORCE COLLECTION.

It shall be the duty of the Director of Finance to enforce payment of all taxes owing to the City; to keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration and make any return, or both, including taxes withheld; and to show the dates and amounts of payments thereof.
(Ord. 66-67. Passed 12-19-66.)

173.2303 AUTHORITY TO MAKE AND ENFORCE REGULATIONS.

The Director of Finance is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.
(Ord. 66-67. Passed 12-19-66.)

173.2304 AUTHORITY TO ARRANGE INSTALLMENT PAYMENTS.

The Director of Finance is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Director that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under this chapter.

Failure to make any deferred payment when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections 173.1701 and 173.1505 of this chapter shall apply.
(Ord. 66-67. Passed 12-19-66.)

173.2305 AUTHORITY TO DETERMINE AMOUNT OF TAX DUE.

(a) Preparation of Return by Director of Finance. If any taxpayer fails to file a tax return which is required by City ordinance within the time prescribed therefor but consents to disclose all information necessary to the preparation thereof, then the Director of Finance may prepare such return which, after being signed by such person, may be received by the Director of Finance as the return of such person.

(b) Execution of Return by Director of Finance. If any taxpayer fails to file a tax return which is required by City ordinances within the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, then the Director of Finance shall make in a reasonable manner such return from his own knowledge and from such information as he can obtain throughout testimony or otherwise.

(c) Assessment of a Taxpayer by Director of Finance. The Director of Finance may calculate and assess any taxpayer for the amount of tax, penalty and interest which is imposed by City ordinance and which is due and owing. Such assessment shall be made by the Director of Finance issuing summary records to the last known address of the taxpayer of the assessment. This summary shall include the identification of the taxpayer, the character of the liability assessed, the taxation period and the amount of the assessment.

(d) Status of Executed Returns and Assessments. Any return executed by or any assessment made by the Director of Finance pursuant to City ordinances shall be prima-facie good and sufficient for all legal purposes. The Director of Finance may execute supplemental tax returns and may issue supplemental assessments whenever the Director of Finance has knowledge derived from any source including the taxpayer's financial data that any executed tax return or assessment is imperfect or incomplete in any material respect.

(e) Limitation of Prosecutions. Neither the Director of Finance's execution of a return nor the Director of Finance's assessment of a taxpayer shall start the running of the period of limitations on prosecutions set forth elsewhere in City ordinances.
(Ord. 84-77. Passed 4-15-85.)

173.2306 AUTHORITY TO MAKE INVESTIGATIONS.

The Director of Finance, or any authorized employee, is hereby authorized to examine the books, papers, records and Federal income tax returns of any employer or of any taxpayer or person subject to, or whom the Director believes is subject to the provisions of this chapter, or the purpose of verifying the accuracy of any return made, or if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request by the Director or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.
(Ord. 66-67. Passed 12-19-66.)

173.2307 AUTHORITY TO COMPEL PRODUCTION OF RECORDS.

The Director of Finance is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and Federal income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to the inquiry.
(Ord. 66-67. Passed 12-19-66.)

173.2308 REFUSAL TO PRODUCE RECORDS.

The refusal to produce books, papers, records and Federal income tax returns, or the refusal to submit to such examination by any employer or persons subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this chapter or with an order or subpoena of the Director of Finance authorized hereby shall be deemed a violation of this chapter, punishable as provided in Section 173.1505.
(Ord. 66-67. Passed 12-19-66.)

173.2309 CONFIDENTIAL NATURE OF INFORMATION OBTAINED; PENALTY.

Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential except for official purposes or in accordance with proper judicial order. Any person divulging such information in violation of this section, shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than six months, or both. Each disclosure shall constitute a separate offense.

In addition to the above penalty, any employee of the City who violates any provision of this section relative to the disclosure of confidential information shall be immediately dismissed.
(Ord. 66-67. Passed 12-19-66.)

173.2310 TAXPAYER REQUIRED TO RETAIN RECORDS.

Every taxpayer shall retain all records necessary to compute his tax liability for a period of five years from the date his return is filed or the withholding taxes are paid.
(Ord. 66-67. Passed 12-19-66.)

173.2311 AUTHORITY TO CONTRACT FOR CENTRAL COLLECTION FACILITIES.

The City, having already entered into an agreement for the establishment of a Regional Council of Governments pursuant to Ordinance 71-34, which Council has organized a municipal tax collection agency known as the "Regional Income Tax Agency, " the Board of Trustees of the Regional Income Tax Agency is authorized to administer and enforce the provisions of this chapter as the agent of the City, and the duties and authority of the Director of Finance hereunder may be performed by the Board of Trustees of the Agency through the Administrator of such Agency. However, the Administrator of the Agency shall have no authority to abate penalties or interest provided for in Section 173.1501 and 173.1502.
(Ord. 71-54. Passed 12-6-71.)

173.2312 DELEGATION OF AUTHORITY.

In order to facilitate the administration of this chapter, the Director of Finance, with the approval of the Mayor, may delegate or assign to a central collection facility any part or all of his duties as set forth in this chapter.
(Ord. 66-67. Passed 12-19-66.)

BOARD OF REVIEW

173.2501 BOARD OF REVIEW ESTABLISHED.

A Board of Review, consisting of the Mayor or his designee, the Director of Law or his Assistant designee and a member of Council to be elected by that body, is hereby created. The Board shall select, each year for a one-year term, one of its members to serve as Chairman and one to serve as Secretary. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 173.2309 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on Appeal.
(Ord. 66-67. Passed 12-19-66.)

173.2502 DUTY TO APPROVE REGULATIONS AND TO HEAR APPEALS.

All rules and regulations and amendments or changes thereto, which are adopted by the Director of Finance under the authority conferred by this chapter, must be approved by the Board of Review before the same becomes effective. The Board shall hear and pass on appeals from any ruling or decision of the Director, and, at the request of the taxpayer or Director, is empowered to substitute alternate methods of allocation.
(Ord. 66-67. Passed 12-19-66.)

173.2503 RIGHT OF APPEAL.

Any person dissatisfied with any ruling or decision of the Director of Finance which is made under the authority conferred by this chapter may appeal therefrom to the Board of Review within thirty days from the announcement of such ruling or decision by the Director, and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision or any part thereof. (Ord. 66-67. Passed 12-19-66.)

OTHER PROVISIONS

173.2701 SEPARABILITY.

If any sentence, clause, section or part of this chapter, or any tax against any individual or any of the several groups specified herein is found to be unconstitutional, illegal or invalid such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.
(Ord. 66-67. Passed 12-19-66.)

173.2702 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

(a) This chapter shall continue effective insofar as the levy of the income tax is concerned until repealed and insofar as the collection of tax levied hereunder and actions and proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of the taxes levied in such period are fully paid and any and all suits and prosecutions for the collection of the taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in Sections 173.1701, 173.1702, 173.1703, 173.1505, 173.1506 and 173.1507.

(b) Annual returns due for all or part of the last effective year of this chapter shall be due on the date provided in Sections 173.1101 and 173.1302 of this chapter as though the tax levied in this chapter was continuing.

(Ord. 66-67. Passed 12-19-66.)

CHAPTER 174
Income Tax Effective January 1, 2016

174.01 Authority to levy tax; purpose of tax.
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CROSS REFERENCES
Power to levy income tax - see Ohio Const., Art. XVIII, Sec. 3
Payroll deductions - see Ohio R.C. 9.42
Municipal income taxes - see Ohio R.C. Ch. 718

174.01 AUTHORITY TO LEVY TAX; PURPOSE OF TAX.

(A) To provide funds for the purposes of general Municipal operations, procurement of fixed assets or permanent improvements, payment of debt charges and for all other lawful purposes of the City of Fairview Park, ("City") there is hereby levied an annual municipal income tax on income, qualifying wages, commissions and other compensation, and on net profits as hereinafter provided. In addition, there is hereby levied an annual municipal income tax on income, qualifying wages, commissions and other compensation, and on net profits, as hereinafter provided, to provide funds for the purpose of acquiring, constructing, operating, maintaining and otherwise improving permanent improvements and their sites, including recreational facilities as an integral part of a cooperative project with the Fairview Park City School District, and paying debt charges related thereto.

(B) (1) The annual tax is levied at a rate of two percent (2.00%) per annum until December 31, 2021, on which date the tax rate shall revert back to one and three-quarters percent (1.75%). The tax is levied at a uniform rate on all persons residing in or earning or receiving income in the City. The tax is levied on income, qualifying wages, commissions and other compensation, and on net profits as hereinafter provided in Section 174.03 of this Chapter and other sections as they may apply.

(2) Intentionally left blank.

(C) The tax on income and the withholding tax established by this Chapter 174 are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax is levied in accordance with, and is intended to be consistent with, the provisions and limitations of Ohio Revised Code 718. (Ord. 15-42. Passed 11-16-15.)

174.02 DEFINITIONS.

(A) Any term used in this Chapter that is not otherwise defined in this Chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the ORC, unless a different meaning is clearly required. If a term used in this Chapter that is not otherwise defined in this Chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the ORC and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the ORC.

(B) The singular shall include the plural, and the masculine shall include the feminine and the gender- neutral.

(C) As used in this Chapter:

(1) "**Adjusted federal taxable income**," for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under (C)(24)(d) of this division, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(a) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

(b) Add an amount equal to five percent (5%) of intangible income deducted under division (C)(1)(a) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in Section 1221 of the Internal Revenue Code;

(c) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code;

(d) (i) Except as provided in (C)(1)(d)(ii) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code;

(ii) Division (C)(1)(d)(i) of this section does not apply to the extent the income or gain is income or gain described in Section 1245 or 1250 of the Internal Revenue Code.

(e) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

(f) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;

(g) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under Section 4313.02 of the ORC;

(h) (i) Except as limited by divisions (C)(1)(h)(ii), (iii), and (iv) of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017.

The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.

(ii) No person shall use the deduction allowed by division (C)(1)(h) of this section to offset qualifying wages.

(iii) (a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct more than fifty percent (50%) of the amount of the deduction otherwise allowed by division (C)(1)(h)(i) of this section.

(b) For taxable years beginning in 2023 or thereafter, a person may deduct the full amount allowed by (C)(1)(h)(i) of this section.

(iv) Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to (C)(1)(h) of this section.

(v) Nothing in division (C)(1)(h)(iii)(a) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (C)(1)(h)(iii)(a) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (C)(1)(h)(iii)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (C)(1)(h)(iii)(a) of this section shall apply to the amount carried forward.

(i) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with division (V)(3)(b) of Section 174.05.

(j) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with division (V)(3)(b) of Section 174.05.

If the taxpayer is not a C corporation, is not a disregarded entity that has made an election described in division (C)(48)(b) of this section, is not a publicly traded partnership that has made the election described in division (C)(24)(d) of this section, and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under Section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in division (C)(1) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

(2) (a) "**Assessment**" means a written finding by the Tax Administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation that commences the person's time limitation for making an appeal to the Board of Tax Review pursuant to Section 174.21, and has "ASSESSMENT" written in all capital letters at the top of such finding.

(b) "**Assessment**" does not include a notice denying a request for refund issued under division (C)(3) of Section 174.09, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (C)(2)(a) of this section.

(3) "**Audit**" means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a municipal income tax.

(4) "**Board of Tax Review**" or "Board of Review" or "Board of Tax Appeals", or other named local board constituted to hear appeals of municipal income tax matters, means the entity created under Section 174.21.

(5) "**Calendar quarter**" means the three-month period ending on the last day of March, June, September, or December.

(6) "**Casino operator" and "casino facility**" have the same meanings as in Section 3772.01 of the ORC.

(7) "**Certified mail," "express mail," "United States mail," "postal service**," and similar terms include any delivery service authorized pursuant to Section 5703.056 of the ORC.

(8) "**Disregarded entity**" means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.

(9) "**Domicile**" means the true, fixed, and permanent home of a taxpayer and to which, whenever absent, the taxpayer intends to return. A taxpayer may have more than one residence but not more than one domicile.

(10) "**Employee**" means an individual who is an employee for federal income tax purposes.

(11) "**Employer**" means a person that is an employer for federal income tax purposes.

(12) "**Exempt income**" means all of the following:

(a) The military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state.

(b) Intangible income.

(c) Social security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (C)(12)(c) of this section, "unemployment compensation" does not include supplemental unemployment compensation described in Section 3402(o)(2) of the Internal Revenue Code.

(d) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.

(e) Compensation paid under Section 3501.28 or 3501.36 of the ORC to a person serving as a precinct election official to the extent that such compensation does not exceed $1,000 for the taxable year. Such compensation in excess of $1,000 for the taxable year may be subject to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.

(f) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations;

(g) Alimony and child support received.

(h) Compensation for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or compensation from punitive damages.

(i) Income of a public utility when that public utility is subject to the tax levied under Section 5727.24 or 5727.30 of the ORC. Division (C)(12)(i) of this section does not apply for purposes of Chapter 5745 of the ORC.

(j) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business.

(k) Compensation or allowances excluded from federal gross income under Section 107 of the Internal Revenue Code.

(l) Employee compensation that is not qualifying wages as defined in division (C)(35) of this section.

(m) Compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States air force that is used for the housing of members of the United States air force and is a center for air force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.

(n) An S corporation shareholder's share of net profits of the S corporation, other than any part of the share of net profits that represents wages as defined in Section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in Section 1402(a) of the Internal Revenue Code.

(o) All of the income of individuals under eighteen (18) years of age.

(p) (i) Except as provided in divisions (C)(12)(p)(ii), (iii), and (iv) of this section, qualifying wages described in division (C)(2) or (5) of Section 174.04 to the extent the qualifying wages are not subject to withholding for the City under either of those divisions.

(ii) The exemption provided in division (C)(12)(p)(i) of this section does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the qualifying wages.

(iii) The exemption provided in division (C)(12)(p)(i) of this section does not apply to qualifying wages that an employer elects to withhold under division (C)(4)(b) of Section 174.04.

(iv) The exemption provided in division (C)(12)(p)(i) of this section does not apply to qualifying wages if both of the following conditions apply:

(a) For qualifying wages described in division (C)(2) of Section 174.04, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in division (C)(5) of Section 174.04, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;

(b) The employee receives a refund of the tax described in division (C)(12)(p)(iv)(a) of this section on the basis of the employee not performing services in that municipal corporation.

(q) (i) Except as provided in division (C)(12)(q)(ii) or (iii) of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the City on not more than twenty (20) days in a taxable year.

(ii) The exemption provided in division (C)(12)(q)(ii) of this section does not apply under either of the following circumstances:

(a) The individual's base of operation is located in the municipal corporation.

(b) The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (C)(12)(q)(ii)(b) of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section 174.04 (C).

(iii) Compensation to which division (C)(12)(q) of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.

(iv) For purposes of division (C)(12)(q) of this section, "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.

(r) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to Section 709.023 of the ORC on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.

(s) Income the taxation of which is prohibited by the constitution or laws of the United States.

Any item of income that is exempt income of a pass-through entity under division (C) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.

(13) "**Form 2106**" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(14) "**Generic form**" means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated municipal income taxes, or annual municipal income tax liability or for filing a refund claim.

(15) "**Gross receipts**" means the total revenue derived from sales, work done, or service rendered.

(16) "**Income**" means the following:

(a) (i) For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident, except as provided in (C)(24)(d) of this division.

(ii) For the purposes of division (C)(16)(a)(i) of this section:

(a) Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to division (C)(16)(a)(iv) of this section;

(b) The resident's distributive share of the net profit of each pass-through entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current taxable year.

(iii) Division (C)(16)(a)(ii) of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division(C)(12)(n) or (C)(16)(c) of this section.

(iv) Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer's net operating loss exceed the original amount of that net operating loss available to that taxpayer.

(b) In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(c) For taxpayers that are not individuals, net profit of the taxpayer;

(d) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings.

(e) Intentionally left blank.

(17) "**Intangible income**" means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the ORC, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.

(18) "**Internal Revenue Code**" has the same meaning as in Section 5747.01 of the ORC.

(19) "**Limited liability company**" means a limited liability company formed under Chapter 1705 of the ORC or under the laws of another state.

(20) "**Municipal corporation**" includes a joint economic development district or joint economic development zone that levies an income tax under Section 715.691, 715.70, 715.71, or 715.74 of the ORC.

(21) (a) "**Municipal Taxable Income**" means the following:

(i) For a person other than an individual, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or sitused to the City under Section 174.03, and further reduced by any pre-2017 net operating loss carryforward available to the person for the City .

(ii) (a) For an individual who is a resident of the City, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (C)(21)(b) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipal corporation.

(b) For an individual who is a nonresident of the City, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or sitused to the municipal corporation under Section 174.03, then reduced as provided in division (C)(21)(b) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the City.

(b) In computing the Municipal Taxable Income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (C)(21)(a)(ii)(a) or (C)(21)(b) of this section, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted for federal income tax purposes for the taxable year, subject to the limitation imposed by Section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for federal income tax purposes, but to the extent the expenses do not relate to exempt income. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in that nonresident municipal corporation and are not related to exempt income.

(22) "**Municipality" and/or "City**" means the same as the City of Fairview Park, Ohio . If the terms are capitalized in the Chapter they are referring to Fairview Park, Ohio. If not capitalized they refer to a municipal corporation other than Fairview Park, Ohio.

(23) "**Net operating loss**" means a loss incurred by a person in the operation of a trade or business. "Net operating loss" does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.

(24) (a) **"Net profit"** for a person other than an individual means adjusted federal taxable income.

(b) "Net profit" for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division (C)(24)(b) of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (C)(1)(h) of this section.

(c) For the purposes of this Chapter, and notwithstanding division (C)(24)(a) of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.

(d) A publicly traded partnership that is treated as a partnership for federal income tax purposes, and that is subject to tax on its net profits by the City, may elect to be treated as a C corporation for the City. The election shall be made on the annual return for the City. The City will treat the publicly traded partnership as a C corporation if the election is so made.

(25) "**Nonresident**" means an individual that is not a resident.

(26) "**Ohio Business Gateway**" means the online computer network system, created under Section 125.30 of the ORC, that allows persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.

(27) "**Other payer**" means any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual. "Other payer" includes casino operators and video lottery terminal sales agents.

(28) "**Pass-through entity**" means a partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax purposes, an S corporation, or any other class of entity from which the income or profits of the entity are given pass-through treatment for federal income tax purposes. "Pass- through entity" does not include a trust, estate, grantor of a grantor trust, or disregarded entity.

(29) "**Pension**" means any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.

(30) "**Person**" includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity.

(31) "**Postal service**" means the United States postal service.

(32) "**Postmark date,**" "**date of postmark**," and similar terms include the date recorded and marked in the manner described in division (B)(3) of Section 5703.056 of the ORC.

(33) (a) "**Pre-2017 net operating loss carryforward**" means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the extent such loss was permitted, by a resolution or ordinance of the City that was adopted by the City before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in the City in future taxable years.

(b) For the purpose of calculating municipal taxable income, any pre-2017 net operating loss carryforward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.

(34) "**Publicly traded partnership**" means any partnership, an interest in which is regularly traded on an established securities market. A "publicly traded partnership" may have any number of partners.

(35) "**Qualifying wages**" means wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

(a) Deduct the following amounts:

(i) Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in Section 125 of the Internal Revenue Code.

(ii) Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.

(iii) Intentionally left blank.

(iv) Intentionally left blank.

(v) Any amount included in wages that is exempt income.

(b) Add the following amounts:

(i) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.

(ii) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option . Division (C)(35)(b)(ii) of this section applies only to those amounts constituting ordinary income.

(iii) Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (C)(35)(b)(iii) of this section applies only to employee contributions and employee deferrals.

(iv) Any amount that is supplemental unemployment compensation benefits described in Section 3402(o)(2) of the Internal Revenue Code and not included in wages.

(v) Any amount received that is treated as self-employment income for federal tax purposes in accordance with Section 1402(a)(8) of the Internal Revenue Code.

(vi) Any amount not included in wages if all of the following apply:

(a) For the taxable year the amount is employee compensation that is earned outside the United States and that either is included in the taxpayer's gross income for federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under Section 911 of the Internal Revenue Code;

(b) For no preceding taxable year did the amount constitute wages as defined in Section 3121(a) of the Internal Revenue Code;

(c) For no succeeding taxable year will the amount constitute wages; and

(d) For any taxable year the amount has not otherwise been added to wages pursuant to either division (C)(35)(b) of this section or ORC Section 718.03, as that section existed before the effective date of H.B. 5 of the 130th General Assembly, March 23, 2015.

(36) "**Related entity**" means any of the following:

(a) An individual stockholder, or a member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

(b) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

(c) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (C)(36)(d) of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty percent of the value of the corporation's outstanding stock;

(d) The attribution rules described in Section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (C)(36)(a) to (c) of this section have been met.

(37) "**Related member**" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in Section 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, " twenty percent (20%)" shall be substituted for "five percent (5%)" wherever "five percent (5%)" appears in Section 1563(e) of the Internal Revenue Code.

(38) "**Resident**" means an individual who is domiciled in the municipal corporation as determined under Section 174.03(E).

(39) "**S corporation**" means a person that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

(40) "**Schedule C**" means internal revenue service schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(41) "**Schedule E**" means internal revenue service schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(42) "**Schedule F**" means internal revenue service schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(43) "**Single member limited liability company**" means a limited liability company that has one direct member.

(44) "**Small employer**" means any employer that had total revenue of less than $500,000 during the preceding taxable year. For purposes of this division, "total revenue" means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; compensation; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles. "Small employer" does not include the federal government; any state government, including any state agency or instrumentality; any political subdivision; or any entity treated as a government for financial accounting and reporting purposes.

(45) "**Tax Administrator**" means the individual charged with direct responsibility for administration of an income tax levied by the City in accordance with this Chapter.

(46) "**Tax return preparer**" means any individual described in Section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15 .

(47) "**Taxable year**" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

(48) (a) "**Taxpayer**" means a person subject to a tax levied on income by a municipal corporation in accordance with this Chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (C)(48)(b)(i) of this section, a disregarded entity.

(b) (i) A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:

(a) The limited liability company's single member is also a limited liability company.

(b) The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five (5) years before January 1, 2004.

(c) Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under division (L) of ORC 718.01 as that section existed on December 31, 2004.

(d) The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member.

(e) The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.

(ii) For purposes of division (C)(48)(b)(ii) of this section, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least $400,000.

(49) "**Taxpayers' rights and responsibilities**" means the rights provided to taxpayers in Sections 174.09, 174.12, 174.13, 174.19(B), 174.20, 174.21, and Sections 5717.011 and 5717.03 of the ORC, and the responsibilities of taxpayers to file, report, withhold, remit, and pay municipal income tax and otherwise comply with Chapter 718 of the ORC and resolutions, ordinances, and rules and regulations adopted by the City for the imposition and administration of a municipal income tax.

(50) "**Video lottery terminal**" has the same meaning as in Section 3770.21 of the ORC.

(51) "**Video lottery terminal sales agent**" means a lottery sales agent licensed under Chapter 3770 of the ORC to conduct video lottery terminals on behalf of the state pursuant to Section 3770.21 of the ORC.

(Ord. 15-42. Passed 11-16-15.)

174.03 IMPOSITION OF TAX.

The income tax levied by the City at a rate of two percent (2.00%) per annum is levied on the Municipal Taxable Income of every person residing in and/or earning and/or receiving income in the City, until December 31, 2021, on which date the tax rate shall revert back to one and three-quarters percent (1.75%) per annum.

Individuals.

(A) For residents of the City, the income tax levied herein shall be on all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident. This is further detailed in the definition of income (Section 174.02 (C)(16)).

(B) For nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(C) For residents and nonresidents, income can be reduced to "Municipal Taxable Income" as defined in Section 174.02 (C)(21). Exemptions which may apply are specified in Section 174.02 (C)(12).

Refundable credit for Nonqualified Deferred Compensation Plan.

(D) (1) As used in this division:

(a) "Nonqualified deferred compensation plan" means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.

(b) "Qualifying loss" means the amount of compensation attributable to a taxpayer's nonqualified deferred compensation plan, less the receipt of money and property attributable to distributions from the nonqualified deferred compensation plan. Full loss is sustained if no distribution of money and property is made by the nonqualified deferred compensation plan. The taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.

(c) (i) "Qualifying tax rate" means the applicable tax rate for the taxable year for the which the taxpayer paid income tax to the City with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.

(ii) If different tax rates applied for different taxable years, then the "qualifying tax rate" is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the City each year with respect to the nonqualified deferred compensation plan.

(d) "Refundable credit" means the amount of Municipal income tax that was paid on the non- distributed portion, if any, of a nonqualified deferred compensation plan.

(2) If, in addition to the City, a taxpayer has paid tax to other municipal corporations with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.

(3) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to the City for all taxable years with respect to the nonqualified deferred compensation plan.

(4) The credit allowed under this division is allowed only to the extent the taxpayer's qualifying loss is attributable to:

(a) The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or

(b) The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.

Domicile.

(E) (1) (a) An individual is presumed to be domiciled in the City for all or part of a taxable year if the individual was domiciled in the City on the last day of the immediately preceding taxable year or if the Tax Administrator reasonably concludes that the individual is domiciled in the City for all or part of the taxable year.

(b) An individual may rebut the presumption of domicile described in division (E)(1)(a) of this section if the individual establishes by a preponderance of the evidence that the individual was not domiciled in the City for all or part of the taxable year.

(2) For the purpose of determining whether an individual is domiciled in the City for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:
(a) The individual's domicile in other taxable years;
(b) The location at which the individual is registered to vote;
(c) The address on the individual's driver's license;
(d) The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;
(e) The location and value of abodes owned or leased by the individual;
(f) Declarations, written or oral, made by the individual regarding the individual's residency;
(g) The primary location at which the individual is employed.
(h) The location of educational institutions attended by the individual's dependents as defined in Section 152 of the Internal Revenue Code, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation where the educational institution is located;
(i) The number of contact periods the individual has with the City . For the purposes of this division, an individual has one "contact period" with the City if the individual is away overnight from the individual's abode located outside of the City and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in the City .
(3) All additional applicable factors are provided in the Rules and Regulations.

Businesses.

(F) This division applies to any taxpayer engaged in a business or profession in the City, unless the taxpayer is an individual who resides in the City or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745 of the ORC.
(1) Except as otherwise provided in division (F)(2) of this section, net profit from a business or profession conducted both within and without the boundaries of the City shall be considered as having a taxable situs in the City for purposes of municipal income taxation in the same proportion as the average ratio of the following:
(a) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the City during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.
As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

(b) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the City to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under Section 174.04(C);

(c) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the City to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

(2) (a) If the apportionment factors described in division (F)(1) of this section do not fairly represent the extent of a taxpayer's business activity in the City, the taxpayer may request, or the Tax Administrator of the City may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

(i) Separate accounting;

(ii) The exclusion of one or more of the factors;

(iii) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation;

(iv) A modification of one or more of the factors.

(b) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by Section 174.12 (A).

(c) The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (F)(2)(a) of this section, but only by issuing an assessment to the taxpayer within the period prescribed by Section 174.12 (A).

(d) Nothing in division (F)(2) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by the Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.

(3) As used in division (F)(1)(b) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:

(a) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:

(i) The employer;

(ii) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;

(iii) A vendor, customer, client, or patient of a person described in (F)(3)(a)(ii) of this section, or a related member of such a vendor, customer, client, or patient.

(b) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;

(c) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (F) (3)(a) or (b) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If the Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.

(4) For the purposes of division (F)(1)(c) of this section, receipts from sales and rentals made and services performed shall be sitused to a municipal corporation as follows:

(a) Gross receipts from the sale of tangible personal property shall be sitused to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in the City if, regardless of where title passes, the property meets any of the following criteria:

(i) The property is shipped to or delivered within the City from a stock of goods located within the City.

(ii) The property is delivered within the City from a location outside the City, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion.

(iii) The property is shipped from a place within the City to purchasers outside the City, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(b) Gross receipts from the sale of services shall be sitused to the City to the extent that such services are performed in the City.

(c) To the extent included in income, gross receipts from the sale of real property located in the City shall be sitused to the City.

(d) To the extent included in income, gross receipts from rents and royalties from real property located in the City shall be sitused to the City.

(e) Gross receipts from rents and royalties from tangible personal property shall be sitused to the City based upon the extent to which the tangible personal property is used in the City.

(5) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual, or by a disregarded entity owned by the individual, shall be subject to the City's tax only if the property generating the net profit is located in the City or if the individual taxpayer that receives the net profit is a resident of the City. The City shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit sitused under this division to the municipal corporation in which the property is located.

(6) (a) Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be sitused to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the City, if applicable, based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the City to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.

(b) An individual who is a resident of the City shall report the individual's net profit from all real estate activity on the individual's annual tax return for the City. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such a credit is allowed under the City's income tax ordinance.

(7) When calculating the ratios described in division (F)(1) of this section for the purposes of that division or division (F)(2) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

(8) Intentionally left blank.

(9) Intentionally left blank.

(Ord. 15-42. Passed 11-16-15.)

174.04 COLLECTION AT SOURCE.

Withholding provisions.

(A) Each employer, agent of an employer, or other payer located or doing business in the City shall withhold an income tax from the qualifying wages earned and/or received by each employee in the City. Except for qualifying wages for which withholding is not required under Section 174.03 or division (B)(4) or (6) of this section, the tax shall be withheld at the rate, specified in Section 174.01of this Chapter, of two percent (2.00%) per annum until December 31, 2021, on which date the tax rate shall revert back to one and three quarters percent (1.75%). An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.

(B) (1) Except as provided in division (B)(2) of this section, an employer, agent of an employer, or other payer shall remit to the Tax Administrator of the City the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer according to the following schedule:

(a) Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer on behalf of the City in the preceding calendar year exceeded $2,399, or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the City in any month of the preceding calendar quarter exceeded $200. Payment under division (B)(1)(a) of this section shall be made so that the payment is received by the Tax Administrator not later than fifteen (15) days after the last day of each month for which the tax was withheld.

(b) Any employer, agent of an employer, or other payer not required to make payments under division (B)(1)(a) of this section of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the fifteenth (15th) day of the month following the end of each calendar quarter.

(c) Intentionally left blank.

(2) If the employer, agent of an employer, or other payer is required to make payments electronically for the purpose of paying federal taxes withheld on payments to employees under Section 6302 of the Internal Revenue Code, 26 C.F.R. 31.6302-1, or any other federal statute or regulation, the payment shall be made by electronic funds transfer to the Tax Administrator of all taxes deducted and withheld on behalf of the City. The payment of tax by electronic funds transfer under this division does not affect an employer's, agent's, or other payer's obligation to file any return as required under this section.

(3) An employer, agent of an employer, or other payer shall make and file a return showing the amount of tax withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the Tax Administrator. A return filed by an employer, agent, or other payer under this division shall be accepted by Tax Administrator and the City as the return required of an non-resident employee whose sole income subject to the tax under this Chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer.

(4) An employer, agent of an employer, or other payer is not required to withhold City income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.

(5) (a) An employee is not relieved from liability for a tax by the failure of the employer, agent of an employer, or other payer to withhold the tax as required under this Chapter or by the employer's, agent's, or other payer's exemption from the requirement to withhold the tax.

(b) The failure of an employer, agent of an employer, or other payer to remit to the City the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.

(6) Compensation deferred before June 26, 2003, is not subject to City income tax or income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.

(7) Each employer, agent of an employer, or other payer required to withhold taxes is liable for the payment of that amount required to be withheld, whether or not such taxes have been withheld, and such amount shall be deemed to be held in trust for the City until such time as the withheld amount is remitted to the Tax Administrator.

(8) On or before the last day of February of each year, an employer shall file a withholding reconciliation return with the Tax Administrator listing:

(a) The names, addresses, and social security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the City during the preceding calendar year;

(b) The amount of tax withheld, if any, from each such employee, the total amount of qualifying wages paid to such employee during the preceding calendar year;

(c) The name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year;

(d) Any other information required for federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect to such employee;

(e) Other information as may be required by the Tax Administrator.

(9) The officer or the employee of the employer, agent of an employer, or other payer with control or direct supervision of or charged with the responsibility for withholding the tax or filing the reports and making payments as required by this section, shall be personally liable for a failure to file a report or pay the tax due as required by this section. The dissolution of an employer, agent of an employer, or other payer does not discharge the officer's or employee's liability for a failure of the employer, agent of an employer, or other payer to file returns or pay any tax due.

(10) An employer is required to deduct and withhold City income tax on tips and gratuities received by the employer's employees and constituting qualifying wages, but only to the extent that the tips and gratuities are under the employer's control. For the purposes of this division, a tip or gratuity is under the employer's control if the tip or gratuity is paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means.

(11) The Tax Administrator shall consider any tax withheld by an employer at the request of an employee, when such tax is not otherwise required to be withheld by this Chapter, to be tax required to be withheld and remitted for the purposes of this section.

Occasional Entrant - Withholding.

(C) (1) As used in this division:

(a) "Employer" includes a person that is a related member to or of an employer.

(b) "Fixed location" means a permanent place of doing business in this state, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.

(c) "Principal place of work" means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, "principal place of work" means the worksite location in this state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee

is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

If there is not a single municipal corporation in which the employee spent the "greatest number of days in a calendar year" performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (C)(2)(a)(i) of this section among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's "principal place of work" with respect to those qualifying wages for the purposes of this section.

For the purposes of this division, the location at which an employee spends a particular day shall be determined in accordance with division (C)(2)(b) of this section, except that "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.

(d) "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.

(e) "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.

(f) "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.

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

(2) (a) Subject to divisions (C)(3), (5), (6), and (7) of this section, an employer is not required to withhold City income tax on qualifying wages paid to an employee for the performance of personal services in the City if the employee performed such services in the City on twenty (20) or fewer days in a calendar year, unless one of the following conditions applies:

(i) The employee's principal place of work is located in the City.

(ii) The employee performed services at one or more presumed worksite locations in the City. For the purposes of this division, "presumed worksite location" means a construction site or other temporary worksite in the City at which the employer provides or provided services that can reasonably be, or would have been, expected by the employer to last more than twenty (20) days in a calendar year. Services can "reasonably be expected by the employer to last more than twenty (20) days" if either of the following applies at the time the services commence:

(a) The nature of the services is such that it will require more than twenty (20) days of the services to complete the services;

(b) The agreement between the employer and its customer to perform services at a location requires the employer to perform the services at the location for more than twenty (20) days.

(iii) The employee is a resident of the City and has requested that the employer withhold tax from the employee's qualifying wages as provided in Section 174.04.

(iv) The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure.

(b) For the purposes of division (C)(2)(a) of this section, an employee shall be considered to have spent a day performing services in the City only if the employee spent more time performing services for or on behalf of the employer in the City than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:

(i) Traveling to the location at which the employee will first perform services for the employer for the day;

(ii) Traveling from a location at which the employee was performing services for the employer to any other location;

(iii) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;

(iv) Transporting or delivering property described in division (C)(2)(b)(iii) of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;

(v) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.

(3) If the principal place of work of an employee is located in another Ohio municipal corporation that imposes an income tax, the exception from withholding requirements described in division (C)(2)(a) of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to that municipal corporation.

(4) (a) Except as provided in division (C)(4)(b) of this section, if, during a calendar year, the number of days an employee spends performing personal services in the City exceeds the twenty (20) day threshold, the employer shall withhold and remit tax to the City for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in the City.

(b) An employer required to begin withholding tax for the City under division (C)(4)(a) of this section may elect to withhold tax for the City for the first twenty (20) days on which the employer paid qualifying wages to the employee for personal services performed in the City.

(5) If an employer's fixed location is the City and the employer qualifies as a small employer as defined in Section 174.02, the employer shall withhold City income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the City, regardless of the number of days which the employee worked outside the corporate boundaries of the City. To determine whether an employer qualifies as a small employer for a taxable year, the employer will be required to provide the Tax Administrator with the employer's federal income tax return for the preceding taxable year.

(6) Divisions (C)(2)(a) and (4) of this section shall not apply to the extent that a Tax Administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of Section 174.04. (Ord. 15-42. Passed 11-16-15.)

174.05 ANNUAL RETURN; FILING.

(A) An annual City income tax return shall be completed and filed by every individual taxpayer eighteen (18) years of age or older and any taxpayer that is not an individual for each taxable year for which the taxpayer is subject to the tax, whether or not a tax is due thereon.

(1) The Tax Administrator may accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer under Section 174.05 of this Chapter when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due the City.

(2) Retirees having no Municipal Taxable Income for City income tax purposes may file with the Tax Administrator a written exemption from these filing requirements on a form prescribed by the Tax Administrator. The written exemption shall indicate the date of retirement and the entity from which retired. The exemption shall be in effect until such time as the retiree receives Municipal Taxable Income taxable to the City, at which time the retiree shall be required to comply with all applicable provisions of this Chapter.

(B) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

(C) If an individual is unable to complete and file a return or notice required by the City, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual.

(D) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust.

(E) The City shall permit spouses to file a joint return.

(F) (1) Each return required to be filed under this division shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer. The return shall include the taxpayer's social security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.

(2) The Tax Administrator shall require a taxpayer who is an individual to include, with each annual return and amended return, copies of the following documents: all of the taxpayer's Internal Revenue Service form W-2, "Wage and Tax Statements," including all information reported on the taxpayer's federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040; and, with respect to an amended tax return, any other documentation necessary to support the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.

(3) The Tax Administrator may require a taxpayer that is not an individual to include, with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return.

A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio Business Gateway or in some other manner shall either mail the documents required under this division to the Tax Administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio Business Gateway.

(4) After a taxpayer files a tax return, the Tax Administrator may request, and the taxpayer shall provide, any information, statements, or documents required by the City to determine and verify the taxpayer's municipal income tax liability. The requirements imposed under division (F) of this section apply regardless of whether the taxpayer files on a generic form or on a form prescribed by the Tax Administrator.

(G) (1) (a) Except as otherwise provided in this Chapter, each individual income tax return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of state individual income tax returns under division (G) of Section 5747.08 of the ORC. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City. No remittance is required if the net amount due is ten dollars ($10.00) or less.

(b) Except as otherwise provided in this Chapter, each annual net profit return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the Tax Administrator on or before the fifteenth (15th) day of the fourth (4th) month following the end of the taxpayer's taxable year. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City. No remittance is required if the net amount due is ten dollars ($10.00) or less.

(2) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of the City's income tax return. The extended due date of the City's income tax return shall be the fifteenth (15th) day of the tenth (10th) month after the last day of the taxable year to which the return relates. An extension of time to file under this division is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.

(a) A copy of the federal extension request shall be included with the filing of the City's income tax return.

(b) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's Municipal income tax return. If the request is received by the Tax Administrator on or before the date the Municipal income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.

(3) If the tax commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of Section 5747.08 of the ORC, a taxpayer shall automatically receive an extension for the filing of the City's income tax return. The extended due date of the City's income tax return shall be the same as the extended due date of the state income tax return.

(4) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the City, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this division, including taxpayers not otherwise required to file annual returns.

(5) To the extent that any provision in this division (G) of this section conflicts with any provision in divisions (N), (O), (P), or (Q) of this section, the provisions in divisions (N), (O), (P), or (Q) prevail.

(H) (1) For taxable years beginning after 2015, the City shall not require a taxpayer to remit tax with respect to net profits if the net amount due is ten dollars ($10.00) or less.

(2) Any taxpayer not required to remit tax to the City for a taxable year pursuant to division (H)(1) of this section shall file with the City an annual net profit return under division (F)(3) of this section.

(I) If a payment is required to be made by electronic funds transfer, the payment is considered to be made when the payment is credited to an account designated by the Tax Administrator for the receipt of tax payments, except that, when a payment made by electronic funds transfer is delayed due to circumstances not under the control of the taxpayer, the payment is considered to be made when the taxpayer submitted the payment. This division shall not apply to payments required to be made under division (B)(1)(a) of Section 174.04 or provisions for semi-monthly withholding.

(J) Taxes withheld for the City by an employer, the agent of an employer, or other payer as described in Section 174.04 shall be allowed to the taxpayer as credits against payment of the tax imposed on the taxpayer by the City, unless the amounts withheld were not remitted to the City and the recipient colluded with the employer, agent, or other payer in connection with the failure to remit the amounts withheld.

(K) Each return required by the City to be filed in accordance with this division shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return.

(L) The Tax Administrator shall accept for filing a generic form of any income tax return, report, or document required by the City, provided that the generic form, once completed and filed, contains all of the information required by ordinance, resolution, or rules and regulations adopted by the City or the Tax Administrator, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this Chapter and any of the City's ordinances, resolutions, or rules and regulations governing the filing of returns, reports, or documents.

Filing via Ohio Business Gateway.

(M) (1) Any taxpayer subject to City income taxation with respect to the taxpayer's net profit from a business or profession may file a City income tax return, estimated City income tax return, or extension for filing a City income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio Business Gateway.

(2) Any employer, agent of an employer, or other payer may report the amount of City income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.

(3) Nothing in this section affects the due dates for filing employer withholding tax returns.

Extension for service in or for the armed forces.

(N) Each member of the national guard of any state and each member of a reserve component of the armed forces of the United States called to active duty pursuant to an executive order issued by the president of the United States or an act of the congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces, may apply to the Tax Administrator of the City for both an extension of time for filing of the return and an extension of time for payment of taxes required by the City during the period of the member's or civilian's duty service, and for one hundred eighty(180) days thereafter. The application shall be filed on or before the one hundred eightieth (180th) day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.

(O) (1) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the one hundred eighty-first (181st) day after the applicant's active duty or service terminates. The Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate. However, taxes pursuant to a contract entered into under this division are not delinquent, and the Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(2) If the Tax Administrator determines that an applicant is qualified for an extension under this section, the applicant shall neither be required to file any return, report, or other tax document nor be required to pay any tax otherwise due to the municipal corporation before the one hundred eighty-first (181st) day after the applicant's active duty or service terminates.

(3) Taxes paid pursuant to a contract entered into under (O)(1) of this division are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(P) (1) Nothing in this division denies to any person described in this division the application of divisions (N) and (O) of this section.

(2) (a) A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by a municipal corporation in accordance with this Chapter. The length of any extension granted under division (P)(2)(a) of this section shall be equal to the length of the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this division, "qualifying taxpayer" means a member of the

national guard or a member of a reserve component of the armed forces of the United States called to active duty pursuant to either an executive order issued by the president of the United States or an act of the congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces.

(b) Taxes whose payment is extended in accordance with division (P)(2)(a) of this section are not delinquent during the extension period. Such taxes become delinquent on the first day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under division (P)(2)(a) of this section in calculating the penalty or interest due on any unpaid tax.

(Q) For each taxable year to which division (N), (O), or (P) of this section applies to a taxpayer, the provisions of divisions (O)(2) and (3) of this section, as applicable, apply to the spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.

Consolidated City income tax return.

(R) As used in this section:

(1) "Affiliated group of corporations" means an affiliated group as defined in Section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.

(2) "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code.

(3) "Consolidated federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. "Consolidated federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division ®(1) of this section.

(4) "Incumbent local exchange carrier" has the same meaning as in Section 4927.01 of the ORC.

(5) "Local exchange telephone service" has the same meaning as in Section 5727.01 of the ORC.

(S) (1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the City's income tax in that taxable year, and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five (5) year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five (5) year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (S)(2) of this section or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.

(2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five (5) year consolidated municipal income tax return election period in effect under division (S)(1) of this section. The election to discontinue filing a consolidated municipal income tax return is binding for a five (5) year period beginning with the first taxable year of the election.

(3) An election made under division (S)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

(T) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated City income tax return for that taxable year if the Tax Administrator determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to the City. A taxpayer that is required to file a consolidated City income tax return for a taxable year shall file a consolidated City income tax return for all subsequent taxable years, unless the taxpayer requests and receives written permission from the Tax Administrator to file a separate return or a taxpayer has experienced a change in circumstances.

(U) A taxpayer shall prepare a consolidated City income tax return in the same manner as is required under the United States department of treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

(V) (1) Except as otherwise provided in divisions (V)(2), (3), and (4) of this section, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in Section 174.02, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

(2) No corporation filing a consolidated City income tax return shall make any adjustment otherwise required under Section 174.02®(1) to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.

(3) If the net profit or loss of a pass-through entity having at least eighty percent (80%) of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated City income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

(a) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in divisions (R) through (Y) of Section 174.05, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to the City. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(b) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in divisions (R) through (Y) of Section 174.05, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to the City. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.

(4) If the net profit or loss of a pass-through entity having less than eighty percent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:

(a) The corporation filing the consolidated municipal income tax return shall exclude the pass- through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in divisions (R) through (Y) of Section 174.05, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to the City;

(b) The pass-through entity shall be subject to City income taxation as a separate taxpayer in accordance with this Chapter on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(W) Corporations filing a consolidated City income tax return shall make the computations required under divisions (R) through (Y) of Section 174.05 by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(X) Each corporation filing a consolidated City income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by the City in accordance with this Chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.

(Y) Corporations and their affiliates that made an election or entered into an agreement with the City before January 1, 2016, to file a consolidated or combined tax return with the City may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January 1, 2016.
(Ord. 15-42. Passed 11-16-15.)

174.06 CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES.

(A) Every individual taxpayer domiciled in the City who is required to and does pay, or has acknowledged liability for, a municipal tax to another municipality on or measured by the same income, qualifying wages, commissions, net profits or other compensation taxable under this Chapter, may claim a nonrefundable credit against the tax imposed by this Chapter upon satisfactory evidence that tax has been paid to another municipality. Subject to division (C) of this section, the credit shall not exceed seventy five percent (75%) of the amount obtained by multiplying the income, qualifying wages, commissions, net profits or other compensation subject to tax in the other municipality by the LOWER of the tax rate in such other municipality OR the tax rate of one and one quarter percent (1.25%).

(B) The City shall grant a credit against its tax on income to a resident of the City who works in a joint economic development zone created under Section 715.691 or a joint economic development district created under Section 715.70, 715.71, or 715.72 of the ORC to the same extent that it grants a credit against its tax on income to its residents who are employed in another municipal corporation.

(C) If the amount of tax withheld or paid to the other municipality is less than the amount of tax required to be withheld or paid to the other municipality, then for purposes of division (A) of this section, "the income, qualifying wages, commissions, net profits or other compensation" subject to tax in the other municipality shall be limited to the amount computed by dividing the tax withheld or paid to the other municipality by the tax rate for that municipality.

(D) Intentionally left blank.
(Ord. 15-42. Passed 11-16-15.)

174.07 ESTIMATED TAXES.

(A) As used in this section:

(1) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's tax liability for the City's income tax for the current taxable year.

(2) "Tax liability" means the total taxes due to the City for the taxable year, after allowing any credit to which the taxpayer is entitled, and after applying any estimated tax payment, withholding payment, or credit from another taxable year.

(B) (1) Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Administrator, if the amount payable as estimated taxes is at least $200. For the purposes of this section:

(a) Taxes withheld for the City from qualifying wages shall be considered as paid to the City in equal amounts on each payment date unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case they shall be considered as paid on the dates on which the amounts were actually withheld.

(b) An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this division, "date of the postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.

(2) Taxpayers filing joint returns shall file joint declarations of estimated taxes. A taxpayer may amend a declaration under rules prescribed by the Tax Administrator. A taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the Tax Administrator.

(3) The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of municipal income tax returns under division (G) of Section 174.05 or on or before the fifteenth (15th) day of the fourth month after the taxpayer becomes subject to tax for the first time.

(4) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth (15th) day of the fourth (4th) month after the beginning of each fiscal year or period.

(5) The original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided in this section.

(C) (1) The required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to the City, including the application of tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be as follows:

(a) On or before the fifteenth (15th) day of the fourth month after the beginning of the taxable year, twenty-two and one-half (22.5%) percent of the tax liability for the taxable year;

(b) On or before the fifteenth (15th) day of the sixth (6th) month after the beginning of the taxable year, forty-five (45%) percent of the tax liability for the taxable year;

(c) On or before the fifteenth (15th) day of the ninth (9th) month after the beginning of the taxable year, sixty-seven and one-half (67.5) percent of the tax liability for the taxable year;

(d) On or before the fifteenth (15th) day of the twelfth month of the taxable year, ninety percent (90%) of the tax liability for the taxable year.

(2) When an amended declaration has been filed, the unpaid balance shown due on the amended declaration shall be paid in equal installments on or before the remaining payment dates.

(3) On or before the fifteenth (15th) day of the fourth (4th) month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid with the return in accordance with Section 174.05.

(D) (1) In the case of any underpayment of any portion of a tax liability, penalty and interest may be imposed pursuant to Section 174.18 upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) of this section. The amount of the underpayment shall be determined as follows:

(a) For the first payment of estimated taxes each year, twenty-two and one-half percent (22.5%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(b) For the second payment of estimated taxes each year, forty-five percent (45%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(c) For the third payment of estimated taxes each year, sixty-seven and one-half percent (67.5%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(d) For the fourth payment of estimated taxes each year, ninety percent (90%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment.

(2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid any penalty.

(E) An underpayment of any portion of tax liability determined under division (D) of this section shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:

(1) The amount of estimated taxes that were paid equals at least ninety percent (90%) of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.

(2) The amount of estimated taxes that were paid equals at least one hundred percent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a return with the City under Section 174.05 for that year.

(3) The taxpayer is an individual who resides in the City but was not domiciled there on the first (1st) day of January of the calendar year that includes the first (1st) day of the taxable year.

(Ord. 15-42. Passed 11-16-15.)

174.08 ROUNDING OF AMOUNTS.

A person may round to the nearest whole dollar all amounts the person is required to enter on any return, report, voucher, or other document required under this Chapter. Any fractional part of a dollar that equals or exceeds fifty cents shall be rounded to the next whole dollar, and any fractional part of a dollar that is less than fifty cents shall be dropped. If a person chooses to round amounts entered on a document, the person shall round all amounts entered on the document.
(Ord. 15-42. Passed 11-16-15.)

174.09 REQUESTS FOR REFUNDS.

(A) As used in this section, "withholding tax" has the same meaning as in Section 174.18.

(B) Upon receipt of a request for a refund, the Tax Administrator, in accordance with this section, shall refund to employers, agents of employers, other payers, or taxpayers, with respect to any income or withholding tax levied by the municipal corporation:

(1) Overpayments of ten dollars ($10.00) or more;

(2) Amounts paid erroneously if the refund requested is ten dollars ($10.00) or more.

(C) (1) Except as otherwise provided in this Chapter, requests for refund shall be filed with the Tax Administrator, on the form prescribed by the Tax Administrator within three (3) years after the tax was due or paid, whichever is later. The Tax Administrator may require the requestor to file with the request any documentation that substantiates the requestor's claim for a refund.

(2) On filing of the refund request, the Tax Administrator shall determine the amount of refund due and certify such amount to the appropriate municipal corporation official for payment. Except as provided in division (C)(3) of this section, the Tax Administrator shall issue an assessment to any taxpayer whose request for refund is fully or partially denied. The assessment shall state the amount of the refund that was denied, the reasons for the denial, and instructions for appealing the assessment.

(3) If a Tax Administrator denies in whole or in part a refund request included within the taxpayer's originally filed annual income tax return, the Tax Administrator shall notify the taxpayer, in writing, of the amount of the refund that was denied, the reasons for the denial, and instructions for requesting an assessment that may be appealed under Section 174.21.

(D) A request for a refund that is received after the last day for filing specified in division (C) of this section shall be considered to have been filed in a timely manner if any of the following situations exist:

(1) The request is delivered by the postal service, and the earliest postal service postmark on the cover in which the request is enclosed is not later than the last day for filing the request.

(2) The request is delivered by the postal service, the only postmark on the cover in which the request is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the request, and the request is received within seven (7) days of such last day.

(3) The request is delivered by the postal service, no postmark date was affixed to the cover in which the request is enclosed or the date of the postmark so affixed is not legible, and the request is received within seven (7) days of the last day for making the request.

(E) Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety (90) days after the final filing date of the annual return or ninety (90) days after the completed return is filed, whichever is later, no interest shall be allowed on the refund. For the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any taxable year shall be considered to have been paid before the date on which the return on which the tax is reported is due, without regard to any extension of time for filing that return. Interest shall be paid at the interest rate described in Section 174.18 (A)(4). (Ord. 15-42. Passed 11-16-15.)

174.10 SECOND MUNICIPALITY IMPOSING TAX AFTER TIME PERIOD ALLOWED FOR REFUND.

(A) Income tax that has been deposited with the City, but should have been deposited with another municipality, is allowable by the City as a refund but is subject to the three (3) year limitation on refunds.

(B) Income tax that was deposited with another municipality but should have been deposited with the City is subject to recovery by City. If the City's tax on that income is imposed after the time period allowed for a refund of the tax or withholding paid to the other municipality, the City shall allow a nonrefundable credit against the tax or withholding the City claims is due with respect to such income or wages, equal to the tax or withholding paid to the first municipality with respect to such income or wages.

(C) If the City's tax rate is less than the tax rate in the other municipality, then the nonrefundable credit shall be calculated using the City's tax rate. However, if the City's tax rate is greater than the tax rate in the other municipality, the tax due in excess of the nonrefundable credit is to be paid to the City, along with any penalty and interest that accrued during the period of nonpayment.

(D) Nothing in this section permits any credit carryforward.
(Ord. 15-42. Passed 11-16-15.)

174.11 AMENDED RETURNS.

(A) (1) If a taxpayer's tax liability shown on the annual tax return for the City changes as a result of an adjustment to the taxpayer's federal or state income tax return, the taxpayer shall file an amended return with the City. The amended return shall be filed on a form required by the Tax Administrator.

(2) If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the Tax Administrator before filing the amended return.

(B) (1) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due, together with any penalty and interest thereon. If the combined tax shown to be due is ten dollars or less, no payment need be made. The amended return shall reopen those facts, figures, computations, or attachments from a previously filed return that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return only:

(i) to determine the amount of tax that would be due if all facts, figures, computations, and attachments were reopened; or,

(ii) if the applicable statute of limitations for civil actions or prosecutions under Section 174.12 has not expired for a previously filed return.

(2) The additional tax to be paid shall not exceed the amount of tax that would be due if all facts, figures, computations, and attachments were reopened; i.e., the payment shall be the lesser of the two amounts.

(C) (1) In the case of an overpayment, a request for refund may be filed under this division within the period prescribed by division (D) of this section for filing the amended return, even if it is filed beyond the period prescribed in that division if it otherwise conforms to the requirements of that division. If the amount of the refund is less than ten dollars, no refund need be paid by the City. A request filed under this division shall claim refund of overpayments resulting from alterations only to those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return, unless it is also filed within the time prescribed in Section 174.09.

(2) The amount to be refunded shall not exceed the amount of refund that would be due if all facts, figures, computations, and attachments were reopened. All facts, figures, computations, and attachments may be reopened to determine the refund amount due by inclusion of all facts, figures, computations, and attachments.

(D) Within sixty (60) days after the final determination of any federal or state tax liability affecting the taxpayer's City income tax liability, that taxpayer shall make and file an amended City income tax return showing income subject to City income tax based upon such final determination of federal or state tax liability. The taxpayer shall pay any additional City income tax shown due thereon or make a claim for refund of any overpayment, unless the tax or overpayment is less than ten ($10.00) dollars.
(Ord. 15-42. Passed 11-16-15.)

174.12 LIMITATIONS.

(A) (1) (a) Civil actions to recover City income taxes and penalties and interest on City income taxes shall be brought within the later of:

(i) Three (3) years after the tax was due or the return was filed, whichever is later; or

(ii) One (1) year after the conclusion of the qualifying deferral period, if any.

(b) The time limit described in division (A)(1)(a) of this section may be extended at any time if both the Tax Administrator and the employer, agent of the employer, other payer, or taxpayer consent in writing to the extension. Any extension shall also extend for the same period of time the time limit described in division (C) of this section.

(2) As used in this section, "qualifying deferral period" means a period of time beginning and ending as follows:

(a) Beginning on the date a person who is aggrieved by an assessment files with the Board of Tax Review the request described in Section 174.21. That date shall not be affected by any subsequent decision, finding, or holding by any administrative body or court that the Board of Tax Review did not have jurisdiction to affirm, reverse, or modify the assessment or any part of that assessment.

(b) Ending the later of the sixtieth (60th) day after the date on which the final determination of the Board of Tax Review becomes final or, if any party appeals from the determination of the Board of Tax Review, the sixtieth (60th) day after the date on which the final determination of the Board of Tax Review is either ultimately affirmed in whole or in part or ultimately reversed and no further appeal of either that affirmation, in whole or in part, or that reversal is available or taken.

(B) Prosecutions for an offense made punishable under a resolution or ordinance imposing an income tax shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense.

(C) A claim for a refund of municipal income taxes shall be brought within the time limitation provided in Section 174.09.

(D) (1) Notwithstanding the fact that an appeal is pending, the petitioner may pay all or a portion of the assessment that is the subject of the appeal. The acceptance of a payment by the City does not prejudice any claim for refund upon final determination of the appeal.

(2) If upon final determination of the appeal an error in the assessment is corrected by the Tax Administrator, upon an appeal so filed or pursuant to a final determination of the Board of Tax Review, of the Ohio board of tax appeals, or any court to which the decision of the Ohio board of tax appeals has been appealed, so that the resultant amount due is less than the amount paid, a refund will be paid in the amount of the overpayment as provided by Section 174.09, with interest on that amount as provided by division D of Section 174.09.

(E) No civil action to recover City income tax or related penalties or interest shall be brought during either of the following time periods:

(1) The period during which a taxpayer has a right to appeal the imposition of that tax or interest or those penalties;

(2) The period during which an appeal related to the imposition of that tax or interest or those penalties is pending.

(Ord. 15-42. Passed 11-16-15.)

174.13 AUDITS.

(A) At or before the commencement of an audit, the Tax Administrator shall provide to the taxpayer a written description of the roles of the Tax Administrator and of the taxpayer during the audit and a statement of the taxpayer's rights, including any right to obtain a refund of an overpayment of a tax. At or before the commencement of an audit, the Tax Administrator shall inform the taxpayer when the audit is considered to have commenced.

(B) Except in cases involving suspected criminal activity, the Tax Administrator shall conduct an audit of a taxpayer during regular business hours and after providing reasonable notice to the taxpayer. A taxpayer who is unable to comply with a proposed time for an audit on the grounds that the proposed time would cause inconvenience or hardship must offer reasonable alternative dates for the audit.

(C) At all stages of an audit by the Tax Administrator, a taxpayer is entitled to be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner. The Tax Administrator shall prescribe a form by which a taxpayer may designate such a person to assist or represent the taxpayer in the conduct of any proceedings resulting from actions by the Tax Administrator. If a taxpayer has not submitted such a form, the Tax Administrator may accept other evidence, as the Tax Administrator considers appropriate, that a person is the authorized representative of a taxpayer.

A taxpayer may refuse to answer any questions asked by the person conducting an audit until the taxpayer has an opportunity to consult with the taxpayer's attorney, accountant, bookkeeper, or other tax practitioner.

This division does not authorize the practice of law by a person who is not an attorney.

(D) A taxpayer may record, electronically or otherwise, the audit examination.

(E) The failure of the Tax Administrator to comply with a provision of this section shall neither excuse a taxpayer from payment of any taxes owed by the taxpayer nor cure any procedural defect in a taxpayer's case.

(F) If the Tax Administrator fails to substantially comply with the provisions of this section, the Tax Administrator, upon application by the taxpayer, shall excuse the taxpayer from penalties and interest. (Ord. 15-42. Passed 11-16-15.)

174.14 SERVICE OF ASSESSMENT.

(A) As used in this section:

(1) "Last known address" means the address the Tax Administrator has at the time a document is originally sent by certified mail, or any address the Tax Administrator can ascertain using reasonable means such as the use of a change of address service offered by the postal service or an authorized delivery service under Section 5703.056 of the ORC.

(2) "Undeliverable address" means an address to which the postal service or an authorized delivery service under Section 5703.056 of the ORC is not able to deliver an assessment of the Tax Administrator, except when the reason for non-delivery is because the addressee fails to acknowledge or accept the assessment.

(B) Subject to division (C) of this section, a copy of each assessment shall be served upon the person affected thereby either by personal service, by certified mail, or by a delivery service authorized under Section 5703.056 of the ORC. With the permission of the person affected by an assessment, the Tax Administrator may deliver the assessment through alternative means as provided in this section, including, but not limited to, delivery by secure electronic mail.

(C) (1) (a) If certified mail is returned because of an undeliverable address, a Tax Administrator shall utilize reasonable means to ascertain a new last known address, including the use of a change of address service offered by the postal service or an authorized delivery service under Section 5703.056 of the ORC. If the Tax Administrator is unable to ascertain a new last known address, the assessment shall be sent by ordinary mail and considered served. If the ordinary mail is subsequently returned because of an undeliverable address, the assessment remains appealable within sixty (60) days after the assessment's postmark.

(b) Once the Tax Administrator or other City official, or the designee of either, serves an assessment on the person to whom the assessment is directed, the person may protest the ruling of that assessment by filing an appeal with the Board of Tax Review within sixty (60) days after the receipt of service. The delivery of an assessment of the Tax Administrator under division (C)(1)(a) of this section is prima facie evidence that delivery is complete and that the assessment is served.

(2) If mailing of an assessment by a Tax Administrator by certified mail is returned for some cause other than an undeliverable address, the Tax Administrator shall resend the assessment by ordinary mail. The assessment shall show the date the Tax Administrator sends the assessment and include the following statement:

"This assessment is deemed to be served on the addressee under applicable law ten (10) days from the date this assessment was mailed by the Tax Administrator as shown on the assessment, and all periods within which an appeal may be filed apply from and after that date."

Unless the mailing is returned because of an undeliverable address, the mailing of that information is prima facie evidence that delivery of the assessment was completed ten (10) days after the Tax Administrator sent the assessment by ordinary mail and that the assessment was served.

If the ordinary mail is subsequently returned because of an undeliverable address, the Tax Administrator shall proceed under division (C)(1)(a) of this section. A person may challenge the presumption of delivery and service under this division in accordance with division (D) of this section.

(D) (1) A person disputing the presumption of delivery and service under division (C) of this section bears the burden of proving by a preponderance of the evidence that the address to which the assessment was sent by certified mail was not an address with which the person was associated at the time the Tax Administrator originally mailed the assessment. For the purposes of this section, a person is associated with an address at the time the Tax Administrator originally mailed the assessment if, at that time, the person was residing, receiving legal documents, or conducting business at the address; or if, before that time, the person had conducted business at the address and, when the assessment was mailed, the person's agent or the person's affiliate was conducting business at the address. For the purposes of this section, a person's affiliate is any other person that, at the time the assessment was mailed, owned or controlled at least twenty (20%) percent, as determined by voting rights, of the addressee's business.

(2) If a person elects to appeal an assessment on the basis described in division (D)(1) of this section, and if that assessment is subject to collection and is not otherwise appealable, the person must do so within sixty (60) days after the initial contact by the Tax Administrator or other City official, or the designee of either, with the person. Nothing in this division prevents the Tax Administrator or other official from entering into a compromise with the person if the person does not actually file such an appeal with the local Board of Tax Review.

(E) Nothing in this section prohibits the Tax Administrator or the Tax Administrator's designee from delivering an assessment by a Tax Administrator by personal service.

(F) Collection actions taken upon any assessment being appealed under division (C)(1)(b) of this section, including those on which a claim has been delivered for collection, shall be stayed upon the pendency of an appeal under this section.

(G) Additional regulations as detailed in the Rules and Regulations shall apply. (Ord. 15-42. Passed 11-16-15.)

174.15 ADMINISTRATION OF CLAIMS.

(A) As used in this section, "claim" means a claim for an amount payable to the City that arises pursuant to the City's income tax imposed in accordance with this Chapter.

(B) Nothing in this Chapter prohibits a Tax Administrator from doing either of the following if such action is in the best interests of the City:

(1) Compromise a claim;

(2) Extend for a reasonable period the time for payment of a claim by agreeing to accept monthly or other periodic payments.

(C) The Tax Administrator's rejection of a compromise or payment-over-time agreement proposed by a person with respect to a claim shall not be appealable.

(D) A compromise or payment-over-time agreement with respect to a claim shall be binding upon and shall be to the benefit of only the parties to the compromise or agreement, and shall not eliminate or otherwise affect the liability of any other person.

(E) A compromise or payment-over-time agreement with respect to a claim shall be void if the taxpayer defaults under the compromise or agreement or if the compromise or agreement was obtained by fraud or by misrepresentation of a material fact. Any amount that was due before the compromise or agreement and that is unpaid shall remain due, and any penalties or interest that would have accrued in the absence of the compromise or agreement shall continue to accrue and be due. (Ord. 15-42. Passed 11-16-15.)

174.16 TAX INFORMATION CONFIDENTIAL.

(A) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by this Chapter is confidential, and no person shall access or disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the City as authorized by this Chapter. The Tax Administrator or a designee thereof may furnish copies of returns filed or otherwise received under this Chapter and other related tax information to the internal revenue service, the tax commissioner, and tax administrators of other municipal corporations.

(B) This section does not prohibit the City from publishing or disclosing statistics in a form that does not disclose information with respect to particular taxpayers.
(Ord. 15-42. Passed 11-16-15.)

174.17 FRAUD.

No person shall knowingly make, present, aid, or assist in the preparation or presentation of a false or fraudulent report, return, schedule, statement, claim, or document authorized or required by City ordinance or state law to be filed with the Tax Administrator, or knowingly procure, counsel, or advise the preparation or presentation of such report, return, schedule, statement, claim, or document, or knowingly change, alter, or amend, or knowingly procure, counsel or advise such change, alteration, or amendment of the records upon which such report, return, schedule, statement, claim, or document is based with intent to defraud the City or the Tax Administrator. (Ord. 15-42. Passed 11-16-15.)

174.18 INTEREST AND PENALTIES.

(A) As used in this section:

(1) "Applicable law" means this Chapter, the resolutions, ordinances, codes, directives, instructions, and rules adopted by the City provided they impose or directly or indirectly address the levy, payment, remittance, or filing requirements of the City.

(2) "Federal short-term rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three (3) years or less, as determined under Section 1274 of the Internal Revenue Code, for July of the current year.

(3) "Income tax," "estimated income tax," and "withholding tax" means any income tax, estimated income tax, and withholding tax imposed by the City pursuant to applicable law, including at any time before January 1, 2016.

(4) "Interest rate as described in division (A) of this section" means the federal short-term rate, rounded to the nearest whole number percent, plus five percent. The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined in accordance with division (A)(2) of this section.

(5) "Return" includes any tax return, report, reconciliation, schedule, and other document required to be filed with a the Tax Administrator or the City by a taxpayer, employer, any agent of the employer, or any other payer pursuant to applicable law, including at any time before January 1, 2016.

(6) "Unpaid estimated income tax" means estimated income tax due but not paid by the date the tax is required to be paid under applicable law.

(7) "Unpaid income tax" means income tax due but not paid by the date the income tax is required to be paid under applicable law.

(8) "Unpaid withholding tax" means withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.

(9) "Withholding tax" includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee's qualifying wages, but that, under applicable law, the employer, agent, or other payer is required to withhold from an employee's qualifying wages.

(B) (1) This section applies to the following:

(a) Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016;

(b) Income tax, estimated income tax, and withholding tax required to be paid or remitted to the City on or after January 1, 2016.

(2) This section does not apply to returns required to be filed or payments required to be made before January 1, 2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before January 1, 2016, but filed or paid after that date shall be subject to the ordinances or rules and regulations, as adopted before January 1, 2016, of the City to which the return is to be filed or the payment is to be made.

(C) Should any taxpayer, employer, agent of the employer, or other payer for any reason fail, in whole or in part, to make timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with the City any return required to be filed, the following penalties and interest shall apply:

(1) Interest shall be imposed at the rate described in division (A) of this section, per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax.

(2) (a) With respect to unpaid income tax and unpaid estimated income tax, the City may impose a penalty equal to fifteen percent (15%) of the amount not timely paid.

(b) With respect to any unpaid withholding tax, the City may impose a penalty equal to fifty percent (50%) of the amount not timely paid.

(3) With respect to returns other than estimated income tax returns, the City may impose a penalty of twenty-five dollars ($25.00) for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed one hundred and fifty dollars ($150.00) for each failure.

(D) Nothing in this section requires the City to refund or credit any penalty, amount of interest, charges, or additional fees that the City has properly imposed or collected before January 1, 2016.

(E) Nothing in this section limits the authority of the City to abate or partially abate penalties or interest imposed under this section when the Tax Administrator determines, in the Tax Administrator's sole discretion, that such abatement is appropriate.

(F) By the 31st day of October of each year the City shall publish the rate described in division (A) of this section applicable to the next succeeding calendar year.

(G) The City may impose on the taxpayer, employer, any agent of the employer, or any other payer the City's post-judgment collection costs and fees, including attorney's fees.
(Ord. 15-42. Passed 11-16-15.)

174.19 AUTHORITY OF TAX ADMINISTRATOR; VERIFICATION OF INFORMATION.

Authority.

(A) Nothing in this Chapter shall limit the authority of the Tax Administrator to perform any of the following duties or functions, unless the performance of such duties or functions is expressly limited by a provision of the ORC:

(1) (a) Exercise all powers whatsoever of an query nature as provided by law, including, the right to inspect books, accounts, records, memorandums, and federal and state income tax returns, to examine persons under oath, to issue orders or subpoenas for the production of books, accounts, papers, records, documents, and testimony, to take depositions, to apply to a court for attachment proceedings as for contempt, to approve vouchers for the fees of officers and witnesses, and to administer oaths.

(b) The powers referred to in this division of this section shall be exercised by the Tax Administrator only in connection with the performance of the duties respectively assigned to the Tax Administrator under the City's income tax ordinance;

(2) Appoint agents and prescribe their powers and duties;

(3) Confer and meet with officers of other municipal corporations and states and officers of the United States on any matters pertaining to their respective official duties as provided by law;

(4) Exercise the authority provided by law, including orders from bankruptcy courts, relative to remitting or refunding taxes, including penalties and interest thereon, for any reason overpaid. In addition, the Tax Administrator may investigate any claim of overpayment and, if the Tax Administrator finds that there has been an overpayment, make a written statement of the Tax Administrator's findings, and'approve and issue a refund payable to the taxpayer, the taxpayer's assigns, or l'gal representative as provided in this Chapter;

(5) Exercise the authority provided by law relative to consenting to the compromise and settlement of tax claims;

(6) Exercise the authority provided by law relative to the use of alternative apportionment methods by taxpayers in accordance with Section 174.03;

(7) (a) Make all tax findings, determinations, computations, and orders the Tax Administrator is by law authorized and required to make and, pursuant to time limitations provided by law, on the Tax Administrator's own motion, r'view, re-determine, or correct any tax findings, determinations, computations, or orders the Tax Administrator has made.

(b) If an appeal has been filed with the Board of Tax Review or other appropriate tribunal, the Tax Administrator shall not review, re-determine, or correct any tax finding, determination, computation, or order which the Tax Administrator has made, unless such appeal or application is withdrawn by the appellant or applicant, is dismissed, or is otherwise final;

(8) Destroy any or all returns or other tax documents in the manner authorized by law;

(9) Enter into an agreement with a taxpayer to simplify the withholding obligations described in Section 174.04.

Verification of accuracy of returns and determination of liability.

(B) (1) A Tax Administrator, or any authorized agent or employee thereof may examine the books, papers, records, and federal and state income tax returns of any employer, taxpayer, or other person that is subject to, or that the Tax Administrator believes is subject to, the provisions of this Chapter for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due under this Chapter. Upon written request by the Tax Administrator or a duly authorized agent or employee thereof, every employer, taxpayer, or other person subject to this section is required to furnish the opportunity for the Tax Administrator, authorized agent, or employee to investigate and examine such books, papers, records, and federal and state income tax returns at a reasonable time and place designated in the request.

(2) The records and other documents of any taxpayer, employer, or other person that is subject to, or that a Tax Administrator believes is subject to, the provisions of this Chapter shall be open to the Tax Administrator's inspection du'ing business hours and shall be preserved for a period of six (6) years following the end of the taxable year to which the records or documents relate, unless the Tax Administrator, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The Tax Administrator may require any person, by notice served on that person, to keep such records as the Tax Administrator determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by the City or for the withholding of such tax.

(3) The Tax Administrator may examine under oath any person that the Tax Administrator reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The Tax Administrator may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records, and federal and state income tax returns in such person's possession or'control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.

(4) No person issued written notice by the Tax Administrator compelling attendance at a hearing or examination or the production of books, papers, records, or federal or state income tax returns under this section shall fail to comply.

Identification information.

(C) (1) Nothing in this Chapter prohibits the Tax Administrator from requiring any person filing a tax document with the Tax Administrator to provide identifying information, which may include the person's social securi'y number, federal employer identification number, or other identification number requested by the Tax Administrator. A person required by the Tax Administrator to provide identifying information that has experienced any change with respect to that information shall notify the Tax Administrator of the change before, or upon, filing the next tax document requiring the identifying information.

(2) (a) If the Tax Administrator makes a request for identifying information and the Tax Administrator does not receive valid identifying information within thirty (30) days of making the request, nothing in this Chapter prohibits the Tax Administrator from imposing a penalty upon the person to whom the request was directed pursuant to Section 174.18, in addition to any applicable penalty described in Section 174.99.

(b) If a person required by the Tax Administrator to provide identifying information does not notify the Tax Administrator of a change with respect to that information as required under division (C) of Section 174.19 within thirty (30) days after filing the next tax document requiring such identifying information, nothing in this Chapter prohibits the Tax Administrator from imposing a penalty pursuant to Section 174.18.

(c) The penalties provided for under divisions (C)(2)(a) and (b) of this section may be billed and imposed in the same manner as the tax or fee with respect to which the identifying information is sought and are in addition to any applicable criminal penalties described in Section 174.99 for a violation of Section 174.17 and any other penalties that may be imposed by the Tax Administrator by law. (Ord. 15-42. Passed 11-16-15.)

174.20 REQUEST FOR OPINION OF THE TAX ADMINISTRATOR.

(A) An "opinion of the Tax Administrator" means an opinion issued under this section with respect to prospective municipal income tax liability. It does not include ordinary correspondence of the Tax Administrator.

(B) A taxpayer may submit a written request for an opinion of the Tax Administrator in accordance with the Rules and Regulations.

(C) A taxpayer is not relieved of tax liability for any activity or transaction related to a request for an opinion that contained any misrepresentation or omission of one or more material facts.

(D) A Tax Administrator may refuse to offer an opinion on any request received under this section. Such refusal is not subject to appeal.

(E) An opinion of the Tax Administrator binds the Tax Administrator only with respect to the taxpayer for whom the opinion was prepared and does not bind the Tax Administrator of any other municipal corporation.

(F) An opinion of the Tax Administrator issued under this section is not subject to appeal. (Ord. 15-42. Passed 11-16-15.)

174.21 BOARD OF TAX REVIEW.

(A) (1) The Board of Tax Review shall consist of three (3) members. Two (2) members shall be appointed by the legislative authority of the City, but such appointees may not be employees, elected officials, or contractors with the City at any time during their term or in the five (5) years immediately preceding the date of appointment. One (1) member shall be appointed by the Mayor of the City. This member may be an employee of the City, but may not be the director of finance or equivalent officer, or the Tax Administrator or other similar official or an employee directly involved in municipal tax matters, or any direct subordinate thereof.

(2) The term for members of the Board of Tax Review appointed by the legislative authority of the City shall be two (2) years. There is no limit on the number of terms that a member may serve if the member is reappointed by the legislative authority. The board member appointed by the Mayor of the City shall serve at the discretion of the Mayor.

(3) Members of the Board of Tax Review appointed by the legislative authority may be removed by the legislative authority by majority vote for malfeasance, misfeasance, or nonfeasance in office. To remove such a member, the legislative authority must give the member a copy of the charges against the member and afford the member an opportunity to be publicly heard in person or by counsel in the member's own defense upon not less than ten (10) days' notice. The decision by the legislative authority on the charges is final and not appealable.

(4) A member of the Board of Tax Review who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.

(5) A vacancy in an unexpired term shall be filled in the same manner as the original appointment within sixty (60) days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the Board of Tax Review shall impair the power and authority of the remaining members to exercise all the powers of the Board of Tax Review.

(6) If a member is temporarily unable to serve on the Board of Tax Review due to a conflict of interest, illness, absence, or similar reason, the legislative authority or top administrative official that appointed the member shall appoint another individual to temporarily serve on the Board of Tax Review in the member's place. The appointment of such an individual shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.

(B) Whenever a Tax Administrator issues an assessment, the Tax Administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the assessment, the manner in which the taxpayer may appeal the assessment, and the address to which the appeal should be directed.

(C) Any person who has been issued an assessment may appeal the assessment to the Board of Tax Review by filing a request with the Board of Tax Review. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty (60) days after the taxpayer receives the assessment.

(D) The Board of Tax Review shall schedule a hearing to be held within sixty (60) days after receiving an appeal of an assessment under division (C) of this section, unless the taxpayer requests additional time to prepare or waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board of Tax Review and may be represented by an attorney at law, certified public accountant, or other representative. The Board of Tax Review may allow a hearing to be continued as jointly agreed to by the parties. In such a case, the hearing must be completed within one hundred twenty (120) days after the first (1st) day of the hearing unless the parties agree otherwise.

(E) The Board of Tax Review may affirm, reverse, or modify the Tax Administrator's assessment or any part of that assessment. The Board of Tax Review shall issue a final determination on the appeal within ninety (90) days after the Board of Tax Review's final hearing on the appeal, and send a copy of its final determination by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the final determination. The taxpayer or the Tax Administrator may appeal the Board of Tax Review's final determination as provided in Section 5717.011 of the ORC.

(F) The Board of Tax Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Section 149.43 of the ORC. Hearings requested by a taxpayer before a Board of Tax Review created pursuant to this section are not meetings of a public body subject to Section 121.22 of the ORC.
(Ord. 15-42. Passed 11-16-15.)

174.22 AUTHORITY TO CREATE RULES AND REGULATIONS.

(A) Nothing in this Chapter prohibits the legislative authority of the City, or a Tax Administrator pursuant to authority granted to the administrator by resolution or ordinance, to adopt rules to administer an income tax imposed by the City in accordance with this Chapter. Such rules shall not conflict with or be inconsistent with any provision of this Chapter. Taxpayers are hereby required to comply not only with the requirements of this Chapter, but also to comply with the Rules and Regulations.

(B) All rules adopted under this section shall be published and posted on the internet.
(Ord. 15-42. Passed 11-16-15.)

174.23 RENTAL AND LEASED PROPERTY.

(A) All property owners of real property located in the City, who rent or otherwise lease the same, or any part thereof, to any person for residential dwelling purposes, including apartments, rooms and other rental accommodations, during any calendar year, or part thereof, commencing with the effective date of this section, shall file with the Tax Administrator on or before July 31st of each calendar year and the January 31 first following such calendar year a written report disclosing the name, address and also telephone number, if available, of each tenant known to have occupied on June 31st and December 31 during such calendar year such apartment, room or other residential dwelling rental property. In addition to the above, property managers and owners who rent or otherwise lease real property located in the City, or any part thereof, to

any person for residential dwelling purposes, including apartment, rooms and other rental accommodations, during any calendar year, or part thereof, having 4 or more units or tenants, during any calendar year, or part thereof, commencing with the effective date of this section, shall file with the Tax Administrator on a monthly basis, on or before the 15th day following the end of the previous calendar month, a written report disclosing the name, address and also telephone number, if available, and length of the contemplated tenancy of each tenant known to have occupied on the first day of the proceeding month such apartment, room or other residential dwelling rental property.

(B) The Tax Administrator may order the appearance before him, or his duly authorized agent, of any person whom he believes to have any knowledge of the name, address and telephone number of any tenant of residential rental real property in the City. The Tax Administrator, or his duly authorized agent, is authorized to examine any person, under oath, concerning the name, address and telephone number of any tenant of residential real property located in the City. The Tax Administrator, or his duly authorized agent, may compel the production of papers and records and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such person has knowledge of the name, address and telephone number of any tenant of residential real property in the City.

(C) Any property owner or person that violates one or more of the following shall be subject to Section 174.99 of this Chapter:

(1) Fails, refuses or neglects to timely file a written report required by subsection (a) hereof; or

(2) Makes an incomplete or intentionally false written report required by subsection (a) hereof; or

(3) Fails to appear before the Tax Administrator or any duly authorized agent and to produce and disclose any tenant information pursuant to any order or subpoena of the Tax Administrator as authorized in this section; or

(4) Fails to comply with the provisions of this section or any order or subpoena of the Tax Administrator.

(Ord. 15-42. Passed 11-16-15.)

174.24 SAVINGS CLAUSE.

This Chapter shall not apply to any person, firm or corporation, or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for. Any sentence, clause, section or part of this Chapter or any tax against or exception granted any individual or any of the several groups of persons, or forms of income specified herein if found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this Chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this Chapter. It is hereby declared to be the intention of Council that this Chapter would have been adopted had such unconstitutional, illegal or invalid sentence, or part hereof, not been included therein.
(Ord. 15-42. Passed 11-16-15.)

174.25 COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE.

(A) This Chapter shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this Chapter are concerned, it shall continue effective until all of said taxes levied hereunder in the aforesaid periods are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Section 174.12 and Section 174.99 hereof.

(B) Annual returns due for all or any part of the last effective year of this ordinance shall be due on the date provided in Sections 174.05 and Section 174.04 of this Chapter as though the same were continuing. (Ord. 15-42. Passed 11-16-15.)

174.26 ADOPTION OF RITA RULES AND REGULATIONS.

The City hereby adopts the Regional Income Tax Agency (RITA) Rules & Regulations, including amendments that may be made from time to time, for use as the City's Income Tax Rules and Regulations. In the event of a conflict with any provision(s) of this Chapter and the RITA Rules & Regulations, this Chapter will supersede. Until and if the contractual relationship between the City and RITA ceases, Section 174.26 will supersede all other provisions within Chapter 174 regarding promulgation of rules and regulations by the Tax Administrator.
(Ord. 15-42. Passed 11-16-15.)

174.99 VIOLATIONS; PENALTIES.

(A) Whoever violates Section 174.17, division (A) of Section 174.16, or Section 174.04 by failing to remit City income taxes deducted and withheld from an employee, shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than $1,000 or imprisonment for a term of up to six months, or both. If the individual that commits the violation is an employee, or official, of the City, the individual is subject to discharge from employment or dismissal from office.

(B) Any person who discloses information received from the Internal Revenue Service in violation of division (A) of Section 174.16 shall be guilty of a felony of the fifth degree and shall be subject to a fine of not more than $5,000 plus the costs of prosecution, or imprisonment for a term not exceeding five (5) years, or both. If the individual that commits the violation is an employee, or official, of the City, the individual is subject to discharge from employment or dismissal from office.

(C) Each instance of access or disclosure in violation of division (A) of Section 174.16 constitutes a separate offense.

(D) If not otherwise specified herein, no person shall:

(1) Fail, neglect or refuse to make any return or declaration required by this Chapter;
(2) File any incomplete or false return;
(3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this Chapter;
(4) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his books, records, papers and federal and state income tax returns relating to the income or net profits of a taxpayer;
(5) Fail to appear before the Tax Administrator and to produce his books, records, papers or federal and state income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator;
(6) Refuse to disclose to the Tax Administrator any information with respect to the income or net profits of a taxpayer;
(7) Fail to comply with the provisions of this Chapter or any order or subpoena of the Tax Administrator authorized hereby;
(8) Give to an employer false information as to his true name, correct social security number, and residence address, or fail to promptly notify an employer of any change in residence address and date thereof;

(9) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this Chapter.

(E) Any person who violates any of the provisions in Section 174.99 (D) shall be subject to the penalties provided for in Section 174.99 (A) of this Chapter.
(Ord. 15-42. Passed 11-16-15.)

CHAPTER 175
Motor Vehicle License Tax

175.01 Levy; purpose.
175.02 Rate.
175.03 Applicability.
175.04 Purpose.
175.05 Chapter certified.

CROSS REFERENCES
Authority to collect - see Ohio R.C. 4504.06

175.01 LEVY; PURPOSE.

There is hereby levied an annual license tax upon those vehicles registered in the City district of registration and upon the operation on the public roads and highways, pursuant to Ohio R.C. 4504.172, for the purposes of planning, constructing, improving, maintaining and repairing public roadways, highways and streets; for paying the costs and expenses of enforcing and administering the tax provided for in this section; to provide additional revenue for the purposes as set forth in Ohio R.C. 4504.06; and to supplement revenue already available for such purposes. (Ord. 88-14. Passed 5-2-88.)

175.02 RATE.

Such tax shall be levied at the rate of five dollars ($5.00) per motor vehicle for each and every motor vehicle, as such term is defined in Ohio R.C. 4501.01 and 4505.01, the district of registration of which vehicles, as defined in Ohio R.C. 4503.10, is in the City of Fairview Park, Ohio. (Ord. 88-14. Passed 5-2-88.)

175.03 APPLICABILITY.

The tax imposed by this chapter shall apply to and be in effect during each registration year thereafter until repealed.
(Ord. 88-14. Passed 5-2-88.)

175.04 PURPOSE.

The moneys derived from the tax imposed by this chapter shall be used by the City for the purposes as set forth in Ohio R.C. 4504.06.
(Ord. 88-14. Passed 5-2-88.)

175.05 CHAPTER CERTIFIED.

The Mayor and the Finance Director are authorized and directed to complete any and all documents necessary to ensure that this chapter is certified to the Bureau of Motor Vehicles on or before September 30, 1988.
(Ord. 88-14. Passed 5-2-88.)

CODIFIED ORDINANCES OF FAIRVIEW PARK

PART THREE - TRAFFIC CODE

TITLE ONE - Administration
Chap. 301. Definitions.
Chap. 303. Enforcement, Impounding and Penalty.
Chap. 305. Traffic Control.
Chap. 307. Impounding Vehicles.

TITLE THREE - Streets and Traffic Control Devices
Chap. 311. Street Obstructions and Special Uses.
Chap. 313. Traffic Control Devices.

TITLE FIVE - Vehicles
Chap. 331. Operation Generally.
Chap. 333. OVI; Willful Misconduct; Speed.
Chap. 335. Licensing; Accidents.
Chap. 337. Safety and Equipment.
Chap. 339. Commercial and Heavy Vehicles.
Chap. 341. Commercial Drivers.
Chap. 343. Transportation of Radioactive Materials.

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CODIFIED ORDINANCES OF FAIRVIEW PARK

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CHAPTER 301
Definitions

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301.01 MEANING OF WORDS AND PHRASES.
The following words and phrases when used in this Traffic Code, except as otherwise provided, shall have the meanings respectively ascribed to them in this chapter.

301.02 AGRICULTURAL TRACTOR.
"Agricultural tractor" means every self-propelling vehicle designed or used for drawing other vehicles or wheeled machinery but having no provision for carrying loads independently of such other vehicles, and used principally for agricultural purposes. (ORC 4511.01(J))

301.03 ALLEY.
"Alley" means a street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic, and includes any street or highway that has been declared an "alley" by Council. (ORC 4511.01(XX))

301.031 BEACON; HYBRID BEACON.
(a) “Beacon” means a highway traffic signal with one or more signal sections that operate in a flashing mode. (ORC 4511.01(KKK))

(b) “Hybrid beacon” means a type of beacon that is intentionally placed in a dark mode between periods of operation where no indications are displayed and, when in operation, displays both steady and flashing traffic control signal indications.
(ORC 4511.01(LLL))

301.04 BICYCLE; MOTORIZED BICYCLE; MOPED.
(a) "Bicycle" means every device, other than a device that is designed solely for use as a play vehicle by a child, that is propelled solely by human power, upon which a person may ride and that has two or more wheels any of which is more than fourteen inches in diameter.
(ORC 4511.01(G))

(b) "Motorized bicycle" or “moped” means any vehicle having either two tandem wheels or one wheel in the front and two wheels in the rear, that may be pedaled and that is equipped with a helper motor of not more than fifty cubic centimeters piston displacement which produces no more than one brake horsepower and is capable of propelling the vehicle at a speed of no greater than twenty miles per hour on a level surface. (ORC 4511.01(H))

301.05 BUS.

"Bus" means every motor vehicle designed for carrying more than nine passengers and used for the transportation of persons other than in a ridesharing arrangement as defined in Ohio R.C. 4511.01, and every motor vehicle, automobile for hire or funeral car, other than a taxicab or motor vehicle used in a ridesharing arrangement, designed and used for the transportation of persons for compensation. (ORC 4511.01(L))

301.06 BUSINESS DISTRICT.

"Business district" means the territory fronting upon a street or highway, including the street or highway, between successive intersections where fifty percent or more of the frontage between such successive intersections is occupied by buildings in use for business, or where fifty percent or more of the frontage for a distance of 300 feet or more is occupied by buildings in use for business, and the character of such territory is indicated by official traffic control devices. (ORC 4511.01(NN))

301.07 COMMERCIAL TRACTOR.

"Commercial tractor" means every motor vehicle having motive power designed or used for drawing other vehicles and not so constructed as to carry any load thereon, or designed or used for drawing other vehicles while carrying a portion of such other vehicles, or the load thereon, or both. (ORC 4511.01(I))

301.08 CONTROLLED-ACCESS HIGHWAY.

"Controlled-access highway" means every street or highway in respect to which owners or occupants of abutting lands and other persons have no legal right or access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such street or highway. (ORC 4511.01(CC))

301.09 CROSSWALK.

"Crosswalk" means:

(a) That part of a roadway at intersections ordinarily included within the real or projected prolongation of property lines and curb lines or, in the absence of curbs, the edges of the traversable roadway;

(b) Any portion of a roadway at an intersection or elsewhere, distinctly indicated for pedestrian crossing by lines or other markings on the surface;

(c) Notwithstanding subsections (a) and (b) hereof, there shall not be a crosswalk where authorized signs have been placed indicating no crossing.
(ORC 4511.01(LL))

301.10 DRIVER OR OPERATOR.

"Driver" or "operator" means every person who drives or is in actual physical control of a vehicle. (ORC 4511.01(Y))

301.11 EMERGENCY VEHICLE.

"Emergency vehicle" means emergency vehicles of municipal, township or county departments or public utility corporations when identified as such as required by law, the Ohio Director of Public Safety or local authorities, and motor vehicles when commandeered by a police officer. (ORC 4511.01(D))

301.12 EXPLOSIVES.

"Explosives" means any chemical compound or mechanical mixture that is intended for the purpose of producing an explosion that contains any oxidizing and combustible units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by a detonator of any part of the compound or mixture may cause

such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, or of destroying life or limb.

Manufactured articles shall not be held to be explosives when the individual units contain explosives in such limited quantities, of such nature or in such packing, that it is impossible to procure a simultaneous or a destructive explosion of such units, to the injury of life, limb or property by fire, by friction, by concussion, by percussion or by a detonator, such as fixed ammunition for small arms, firecrackers or safety fuse matches. (ORC 4511.01(T))

301.13 EXPRESSWAY.

"Expressway" means a divided arterial highway for through traffic with full or partial control of access with an excess of fifty percent of all crossroads separated in grade.
(ORC 4511.01(ZZ))

301.14 FLAMMABLE LIQUID.

"Flammable liquid" means any liquid that has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closed cup test device.
(ORC 4511.01(U))

301.15 FREEWAY.

"Freeway" means a divided multi-lane highway for through traffic with all crossroads separated in grade and with full control of access. (ORC 4511.01(YY))

301.16 GROSS WEIGHT.

"Gross weight" means the weight of a vehicle plus the weight of any load thereon.
(ORC 4511.01(V))

301.161 HIGHWAY MAINTENANCE VEHICLE.

“Highway maintenance vehicle” means a vehicle used in snow and ice removal or road surface maintenance, including a snow plow, traffic line striper, road sweeper, mowing machine, asphalt distributing vehicle, or other such vehicle designed for use in specific highway maintenance activities. (ORC 4511.01(QQQ))

301.162 HIGHWAY TRAFFIC SIGNAL.

“Highway traffic signal”means a power-operated traffic control device by which traffic is warned or directed to take some specific action. “Highway traffic signal” does not include a power-operated sign, steadily illuminated pavement markers, warning light, or steady burning electric lamp. (ORC 4511.01(MMM))

301.17 INTERSECTION.

"Intersection" means:

(a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways that join at any other angle might come into conflict. The junction of an alley or driveway with a roadway or highway does not constitute an intersection unless the roadway or highway at the junction is controlled by a traffic control device.

(b) If a highway includes two roadways that are thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway constitutes a separate intersection. If both intersecting highways include two roadways thirty feet or more apart, then every crossing of any two roadways of such highways constitutes a separate intersection.

(c) At a location controlled by a traffic control signal, regardless of the distance between the separate intersections as described in subsection (b) of this section:
(1) If a stop line, yield line, or crosswalk has not been designated on the roadway within the median between the separate intersections, the two intersections and the roadway and median constitute one intersection.
(2) Where a stop line, yield line, or crosswalk line is designated on the roadway on the intersection approach, the area within the crosswalk and any area beyond the designated stop line or yield line constitute part of the intersection.
(3) Where a crosswalk is designated on a roadway on the departure from the intersection, the intersection includes the area that extends to the far side of the crosswalk. (ORC 4511.01(KK))

301.18 LANED STREET OR HIGHWAY.
"Laned street or highway" means a street or highway the roadway of which is divided into two or more clearly marked lanes for vehicular traffic.
(ORC 4511.01(GG))

301.181 MEDIAN.
“Median” means the area between two roadways of a divided highway, measured from edge of traveled way to edge of traveled way, but excluding turn lanes. The width of a median may be different between intersections, between interchanges, and at opposite approaches of the same intersection. (ORC 4511.01(NNN))

301.19 MOTORCYCLE.
"Motorcycle" means every motor vehicle, other than a tractor, having a seat or saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground, including but not limited to, motor vehicles known as "motor-driven cycle," "motor scooter," “autocycle,”,“cab-enclosed motorcycle” or "motorcycle" without regard to weight or brake horsepower. (ORC 4511.01(C))

301.20 MOTOR VEHICLE.
"Motor vehicle" means every vehicle propelled or drawn by power other than muscular power, except motorized bicycles, road rollers, traction engines, power shovels, power cranes and other equipment used in construction work and not designed for or employed in general highway transportation, hole-digging machinery, well-drilling machinery, ditch-digging machinery, farm machinery, and trailers designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of twenty-five miles per hour or less.
(ORC 4511.01(B))

301.201 OPERATE.
“Operate” means to cause or have caused movement of a vehicle.
(ORC 4511.01(HHH))

301.21 PARK OR PARKING.
"Park or parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

301.22 PEDESTRIAN.
"Pedestrian" means any natural person afoot. (ORC 4511.01(X))

301.23 PERSON.
"Person" means every natural person, firm, copartnership, association or corporation. (ORC 4511.01(W))

301.24 POLE TRAILER.
"Pole trailer" means every trailer or semitrailer attached to the towing vehicle by means of a reach, pole or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregular shaped loads such as poles, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connection.
(ORC 4511.01(O))

301.25 POLICE OFFICER.
"Police officer" means every officer authorized to direct or regulate traffic, or to make arrests for violations of traffic regulations.
(ORC 4511.01(Z))

301.251 PREDICATE MOTOR VEHICLE OR TRAFFIC OFFENSE.
"Predicate motor vehicle or traffic offense" means any of the following:

(a) A violation of Ohio R.C. 4511.03, 4511.051, 4511.12, 4511.132, 4511.16, 4511.20, 4511.201, 4511.21, 4511.211, 4511.213, 4511.22, 4511.23, 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.432, 4511.44, 4511.441, 4511.451, 4511.452, 4511.46, 4511.47, 4511.48, 4511.481, 4511.49, 4511.50, 4511.511, 4511.53, 4511.54, 4511.55, 4511.56, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.64, 4511.66, 4511.661, 4511.68, 4511.70, 4511.701, 4511.71, 4511.711, 4511.712, 4511.713, 4511.72, 4511.73, 4511.763, 4511.771, 4511.78 or 4511.84;

(b) A violation of division (A)(2) of Ohio R.C. 4511.17, divisions (A) to (D) of Ohio R.C. 4511.51, or division (A) of Ohio R.C. 4511.74;

(c) A violation of any provision of Ohio R.C. 4511.01 to 4511.76 for which no penalty otherwise is provided in the section that contains the provision violated;

(d) A violation of a municipal ordinance that is substantially similar to any section or provision set forth or described in subsection (a) to (c) of this section.
(ORC 4511.01(III))

301.26 PRIVATE ROAD OR DRIVEWAY.
(a) "Private road or driveway" means every way or place in private ownership used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons. (ORC 4511.01(DD))

(b) "Private road open to public travel" means a private toll road or road, including any adjacent sidewalks that generally run parallel to the road, within a shopping center, airport, sports arena, or other similar business or recreation facility that is privately owned but where the public is allowed to travel without access restrictions. "Private road open to public travel" includes a gated toll road but does not include a road within a private gated property where access is restricted at all times, a parking area, a driving aisle within a parking area, or a private grade crossing. (ORC 4511.01(OOO))

301.27 PUBLIC SAFETY VEHICLE.
"Public safety vehicle" means any of the following:

(a) Ambulances, including private ambulance companies under contract to a municipal corporation, township or county and private ambulances and transport vehicles bearing license plates issued under Ohio R.C. 4503.49;

(b) Motor vehicles used by public law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the State or the Municipality;

(c) Any motor vehicle when properly identified as required by the Ohio Director of Public Safety, when used in response to fire emergency calls or to provide emergency medical service to ill or injured persons, and when operated by a duly qualified person who is a member of a volunteer rescue service or a volunteer fire department, and who is on duty pursuant to the rules or directives of that service. The Ohio Fire Marshal shall be designated by the Ohio Director of Public Safety as the certifying agency for all public safety vehicles described in this subsection (c);

(d) Vehicles used by fire departments, including motor vehicles when used by volunteer fire fighters responding to emergency calls in the fire department service when identified as required by the Ohio Director of Public Safety.

Any vehicle used to transport or provide emergency medical service to an ill or injured person, when certified as a public safety vehicle, shall be considered a public safety vehicle when transporting an ill or injured person to a hospital regardless of whether such vehicle has already passed a hospital.

(ORC 4511.01(E))

(e) Vehicles used by the Commercial Motor Vehicle Safety Enforcement Unit for the enforcement of orders and rules of the Public Utilities Commission as specified in Ohio R.C. 5503.34.

301.28 RAILROAD.

"Railroad" means a carrier of persons or property operating upon rails placed principally on a private right of way. (ORC 4511.01(P))

301.29 RAILROAD SIGN OR SIGNAL.

"Railroad sign or signal" means any sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.
(ORC 4511.01(SS))

301.30 RAILROAD TRAIN.

"Railroad train" means a steam engine, or an electric or other motor, with or without cars coupled thereto, operated by a railroad. (ORC 4511.01(Q))

301.31 RESIDENCE DISTRICT.

"Residence district" means the territory, not comprising a business district, fronting on a street or highway, including the street or highway, where, for a distance of 300 feet or more, the frontage is improved with residences or residences and buildings in use for business.
(ORC 4511.01(OO))

301.32 RIGHT OF WAY.

"Right of way" means either of the following, as the context requires:

(a) The right of a vehicle or pedestrian to proceed uninterruptedly in a lawful manner in the direction in which it or the individual is moving in preference to another vehicle or pedestrian approaching from a different direction into its or the individual's path;

(b) A general term denoting land, property or the interest therein, usually in the configuration of a strip, acquired for or devoted to transportation purposes. When used in this context, right of way includes the roadway, shoulders or berm, ditch, and slopes extending to the right-of-way limits under the control of the State or local authority.(ORC 4511.01(UU))

301.321 ROAD SERVICE VEHICLE.
"Road service vehicle" means wreckers, utility repair vehicles, and state, county, and municipal service vehicles equipped with visual signals by means of flashing, rotating, or oscillating lights. (ORC 4511.01(JJJ))

301.33 ROADWAY.
"Roadway" means that portion of a street or highway improved, designed or ordinarily used for vehicular travel, except the berm or shoulder. If a street or highway includes two or more separate roadways, the term "roadway" means any such roadway separately but not all such roadways collectively.
(ORC 4511.01(EE))

301.34 SAFETY ZONE.
"Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and protected or marked or indicated by adequate signs as to be plainly visible at all times. (ORC 4511.01(MM))

301.35 SCHOOL BUS.
"School bus" means every bus designed for carrying more than nine passengers that is owned by a public, private or governmental agency or institution of learning and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for compensation for the transportation of children to or from a school session or a school function; provided "school bus" does not include a bus operated by a municipally owned transportation system, a mass transit company operating exclusively within the territorial limits of the Municipality, or within such limits and the territorial limits of municipal corporations immediately contiguous to the Municipality, nor a common passenger carrier certified by the Public Utilities Commission unless such bus is devoted exclusively to the transportation of children to and from a school session or a school function, and "school bus" does not include a van or bus used by a licensed child day-care center or type A family day-care home to transport children from the child day-care center or type A family day-care home to a school if the van or bus does not have more than fifteen children in the van or bus at any time. "Child day-care center" and "type A family day-care home" have the same meanings as in Ohio R.C. 5104.01.
(ORC 4511.01(F), (FFF))

301.36 SEMITRAILER.
"Semitrailer" means every vehicle designed or used for carrying persons or property with another and separate motor vehicle so that in operation a part of its own weight or that of its load, or both, rests upon and is carried by another vehicle. (ORC 4511.01(N))

301.361 SHARED-USE PATH.
"Shared-use path" means a bikeway outside the traveled way and physically separate from motorized vehicular traffic by an open space or barrier and either within the highway right-of-way or within an independent alignment. A shared-use path also may be used by pedestrians, including skaters, joggers, users of manual and motorized wheelchairs, and other authorized motorized and non-motorized users. (ORC 4511.01(PPP))

301.37 SIDEWALK.
"Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians. (ORC 4511.01(FF))

301.38 STATE ROUTE.
"State route" means every highway that is designated with an official State route number and so marked. (ORC 4511.01(JJ))

301.39 STOP (WHEN REQUIRED).
"Stop" when required means a complete cessation of movement.

301.40 STOPPING OR STANDING.
(a) "Stop or stopping" when prohibited means any halting of a vehicle, even momentarily, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device.

(b) "Stand or standing" means the halting of a vehicle, whether occupied or not, otherwise then temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

301.41 STOP INTERSECTION.
"Stop intersection" means any intersection at one or more entrances of which stop signs are erected. (ORC 4511.01(BBB))

301.42 STREET OR HIGHWAY; ARTERIAL STREET.
(a) "Street" or "highway" are synonymous and mean the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel. (ORC 4511.01(BB))

(b) "Arterial street" means any United States or State numbered route, controlled access highway or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways. (ORC 4511.01(CCC))

301.43 THROUGH STREET OR HIGHWAY.
"Through street or highway" means every street or highway as provided in Section 313.02. (ORC 4511.01(HH))

301.44 THRUWAY.
"Thruway" means a through street or highway whose entire roadway is reserved for through traffic and on which roadway parking is prohibited.
(ORC 4511.01(AAA))

301.45 TRAFFIC.
"Traffic" means pedestrians, ridden or herded animals, vehicles and other devices, either singly or together, while using for purposes of travel any street or highway or private road open to public travel. (ORC 4511.01(TT))

301.46 TRAFFIC CONTROL DEVICE.
“Traffic control device” means a flagger, sign, signal, marking, or other device used to regulate, warn or guide traffic, placed on, over, or adjacent to a street, highway, private road open to public travel, pedestrian facility, or shared-use path by authority of a public agency or official having jurisdiction, or, in the case of a private road open to public travel, by authority of the private owner or private official having jurisdiction.
(ORC 4511.01(QQ))

301.47 TRAFFIC CONTROL SIGNAL.
"Traffic control signal" means any highway traffic signal by which traffic is alternately directed to stop and permitted to proceed.
(ORC 4511.01(RR))

301.48 TRAILER.

"Trailer" means every vehicle designed or used for carrying persons or property wholly on its own structure and for being drawn by a motor vehicle, including any such vehicle when formed by or operated as a combination of a semitrailer and a vehicle of the dolly type, such as that commonly known as a trailer dolly, a vehicle used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a street or highway at a speed greater than twenty-five miles per hour and a vehicle designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of more than ten miles or at a speed of more than twenty-five miles per hour.
(ORC 4511.01(M))

301.49 TRUCK.

"Truck" means every motor vehicle, except trailers and semitrailers, designed and used to carry property. (ORC 4511.01(K))

301.50 URBAN DISTRICT.

"Urban district" means the territory contiguous to and including any street or highway which is built up with structures devoted to business, industry or dwelling houses situated at intervals of less than 100 feet for distance of a quarter of a mile or more, and the character of such territory is indicated by official traffic control devices. (ORC 4511.01(PP))

301.51 VEHICLE.

"Vehicle" means every device, including a motorized bicycle, in, upon or by which any person or property may be transported or drawn upon a street or highway, except that “vehicle” does not include any motorized wheelchair, electric personal assistive mobility device, or any device, other than a bicycle, that is moved by human power. (ORC 4511.01(A))

301.52 WHEELCHAIR, MOTORIZED.

"Motorized wheelchair" means any self-propelled vehicle designed for, and used by, a handicapped person and that is incapable of a speed in excess of eight miles per hour.
(ORC 4511.01(EEE))

301.53 WASTE COLLECTION VEHICLE.

“Waste collection vehicle” means a vehicle used in the collection of garbage, refuse, trash or recyclable materials. (ORC 4511.01(RRR))

CHAPTER 303
Enforcement, Impounding and Penalty

303.01 Compliance with lawful order of police officer; fleeing.
303.02 Traffic direction in emergencies; obedience to school guard.
303.03 Officer may remove ignition key.
303.04 Road workers, motor vehicles and equipment excepted.
303.041 Emergency, public safety and coroner's vehicles exempt.
303.05 Application to persons riding, driving animals upon roadway.
303.06 Freeway use prohibited by pedestrians, bicycles and animals.
303.07 Application to drivers of government vehicles.
303.08 Falsification of identity prohibited.
303.99 General Traffic Code penalties.
303.991 Committing an offense while distracted penalty.

CROSS REFERENCES

See sectional histories for similar State law
Disposition of unclaimed vehicles - see Ohio R.C. 737.32, 4513.62 et seq.
Citations for minor misdemeanors - see Ohio R.C. 2935.26 et seq.
Power of trial court of record to suspend or revoke license for certain violations - see Ohio R.C. 4507.16, 4507.34
State point system suspension - see Ohio R.C. 4507.40
Uniform application of Ohio Traffic Law - see Ohio R.C. 4511.06
Marking motor vehicles used by traffic officers - see Ohio R.C. 4549.13
Distinctive uniform required for traffic officers - see Ohio R.C. 4549.15
Exceptions for emergency or public safety vehicles - see TRAF. 331.20, 333.06

303.01 COMPLIANCE WITH LAWFUL ORDER OF POLICE OFFICER; FLEEING.

(a) No person shall fail to comply with any lawful order or direction of any police officer invested with authority to direct, control or regulate traffic.

(b) No person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop.

(EDITOR'S NOTE: Refer to Ohio R.C. 2921.331 for filing charges under subsection (b) hereof since the jury or judge as trier of fact may determine the violation to be a felony.)

(c) Whoever violates this section is guilty of failure to comply with an order or signal of a police officer. A violation of subsection (a) is a misdemeanor of the first degree. Except as hereinafter provided, a violation of subsection (b) is a misdemeanor of the first degree. A violation of subsection (b) is a felony if the jury or judge as trier of fact finds any one of the following by proof beyond a reasonable doubt:

(1) In committing the offense, the offender was fleeing immediately after the commission of a felony;

(2) The operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property;

(3) The operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.

(d) In addition to any other sanction imposed for a violation of subsection (a) of this section or a misdemeanor violation of subsection (b) of this section, the court shall impose a class five suspension from the range specified in Ohio R.C. 4510.02(A)(5). If the offender previously has been found guilty of an offense under this section, in addition to any other sanction imposed for the offense, the court shall impose a class one suspension as described in division (A)(1) of that section. The court may grant limited driving privileges to the offender on a suspension imposed for a misdemeanor violation of this section as set forth in Ohio R.C. 4510.021. No judge shall suspend the first three years of suspension under a class two suspension of an offender's license, permit or privilege required by this division on any portion of the suspension under a class one suspension of an offender's license, permit, or privilege required by this subsection.
(ORC 2921.331)

303.02 TRAFFIC DIRECTION IN EMERGENCIES; OBEDIENCE TO SCHOOL GUARD.

(a) Police officers shall direct or regulate traffic in accordance with the provisions of this Traffic Code, provided that, in the event of fire or other emergency or to expedite traffic or safeguard pedestrians, they are authorized to direct traffic as conditions may require notwithstanding the provisions of this Traffic Code. Firemen, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity. The direction of traffic may be by word or audible signal, by gesture or visible signal or by any combination thereof. No person shall fail to comply with any lawful order or direction of any police officer or fireman issued pursuant to this section.

(b) No person shall fail to comply with any lawful order or direction of any school crossing guard invested with authority to direct, control or regulate traffic in the vicinity of the school to which such guard may be assigned.

(c) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

303.03 OFFICER MAY REMOVE IGNITION KEY.

A law enforcement officer may remove the ignition key left in the ignition switch of an unlocked and unattended motor vehicle parked on a street or highway, or any public or private property used by the public for purposes of vehicular travel or parking. The officer removing such key shall place notification upon the vehicle detailing his name and badge number, the place where such key may be reclaimed and the procedure for reclaiming such key. The key shall be returned to the owner of the motor vehicle upon presentation of proof of ownership.
(ORC 4549.05)

303.04 ROAD WORKERS, MOTOR VEHICLES AND EQUIPMENT EXCEPTED.

(a) The provisions of this Traffic Code do not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway within an area designated by traffic control devices, but apply to such persons and vehicles when traveling to or from such work.

(b) The driver of a highway maintenance vehicle owned by this state or any political subdivision of this state, while the driver is engaged in the performance of official duties upon a street or highway, provided the highway maintenance vehicle is equipped with flashing lights and such other markings as are required by law, and such lights are in operation when the driver and vehicle are so engaged, shall be exempt from criminal prosecution for violations of Sections 331.01 to 331.04, 331.06 to 331.08, 331.31, 333.04, 337.01 and Ohio R.C. 4511.66 and 5577.01 to 5577.09.

(c) (1) This section does not exempt a driver of as highway maintenance vehicle from civil liability arising from a violation of Sections 331.01 to 331.04, 331.06 to 331.08, 331.31, 333.04, 337.01 or Ohio R.C. 4511.66 or 5577.01 to 5577.09.

(2) This section does not exempt a driver of a vehicle who is not a state employee and who is engaged in the transport of highway maintenance equipment from criminal liability for a violation of Ohio R.C. 5577.01 to 5577.09.

(d) As used in this section, "engaged in the performance of official duties" includes driving a highway maintenance vehicle to and from the manufacturer or vehicle maintenance provider and transporting a highway maintenance vehicle, equipment, or materials to and from a work location. (ORC 4511.04)

303.041 EMERGENCY, PUBLIC SAFETY AND CORONER'S VEHICLES EXEMPT.

(a) Ohio R.C. 4511.12, 4511.13, 4511.131, 4511.132, 4511.14, 4511.202, 4511.21, 4511.211, 4511.22, 4511.23, 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.432, 4511.44, 4511.441, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.62, 4511.66, 4511.68, 4511.681 and 4511.69 and all sections of this Traffic Code or other municipal ordinances that are substantially equivalent to the sections listed above, do not apply to the driver of an emergency vehicle or public safety vehicle if the emergency vehicle or public safety vehicle is responding to an emergency call, is equipped with and displaying at least one flashing, rotating or oscillating light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle and if the driver of the vehicle is giving an audible signal by siren, exhaust whistle or bell. This section does not relieve the driver of an emergency vehicle or public safety vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway. (ORC 4511.041)

(b) Ohio R.C. 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.35, 4511.36, 4511.37, 4511.38 and 4511.66, and all sections of this Traffic Code or other municipal ordinances that are substantially equivalent to the sections listed above, do not apply to a coroner, deputy coroner, or coroner's investigator operating a motor vehicle in accordance with Ohio R.C. 4513.171. This section does not relieve a coroner, deputy coroner, or coroner's investigator operating a motor vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway. (ORC 4511.042)

303.05 APPLICATION TO PERSONS RIDING, DRIVING ANIMALS UPON ROADWAY.

Every person riding, driving or leading an animal upon a roadway shall be subject to the provisions of this Traffic Code applicable to the driver of a vehicle, except those provisions of such sections which by their nature are inapplicable. (ORC 4511.05)

303.06 FREEWAY USE PROHIBITED BY PEDESTRIANS, BICYCLES AND ANIMALS.

(a) No person, unless otherwise directed by a police officer, shall:

(1) As a pedestrian, occupy any space within the limits of the right-of-way of a freeway, except: in a rest area; on a facility that is separated from the roadway and shoulders of the freeway and is designed and appropriately marked for pedestrian use; in the performance of public works or official duties; as a result of an emergency caused by an accident or breakdown of a motor vehicle; or to obtain assistance;

(2) Occupy any space within the limits of the right of way of a freeway, with: an animal-drawn vehicle; a ridden or led animal; herded animals; a pushcart; a bicycle, except on a facility that is separated from the roadway and shoulders of the freeway and is designed and appropriately marked for bicycle use; a bicycle with motor attached; a motor driven cycle with a motor which produces not to exceed five brake horsepower; an agricultural tractor; farm machinery; except in the performance of public works or official duties.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.051)

303.07 APPLICATION TO DRIVERS OF GOVERNMENT VEHICLES.

The provisions of this Traffic Code applicable to the drivers of vehicles shall apply to the drivers of all vehicles owned or operated by the United States, any state or any political subdivision thereof, including this Municipality, except as may be otherwise provided by law and subject to such specific exceptions as are set forth with reference to authorized emergency and public safety vehicles.

303.08 FALSIFICATION OF IDENTITY PROHIBITED.

(a) No person, knowingly and with the purpose to avoid or to hinder the citation, arrest, discovery, apprehension, prosecution, conviction or punishment of such person for a violation of any provision of this Traffic Code shall present, display, exhibit or orally communicate a false, inaccurate or incomplete name, social security number, or date of birth to any law enforcement officer who is in the process of issuing to the person a citation, ticket or complaint for a violation of any provision of the Traffic Code.

(b) Whoever violates this section is guilty of a misdemeanor of the second degree.
(Ord. 91-61. Passed 7-1-91.)

303.99 GENERAL TRAFFIC CODE PENALTIES.

(a) General Misdemeanor Classifications. Whoever violates any provision of this Traffic Code for which violation no penalty is otherwise provided, is guilty of a minor misdemeanor.
(ORC 4513.99)

(b) Penalties. Whoever is convicted of or pleads guilty to a violation of this Traffic Code shall be imprisoned for a definite term or fined, or both, which term of imprisonment and fine shall be fixed by the court as provided in this section.

Classification of Misdemeanor	Maximum Term of Imprisonment	Maximum Fine
First degree	180 days	$1,000.00
Second degree	90 days	750.00
Third degree	60 days	500.00
Fourth degree	30 days	250.00
Minor	No imprisonment	150.00

(ORC 2929.24; 2929.28)

303.991 COMMITTING AN OFFENSE WHILE DISTRACTED PENALTY.

(a) As used in this section and each section of the Traffic Code where specified, all of the following apply:

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

A. Using a handheld electronic wireless communications device, as defined in Ohio R.C. 4511.204 except when utilizing any of the following:

1. The device's speakerphone function;
2. A wireless technology standard for exchanging data over short distances;
3. A "voice-operated or hands-free" device that allows the person to use the electronic wireless communications device without the use of either hand except to activate, deactivate, or initiate a feature or function;
4. Any device that is physically or electronically integrated into the motor vehicle.

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

(2) "Distracted" does not include operating a motor vehicle while wearing an earphone or earplug over or in both ears at the same time. A person who so wears earphones or earplugs may be charged with a violation of Section 331.43.

(3) "Distracted" does not include conducting any activity while operating a utility service vehicle or a vehicle for or on behalf of a utility, provided that the driver of the vehicle is acting in response to an emergency, power outage or a circumstance affecting the health or safety of individuals.

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

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

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

(b) If an offender violates any section of this Traffic Code which provides for an enhanced penalty for an offense committed while distracted and the distracting activity is a contributing factor to the commission of the violation, the offender is subject to the applicable penalty for the violation and, notwithstanding Ohio R.C. 2929.28, is subject to an additional fine of not more than one hundred dollars ($100.00) as follows:

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

In lieu of payment of the additional fine of one hundred dollars ($100.00), the offender instead may elect to attend a distracted driving safety course, the duration and contents of which shall be established by the Ohio Director of Public Safety. If the offender attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall be required to pay the total amount of the fine established for the violation, but shall not be required to pay the additional fine of one hundred dollars ($100.00), so long as the offender submits to the court both the offender's payment in full and such written evidence.

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

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

(ORC 4511.991)

CHAPTER 305
Traffic Control

305.01 Division of Traffic Engineering and Safety created.
305.02 Authority and considerations for placement of devices.
305.03 Conformity with State Manual.
305.04 Powers of Public Safety Director.
305.05 Posting of signs and signals required.
305.06 Director's powers not limited.
305.07 Records of Director.
305.08 Reservation of power to Council.
305.09 Violations subject to misdemeanor classification.

CROSS REFERENCES

Power to designate highway as included in a freeway, expressway or thruway - see Ohio R.C. 4511.011
Power to enact local traffic regulations - see Ohio R.C. 4511.07, 4511.61
Local traffic control devices - see Ohio R.C. 4511.11
Alteration of prima-facie speed limits - see Ohio R.C. 4511.21, 4511.22(A), 4511.23
Designation of through streets and erection of stop or yield signs - see Ohio R.C. 4511.65; TRAF. 313.02

305.01 DIVISION OF TRAFFIC ENGINEERING AND SAFETY CREATED.

Pursuant to Ohio R.C. 737.021 and 737.022, a Division of Traffic Engineering and Safety is hereby created, and the Director of Public Safety shall be the executive head of such Division.

305.02 AUTHORITY AND CONSIDERATIONS FOR PLACEMENT OF DEVICES.

The Director of Public Safety is hereby authorized to place and maintain traffic control devices upon any street or highway under his jurisdiction as are necessary to effectuate the provisions of this Traffic Code, or to regulate, warn or guide traffic, and such other traffic control devices as he shall deem necessary for the proper control of traffic. The Director of Public Safety shall determine the location, timing and coordination of such traffic control devices upon the basis of an applicable engineering or traffic investigation and shall consider the following:

(a) The maximum safety and protection of vehicular and pedestrian traffic from physical injury or property damage.
(b) The existing and potential traffic movement, volume and conditions.

(c) The location and frequency of accidents, including studies of remedial measures.
(d) The recommendations of the Police and Fire Chiefs.
(e) The acceleration of transportation of persons and property by vehicles so as to expedite travel and promote public safety.
(f) The convenience and welfare of the general public in parking, standing, loading and unloading, and the use of the streets as affecting business concerns and places of assembly.
(g) Economy in the expenditure of money.

305.03 CONFORMITY WITH STATE MANUAL.

All traffic control devices placed pursuant to the provisions of this Traffic Code shall conform to the Ohio Manual of Uniform Traffic Control Devices for Streets and Highways, as set forth in Ohio R.C. 4511.09.

305.04 POWERS OF PUBLIC SAFETY DIRECTOR.

The Director of Public Safety is hereby empowered to:

(a) Designate any street or highway as a through street or highway and require that all vehicles stop or yield the right of way as may be required before entering the same; or in residence districts designate certain streets or highways or portions thereof not to be through streets or highways despite the erection of stop signs or other official traffic control devices at intersecting streets.
(b) Designate any intersection as a stop intersection and require all vehicles to stop at one or more entrances to such intersection.
(c) Designate any intersection as a yield intersection and require all vehicles to yield the right of way as required.
(d) Designate any street as a one-way street and require that all vehicles thereon be moved in one specific direction.
(e) Designate and mark lanes to be used by traffic moving in a particular direction regardless of the center line of the roadway.
(f) Erect signs directing slow-moving traffic to use a designated lane or allocating specified lanes to traffic moving in the same direction.
(g) Designate those portions of any street, where overtaking and passing other traffic or driving to the left of the center or center line of the roadway would be especially hazardous, by appropriate signs or markings on the street to indicate the beginning and end of such zones. Such zones may be marked by an auxiliary yellow line placed parallel and to the right of the normal center line or offset marked lane line.
(h) Place markers, buttons or signs within or adjacent to intersections and require that a specific course of direction be traveled by vehicles proceeding in lanes by either permitting, prohibiting or requiring turns at such intersections.
(i) Install traffic control devices, signals and signs at any location to regulate traffic.
(j) Establish safety zones, crosswalks, zones of quiet and play streets.
(k) Close any street or portion thereof to vehicular traffic which is in the process of construction, reconstruction or repair.

(l) Determine the location of any necessary bus stops and taxicab stands.
(m) Determine the location and limiting hours of truck loading zones.
(n) Designate dangerous railroad crossings and erect stop signs thereat.
(o) Erect "No U Turn" signs at any location to prohibit a vehicle from being turned so as to proceed in the opposite direction.
(p) Regulate or prohibit the stopping, standing and parking of vehicles on streets, alleys or public property by erecting signs plainly indicating the prohibitions, restrictions or limitations.
(q) Designate individual parking spaces by markings, which may either be parallel or at a prescribed angle to the curb or edge of the roadway.
(r) Designate truck routes and streets or parts thereof where either a weight limit restriction or truck exclusion has been imposed by rule or regulation provided such is not in conflict with any legislation.
(s) Erect signs to prohibit a right or left turn against a steady red signal at any intersection.

305.05 POSTING OF SIGNS AND SIGNALS REQUIRED.

No provision of this chapter shall be effective until signs, signals, markings or other devices giving notice of such local traffic regulations are posted upon or at the entrance to the street or part thereof affected, as may be most appropriate, so that in a proper position they are sufficiently legible to be seen by an ordinarily observant person.

305.06 DIRECTOR'S POWERS NOT LIMITED.

The powers of the Director of Public Safety shall not be limited by the specific enumeration of subjects contained in this chapter.

305.07 RECORDS OF DIRECTOR.

The Director of Public Safety shall keep a record of all rules, regulations and proceedings promulgated in connection with this chapter.

305.08 RESERVATION OF POWER TO COUNCIL.

Notwithstanding the provisions of this chapter, Council may override any decision of the Director of Public Safety and may assume any of the powers delegated to the Director, by legislation adopted by a vote of a majority of the members duly elected thereto. Upon the adoption of any such legislation, the same may be changed only by amending or repealing legislation adopted by Council.

305.09 VIOLATIONS SUBJECT TO MISDEMEANOR CLASSIFICATION.

Except as otherwise provided, any person violating the rules and regulations promulgated in connection with this chapter is guilty of a misdemeanor which shall be classified as provided in Section 303.99.

CHAPTER 307
Impounding Vehicles

307.01 Authority to impound vehicles.
307.02 Redemption and disposal.
307.03 Garages used; conditions.
307.04 Removal of garage from list.
307.05 Fees.
307.06 Impounding records to be kept.
307.07 Repossession of motor vehicles; reporting.
307.08 Unclaimed motor vehicles; reporting.
307.09 Abandoned junk motor vehicle.
307.10 Leaving junk and other vehicles on private or public property without permission or notification.
307.11 Parking on private property without consent.
307.12 Storage of impounded vehicles; charges.
307.99 Penalty.

CROSS REFERENCES
Disposition of unclaimed vehicles - see Ohio R.C. 737.32, 4513.62 et seq.
Junk vehicles - see Ohio R.C. 4513.64 et seq.

307.01 AUTHORITY TO IMPOUND VEHICLES.

(a) The Chief of Police or his designate police officer is authorized to provide for the removal and impounding of a motor vehicle under the following circumstances:

(1) When any vehicle is left unattended upon any street, bridge or causeway and is so illegally parked as to constitute a hazard or obstruction to the normal movement of traffic, or parked in a fire lane, or so as to unreasonably interfere with street cleaning or snow removal operations. (Ord. 73-72. Passed 10-1-73.)

(2) When any vehicle or any component part thereof has been stolen, or from which the manufacturer's serial number, motor number, identification number or any other distinguishing mark or number has been removed, defaced, covered, altered or destroyed, or which has been operated without the consent of the owner. For the purpose of determining whether any motor vehicle or any component part thereof has been stolen, or from which the manufacturer's serial number, motor number, identification number or other distinguishing mark or number has been removed, defaced, covered, altered or destroyed, any member of the Police Department may, as to any motor vehicle within the City required to be licensed under the laws of any State, the District of Columbia, the Commonwealth of Puerto Rico or any Province of Canada, inspect the certificate of title or registration of the vehicle or the manufacturer's serial number, motor number, identification number or other distinguishing mark or number in order to establish the lawful ownership or possession of the vehicle or of any component part thereof.
(Ord. 82-22. Passed 6-21-82.)

(3) When any vehicle displays illegal license plates or fails to display the current lawfully required license plates.
(Ord. 73-72. Passed 10-1-73.)

(4) When any vehicle has been used in or connected with the commission of a criminal offense or a violation of Section 541.03 of the Codified Ordinances.
(Ord. 88-13. Passed 5-16-88.)

(5) When any vehicle has been damaged or wrecked so as to be inoperable or violates equipment provisions of this Traffic Code whereby its continued operation would constitute a condition hazardous to life, limb or property.

(6) When any vehicle is left unattended due to the removal of an ill, injured or arrested operator.

(7) When any vehicle has been operated by any person who fails to stop in case of an accident or collision.

(8) When any vehicle has been operated by any person who is driving without a lawful license or registration or while his license has been suspended or revoked.

(9) When any vehicle is found for which two or more citation tags for violations of this Traffic Code have been issued and the owner or operator thereof fails to respond to such citation tags as lawfully required.

(10) When any vehicle, other than an abandoned junk motor vehicle as defined in Section 307.09, which has been left on a public street or other property open to the public for purposes of vehicular travel, or upon or within the right of way of any road or highway, for forty-eight hours or longer without notification to the Chief of Police of the reasons for leaving the motor vehicle in such place.
(ORC 4513.61)

(11) When, upon complaint of a person adversely affected, any vehicle other than an abandoned junk motor vehicle has been left on private property in violation of Section 307.11.

(b) The private property owner shall pay the towing fee for the removal of such vehicle. The towing fee shall be established by the Director of Public Service and Development and shall be reimbursed to the private property owner if and when the owner of the vehicle reclaims his motor vehicle.
(Ord. 73-72. Passed 10-1-73.)

307.02 REDEMPTION AND DISPOSAL.

(a) In the case of an impounding under Section 307.01(a)(10), the Chief of Police shall, within a reasonable time, cause a search to be made of the records of the Bureau of Motor Vehicles to ascertain the owner and any lienholder of a motor vehicle ordered into storage by the Chief of Police, and, if known, shall send notice to the owner or lienholder at his last known address by certified mail with return receipt requested, that the motor vehicle shall be declared a nuisance and disposed of if not claimed within ten days of the date of mailing of the notice. The owner or lienholder of the motor vehicle may reclaim it upon payment of any expenses or charges incurred in its removal and storage, and presentation of proof of ownership, which may be evidenced by a certificate of title to the motor vehicle.

If the owner or lienholder makes no claim to the motor vehicle within ten days of the date of mailing of the notice, the Chief of Police shall file with the Clerk of Courts of the County in which the place of storage is located an affidavit showing compliance with the requirements of this section upon presentation of the affidavit, the Clerk of Courts shall without charge issue a certificate of title free and clear of all liens and encumbrances, to the Chief of Police upon receipt of the certificate of title, the Chief of Police shall dispose of the motor vehicle in such manner as provided in Section 307.02(d).
(ORC 4513.61)

(b) In case of an impounding under Section 307.01(a)(11), the owner of the motor vehicle may reclaim it upon payment of any expenses or charges incurred in its removal and storage, and presentation of proof of ownership, which may be evidenced by a certificate of title to the motor vehicle. If the motor vehicle remains unclaimed by the owner for thirty days, the procedures established by Ohio R.C. 4513.61 and 4513.62 and Section 307.02(c) hereof shall apply. (ORC 4513.60)

(c) Except as provided above, the Police Department shall within a reasonable period of time notify the registered vehicle owner of the fact of such removal and impounding, reasons therefor and the place of storage. Any person desiring to redeem an impounded vehicle shall appear at the Police Department to furnish satisfactory evidence of identity and ownership or right to possession, which may be evidenced by a certificate of title to the motor vehicle. Prior to issuance of a release form, the claimant, owner or operator shall either pay the amount due for any fines or violations on account of which such vehicle was impounded or, as the court may require, post a bond in an amount set by the court, to appear to answer to such violations. The pound operator shall release such vehicle upon notification of the Police Department and payment of all towage and storage charges. In the event an impounded vehicle has been used in or connected with the commission of a criminal offense, and is needed as evidence, or is the subject matter of such offense, or is forfeited because of the offense, determination of the release of such vehicle shall be suspended until a full adjudication of the merits of the offense has taken place.

(d) Any vehicle impounded and not reclaimed under procedures outlined in Section 307.02(a), (b) and (c) shall be disposed of at the order of the Chief of Police of the municipal corporation to a junk yard or scrap metal processing facility as defined in Ohio R.C. 4737.05, or to any other facility owned by or under contract with the municipal corporation for the disposal of such motor vehicles, or shall be sold by the Chief of Police, or licensed auctioneer at public auction, after giving notice thereof by advertisement, published once a week for two successive weeks in a newspaper of general circulation in the County. Any moneys accruing from the disposition of an unclaimed motor vehicle that are in excess of the expenses resulting from the removal and storage of the vehicle shall be credited to the General Fund of the County or the municipal corporation, as the case may be. (ORC 4513.62)

(e) Any expenses accrued by the junk yard, scrap metal processing facility or other facility owned by or under contract with the City, in the form of towing or storage expenses shall be subject to and dependant upon recovery of sums resulting from auction proceeds of such vehicle or proceeds resulting from subsequent disposition. The City shall not be liable to the disposing agency for unrecovered towing or storage expenses, unless recovery in the aforementioned manner is made.
(Ord. 73-72. Passed 10-1-73.)

307.03 GARAGES USED; CONDITIONS.

Any garage, upon written application to the Police Chief, may become a member of such list of designated garages upon complying with the following conditions:

(a) The garage, in the opinion of the Police Chief, has the proper equipment for towing and sufficient and proper facilities for impounding vehicles under Section 307.01.

(b) The garage owner shall carry an insurance policy or policies which meet the approval of the Director of Law and which name the City as co-insured, as follows:

(1) Fire and theft insurance in the amount of fifty thousand dollars ($50,000).

(2) Public liability insurance in the amount of one hundred thousand dollars ($100,000) for injury to one person, three hundred thousand dollars ($300,000) for injury to two or more persons and twenty-five thousand dollars ($25,000) for property damage.

(c) The garage shall make reports in writing to the Chief of Police of all vehicles impounded and unclaimed as of the first day of each month.

(d) Provide a reasonable towing charge and storage schedule. The garage shall establish a schedule bimonthly, and present copies of that schedule to the Chief of Police of current rates for towing charges and storage charges, the reasonableness of such schedules to be determined by the Chief of Police according to the prevailing rates in the trade at the time.

(e) Whenever a vehicle is required to be towed and/or impounded, the Chief of Police or his designate shall, in consideration of all circumstances, have full discretion in selecting the facility to be used for towing and/or storage.
(Ord. 73-72. Passed 10-1-73.)

307.04 REMOVAL OF GARAGE FROM LIST.

Any garage owner who is found guilty by the Court of any violation of any provision in this chapter shall be removed from such list by the Police Chief and shall not be eligible for reinstatement to the list for a period of six months.
(Ord. 73-72. Passed 10-1-73.)

307.05 FEES.

The list of fees referred to in Section 307.03(d) hereof shall include rates for the removal of vehicles from the streets in the daytime (i.e., one hour before sunset) and nighttime (i.e., one hour after sunset), and a daily (i.e., twenty-four hours) rate for storage.
(Ord. 73-72. Passed 10-1-73.)

307.06 IMPOUNDING RECORDS TO BE KEPT.

It shall be the duty of the police officer or the person in charge of records, to keep the names of all owners of vehicles impounded, the number of their license tags and the nature and circumstances of each violation, as well as the disposition of each case.
(Ord. 73-72. Passed 10-1-73.)

307.07 REPOSSESSIONS OF MOTOR VEHICLES; REPORTING.

No person engaged in the busienss of making loans, purchasing notes secured by mortgages, conditional sales agreements or any other liens upon motor vehicles, or engaged in any business involving the repossession of motor vehicles, shall fail to notify the Police Department of any repossession of a motor vehicle and to give any additional information as may be required within one hour after taking possession of any motor vehicle when the same is taken without the owner's consent or knowledge.
(Ord. 73-72. Passed 10-1-73.)

307.08 UNCLAIMED MOTOR VEHICLES; REPORTING.

No person engaged in the business of operating a garage or parking space or lot, or renting space for the parking or storing of four or more vehicles, or engaged in the business of repairing motor vehicles, parts and accessories, shall fail to report to the Police Department when any motor vehicle has remained in his or its possession unclaimed for a period of more than thirty days, except where the same has been parked or placed in storage by order of the Police Department. However, nothing herein shall apply where arrangements have been made for continuous storage or parking and where the owner of the motor vehicle so parked or stored is personally known to the owner or operator of the garage, parking lot or space, so that the name and address of the owner can be furnished upon the request of any member of the Police Department.
(Ord. 73-72. Passed 10-1-73.)

307.09 ABANDONED JUNK MOTOR VEHICLE.

(a) "Abandoned junk motor vehicle" means any motor vehicle meeting all of the following requirements:

(1) Left on private property for more than seventy-two hours without the permission of the person having the right to the possession of the property, on a public street or other property open to the public for purposes of vehicular travel or parking, or upon or within the right of way of any road or highway, for forty-eight hours or longer;

(2) Three years old or older;
(3) Extensively damaged, such damage including but not limited to, any of the following: a broken window or windshield, missing wheels, tires, motor or transmission;
(4) Apparently inoperable; (Ord. 92-8. Passed 4-6-92.)
(5) Having a fair market value of one thousand five hundred dollars ($1,500.00) or less.
(Ord. 00-83. Passed 12-18-00.)

(b) The Chief of Police, within his respective territorial jurisdiction upon notification of such action, shall order any abandoned junk motor vehicle to be photographed by a law enforcement officer in the place where abandoned. The officer shall record the make of the motor vehicle, the serial number when available and shall also detail the damage or missing equipment to substantiate the value of fifteen hundred dollars ($1,500.00) or less. The Chief of Police shall thereupon immediately dispose of the abandoned junk motor vehicle to a junk yard or scrap metal processing facility as defined in previous sections, or to any other facility owned by or under contract with the County or City for the disposal of such motor vehicles. The records and photographs relating to the abandoned junk motor vehicle shall be retained by the law enforcement agency ordering the disposition of such vehicle for a period of at least two years. The law enforcement agency shall execute in quadruplicate an affidavit, as prescribed by the Registrar of Motor Vehicles, describing the motor vehicle and the manner in which it was disposed of, and that all requirements of this section have been complied with, and shall sign and file the same with the Clerk of Courts of the County in which the motor vehicle was abandoned. The Clerk of Courts shall retain the original of the affidavit for his files, shall furnish one copy thereof to the Registrar, one copy to the junk yard or other facility handling the disposal of the vehicle and one copy to the law enforcement agency ordering the disposal, who shall file such copy with the records and photographs relating to the disposal. Any moneys arising from the disposal of an abandoned junk motor vehicle shall be deposited in the General Fund of the County or the City, as the case may be.

307.10 LEAVING JUNK AND OTHER VEHICLES ON PRIVATE OR PUBLIC PROPERTY WITHOUT PERMISSION OR NOTIFICATION.

No person shall willfully leave an "abandoned junk motor vehicle" as defined in Ohio R.C. 4513.63 on private property for more than seventy-two consecutive hours without the permission of the person having the right to the possession of the property or on a public street or other property open to the public for purposes of vehicular travel or parking, or upon or within the right of way of any road or highway, for forty-eight consecutive hours or longer, without notification to the Police Chief of the reasons for leaving the vehicle in such place.

For purposes of this section, the fact that a vehicle has been so left without permission or notification is prima-facie evidence of abandonment. Nothing contained in this section shall invalidate the provisions of other ordinances regulating or prohibiting the abandonment of motor vehicles on streets, highways, public property or private property within the City.
(ORC 4513.64)

307.11 PARKING ON PRIVATE PROPERTY WITHOUT CONSENT.

No person shall, without lawful authority, park any vehicle upon private property, or permit a vehicle to remain upon a private parking lot longer than the time permitted by the owner of such private parking lot, or his lawful agent, when the time is indicated by clearly visible signs, except by permission of the owner of such parking lot or his lawful agent.
(Ord. 74-36. Passed 5-6-74.)

307.12 STORAGE OF IMPOUNDED VEHICLES; CHARGES.

(a) The facilities at 20777 Lorain Road are hereby authorized for the storage of vehicles that are in the temporary custody of the Police Department.

(b) The storage charge for each vehicle for the use of such facility is hereby established at ten dollars ($10.00) per day. The monies received from the storage of vehicles is to be placed into the POPAS Fund. (Ord. 99-17. Passed 3-1-99.)

307.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty and penalties applicable to misdemeanor classifications.)

(a) Junk Motor Vehicles. Whoever violates Section 307.10 is guilty of a minor misdemeanor, and shall also be assessed any costs incurred by the City in disposing of such junk motor vehicle, less any money accruing to the City from such disposal.
(ORC 4513.99(D); Ord. 78-6. Passed 3-20-78.)

TITLE THREE - Streets and Traffic Control Devices

Chap. 311. Street Obstructions and Special Uses.
Chap. 313. Traffic Control Devices.

CHAPTER 311
Street Obstructions and Special Uses

311.01 Placing injurious material or obstruction in street.
311.02 Parades and special events; permit and fee.
311.03 Zones of quiet.
311.04 Games on streets.
311.05 Toy vehicles on streets.

CROSS REFERENCES
See sectional history for similar State law
Power to regulate processions or assemblages - see Ohio R.C. 4511.07(C)
Dropping, sifting and leaking loads - see TRAF. 339.08

311.01 PLACING INJURIOUS MATERIAL OR OBSTRUCTION IN STREET.

(a) No person shall place or knowingly drop upon any part of a street, highway or alley any tacks, bottles, wire, glass, nails or other articles which may damage or injure any person, vehicle or animal traveling along or upon such street, except such substances that may be placed upon the roadway by proper authority for the repair or construction thereof.

(b) Any person who drops or permits to be dropped or thrown upon any street any noxious, destructive or injurious material shall immediately remove the same.

(c) Any person authorized to remove a wrecked or damaged vehicle from a street shall remove any glass or other injurious substance dropped upon the street from such vehicle.

(d) No person shall place any obstruction in or upon a street without proper authority.

(e) No person, with intent to cause physical harm to a person or vehicle, shall place or knowingly drop upon any part of a highway, lane, road, street or alley any tacks, bottles, wire, glass, nails or other articles which may damage or injure any person, vehicle or animal traveling along or upon such highway, except such substances that may be placed upon the roadway by proper authority for the repair or construction thereof.

(f) (1) Except as otherwise provided in this subsection, whoever violates any provision of subsections (a) to (d) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates any provision of subsections (a) to (d) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates any provision of subsections (a) to (d) of this section is guilty of a misdemeanor of the third degree.

(2) Whoever violates subsection (e) of this section is guilty of a misdemeanor of the first degree. (ORC 4511.74)

311.02 PARADES AND SPECIAL EVENTS; PERMIT AND FEE.

(a) "Fairview Park community group" means a group organized for a purpose other than to generate income for profit and that maintains a business address within the City of Fairview Park.

(b) "Parade" means a group of five or more persons on foot, or three or more vehicles or equestrians standing or moving upon any public highway or public ground, under common control or direction. This definition shall not include any governmental officers or employees acting in their capacity as such, or persons under their direction, any military organization, any funeral procession or any person while engaging in his lawful employment in business or trade.

(c) "Special event" means an activity sponsored by one or more Fairview Park community groups in a public park or within the public right-of-way subject to the approval by the Chief of Police.

(d) No person shall take part in any parade or special event unless a permit for the parade has been issued as herein provided.

(e) No person shall drive a vehicle through a parade except with permission of a police officer.

(f) Except for parades or special events sponsored by the City including, but not limited to, holiday parades, block parties, commemorations, social gatherings, tours and similar events, no person or organization shall sponsor or conduct a parade or special event without first obtaining a permit from the Chief of Police or his or her designee. The application for such a permit shall be filed with the Chief of Police or designee not less than 45 days prior to the parade or special event, and shall contain such information required by the Chief of Police.

(g) If the Chief of Police or his or her designee finds that the proposed parade or special event will result in disturbance of the peace, or violation of law, or unreasonable interference with public travel, or unreasonable demand upon police, fire or service personnel, including the cumulative cost and impact of permits granted previously during the year for other parades or special events, or unreasonable interference with the right of quiet enjoyment by the citizens in the use of their property, that food will be prepared or served in violation of any applicable health codes, that alcohol will be served, or that the applicant or group, organization or persons represented by the applicant, shall have previously violated the provisions of a similar permit, or shall have violated any of the ordinances of the City, or laws of the State or of the United States in connection with a previous parade or special event in or upon the streets, parks or public grounds of the City or elsewhere, the permit shall not be issued, otherwise, the Chief of Police or his or her designee shall issue a permit therefor.

(h) The 45-day application period may be shortened by the Chief of Police or his or her designee for good cause shown, upon the written request of the applicant, stating the reasons therefor, and further, that the shortening of the permit application period would not be detrimental to the peace, health, safety and welfare of the City.

(i) Except where the event is organized or sponsored by the Fairview Park Board of Education, the person or organization sponsoring or conducting a parade or special event shall be responsible for providing adequate off-duty safety personnel as required and approved by the Chief of Police or his or her designee.

(j) The Chief of Police or his or her designee may promulgate written rules and regulations for the administration of this section, a copy of which, if so promulgated, shall be provided with any permit application requested. The Chief of Police or his or her designee may delegate an officer or employee of the City to process permit applications. The Chief of Police shall establish a list of City owned parks that may be held open to community groups for special events.

(k) No person shall knowingly give any false or misleading information in any permit application for a parade or special event permit.

(l) Each permit application, except those submitted by the Fairview Park Board of Education, shall be accompanied by the application fee of three hundred dollars ($300.00) to reimburse the City for its administrative costs, including set-up and inspections. The application fee shall be refunded only if no permit is issued. After the parade or special event and all direct and indirect costs have been calculated, the applicant will either be billed for or refunded the difference.

(m) Whoever violates any provision of this chapter is guilty of a minor misdemeanor. (Ord. 13-15. Passed 4-1-13.)

311.03 ZONES OF QUIET.

(a) Whenever authorized signs are erected indicating a zone of quiet, no person operating a vehicle within any such zone shall sound the horn or other warning device of such vehicle except in an emergency. (Ord. 59-1. Passed 1-5-59.)

(b) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

311.04 GAMES ON STREETS.

(a) No person shall fly a kite or play any game of ball, quoits or other game on any street. (Ord. 59-1. Passed 1-5-59.)

(b) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

311.05 TOY VEHICLES UPON ROADWAY.

(a) No person riding upon any coaster, roller skates, sled, toy vehicle or other similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. (Ord. 59-1. Passed 1-5-59.)

(b) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

CHAPTER 313
Traffic Control Devices

313.01 Obedience to traffic control devices.
313.02 Through streets; stop and yield right-of-way signs.
313.03 Traffic signal indications.
313.04 Lane-use control signal indications.
313.05 Special pedestrian control signals.
313.06 Flashing traffic signals. (Repealed)
313.07 Unauthorized signs and signals, hiding from view, advertising.
313.08 Alteration, injury, removal of traffic control devices.
313.09 Driver's duties upon approaching ambiguous or non-working traffic signal.
313.10 Unlawful purchase, possession or sale.
313.11 Portable signal preemption devices prohibited.

CROSS REFERENCES

See sectional histories for similar State law
Designation of through streets or stop intersections - see Ohio R.C. 4511.07(F), 4511.65
Uniform system of traffic control devices - see Ohio R.C. 4511.09, 4511.11(D)
Placing and maintaining local traffic control devices - see Ohio R.C. 4511.10, 4511.11
Traffic control devices defined - TRAF. 301.46

313.01 OBEDIENCE TO TRAFFIC CONTROL DEVICES.

(a) No pedestrian or driver of a vehicle shall disobey the instructions of any traffic control device placed in accordance with the provisions of this Traffic Code, unless at the time otherwise directed by a police officer.

No provisions of this Traffic Code for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section of this Traffic Code does not state that signs are required, that section shall be effective even though no signs are erected or in place.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.12)

313.02 THROUGH STREETS; STOP AND YIELD RIGHT-OF-WAY SIGNS.

(a) All State routes are hereby designated as through streets or highways, provided that stop signs, yield signs or traffic control signals shall be erected at all intersections with such through streets or highways, except as otherwise provided in this section. Where two or more State routes that are through streets or highways intersect and no traffic control signal is in operation, stop signs or yield signs shall be erected at one or more entrances thereto by the Ohio Department of Transportation, except as otherwise provided in this section.

Whenever the Ohio Director of Transportation determines on the basis of an engineering and traffic investigation that stop signs are necessary to stop traffic on a through highway for safe and efficient operation, nothing in this section shall be construed to prevent such installations. When circumstances warrant, the Director also may omit stop signs on roadways intersecting through highways under his jurisdiction. Before the Director either installs or removes a stop sign under this paragraph, he shall give notice, in writing, of that proposed action to the Municipality at least thirty days before installing or removing the stop sign.

(b) Other streets or highways or portions thereof, are hereby designated through streets or highways, if they are within the Municipality, if they have a continuous length of more than one mile between the limits of such street or highway or portion thereof, and if they have "stop" or "yield" signs or traffic control signals at the entrances of the majority of intersecting streets or highways. For purposes of this section, the limits of such street or highway or portion thereof, shall be a municipal corporation line, the physical terminus of the street or highway or any point on such street or highway at which vehicular traffic thereon is required by regulatory signs to stop or yield to traffic on the intersecting street, provided that in residence districts the Municipality may by ordinance designate such street or highway, or portion thereof, not to be a through highway and thereafter the affected residence district shall be indicated by official traffic control devices. Where two or more streets or highways designated under this subsection (b) intersect and no traffic control signal is in operation, stop signs or yield signs shall be erected at one or more entrances thereto by the Ohio Department of Transportation or by Council or the authorized local authority, except as otherwise provided in this section.

(c) Stop signs need not be erected at intersections so constructed as to permit traffic to safely enter a through street or highway without coming to a stop. Signs shall be erected at such intersections indicating that the operator of a vehicle shall yield the right of way to or merge with all traffic proceeding on the through street or highway.

(d) Council or the authorized local authority may designate additional through streets or highways and shall erect stop signs, yield signs or traffic control signals at all streets and highways intersecting such through streets or highways, or may designate any intersection as a stop or yield intersection and shall erect like signs at one or more entrances to such intersection. (ORC 4511.65)

313.03 TRAFFIC SIGNAL INDICATIONS.

Highway traffic signal indications for vehicles, and pedestrians shall have the following meanings:

(a) Steady Green Signal Indication:

(1) A. Vehicular traffic facing a circular green signal indication is permitted to proceed straight through or turn right or left, or make a u-turn movement except as such movement is modified by a lane-use sign, turn prohibition sign, lane marking, roadway design, separate turn signal indication, or other traffic control device. Such vehicular traffic, including vehicles turning right or left or making a u-turn movement, shall yield the right-of-way to both of the following:

1. Pedestrians lawfully within an associated crosswalk;
2. Other vehicles lawfully within the intersection.

B. In addition, vehicular traffic turning left or making a u-turn movement to the left shall yield the right-of-way to other vehicles approaching from the opposite direction so closely as to constitute an immediate hazard during the time when such turning vehicle is moving across or within the intersection.

(2) Vehicular traffic facing a green arrow signal indication, displayed alone or in combination with another signal indication, is permitted to cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications displayed at the same time. Such vehicular traffic, including vehicles turning right or left or making a u-turn movement, shall yield the right-of-way to both of the following:

A. Pedestrians lawfully within an associated crosswalk.

B. Other traffic lawfully using the intersection.

(3) A. Unless otherwise directed by a pedestrian signal indication, as provided in Section 313.05, pedestrians facing a circular green signal indication are permitted to proceed across the roadway within any marked or unmarked associated crosswalk. The pedestrian shall yield the right-of-way to vehicles lawfully within the intersection or so close as to create an immediate hazard at the time that the green signal indication is first displayed.

B. Pedestrians facing a green arrow signal indication, unless otherwise directed by a pedestrian signal indication or other traffic control device, shall not cross the roadway.

(b) Steady Yellow Signal Indication:

(1) Vehicular traffic facing a steady circular yellow signal indication is thereby warned that the related green movement or the related flashing arrow movement is being terminated or that a steady red signal indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection. The provisions governing vehicular operation under the movement being terminated shall continue to apply while the steady circular yellow signal indication is displayed.

(2) Vehicular traffic facing a steady yellow arrow signal indication is thereby warned that the related green arrow movement or the related flashing arrow movement is being terminated. The provisions governing vehicular operation under the movement being terminated shall continue to apply while the steady yellow arrow signal indication is displayed.

(3) Pedestrians facing a steady circular yellow or yellow arrow signal indication, unless otherwise directed by a pedestrian signal indication as provided in Section 313.05 or other traffic control device, shall not start to cross the roadway.

(c) Steady Red Signal Indication:

(1) A. Vehicular traffic facing a steady circular red signal indication, unless entering the intersection to make another movement permitted by another signal indication, shall stop at a clearly marked stop line; but if there is no stop line, traffic shall stop before entering the crosswalk on the near side of the intersection; or if there is no crosswalk, before then before entering the intersection; and shall remain stopped until a signal indication to proceed is displayed except as provided in subsections (c)(1), (2) and (3) of this section.

B. Except when a traffic control device is in place prohibiting a turn on red or a steady red arrow signal indication is displayed, vehicular traffic facing a steady circular red signal indication is permitted, after stopping, to enter the intersection to turn right, or to turn left from a one-way street into a one-way street. The right to proceed with the turn shall be subject to the provisions that are applicable after making a stop at a stop sign.

(2) A. Vehicular traffic facing a steady red arrow signal indication shall not enter the intersection to make the movement indicated by the arrow and, unless entering the intersection to make another movement permitted by another signal indication, shall stop at a clearly marked stop line; but if there is no stop line, before entering the crosswalk on the near side of the intersection; or if there is no crosswalk, then before entering the intersection; and shall remain stopped until a signal indication or other traffic control device permitting the movement indicated by such red arrow is displayed.

B. When a traffic control device is in place permitting a turn on a steady red arrow signal indication, vehicular traffic facing a steady red arrow indication is permitted, after stopping, to enter the intersection to turn right or to turn left from a one-way street into a one-way street. The right to proceed with the turn shall be limited to the direction indicated by the arrow, and shall be subject to the provisions that are applicable after making a stop at a stop sign.

(3) Unless otherwise directed by a pedestrian signal indication as provided in Section 313.05 or other traffic control device, pedestrians facing a steady circular red or steady red arrow signal indication shall not enter the roadway.

(4) Local authorities by ordinance, or the Director of Transportation on State highways, may prohibit a right or a left turn against a steady red signal at any intersection, which shall be effective when signs giving notice thereof are posted at the intersection.

(d) Flashing Green Signal Indication. A flashing green signal indication has no meaning and shall not be used.

(e) Flashing Yellow Signal Indication:

(1) A. Vehicular traffic, on an approach to an intersection, facing a flashing circular yellow signal indication, is permitted to cautiously enter the intersection to proceed straight through or turn right or left or make a u-turn movement except as such movement is modified by lane-use signs, turn prohibition signs, lane markings, roadway design, separate turn signal indications, or other traffic control devices. Such vehicular traffic, including vehicles turning right or left or making a u-turn movement, shall yield the right-of-way to both of the following:

1. Pedestrians lawfully within an associated crosswalk;
2. Other vehicles lawfully within the intersection.

B. In addition, vehicular traffic turning left or making a u-turn to the left shall yield the right-of-way to other vehicles approaching from the opposite direction so closely as to constitute an immediate hazard during the time when such turning vehicle is moving across or within the intersection.

(2) A. Vehicular traffic, on an approach to an intersection, facing a flashing yellow arrow signal indication, displayed alone or in combination with another signal indication, is permitted to cautiously enter the intersection only to make the movement indicated by such arrow, or other such movement as is permitted by other signal indications displayed at the same time. Such vehicular traffic, including vehicles turning right or left or making a u-turn, shall yield the right-of-way to both of the following:

1. Pedestrians lawfully within an associated crosswalk;
2. Other vehicles lawfully within the intersection.

B. In addition, vehicular traffic turning left or making a u-turn to the left shall yield the right-of-way to other vehicles approaching from the opposite direction so closely as to constitute an immediate hazard during the time when such turning vehicle is moving across or within the intersection.

(3) Pedestrians facing any flashing yellow signal indication at an intersection, unless otherwise directed by a pedestrian signal indication or other traffic control device, are permitted to proceed across the roadway within any marked or unmarked associated crosswalk. Pedestrians shall yield the right-of-way to vehicles lawfully within the intersection at the time that the flashing yellow signal indication is first displayed.

(4) When a flashing circular yellow signal indication is displayed as a beacon to supplement another traffic control device, road users are notified that there is a need to pay additional attention to the message contained thereon or that the regulatory or warning requirements of the other traffic control device, which might not be applicable at all times, are currently applicable.

(f) Flashing Red Signal Indication:

(1) Vehicular traffic, on an approach to an intersection, facing a flashing circular red signal indication, shall stop at a clearly marked stop line; but if there is no stop line, before entering the crosswalk on the near side of the intersection; or if there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. The right to proceed shall be subject to the provisions that are applicable after making a stop at a stop sign.

(2) Pedestrians facing any flashing red signal indication at an intersection, unless otherwise directed by a pedestrian signal indication or other traffic control device, are permitted to proceed across the roadway within any marked or unmarked associated crosswalk. Pedestrians shall yield the right-of-way to vehicles lawfully within the intersection at the time that the flashing red signal indication is first displayed.

(3) When a flashing circular red signal indication is displayed as a beacon to supplement another traffic control device, road users are notified that there is a need to pay additional attention to the message contained thereon or that the regulatory requirements of the other traffic control device, which might not be applicable at all times, are currently applicable. Use of this signal indication shall be limited to supplementing stop, do not enter, or wrong way signs, and to applications where compliance with the supplemented traffic control device requires a stop at a designated point.

(g) General Application: In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(h) Exception. This section does not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by Ohio R.C. 4511.61 and 4511.62. (ORC 4511.13)

313.04 LANE-USE CONTROL SIGNAL INDICATIONS.

(a) The meanings of lane-use control signal indications are as follows:

(1) A steady downward green arrow: A road user is permitted to drive in the lane over which the arrow signal indication is located.

(2) A steady yellow "X": A road user is to prepare to vacate the lane over which the signal indication is located because a lane control change is being made to a steady red "X" signal indication.

(3) A steady white two-way left-turn arrow: A road user is permitted to use a lane over which the signal indication is located for a left turn, but not for through travel, with the understanding that common use of the lane by oncoming road users for left turns also is permitted.

(4) A steady white one-way left-turn arrow: A road user is permitted to use a lane over which the signal indication is located for a left turn, without opposing turns in the same lane, but not for through travel.

(5) A steady red "X": A road user is not permitted to use the lane over which the signal indication is located and that this signal indication shall modify accordingly the meaning of other traffic controls present.
(ORC 4511.131)

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(ORC 4511.99)

313.05 SPECIAL PEDESTRIAN CONTROL SIGNALS.

(a) Whenever special pedestrian control signals exhibiting the words "walk" or "don't walk", or the symbol of a walking person or an upraised palm are in place, such signals shall indicate the following instructions:

(1) A steady walking person signal indication, which symbolizes "walk", means that a pedestrian facing the signal indication is permitted to start to cross the roadway in the direction of the signal indication, possibly in conflict with turning vehicles. The pedestrian shall yield the right-of-way to vehicles lawfully within the intersection at the time that the walking person signal indication is first shown.

(2) A flashing upraised hand signal indication, which symbolizes "don't walk", means that a pedestrian shall not start to cross the roadway in the direction of the signal indication, but that any pedestrian who has already started to cross on a steady walking person signal indication shall proceed to the far side of the traveled way of the street or highway, unless otherwise directed by a traffic control device to proceed only to the median of a divided highway or only to some other island or pedestrian refuge area.

(3) A steady upraised hand signal indication means that a pedestrian shall not enter the roadway in the direction of the signal indication.

(4) Nothing int his section shall be construed to invalidate the continued use of pedestrian control signals utilizing the word "wait" if those signals were installed prior to March 28, 1985.

(5) A flashing walking person signal indication has no meaning and shall not be used. (ORC 4511.14)

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree. (ORC 4511.99)

313.06 FLASHING TRAFFIC SIGNALS.

(Former Ohio R.C. 4511.15 from which Section 313.06 was derived was repealed by House Bill 349, effective April 20, 2012.)

313.07 UNAUTHORIZED SIGNS AND SIGNALS, HIDING FROM VIEW, ADVERTISING.

(a) No person shall place, maintain or display upon or in view of any street any unauthorized sign, signal, marking or device which purports to be, is an imitation of or resembles a traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic, or hides from view or interferes with the effectiveness of any traffic control device or any railroad sign or signal, and no person shall place or maintain, nor shall any public authority permit upon any street any traffic sign or signal bearing thereon any commercial advertising. This section does not prohibit either the erection upon private property adjacent to streets of signs giving useful directional information and of a type that cannot be mistaken for traffic control devices, or the erection upon private property of traffic control devices by the owner of real property in accordance with Ohio R.C. 4511.211 and 4511.432.

Every such prohibited sign, signal, marking or device is a public nuisance, and the Police Chief is authorized to remove it or cause it to be removed.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree. (ORC 4511.16)

313.08 ALTERATION, INJURY, REMOVAL OF TRAFFIC CONTROL DEVICES.

(a) No person without lawful authority, shall do any of the following:

(1) Knowingly move, deface, damage, destroy or otherwise improperly tamper with any traffic control device, any railroad sign or signal, or any inscription, shield or insignia on the device, sign or signal, or any part of the device, sign or signal;

(2) Knowingly drive upon or over any freshly applied pavement marking material on the surface of a roadway while the marking material is in an undried condition and is marked by flags, markers, signs or other devices intended to protect it;

(3) Knowingly move, damage, destroy or otherwise improperly tamper with a manhole cover.

(b) (1) Except as otherwise provided in this subsection, whoever violates subsection (a)(1) or (3) of this section is guilty of a misdemeanor of the third degree. If a violation of subsection (a)(1) or (3) of this section creates a risk of physical harm to any person, the offender is guilty of a misdemeanor of the first degree. If a violation of subsection (a)(1) or (3) of this section causes serious physical harm to property that is owned, leased, or controlled by a state or local authority, the offender is guilty of a felony and shall be prosecuted under appropriate state law.

(2) Except as otherwise provided in this subsection, whoever violates subsection (a)(2) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates subsection (a)(2) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates subsection (a)(2) of this section is guilty of a misdemeanor of the third degree. (ORC 4511.17)

313.09 DRIVER'S DUTIES UPON APPROACHING AMBIGUOUS OR NON-WORKING TRAFFIC SIGNAL.

(a) The driver of a vehicle who approaches an intersection where traffic is controlled by traffic control signals shall do all of the following, if the signal facing the driver exhibits no colored lights, or colored lighted arrows, exhibits a combination of such lights or arrows that fails to clearly indicate the assignment of right of way, or if the vehicle is a bicycle, the signals are otherwise malfunctioning, due to the failure of a vehicle detector to detect the presence of the bicycle:

(1) Stop at a clearly marked stop line, but if none, stop before entering the crosswalk on the near side of the intersection, or, if none, stop before entering the intersection;

(2) Yield the right of way to all vehicles in the intersection or approaching on an intersecting road, if the vehicles will constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways.

(3) Exercise ordinary care while proceeding through the intersection.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.132)

313.10 UNLAWFUL PURCHASE, POSSESSION OR SALE.

(a) As used in this section, "traffic control device" means any sign, traffic control signal or other device conforming to and placed or erected in accordance with the manual adopted under Ohio R.C. 4511.09 by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic, including signs denoting the names of streets and highways, but does not mean any pavement marking.

(b) No individual shall buy or otherwise possess or sell, a traffic control device, except when one of the following applies:

(1) In the course of the individual's employment by the State or a local authority for the express or implied purpose of manufacturing, providing, erecting, moving or removing such a traffic control device;

(2) In the course of the individual's employment by any manufacturer of traffic control devices other than a State or local authority;

(3) For the purpose of demonstrating the design and function of a traffic control device to State or local officials;

(4) When the traffic control device has been purchased from the State or a local authority at a sale of property that is no longer needed or is unfit for use;

(5) The traffic control device has been properly purchased from a manufacturer for use on private property and the person possessing the device has a sales receipt for the device or other acknowledgment of sale issued by the manufacturer.

(c) This section does not preclude, and shall not be construed as precluding, prosecution for theft in violation of Ohio R.C. 2913.02 or a municipal ordinance relating to theft, or for receiving stolen property in violation of Ohio R.C. 2913.51 or a municipal ordinance relating to receiving stolen property.

(d) Whoever violates this section is guilty of a misdemeanor of the third degree. (ORC 4511.18)

313.11 PORTABLE SIGNAL PREEMPTION DEVICES PROHIBITED.

(a) (1) No person shall possess a portable signal preemption device.

(2) No person shall use a portable signal preemption device to affect the operation of a traffic control signal.

(b) Subsection (a)(1) of this section does not apply to any of the following persons and subsection (a)(2) of this section does not apply to any of the following persons when responding to an emergency call:

(1) A peace officer, as defined in Ohio R.C. 109.71(A)(11), (12), (14) or (19);

(2) A State highway patrol trooper;

(3) A person while occupying a public safety vehicle as defined in Ohio R.C. 4511.01(E)(1), (3) or (4).

(c) Whoever violates subsection (a)(1) of this section is guilty of a misdemeanor of the fourth degree. Whoever violates subsection (a)(2) of this section is guilty of a misdemeanor of the first degree.

(d) As used in this section, "portable signal preemption device" means a device that, if activated by a person, is capable of changing a traffic control signal to green out of sequence. (ORC 4513.031)

TITLE FIVE - Vehicles

Chap. 331. Operation Generally.
Chap. 333. OVI; Willful Misconduct; Speed.
Chap. 335. Licensing; Accidents.
Chap. 337. Safety and Equipment.
Chap. 339. Commercial and Heavy Vehicles.
Chap. 341. Commercial Drivers.
Chap. 343. Transportation of Radioactive Materials.

CHAPTER 331
Operation Generally

331.01 Driving upon right side of roadway; exceptions.
331.02 Passing to right when proceeding in opposite directions.
331.03 Overtaking, passing to left; driver's duties.
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CROSS REFERENCES

See sectional histories for similar State law
Obedience to traffic control devices - see TRAF. 313.01
Operation of bicycles and motorcycles - see TRAF. 373.01 et seq.
School bus operation - see OAC Ch. 4501-3

331.01 DRIVING UPON RIGHT SIDE OF ROADWAY; EXCEPTIONS.

(a) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction, or when making a left turn under the rules governing such movements;

(2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(3) When driving upon a roadway divided into three or more marked lanes for traffic under the rules applicable thereon;

(4) When driving upon a roadway designated and posted with signs for one-way traffic;

(5) When otherwise directed by a police officer or traffic control device.

(b) (1) Upon all roadways any vehicle proceeding at less than the prevailing and lawful speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, and far enough to the right to allow passing by faster vehicles if such passing is safe and reasonable, except under any of the following circumstances:

A. When overtaking and passing another vehicle proceeding in the same direction;

B. When preparing for a left turn;

C. When the driver must necessarily drive in a lane other than the right-hand lane to continue on the driver's intended route.

(2) Nothing in subsection (b)(1) of this section requires a driver of a slower vehicle to compromise the driver's safety to allow overtaking by a faster vehicle.

(c) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic control devices designating certain lanes to the left of the center of the roadway for use by traffic not otherwise permitted to use the lanes, or except as permitted under subsection (a) (2) hereof.

This subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road or driveway.

(d) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.25)

331.02 PASSING TO RIGHT WHEN PROCEEDING IN OPPOSITE DIRECTIONS.

(a) Operators of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction, each operator shall give to the other one-half of the main traveled portion of the roadway or as nearly one-half as is reasonably possible.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.26)

331.03 OVERTAKING, PASSING TO LEFT; DRIVER'S DUTIES.

(a) The following rules govern the overtaking and passing of vehicles proceeding in the same direction:

(1) The operator of a vehicle overtaking another vehicle proceeding in the same direction shall, except as provided in subsection (a)(3) hereof, signal to the vehicle to be overtaken, shall pass to the left thereof at a safe distance, and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle. When a motor vehicle overtakes and passes a bicycle, three feet or greater is considered a safe passing distance.

(2) Except when overtaking and passing on the right is permitted, the operator of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle at the latter's audible signal, and the operator shall not increase the speed of the operator’s vehicle until completely passed by the overtaking vehicle.

(3) The operator of a vehicle overtaking and passing another vehicle proceeding in the same direction on a divided street or highway as defined in Section 331.31, a limited access highway as defined in Ohio R.C. 5511.02 or a highway with four or more traffic lanes, is not required to signal audibly to the vehicle being overtaken and passed.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.27)

331.04 OVERTAKING AND PASSING UPON RIGHT.

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(1) When the vehicle overtaken is making or about to make a left turn;

(2) Upon a roadway with unobstructed pavement of sufficient width for two or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.

(b) The driver of a vehicle may overtake and pass another vehicle only under conditions permitting such movement in safety. The movement shall not be made by driving off the roadway.

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.28)

331.05 OVERTAKING, PASSING TO LEFT OF CENTER.

(a) No vehicle shall be driven to the left of the center of the roadway in overtaking and passing traffic proceeding in the same direction, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made, without interfering with the safe operation of any traffic approaching from the opposite direction or any traffic overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for traffic approaching from the opposite direction before coming within 200 feet of any approaching vehicle.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.29)

331.06 ADDITIONAL RESTRICTIONS ON DRIVING UPON LEFT SIDE OF ROADWAY.

(a) No vehicle shall be driven upon the left side of the roadway under the following conditions:

(1) When approaching the crest of a grade or upon a curve in the highway, where the operator's view is obstructed within such a distance as to create a hazard in the event traffic might approach from the opposite direction;

(2) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct or tunnel;

(3) When approaching within 100 feet of or traversing any intersection or railroad grade crossing.

(b) This section does not apply to vehicles upon a one-way roadway, upon a roadway where traffic is lawfully directed to be driven to the left side or under the conditions described in Section 331.01(a)(2).

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.30)

331.07 HAZARDOUS OR NO PASSING ZONES.

(a) Hazardous zones, commonly called "no passing zones," shall consist of an auxiliary yellow line marked on the roadway pavement and placed parallel to the normal center line or marked lane line. When the auxiliary yellow line appears on the left side in the driver's lane of travel and to the right of the normal center line or marked lane line, no driver shall drive across the auxiliary yellow line to overtake and pass another vehicle proceeding in the same direction. When auxiliary yellow lines appear on both sides of the normal center line or marked lane line, drivers proceeding in either direction shall not drive across such auxiliary yellow lines to overtake and pass another vehicle proceeding in the same direction. No driver shall, at any other time, drive across the yellow auxiliary line when it appears in the driver's lane of travel, except to make a lawfully permitted left-hand turn under the rules governing such movement. No passing signs may also be erected facing traffic to indicate the beginning and end of each no passing zone.

When appropriate signs or markings indicating hazardous or no passing zones are in place and clearly visible, every operator of a vehicle shall obey the directions of the signs or markings, notwithstanding the distance set out in Section 331.06.

(b) Subsection (a) of this section does not apply when all of the following apply:

(1) The slower vehicle is proceeding at less than half the speed of the speed limit applicable to that location.

(2) The faster vehicle is capable of overtaking and passing the slower vehicle without exceeding the speed limit.

(3) There is sufficient clear sight distance to the left of the center or center line of the roadway to meet the overtaking and passing provisions of Section 331.05, considering the speed of the slower vehicle.

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.31)

331.08 DRIVING IN MARKED LANES OR CONTINUOUS LINES OF TRAFFIC.

(a) Whenever any roadway has been divided into two or more clearly marked lanes for traffic or wherever traffic is lawfully moving in two or more substantially continuous lines in the same direction, the following rules apply:

(1) A vehicle shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or when preparing for a left turn, or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is posted with signs to give notice of such allocation.

(3) Official signs may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway, or restricting the use of a particular lane to only buses during certain hours or during all hours, and drivers of vehicles shall obey the directions of such signs.

(4) Official traffic control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.33)

331.09 FOLLOWING TOO CLOSELY.

(a) The operator of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the highway.

The driver of any truck, or motor vehicle drawing another vehicle, when traveling upon a roadway outside a business or residence district shall maintain a sufficient space, whenever conditions permit, between such vehicle and another vehicle ahead so an overtaking motor vehicle may enter and occupy such space without danger. This paragraph does not prevent overtaking and passing nor does it apply to any lane specially designated for use by trucks.

Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade, shall maintain a sufficient space between such vehicles so an overtaking vehicle may enter and occupy such space without danger. This paragraph shall not apply to funeral processions.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.34)

331.10 TURNING AT INTERSECTIONS.

(a) The driver of a vehicle intending to turn at an intersection shall be governed by the following rules:

(1) Approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane of the roadway being entered lawfully available to the traffic moving in that lane.

(4) Markers, buttons or signs may be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when such markers, buttons or signs are so placed, no operator of a vehicle shall turn such vehicle at an intersection other than as directed and required by such markers, buttons or signs.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.36)

331.11 TURNING INTO PRIVATE DRIVEWAY, ALLEY OR BUILDING.

(a) The driver of a vehicle intending to turn into a private road or driveway, alley or building from a public street or highway shall be governed by the following rules:

(1) Approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) Upon a roadway where traffic is proceeding in opposite directions, approach for a left turn and a left turn shall be made from that portion of the right half of the roadway nearest the center line thereof.

(3) Upon a roadway where traffic is restricted to one direction, approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway.

It shall be the duty of the driver of any vehicle entering a private road or driveway, alley or building to yield the right of way to pedestrians lawfully using the sidewalk or sidewalk area extending across any alleyway, private road, driveway or building.

(b) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

331.12 "U" TURNS RESTRICTED.

(a) Except as provided in Section 313.03 and subsection (b) hereof, no vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, if the vehicle cannot be seen within 500 feet by the driver of any other vehicle approaching from either direction.

(b) The driver of an emergency vehicle or public safety vehicle, when responding to an emergency call, may turn the vehicle so as to proceed in the opposite direction. This subsection applies only when the emergency vehicle or public safety vehicle is responding to an emergency call, is equipped with and displaying at least one flashing, rotating or oscillating light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle, and when the driver of the vehicle is giving an audible signal by siren, exhaust whistle or bell. This subsection does not relieve the driver of an emergency vehicle or public safety vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway. (ORC 4511.37)

(c) Except as provided in subsection (b) hereof, no vehicle shall be turned so as to proceed in the opposite direction within an intersection, or upon any street in a business district, or upon a freeway, expressway or controlled-access highway, or where authorized signs are erected to prohibit such movement, or at any other location unless such movement can be made with reasonable safety to other users of the street and without interfering with the safe operation of any traffic that may be affected by such movement.

(d) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.37)

331.13 STARTING AND BACKING VEHICLES.

(a) No person shall start a vehicle which is stopped, standing or parked until such movement can be made with reasonable safety.

Before backing, operators of vehicles shall give ample warning, and while backing they shall exercise vigilance not to injure person or property on the street or highway.

No person shall back a motor vehicle on a freeway, except: in a rest area; in the performance of public works or official duties; as a result of an emergency caused by an accident or breakdown of a motor vehicle.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.38)

331.14 SIGNALS BEFORE CHANGING COURSE, TURNING OR STOPPING.

(a) No person shall turn a vehicle or move right or left upon a highway unless and until such person has exercised due care to ascertain that the movement can be made with reasonable safety nor without giving an appropriate signal in the manner hereinafter provided.

When required, a signal of intention to turn or move right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning, except that in the case of a person operating a bicycle, the signal shall be made not less than one time but is not required to be continuous. A bicycle operator is not required to make a signal if the bicycle is in a designated turn lane, and a signal shall not be given when the operator's hands are needed for the safe operation of the bicycle.

No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give a signal.

Any stop or turn signal required by this section shall be given either by means of the hand and arm, or by signal lights that clearly indicate to both approaching and following traffic intention to turn or move right or left, except that any motor vehicle in use on a highway shall be equipped with, and the required signal shall be given by, signal lights when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds twenty-four inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet, whether a single vehicle or a combination of vehicles.

The signal lights required by this section shall not be flashed on one side only on a disabled vehicle, flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.39)

331.15 HAND AND ARM SIGNALS.

(a) Except as provided in subsection (b) hereof, all signals required by this Traffic Code, when given by hand and arm shall be given from the left side of the vehicle in the following manner, and such signals shall indicate as follows:

(1) Left turn: Hand and arm extended horizontally;
(2) Right turn: Hand and arm extended upward;
(3) Stop or decrease speed: Hand and arm extended downward.

(b) As an alternative to subsection (a)(2) hereof, a person operating a bicycle may give a right turn signal by extending the right hand and arm horizontally and to the right side of the bicycle.

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.40)

331.16 RIGHT OF WAY AT INTERSECTIONS.

(a) When two vehicles approach or enter an intersection from different streets or highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(b) The right of way rule declared in subsection (a) hereof, is modified at through highways and otherwise as stated in this Traffic Code and Ohio R.C. Chapter 4511. (ORC 4511.41)

(c) Subject to compliance with any traffic control device, when two vehicles approach or enter a junction of two or more alleys from different directions at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(d) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.41)

331.17 RIGHT OF WAY WHEN TURNING LEFT.

(a) The operator of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right of way to any vehicle approaching from the opposite direction, whenever the approaching vehicle is within the intersection or so close to the intersection, alley, private road or driveway as to constitute an immediate hazard.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.42)

331.18 OPERATION OF VEHICLE AT YIELD SIGNS.

(a) The driver of a vehicle approaching a yield sign shall slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After slowing or stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways. Whenever a driver is involved in a collision with a vehicle in the intersection or junction of roadways, after driving past a yield sign without stopping, the collision shall be prima-facie evidence of the driver's failure to yield the right of way.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.43(B))

331.19 OPERATION OF VEHICLE AT STOP SIGNS.

(a) Except when directed to proceed by a law enforcement officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.43(A))

331.20 EMERGENCY OR PUBLIC SAFETY VEHICLES AT STOP SIGNALS OR SIGNS.

(a) The driver of any emergency vehicle or public safety vehicle, when responding to an emergency call, upon approaching a red or stop signal or any stop sign shall slow down as necessary for safety to traffic, but may proceed cautiously past such red or stop sign or signal with due regard for the safety of all persons using the street or highway.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.03)

331.21 RIGHT OF WAY OF PUBLIC SAFETY OR CORONER'S VEHICLE.

(a) Upon the approach of a public safety vehicle or coroner's vehicle, equipped with at least one flashing, rotating or oscillating light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle and the driver is giving an audible signal by siren, exhaust whistle or bell, no driver of any other vehicle shall fail to yield the right-of-way, immediately drive if practical to a position parallel to and as close as possible to, the right edge or curb of the street clear of any intersection, and stop and remain in that position until the public safety vehicle or coroner's vehicle has passed, except when otherwise directed by a police officer.

(b) This section does not relieve the driver of a public safety vehicle or coroner's vehicle from the duty to drive with due regard for the safety of all persons and property upon the street.

(c) This section applies to a coroner's vehicle only when the vehicle is operated in accordance with Ohio R.C. 4513.171. As used in this section, "coroner's vehicle" means a vehicle used by a coroner, deputy coroner or coroner's investigator that is equipped with a flashing, oscillating or rotating red or blue light and a siren, exhaust whistle, or bell capable of giving an audible signal.

(d) Except as otherwise provided in this subsection or Section 331.211, whoever violates subsection (a) of this section is guilty of a misdemeanor of the fourth degree on a first offense. On a second offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree, and, on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the second degree. (ORC 4511.45)

331.211 REPORT OF VEHICLE FAILING TO YIELD RIGHT OF WAY TO PUBLIC SAFETY VEHICLE.

(a) When the failure of a motor vehicle operator to yield the right-of-way to a public safety vehicle as required by Section 331.21(a) impedes the ability of the public safety vehicle to respond to an emergency, any emergency personnel in the public safety vehicle may report the license plate number and a general description of the vehicle and the operator of the vehicle to the law enforcement agency exercising jurisdiction over the area where the alleged violation occurred.

(b) (1) Upon receipt of a report under subsection (a) of this section, the law enforcement agency may conduct an investigation to attempt to determine or confirm the identity of the operator of the vehicle at the time of the alleged violation.

(2) If the identity of the operator at the time of an alleged violation of Section 331.21(a) is established, the law enforcement agency has probable cause to issue either a written warning or a citation for that violation, and the agency shall issue a written warning or a citation to the operator.

(3) If the identity of the operator of the vehicle at the time of the alleged violation cannot be established, the law enforcement agency may issue a warning to the person who owned the vehicle at the time of the alleged violation. However, in the case of a leased or rented vehicle, the law enforcement agency shall issue the written warning to the person who leased or rented the vehicle at the time of the alleged violation.

(c) (1) Whoever violates Section 331.21(a) based on a report filed under subsection (a) of this section is guilty of a minor misdemeanor and shall be fined one hundred fifty dollars ($150.00).

(2) If a person who is issued a citation for a violation of Section 331.21(a) based on a report filed under subsection (a) of this section does not enter a written plea of guilty and does not waive the person's right to contest the citation but instead appears in person in the proper court to answer the charge, the trier of fact cannot find beyond a reasonable doubt that the person committed that violation unless the emergency personnel who filed the report appears in person in the court and testifies.

(d) As used in this section:

(1) "License plate" includes any temporary license placard issued under Ohio R.C. 4503.182 or similar law of another jurisdiction.

(2) "Public safety vehicle" does not include an unmarked public safety vehicle or a vehicle used by a public law enforcement officer or other person sworn to enforce the criminal and traffic laws of the State or a vehicle used by the Motor Carrier Enforcement Unit for the enforcement of orders and rules of the Public Utilities Commission. (ORC 4511.454)

331.22 DRIVING ONTO ROADWAY FROM PLACE OTHER THAN ROADWAY: DUTY TO YIELD.

(a) Subject to compliance with any traffic control device, the operator of a vehicle about to enter or cross a highway from an alley or from any place other than another roadway shall yield the right of way to all traffic approaching on the roadway to be entered or crossed.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.44)

331.23 DRIVING ONTO ROADWAY FROM PLACE OTHER THAN ROADWAY: STOPPING AT SIDEWALK.

(a) Subject to compliance with any traffic control device, the driver of a vehicle emerging from an alley, building, private road or driveway within a business or residence district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, road or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic thereon.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.431)

331.24 RIGHT OF WAY OF FUNERAL PROCESSION.

(a) As used in this section "funeral procession" means two or more vehicles accompanying the cremated remains or the body of a deceased person in the daytime when each of the vehicles has its headlights lighted and is displaying a purple and white or an orange and white pennant attached to each vehicle in such a manner as to be clearly visible to traffic approaching from any direction.

(b) Excepting public safety vehicles proceeding in accordance with Section 331.21 or when directed otherwise by a police officer, pedestrians and the operators of all vehicles shall yield the right of way to each vehicle that is a part of a funeral procession. Whenever the lead vehicle in a funeral procession lawfully enters an intersection, the remainder of the vehicles in the procession may continue to follow the lead vehicle through the intersection notwithstanding any traffic control devices or right-of-way provisions of this Traffic Code, provided that the operator of each vehicle exercises due care to avoid colliding with any other vehicle or pedestrian.

(c) No person shall operate any vehicle as a part of a funeral procession without having the headlights of the vehicle lighted and without displaying a purple and white or an orange and white pennant in such a manner as to be clearly visible to traffic approaching from any direction.

(d) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.451)

331.25 DRIVER'S VIEW AND CONTROL TO BE UNOBSTRUCTED BY LOAD OR PERSONS.

(a) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such number of persons, as to obstruct the view of the driver to the front or sides of the vehicle or to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with the driver's control over the driving mechanism of the vehicle.

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree. (ORC 4511.70(A),(B),(D))

331.26 DRIVING UPON STREET POSTED AS CLOSED FOR REPAIR.

(a) No person shall drive upon, along or across a street or highway, or any part of a street or highway that has been closed in the process of its construction, reconstruction or repair, and posted with appropriate signs by the authority having jurisdiction to close such street or highway.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.71)

331.27 FOLLOWING AND PARKING NEAR EMERGENCY OR SAFETY VEHICLES.

(a) The driver of any vehicle, other than an emergency vehicle or public safety vehicle on official business, shall not follow any emergency vehicle or public safety vehicle traveling in response to an alarm closer than 500 feet, or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm, unless directed to do so by a police officer or a firefighter.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.72)

331.28 DRIVING OVER FIRE HOSE.

(a) No vehicle shall, without the consent of the Fire Chief or fire official in command, be driven over any unprotected fire hose that is laid down on any street or private driveway to be used at any fire or alarm of fire.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.73)

331.29 DRIVING THROUGH SAFETY ZONE.

(a) No vehicle shall at any time be driven through or within a safety zone.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.60)

331.30 ONE-WAY STREETS AND ROTARY TRAFFIC ISLANDS.

(a) Upon a roadway designated and posted with signs for one-way traffic a vehicle shall be driven only in the direction designated. A vehicle passing around a rotary traffic island shall be driven only to the right of the rotary traffic island.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.32)

331.31 DRIVING UPON DIVIDED ROADWAYS.

(a) Whenever any street has been divided into two roadways by an intervening space, or by a physical barrier, or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway, and no vehicle shall be driven over, across or within any such dividing space, barrier or median section, except through an opening, crossover or intersection established by public authority. This section does not prohibit the occupancy of such dividing space, barrier or median section for the purpose of an emergency stop or in compliance with an order of a police officer.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.35)

331.32 ENTERING AND EXITING CONTROLLED-ACCESS HIGHWAY.

(a) No person shall drive a vehicle onto or from any controlled-access highway except at such entrances and exits as are established by public authority.

(b) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

331.33 OBSTRUCTING INTERSECTION, CROSSWALK OR GRADE CROSSING.

(a) No driver shall enter an intersection or marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk or grade crossing to accommodate the vehicle the driver is operating without obstructing the passage of other vehicles, pedestrians or railroad trains, notwithstanding any traffic control signal indication to proceed.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.712)

331.34 FAILURE TO CONTROL; WEAVING; FULL TIME AND ATTENTION.

(a) No person shall operate a vehicle without exercising reasonable and ordinary control over such vehicle.

(b) No person shall operate a vehicle in a weaving or zigzag course unless such irregular course is necessary for safe operation or in compliance with law.

(c) No person shall operate a vehicle without giving his full time and attention to the operation of such vehicle.

(d) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

331.341 TEXT MESSAGING WHILE DRIVING.

EDITOR'S NOTE: Former Section 331.341 has been replaced by Sections 333.13 and 335.032 to comply with State law.

331.35 OCCUPYING A MOVING TRAILER OR MANUFACTURED OR MOBILE HOME.

(a) No person shall occupy any travel trailer or manufactured or mobile home while it is being used as a conveyance upon a street or highway.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree. (ORC 4511.701)

331.36 SQUEALING TIRES, "PEELING," CRACKING EXHAUST NOISES.

(a) No person shall unnecessarily race the motor of any vehicle and no person shall operate any motor vehicle, except in an emergency, in such a manner that the vehicle is so rapidly accelerated or started from a stopped position that the exhaust system emits a loud, cracking or chattering noise unusual to its normal operation, or whereby the tires of such vehicle squeal or leave tire marks on the roadway, commonly called "peeling".

(b) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

331.37 DRIVING UPON SIDEWALKS, STREET LAWNS OR CURBS.

(a) No person shall drive any vehicle, other than a bicycle, upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway. (ORC 4511.711)

(b) No person shall drive a vehicle on a street lawn area or the curb of a street, except upon a permanent or duly authorized temporary driveway or when otherwise lawfully authorized.

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.711)

331.38 STOPPING FOR SCHOOL BUS; DISCHARGING CHILDREN.

(a) The driver of a vehicle upon meeting or overtaking from either direction any school bus stopped for the purpose of receiving or discharging any school child, person attending programs offered by community boards of mental health and County boards of developmental disabilities, or child attending a program offered by a head start agency, shall stop at least ten feet from the front or rear of the school bus and shall not proceed until such school bus resumes motion, or until signaled by the school bus driver to proceed.

It is no defense to a charge under this subsection (a) hereof that the school bus involved failed to display or be equipped with an automatically extended stop warning sign as required by subsection (b) hereof.

(b) Every school bus shall be equipped with amber and red visual signals meeting the requirements of Ohio R.C. 4511.771, and an automatically extended stop warning sign of a type approved by the State Board of Education, which shall be actuated by the driver of the bus whenever but only whenever the bus is stopped or stopping on the roadway for the purpose of receiving or discharging school children, persons attending programs offered by community boards of mental health and County boards of developmental disabilities, or children attending programs offered by head start agencies. A school bus driver shall not actuate the visual signals or the stop warning sign in designated school bus loading areas where the bus is entirely off the roadway or at school buildings when children or persons attending programs offered by community boards of mental health and County boards of developmental disabilities are loading or unloading at curbside or at buildings when children attending programs offered by head start agencies are boarding or unloading at curbside. The visual signals and stop warning sign shall be synchronized or otherwise operated as required by rule of the Board.

(c) Where a highway has been divided into four or more traffic lanes, a driver of a vehicle need not stop for a school bus approaching from the opposite direction which has stopped for the purpose of receiving or discharging any school child, persons attending programs offered by community boards of mental health and County boards of developmental disabilities, or children attending programs offered by head start agencies. The driver of any vehicle overtaking the school bus shall comply with subsection (a) hereof.

(d) School buses operating on divided highways or on highways with four or more traffic lanes shall receive and discharge all school children, persons attending programs offered by community boards of mental health and County boards of developmental disabilities, and children attending programs offered by head start agencies on their residence side of the highway.

(e) No school bus driver shall start the driver's bus until after any child, person attending programs offered by community boards of mental health and County boards of developmental disabilities, or child attending a program offered by a head start agency who may have alighted therefrom has reached a place of safety on the child or person's residence side of the road.

(f) As used in this section:

(1) "Head start agency" has the same meaning as in Ohio R.C. 3301.32.

(2) "School bus", as used in relation to children who attend a program offered by a head start agency, means a bus that is owned and operated by a head start agency, is equipped with an automatically extended stop warning sign of a type approved by the State Board of Education, is painted the color and displays the markings described in Ohio R.C. 4511.77, and is equipped with amber and red visual signals meeting the requirements of Ohio R.C. 4511.771, irrespective of whether or not the bus has fifteen or more children aboard at any time. "School bus" does not include a van owned and operated by a head start agency, irrespective of its color, lights, or markings.

(g) (1) Whoever violates subsection (a) of this section may be fined an amount not to exceed five hundred dollars ($500.00). A person who is issued a citation for a violation of subsection (a) of this section is not permitted to enter a written plea of guilty and waive the person's right to contest the citation in a trial but instead must appear in person in the proper court to answer the charge.

(2) In addition to and independent of any other penalty provided by law, the court or mayor may impose upon an offender who violates this section a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (a)(7) of Ohio R.C. 4510.02. When a license is suspended under this section, the court or mayor shall cause the offender to deliver the license to the court, and the court or clerk of the court immediately shall forward the license to the Registrar of Motor Vehicles, together with notice of the court's action. (ORC 4511.75)

331.39 ERECTION OF STOP SIGNS ON PRIVATE ROADS AND DRIVEWAYS; ENFORCEMENT.

(a) The owner of a private road or driveway located in a private residential area containing twenty or more dwelling units may erect stop signs at places where the road or driveway intersects with another private road or driveway in the residential area, in compliance with all of the following requirements:

(1) The stop sign is sufficiently legible to be seen by an ordinarily observant person and meets the specifications of and is placed in accordance with the manual adopted by the Department of Transportation pursuant to Ohio R.C. 4511.09;

(2) The owner has posted a sign at the entrance of the private road or driveway that is in plain view and clearly informs persons entering the road or driveway that they are entering private property, stop signs have been posted and shall be obeyed, and the signs are enforceable by law enforcement officers under State or municipal law. The sign required by this section, where appropriate, may be incorporated with the sign required by Section 333.10.

(b) Sections 331.19 and 371.01 shall be deemed to apply to the driver of a vehicle on a private road or driveway where a stop sign is placed in accordance with subsection (a) hereof and to a pedestrian crossing such a road or driveway at an intersection where a stop sign is in place.

(c) When a stop sign is placed in accordance with subsection (a) hereof, any law enforcement officer may apprehend a person found violating the stop sign and may stop and charge the person with violating the stop sign.

(d) As used in this section, and for the purpose of applying Sections 331.19 and 371.01 to conduct under this section:

(1) "Intersection" means:

A. The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two private roads or driveways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different private roads or driveways joining at any other angle may come in conflict.

B. Where a private road or driveway includes two roadways thirty feet or more apart, then every crossing of two roadways of such private roads or driveways shall be regarded as a separate intersection.

(2) "Roadway" means that portion of a private road or driveway improved, designed or ordinarily used for vehicular travel, except the berm or shoulder. If a private road or driveway includes two or more separate roadways, the term "roadway" means any such roadway separately but not all such roadways collectively.

(3) "Owner" and "private residential area containing twenty or more dwelling units" have the same meanings as in Section 333.10.

(Ord. 90-88. Passed 10-15-90.)

(e) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

331.40 EARPHONES OR EARPLUGS ON OPERATOR PROHIBITED; EXCEPTIONS.

(a) No person shall operate a motor vehicle while wearing earphones over, or earplugs in, one or both ears. As used herein, "earphones" means any headset, radio, tape, disc or cassette player, or other similar device that provides to or is capable of providing the person with radio programs, music or other recorded information through a device attached to the head and that covers all or a portion of one or both ears. "Earphones" do not include speakers or other listening devices that are a component of protective headgear.

(b) The provisions of this section do not apply to any person wearing a hearing aid or when wearing earphones over or earplugs in one or both ears as a part of the normal function of such person's employment or when required by any safety law, requirement, rule or regulation applicable to employees while in the course of employment.

(Ord. 91-70. Passed 7-1-91.)

(c) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

331.41 SHORTCUTTING AT INTERSECTIONS.

(a) No person, being the operator of a motor vehicle, shall enter upon private property for the purpose of driving across such property between the abutting streets thereof. Driving on such property without stopping for the purpose of the business thereon shall be prima-facie evidence of a violation of this section.

(Ord. 78-27. Passed 6-19-78.)

(b) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

331.42 LITTERING FROM MOTOR VEHICLE.

(a) No operator or occupant of a motor vehicle shall, regardless of intent, throw, drop, discard or deposit litter from any motor vehicle in operation upon any street, road or highway, except into a litter receptacle in a manner that prevents its being carried away or deposited by the elements.

(b) No operator of a motor vehicle in operation upon any street, road or highway shall allow litter to be thrown, dropped, discarded or deposited from the motor vehicle, except into a litter receptacle in a manner that prevents its being carried away or deposited by the elements.

(c) As used in this section, "litter" means garbage, trash, waste, rubbish, ashes, cans, bottles, wire, paper, cartons, boxes, automobile parts, furniture, glass or anything else of an unsightly or unsanitary nature.

(d) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4511.82)

331.43 VEHICULAR OPERATION ON STREET CLOSED DUE TO RISE IN WATER LEVEL.

(a) No person shall operate a vehicle on or onto a public street or highway that is temporarily covered by a rise in water level, including groundwater or an overflow of water, and that is clearly marked by a sign that specifies that the road is closed due to the rise in water level and that any person who uses the closed portion of the road may be fined up to two thousand dollars ($2,000).

(b) A person who is issued a citation for a violation of subsection (a) hereof is not permitted to enter a written plea of guilty and waive the person's right to contest the citation in court, but instead must appear in person in the proper court to answer the charge.

(c) (1) Whoever violates subsection (a) hereof is guilty of a minor misdemeanor.

(2) In addition to the financial sanctions authorized or required under Section 501.99 and to any costs otherwise authorized or required under any provision of law, the court imposing the sentence upon an offender who is convicted of or pleads guilty to a violation of subsection (a) hereof shall order the offender to reimburse one or more rescuers for the cost any such rescurer incurred in rescuing the person, excluding any cost of transporting the rescued person to a hospital or other facility for treatment of injuries, up to a cumulative maximum of two thousand dollars ($2,000). If more than one rescuer was involved in the emergency response, the court shall allocate the reimbursement proportionately, according to the cost each rescuer incurred. A financial sanction imposed under this section is a judgment in favor of the rescuer and, subject to a determination of indigency under division (B) of Ohio R.C. 2929.28, a rescuer may collect the financial sanction in the same manner as provided in Ohio R.C. 2929.28.

(d) As used in this section:

(1) "Emergency medical service organization", "firefighting agency" and "private fire company" have the same meanings as in Ohio R.C. 9.60.

(2) "Rescuer" means a state agency, political subdivision, firefighting service, private fire company, or emergency medical service organization.
(ORC 4511.714.)

CHAPTER 333
OVI; Willful Misconduct; Speed

333.01 Driving or physical control while under the influence.
333.02 Operation in willful or wanton disregard of safety.
333.03 Maximum speed limits; assured clear distance ahead.
333.031 Approaching a stationary public safety, emergency, or road service vehicle.
333.04 Stopping vehicle; slow speed; posted minimum speeds.
333.05 Speed limitations over bridges.
333.06 Speed exceptions for emergency or safety vehicles.
333.07 Street racing prohibited.
333.08 Operation without reasonable control.
333.09 Reckless operation on streets, public or private property.
333.10 Speed limits on private roads and driveways; enforcement.
333.11 Police on Patrol Arresting Speeders (POPAS).
333.12 Operation in violation of immobilization order.
333.13 Texting while driving prohibited.

CROSS REFERENCES
See sectional histories for similar State law
Drug of abuse defined - see Ohio R.C. 3719.011(A)
Alcohol defined - see Ohio R.C. 4301.01(B)(1)
Alteration of prima-facie speed limits - see Ohio R.C. 4511.21, 4511.22(B), 4511.23
Failure to control vehicle - see TRAF. 331.34
Walking on highway while under the influence - see TRAF. 371.09

333.01 DRIVING OR PHYSICAL CONTROL WHILE UNDER THE INFLUENCE.

(a) (1) Operation Generally. No person shall operate any vehicle within this Municipality, if, at the time of the operation, any of the following apply:

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

B. The person has a concentration of eight-hundredths of one per cent or more but less than seventeen-hundredths of one per cent by weight per unit volume of alcohol in the person's whole blood.

C. The person has a concentration of ninety-six-thousandths of one per cent or more but less than two hundred four-thousandths of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma.

D. The person has a concentration of eight-hundredths of one gram or more but less than seventeen-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath.

E. The person has a concentration of eleven-hundredths of one gram or more but less than two hundred thirty-eight-thousandths of one gram by weight of alcohol per one hundred milliliters of the person's urine.

F. The person has a concentration of seventeen-hundredths of one per cent or more by weight per unit volume of alcohol in the person's whole blood.

G. The person has a concentration of two hundred four-thousandths of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma.

H. The person has a concentration of seventeen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath.

I. The person has a concentration of two hundred thirty-eight-thousandths of one gram or more by weight of alcohol per one hundred milliliters of the person's urine.

J. Except as provided in subsection (m) of this section, the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following:

1. The person has a concentration of amphetamine in the person's urine of at least five hundred nanograms of amphetamine per milliliter of the person's urine or has a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma.
2. The person has a concentration of cocaine in the person's urine of at least one hundred fifty nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma.
3. The person has a concentration of cocaine metabolite in the person's urine of at least one hundred fifty nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma.
4. The person has a concentration of heroin in the person's urine of at least two thousand nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the person's whole blood or blood serum or plasma of at least fifty nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma.
5. The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma.

6. The person has a concentration of L.S.D. in the person's urine of at least twenty-five nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least ten nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma.
7. The person has a concentration of marihuana in the person's urine of at least ten nanograms of marihuana per milliliter of the person's urine or has a concentration of marihuana in the person's whole blood or blood serum or plasma of at least two nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma.
8. Either of the following applies:
   a. The person is under the influence of alcohol, a drug of abuse or a combination of them, and the person has a concentration of marihuana metabolite in the person's urine of at least fifteen nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least five nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.
   b. The person has a concentration of marihuana metabolite in the person's urine of at least thirty-five nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.
9. The person has a concentration of methamphetamine in the person's urine of at least five hundred nanograms of methamphetamine per milliliter of the person's urine or has a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma.
10. The person has a concentration of phencyclidine in the person's urine of at least twenty-five nanograms of phencyclidine per milliliter of the person's urine or has a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least ten nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.
11. The State Board of Pharmacy has adopted a rule pursuant to Ohio R.C. 4729.041 that specifies the amount of salvia divinorum and the amount of salvinorin A that constitute concentrations of salvia divinorum and salvinorin A in a person's urine, in a person's whole blood, or in a person's blood serum or plasma at or above which the person is impaired for purposes of operating any vehicle within this

Municipality, the rule is in effect, and the person has a concentration of salvia divinorum or salvinorin A of at least that amount so specified by rule in the person's urine, in the person's whole blood, or in the person's blood serum or plasma.

(2) No person who, within twenty years of the conduct described in subsection (a)(2)A. of this section, previously has been convicted of or pleaded guilty to a violation of Ohio R.C. 4511.19(A) or (B), or any other equivalent offense shall do both of the following:

A. Operate any vehicle within this Municipality while under the influence of alcohol, a drug of abuse or a combination of them;

B. Subsequent to being arrested for operating the vehicle as described in subsection (a)(2)A. of this section, being asked by a law enforcement officer to submit to a chemical test or tests under Ohio R.C. 4511.191, and being advised by the officer in accordance with Ohio R.C. 4511.192 of the consequences of the person's refusal or submission to the test or tests, refuse to submit to the test or tests.

(b) Operation After Under-Age Consumption. No person under twenty-one years of age shall operate any vehicle within this Municipality, if, at the time of the operation, any of the following apply:

(1) The person has a concentration of at least two-hundredths of one per cent but less than eight-hundredths of one per cent by weight per unit volume of alcohol in the person's whole blood.

(2) The person has a concentration of at least three-hundredths of one per cent but less than ninety-six-thousandths of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma.

(3) The person has a concentration of at least two-hundredths of one gram but less than eight-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath.

(4) The person has a concentration of at least twenty-eight one-thousandths of one gram but less than eleven-hundredths of one gram by weight of alcohol per one hundred milliliters of the person's urine.

(c) One Conviction Limitation. In any proceeding arising out of one incident, a person may be charged with a violation of subsection (a)(1)A. or (a)(2) and a violation of subsection (b)(1), (2) or (3) of this section, but the person may not be convicted of more than one violation of these subsections. (ORC 4511.99)

(d) Physical Control.

(1) As used in this subsection, "physical control" means being in the driver's position of the front seat of a vehicle and having possession of the vehicle's ignition key or other ignition device.

(2) A. No person shall be in physical control of a vehicle if, at the time of the physical control, any of the following apply:

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

2. The person's whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol specified in subsection (a)(1)B., C., D. or E. hereof.

3. Except as provided in subsection (d)(3) of this section, the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the concentration specified in subsection (a)(1)J. hereof.

B. No person under twenty-one years of age shall be in physical control of a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or while the person's whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol specified in subsection (b)(1) to (4) hereof.

(3) Subsection (d)(2)A.3. of this section does not apply to a person who is in physical control of a vehicle while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in subsection (a)(1)J. hereof, if both of the following apply:

A. The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

B. The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.

(e) Evidence; Tests.

(1) A. In any criminal prosecution or juvenile court proceeding for a violation of (a)(1)A. of this section or for any equivalent offense, that is vehicle-related the result of any test of any blood or urine withdrawn and analyzed at any health care provider, as defined in Ohio R.C. 2317.02, may be admitted with expert testimony to be considered with any other relevant and competent evidence in determining the guilt or innocence of the defendant.

B. In any criminal prosecution or juvenile court proceeding for a violation of subsection (a) or (b) of this section or for an equivalent offense that is vehicle related, the court may admit evidence on the concentration of alcohol, drugs of abuse, controlled substances, metabolites of a controlled substance, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within three hours of the time of the alleged violation. The three-hour time limit specified in this subsection regarding the admission of evidence does not extend or affect the two-hour time limit specified in Ohio R.C. 4511.192(A) as the maximum period of time during which a person may consent to a chemical test or tests as described in that section.

The court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them as described in this section when a person submits to a blood, breath, urine or other bodily substance test at the request of a law enforcement officer under Ohio R.C. 4511.191, or a blood or urine sample is obtained pursuant to a search warrant. Only a physician, a registered nurse, an emergency medical technician-intermediate, an emergency medical technician-paramedic or a qualified technician, chemist, or phlebotomist shall withdraw a blood sample for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the whole blood, blood serum, or blood plasma. This limitation does not apply to the taking of breath or urine specimens. A person authorized to withdraw blood under this subsection may refuse to withdraw blood under this subsection, if in that person's opinion, the physical welfare of the person would be endangered by the withdrawing of blood.

The bodily substance withdrawn under subsection (e)(1)B. hereof shall be analyzed in accordance with methods approved by the Director of Health by an individual possessing a valid permit issued by the Director pursuant to Ohio R.C. 3701.143.

C. As used in subsection (e)(1)B. of this section, "emergency medical technician-intermediate" and "emergency medical technician-paramedic" have the same meanings as in Ohio R.C. 4765.01.

(2) In a criminal prosecution or juvenile court proceeding for violation of subsection (a) of this section or for an equivalent offense that is vehicle related, if there was at the time the bodily substance was withdrawn a concentration of less than the applicable concentration of alcohol specified in subsections (a)(1)B., C., D. and E. of this section, or less than the applicable concentration of a listed controlled substance or a listed metabolite of a controlled substance specified for a violation of subsection (a)(1)J. of this section, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This subsection does not limit or affect a criminal prosecution or juvenile court proceeding for a violation of subsection (b) of this section or for an equivalent offense that is substantially equivalent to that subsection.

(3) Upon the request of the person who was tested, the results of the chemical test shall be made available to the person or the person's attorney, immediately upon the completion of the chemical test analysis.

If the chemical test was obtained pursuant to subsection (e)(1)B. hereof, the person tested may have a physician, a registered nurse, or a qualified technician, chemist or phlebotomist of the person's own choosing administer a chemical test or tests, at the person's expense, in addition to

any administered at the request of a law enforcement officer. If the person was under arrest as described in division (A)(5) of Ohio R.C. 4511.191, the arresting officer shall advise the person at the time of the arrest that the person may have an independent chemical test taken at the person's own expense. If the person was under arrest other than described in division (A)(5) of Ohio R.C. 4511.191, the form to be read to the person to be tested, as required under Ohio R.C. 4511.192, shall state that the person may have an independent test performed at the person's expense. The failure or inability to obtain an additional chemical test by a person shall not preclude the admission of evidence relating to the chemical test or tests taken at the request of a law enforcement officer.

(4) A. As used in subsections (e)(4)B. and C. of this section, "national highway traffic safety administration" means the National Traffic Highway Safety Administration established as an administration of the United States Department of Transportation under 96 Stat. 2415 (1983), 49 U.S.C.A. 105.

B. In any criminal prosecution or juvenile court proceeding for a violation of subsection (a), (b) or (d) of this section, of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or of a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath or urine, if a law enforcement officer has administered a field sobriety test to the operator or person in physical control of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that were set by the National Highway Traffic Safety Administration, all of the following apply:

1. The officer may testify concerning the results of the field sobriety test so administered.
2. The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.
3. If testimony is presented or evidence is introduced under subsection (e)(4)B.1. or 2. of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

C. Subsection (e)(4)B. of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that subsection, from considering evidence or testimony that is not otherwise disallowed by subsection (e)(4)B. of this section. (ORC 4511.19; 4511.194)

(f) Forensic Laboratory Reports.

(1) Subject to subsection (f)(3) of this section, in any criminal prosecution or juvenile court proceeding for a violation of subsection (a)(1)B., C., D., E., F., G., H., I., or J. or (b)(1), (2), (3) or (4) of this section or for an equivalent offense that is substantially equivalent to any of those subsections, a laboratory report from any laboratory personnel issued a permit by the Department of Health authorizing an analysis as described in this subsection that contains an analysis of the whole blood, blood serum or plasma, breath, urine, or other bodily substance tested and that contains all of the information specified in this subsection shall be admitted as prima-facie evidence of the information and statements that the report contains. The laboratory report shall contain all of the following:

A. The signature, under oath, of any person who performed the analysis;

B. Any findings as to the identity and quantity of alcohol, a drug of abuse, a controlled substance, a metabolite of a controlled substance, or a combination of them that was found;

C. A copy of a notarized statement by the laboratory director or a designee of the director that contains the name of each certified analyst or test performer involved with the report, the analyst's or test performer's employment relationship with the laboratory that issued the report, and a notation that performing an analysis of the type involved is part of the analyst's or test performer's regular duties;

D. An outline of the analyst's or test performer's education, training, and experience in performing the type of analysis involved and a certification that the laboratory satisfies appropriate quality control standards in general and, in this particular analysis, under rules of the Department of Health.

(2) Notwithstanding any other provision of law regarding the admission of evidence, a report of the type described in subsection (f)(1) of this section is not admissible against the defendant to whom it pertains in any proceeding, other than a preliminary hearing or a grand jury proceeding, unless the prosecutor has served a copy of the report on the defendant's attorney or, if the defendant has no attorney, on the defendant.

(3) A report of the type described in subsection (f)(1) of this section shall not be prima-facie evidence of the contents, identity, or amount of any substance if, within seven days after the defendant to whom the report pertains or the defendant's attorney receives a copy of the report, the defendant or the defendant's attorney demands the testimony of the person who signed the report. The judge in the case may extend the seven-day time limit in the interest of justice.

(g) Immunity From Liability For Withdrawing Blood. Except as otherwise provided in this subsection, any physician, registered nurse, emergency medical technician-intermediate, emergency medical technician-paramedic, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to this section or Ohio R.C. 4511.191 or 4511.192, and any hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to this section or Ohio R.C. 4511.191 or 4511.192, is immune from criminal liability and civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. The immunity provided in this subsection also extends to an emergency medical service organization that employs an emergency medical technician-intermediate or emergency medical technician-paramedic who withdraws blood under this section. The immunity provided in this subsection is not available to a person who withdraws blood if the person engaged in willful or wanton misconduct.

As used in this subsection, "emergency medical technician-intermediate" and "emergency medical technician-paramedic" have the same meanings as in Ohio R.C. 4765.01.

(h) General OVI Penalty.

(1) Whoever violates any provision of subsections (a)(1)A. to I. or (a)(2) of this section is guilty of operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them. Whoever violates subsection (a)(1)J. of this section is guilty of operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance. The court shall sentence the offender for either offense under Ohio R.C. Chapter 2929, and this Traffic Code, except as otherwise authorized or required by subsections (h)(1)A. to E. of this section:

A. Except as otherwise provided in subsections (h)(1)B., C., D. or E. of this section, the offender is guilty of a misdemeanor of the first degree, and the court shall sentence the offender to all of the following:

1. If the sentence is being imposed for a violation of subsections (a)(1)A., B., C., D., E., or J. of this section, a mandatory jail term of three consecutive days. As used in this subsection, three consecutive days means seventy-two consecutive hours. The court may sentence an offender to both an intervention program and a jail term. The court may impose a jail term in addition to the three-day mandatory jail term or intervention program. However, in no case shall the cumulative jail term imposed for the offense exceed six months.

The court may suspend the execution of the three-day jail term under this subsection if the court, in lieu of that suspended term, places the offender under a community control sanction pursuant to Ohio R.C. 2929.25 and requires the offender to attend, for three consecutive days, a drivers' intervention program certified under Ohio R.C. 5119.38.

The court also may suspend the execution of any part of the three-day jail term under this subsection if it places the offender under a community control sanction pursuant to Ohio R.C. 2929.25 for part of the three days, requires the offender to attend for the suspended part of the term a drivers' intervention program so certified, and sentences the offender to a jail term equal to the remainder of the three consecutive days that the offender does not spend attending the program. The court may require the offender, as a condition of community control and in addition to the required attendance at a drivers' intervention program, to attend and satisfactorily complete any treatment or education programs that comply with the minimum standards adopted pursuant to Ohio R.C. Chapter 5119 by the Director of Mental Health and Addiction Services that the operators of the drivers' intervention program determine that the offender should attend and to report periodically to the court on the offender's progress in the programs. The court also may impose on the offender any other conditions of community control that it considers necessary.

If the court grants unlimited driving privileges to a first-time offender under Ohio R.C. 4510.022, all penalties imposed upon the offender by the court under subsection (h)(1)A.1. of this section for the offense apply, except that the court shall suspend any mandatory or additional jail term imposed by the court under subsection (h)(1)A.1. of this section upon granting unlimited driving privileges in accordance with Ohio R.C. 4510.022.

2. If the sentence is being imposed for a violation of subsection (a)(1)F., G., H. or I. or (a)(2) of this section, except as otherwise provided in this subsection, a mandatory jail term of at least three consecutive days and a requirement that the offender attend, for three consecutive days, a drivers' intervention program that is certified pursuant to Ohio R.C. 5119.38. As used in this subsection, three consecutive days means seventy-two consecutive hours. If the court determines that the offender is not conducive to treatment in a drivers' intervention program, if the offender refuses to attend a drivers' intervention program, or if the jail at which the offender is to serve the jail term imposed can provide a drivers' intervention program, the court shall sentence the offender to a mandatory jail term of at least six consecutive days.

If the court grants unlimited driving privileges to a first-time offender under Ohio R.C. 4510.022, all penalties imposed upon the offender by the court under subsection (h)(1)A.2. of this section for the offense apply, except that the court shall suspend any mandatory or additional jail term imposed by the court under subsection (h)(1)A.2. of this section upon granting unlimited driving privileges in accordance with Ohio R.C. 4510.022.

The court may require the offender, under a community control sanction imposed under Ohio R.C. 2929.25, to attend and satisfactorily complete any treatment or education programs that comply with the minimum standards adopted pursuant to Ohio R.C. Chapter 5119 by the Director of Mental Health and Addiction Services, in addition to the required attendance at drivers' intervention program, that the operators of the drivers' intervention program determine that the offender should attend and to report periodically to the court on the offender's progress in the programs. The court also may impose any other conditions of community control on the offender that it considers necessary.

3. In all cases, a fine of not less than three hundred seventy-five dollars ($375.00) and not more than one thousand seventy-five dollars ($1,075).

4. In all cases, a suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege for a definite period of one to three years. The court may grant limited driving privileges relative to the suspension under Ohio R.C. 4510.021 and 4510.13. The court may grant unlimited driving privileges with an ignition interlock device relative to the suspension and may reduce the period of suspension as authorized under Ohio R.C. 4510.022.

B. Except as otherwise provided in subsection (h)(1)E. of this section, an offender who, within ten years of the offense, previously has been convicted of or pleaded guilty to one violation of subsection (a) or (b) of this section or one other equivalent offense is guilty of a misdemeanor of the first degree. The court shall sentence the offender to all of the following:

1. If the sentence is being imposed for a violation of subsection (a)(1)A., B., C., D., E., or J. of this section, a mandatory jail term of ten consecutive days. The court shall impose the ten-day mandatory jail term under this subsection unless, subject to subsection (h)(3) of this section, it instead imposes a sentence under that subsection consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the ten-day mandatory jail term. The cumulative jail term imposed for the offense shall not exceed six months.

   In addition to the jail term or the term of house arrest with electronic monitoring or continuous alcohol monitoring or both types of monitoring and jail term, the court shall require the offender to be assessed by a community addiction services provider that is authorized by Ohio R.C. 5119.21, subject to subsection (k) of this section, and shall order the offender to follow the treatment recommendations of the services provider. The purpose of the assessment is to determine the degree of the offender's alcohol usage and to determine whether or not treatment is warranted. Upon

the request of the court, the services provider shall submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use.

2. If the sentence is being imposed for a violation of subsection (a)(1)F., G., H. or I. or (a)(2) of this section, except as otherwise provided in this subsection, a mandatory jail term of twenty consecutive days. The court shall impose the twenty-day mandatory jail term under this subsection unless, subject to subsection (h)(3) of this section, it instead imposes a sentence under that subsection consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the twenty-day mandatory jail term. The cumulative jail term imposed for the offense shall not exceed six months.

   In addition to the jail term or the term of house arrest with electronic monitoring or continuous alcohol monitoring or both types of monitoring and jail term, the court shall require the offender to be assessed by a community addiction services provider that is authorized by Ohio R.C. 5119.21, subject to subsection (k) of this section, and shall order the offender to follow the treatment recommendations of the services provider. The purpose of the assessment is to determine the degree of the offender's alcohol usage and to determine whether or not treatment is warranted. Upon the request of the court, the services provider shall submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use.

3. In all cases, notwithstanding the fines set forth in Section 303.99, a fine of not less than five hundred twenty-five dollars ($525.00) and not more than one thousand six hundred twenty-five dollars ($1,625).

4. In all cases, a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for a definite period of one to seven years. The court may grant limited driving privileges relative to the suspension under Ohio R.C. 4510.021 and 4510.13. (ORC 4511.19)

5. In all cases, if the vehicle is registered in the offender's name, immobilization of the vehicle involved in the offense for ninety days in accordance with Ohio R.C. 4503.233 and impoundment of the license plates of that vehicle for ninety days. (ORC 4511.193)

C. Except as otherwise provided in subsection (h)(1)E. of this section, an offender who, within ten years of the offense, previously has been convicted of or pleaded guilty to two violations of subsection (a) or (b) of this section or other equivalent offenses is guilty of a misdemeanor. The court shall sentence the offender to all of the following:

1. If the sentence is being imposed for a violation of subsection (a)(1)A., B., C., D., E., or J. of this section, a mandatory jail term of thirty consecutive days. The court shall impose the thirty-day mandatory jail term under this subsection unless, subject to subsection (h)(3) of this section, it instead imposes a sentence under that subsection consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the thirty-day mandatory jail term. Notwithstanding the jail terms set forth in Section 303.99, the additional jail term shall not exceed one year, and the cumulative jail term imposed for the offense shall not exceed one year.
2. If the sentence is being imposed for a violation of subsection (a)(1)F., G., H. or I. or (a)(2) of this section, a mandatory jail term of sixty consecutive days. The court shall impose the sixty-day mandatory jail term under this subsection unless, subject to subsection (h)(3) of this section, it instead imposes a sentence under that subsection consisting of both a jail term and a term of electronically monitored house arrest with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the sixty-day mandatory jail term. Notwithstanding the terms of imprisonment set forth in Section 303.99, the additional jail term shall not exceed one year, and the cumulative jail term imposed for the offense shall not exceed one year.
3. In all cases, notwithstanding the fines set forth in Section 303.99, a fine of not less than eight hundred fifty dollars ($850.00) and not more than two thousand seven hundred fifty dollars ($2,750).
4. In all cases, a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for a definite period of two to twelve years. The court may grant limited driving privileges relative to the suspension under Ohio R.C. 4510.021 and 4510.13. (ORC 4511.19)
5. In all cases, if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense in accordance with Ohio R.C. 4503.234. Subsection (h)(5) of this section applies regarding any vehicle that is subject to an order of criminal forfeiture under this subsection. (ORC 4511.193)

6. In all cases, the court shall order the offender to participate with a community addiction services provider authorized by Ohio R.C. 5119.21, subject to subsection (k) of this section, and shall order the offender to follow the treatment recommendations of the services provider. The operator of the services provider shall determine and assess the degree of the offender's alcohol dependency and shall make recommendations for treatment. Upon the request of the court, the services provider shall submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use.

D. Except as otherwise provided in subsection (h)(1)E. of this section, an offender who, within ten years of the offense, previously has been convicted of or pleaded guilty to three or four violations of subsection (a) or (b) of this section or other equivalent offenses or an offender who, within twenty years of the offense, previously has been convicted of or pleaded guilty to five or more violations of that nature is guilty of a felony of the fourth degree and shall be prosecuted under appropriate state law.

E. An offender who previously has been convicted of or pleaded guilty to a violation of Ohio R.C. 4511.19(A) that was a felony, regardless of when the violation and the conviction or guilty plea occurred, is guilty of a felony of the third degree and shall be prosecuted under appropriate state law.

(2) An offender who is convicted of or pleads guilty to a violation of subsection (a) of this section and who subsequently seeks reinstatement of the driver's or occupational driver's license or permit or nonresident operating privilege suspended under this section as a result of the conviction or guilty plea shall pay a reinstatement fee as provided in division (F)(2) of Ohio R.C. 4511.191.

(3) If an offender is sentenced to a jail term under subsection (h)(1)B.1. or 2. or (h)(1)C.1. or 2. of this section and if, within sixty days of sentencing of the offender, the court issues a written finding on the record that, due to the unavailability of space at the jail where the offender is required to serve the term, the offender will not be able to begin serving that term within the sixty-day period following the date of sentencing, the court may impose an alternative sentence under this subsection that includes a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring.

As an alternative to a mandatory jail term of ten consecutive days required by subsection (h)(1)B.1. of this section, the court, under this subsection, may sentence the offender to five consecutive days in jail and not less than eighteen consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the five consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring, or both types of monitoring shall not exceed six months. The five consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

As an alternative to the mandatory jail term of twenty consecutive days required by subsection (h)(1)B.2. of this section, the court, under this subsection, may sentence the offender to ten consecutive days in jail and not less than thirty-six consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the ten consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring or both types of monitoring shall not exceed six months. The ten consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

As an alternative to a mandatory jail term of thirty consecutive days required by subsection (h)(1)C.1. of this section, the court, under this subsection, may sentence the offender to fifteen consecutive days in jail and not less than fifty-five consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the fifteen consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring or both types of monitoring shall not exceed one year. The fifteen consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

As an alternative to the mandatory jail term of sixty consecutive days required by subsection (h)(1)C.2. of this section, the court, under this subsection, may sentence the offender to thirty consecutive days in jail and not less than one hundred ten consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the thirty consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring, or both types of monitoring shall not exceed one year. The thirty consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

(4) If an offender's driver's or occupational driver's license or permit or nonresident operating privilege is suspended under subsection (h) of this section and if Ohio R.C. 4510.13 permits the court to grant limited driving privileges, the court may grant the limited driving privileges in accordance with that section. If division (A)(7) of that section requires that the court impose as a condition of the privileges that the offender must display on the vehicle that is driven subject to the privileges restricted license plates that are issued under Ohio R.C. 4503.231, except as provided in division (B) of that section, the court shall impose that condition as one of the conditions of the limited driving privileges granted to the offender, except as provided in division (B) of Ohio R.C. 4503.231.

(5) If title to a motor vehicle that is subject to an order of criminal forfeiture under this section is assigned or transferred and division (B)(2) or (3) of Ohio R.C. 4503.234 applies, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the national auto dealers association. The proceeds of any fine so imposed shall be distributed in accordance with division (C)(2) of that section.

(6) In all cases in which an offender is sentenced under subsection (h) of this section, the offender shall provide the court with proof of financial responsibility as defined in Ohio R.C. 4509.01. If the offender fails to provide that proof of financial responsibility, the court, in addition to any other penalties provided by law, may order restitution pursuant to Ohio R.C. 2929.18 or 2929.28 in an amount not exceeding five thousand dollars ($5,000) for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during or after committing the offense for which the offender is sentenced under subsection (h) of this section.

(7) A court may order an offender to reimburse a law enforcement agency for any costs incurred by the agency with respect to a chemical test or tests administered to the offender if all of the following apply:

A. The offender is convicted of or pleads guilty to a violation of subsection (a) of this section.

B. The test or tests were of the offender's whole blood, blood serum or plasma, or urine.

C. The test or tests indicated that the offender had a prohibited concentration of a controlled substance or a metabolite of a controlled substance in the offender's whole blood, blood serum or plasma, or urine at the time of the offense.

(8) As used in subsection (h) of this section, "electronic monitoring", "mandatory prison term" and "mandatory term of local incarceration" have the same meanings as in Ohio R.C. 2929.01.

(i) Vehicle Operation After Underage Alcohol Consumption Penalty. Whoever violates subsection (b) of this section is guilty of operating a vehicle after underage alcohol consumption and shall be punished as follows:

(1) Except as otherwise provided in subsection (i)(2) of this section, the offender is guilty of a misdemeanor of the fourth degree. In addition to any other sanction imposed for the offense, the court shall impose a class six suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(6) of Ohio R.C. 4510.02. The court may grant limited driving privileges relative to the suspension under Ohio R.C. 4510.021 and 4510.13. The court may grant unlimited driving privileges with an ignition interlock device relative to the suspension and may reduce the period of suspension as authorized under Ohio R.C. 4510.022. If the court grants unlimited driving privileges under Ohio R.C. 4510.022, the court shall suspend any jail term imposed under subsection (i)(1) of this section as required under that section.

(2) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one or more violations of subsection (a) or (b) of this section or other equivalent offenses, the offender is guilty of a misdemeanor of the third degree. In addition to any other sanction imposed for the offense, the court shall impose a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of Ohio R.C. 4510.02. The court may grant limited driving privileges relative to the suspension under Ohio R.C. 4510.021 and 4510.13.

(3) If the offender also is convicted of or also pleads guilty to a specification of the type described in Ohio R.C. 2941.1416 and if the court imposes a jail term for the violation of subsection (b) of this section, the court shall impose upon the offender an additional definite jail term pursuant to division (E) of Ohio R.C. 2929.24.

(4) The offender shall provide the court with proof of financial responsibility as defined in Ohio R.C. 4509.01. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to Ohio R.C. 2929.28, in an amount not exceeding five thousand dollars ($5,000) for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during or after committing the violation of subsection (b) of this section.
(ORC 4511.19)

(j) Physical Control Penalty. Whoever violates subsection (d) hereof is guilty of having physical control of a vehicle while under the influence, a misdemeanor of the first degree. In addition to other sanctions imposed, the court may impose on the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(7) of Ohio R.C. 4510.02. (ORC 4511.194)

(k) Compliance With Ohio R.C. Chapter 5119 Standards.

(1) No court shall sentence an offender to an alcohol treatment program under this section unless the treatment program complies with the minimum standards for alcohol treatment programs adopted under Ohio R.C. Chapter 5119 by the Director of Mental Health and Addiction Services.

(2) An offender who stays in a driver's intervention program or in an alcohol treatment program under an order issued under this section shall pay the cost of the stay in the program. However, if the court determines that an offender who stays in an alcohol treatment program under an order issued under this section is unable to pay the cost of the stay in the program, the court may order that the cost be paid from the court's indigent drivers' alcohol treatment fund.

(l) Appeal Does Not Stay Operation of License Suspension. If a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended under this section files an appeal regarding any aspect of the person's trial or sentence, the appeal itself does not stay the operation of the suspension.

(m) Subsection (a)(1)J. of this section does not apply to a person who operates a vehicle while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that subsection, if both of the following apply:

(1) The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(2) The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.

(n) The prohibited concentrations of a controlled substance or a metabolite of a controlled substance listed in subsection (a)(1)J. of this section also apply in a prosecution of a violation of Ohio R.C. 2923.16(D) in the same manner as if the offender is being prosecuted for a prohibited concentration of alcohol.

(o) Conflict of Terms. All terms defined in Ohio R.C. 4510.01 apply to this section. If the meaning of a term defined in Ohio R.C . 4510.01 conflicts with the meaning of the same term as defined in Ohio R.C. 4501.01 or this Traffic Code, the term as defined in Ohio R.C. 4510.01 applies to this section. (ORC 4511.19)

(p) Indigent Drivers Alcohol Treatment Fund. Twenty-five dollars ($25.00) of any fine imposed for a violation of subsection (a) hereof shall be deposited into the municipal or county indigent drivers alcohol treatment fund pursuant to Ohio R.C. 4511.193.
(ORC 4511.193)

(q) Definitions. As used in this section:

(1) "Equivalent offense" means any of the following:

A. A violation of division (A) or (B) of Ohio R.C. 4511.19;

B. A violation of a municipal OVI ordinance;

C. A violation of Ohio R.C. 2903.04 in a case in which the offender was subject to the sanctions described in division (D) of that section;

D. A violation of division (A)(1) of Ohio R.C. 2903.06 or 2903.08 or a municipal ordinance that is substantially equivalent to either of those divisions;

E. A violation of division (A)(2), (3) or (4) of Ohio R.C. 2903.06, division (A)(2) of Ohio R.C. 2903.08, or former Ohio R.C. 2903.07, or a municipal ordinance that is substantially equivalent to any of those divisions or that former section, in a case in which a judge or jury as the trier of fact found that the offender was under the influence of alcohol, a drug of abuse, or a combination of them;

F. A violation of division (A) or (B) of Ohio R.C. 1547.11;

G. A violation of a municipal ordinance prohibiting a person from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane or similar device on the waters of this State while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane or similar device on the waters of this State with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath or urine;

H. A violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to division (A) or (B) of Ohio R.C. 4511.19 or division (A) or (B) or Ohio R.C. 1547.11;

I. A violation of a former law of this State that was substantially equivalent to division (A) or (B) of Ohio R.C. 4511.19 or division (A) or (B) of Ohio R.C. 1547.11;

(2) "Mandatory jail term" means the mandatory term in jail of three, six, ten, twenty, thirty, or sixty days that must be imposed under subsection (h)(1)A., B. or C. upon an offender convicted of a violation of subsection (a) hereof and in relation to which all of the following apply:

A. Except as specifically authorized under this section, the term must be served in a jail.

B. Except as specifically authorized under this section, the term cannot be suspended, reduced or otherwise modified pursuant to Ohio R.C. 2929.21 to 2929.28, or any other provision of the Ohio Revised Code.

(3) "Municipal OVI ordinance" and "municipal OVI offense" mean any municipal ordinance prohibiting a person from operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum, or plasma, breath or urine.

(4) "Community residential sanction", "continuous alcohol monitoring", "jail", "mandatory prison term", "mandatory term of local incarceration", "sanction" and "prison term" have the same meanings as in Ohio R.C. 2929.01.

(5) "Drug of abuse" has the same meaning as in Ohio R.C. 4506.01.

(6) "Equivalent offense that is vehicle-related" means an equivalent offense that is any of the following:

A. A violation described in subsection (q)(1), (2), (3), (4) or (5) hereof;

B. A violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to division (A) or (B) of Ohio R.C. 4511.19;

C. A violation of a former law of this state that was substantially equivalent to division (A) or (B) of Ohio R.C. 4511.19.

(ORC 4511.181)

333.02 OPERATION IN WILLFUL OR WANTON DISREGARD OF SAFETY.

(a) No person shall operate a vehicle on any street or highway in willful or wanton disregard of the safety of persons or property. (ORC 4511.20)

(b) No person shall operate a vehicle on any public or private property other than streets or highways, in willful or wanton disregard of the safety of persons or property.

This subsection does not apply to the competitive operation of vehicles on public or private property when the owner of such property knowingly permits such operation thereon.

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree. (ORC 4511.201)

(d) No person, without privilege to do so, shall, by the use of a motor vehicle or motorcycle, recklessly destroy or otherwise injure or damage land of another or a vine, bush, shrub, sapling, tree or crop standing or growing on land of another or upon public land, nor destroy or otherwise injure or damage a tree lawn of another or on public land. (Ord. 83-20. Passed 3-21-83.)

(e) Whoever violates Section 333.02(d) is guilty of a misdemeanor of the first degree in addition to the license suspension or revocation provided in Ohio R.C. 4507.16 and 4507.162. (Ord. 80-63. Passed 9-15-80.)

333.03 MAXIMUM SPEED LIMITS; ASSURED CLEAR DISTANCE AHEAD.

(a) No person shall operate a motor vehicle at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface and width of the street or highway and any other conditions, and no person shall drive any motor vehicle in and upon any street or highway

at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead.

(b) It is prima-facie lawful, in the absence of a lower limit declared pursuant to Ohio R.C. 4511.21 by the Ohio Director of Transportation or Council, for the operator of a motor vehicle to operate the same at a speed not exceeding the following:

(1) A. Twenty miles per hour in school zones during school recess and while children are going to or leaving school during the opening or closing hours, and when twenty miles per hour school speed limit signs are erected; except, that on controlled-access highways and expressways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by subsection (b)(4) hereof and on freeways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by subsection (b)(7) hereof. The end of every school zone may be marked by a sign indicating the end of the zone. Nothing in this section or in the manual and specifications for a uniform system of traffic control devices shall be construed to require school zones to be indicated by signs equipped with flashing or other lights, or giving other special notice of the hours in which the school zone speed limit is in effect.

B. As used in this section, "school" means any school chartered under Ohio R.C. 3301.16 and any nonchartered school that during the preceding year filed with the Department of Education in compliance with rule 3301-35-08 of the Ohio Administrative Code, a copy of the school's report for the parents of the school's pupils certifying that the school meets Ohio minimum standards for nonchartered, nontax-supported schools and presents evidence of this filing to the jurisdiction from which it is requesting the establishment of a school zone.

C. As used in this section, "school zone" means that portion of a street or highway passing a school fronting upon the street or highway that is encompassed by projecting the school property lines to the fronting street or highway. Upon request from the Municipality for streets and highways under its jurisdiction, the Ohio Director of Transportation may extend the traditional school zone boundaries. The distances in subsections (b)(1)C.1. to 3. hereof shall not exceed 300 feet per approach per direction and are bounded by whichever of the following distances or combinations thereof the Director approves as most appropriate:

1. The distance encompassed by projecting the school building lines normal to the fronting highway and extending a distance of 300 feet on each approach direction;
2. The distance encompassed by projecting the school property lines intersecting the fronting highway and extending a distance of 300 feet on each approach direction;
3. The distance encompassed by the special marking of the pavement for a principal school pupil crosswalk plus a distance of 300 feet on each approach direction of highway;

Nothing in this section shall be construed to invalidate the Director's initial action on August 9, 1976, establishing all school zones at the traditional school zone boundaries defined by projecting school property lines, except when those boundaries are extended as provided in subsections (b)(1)A. and C. hereof.

D. As used in this subsection, "crosswalk" has the meaning given that term in Section 301.09. The Director may, upon request by resolution of Council, and upon submission by the Municipality of such engineering, traffic and other information as the Director considers necessary, designate a school zone on any portion of a State route lying within the Municipality that includes a crosswalk customarily used by children going to or leaving a school during recess and opening and closing hours, whenever the distance, as measured in a straight line, from the school property line nearest the crosswalk to the nearest point of the crosswalk is no more than 1,320 feet. Such a school zone shall include the distance encompassed by the crosswalk and extending 300 feet on each approach direction of the State route;

(2) Twenty-five miles per hour in all other portions of the Municipality, except on State routes outside business districts, through highways outside business districts and alleys;

(3) Thirty-five miles per hour on all State routes or through highways within the Municipality outside business districts, except as provided in subsections (b)(4) and (5) hereof;

(4) Fifty miles per hour on controlled-access highways and expressways within the Municipality;

(5) Fifty miles per hour on State routes within the Municipality outside urban districts unless a lower prima-facie speed is established as further provided in this section;

(6) Fifteen miles per hour on all alleys within the Municipality;

(7) Fifty-five miles per hour at all times on freeways with paved shoulders inside the Municipality other than freeways as provided in subsection (b)(10) and (12);

(8) Sixty miles per hour for operators of any motor vehicle at all times on all portions of rural divided highways;

(9) Sixty-five miles per hour for operators of any motor vehicle at all times on rural expressways without traffic control signals;

(10) Seventy miles per hour for operators of any motor vehicle at all times on all rural freeways.

(11) Fifty-five miles per hour for operators of any motor vehicle at all times on all portions of freeways in congested areas as determined by the Director and that are part of the interstate system and are located within a municipal corporation or within an interstate freeway outerbelt;

(12) Sixty-five miles per hour for operators of any motor vehicle at all times on all portions of freeways in urban areas as determined by the Director and that are part of the interstate system and are part of an interstate freeway outerbelt;

(c) It is prima-facie unlawful for any person to exceed any of the speed limitations in subsection (b)(1)A. to (b)(6) hereof, or any declared or established pursuant to this section by the Director or local authorities and it is unlawful for any person to exceed any of the speed limitations in subsection (d) hereof. No person shall be convicted of more than one violation of this section for the same conduct, although violations of more than one provision of this section may be charged in the alternative in a single affidavit.

(d) No person shall operate a motor vehicle upon a street or highway as follows:

(1) At a speed exceeding fifty-five miles per hour, except upon a highway, expressway or freeway as provided in subsection (b)(8), (9), (10) and (12) hereof;

(2) At a speed exceeding sixty miles per hour upon a highway as provided in subsection (b)(8) hereof;

(3) At a speed exceeding sixty-five miles per hour upon an expressway as provided in subsection (b)(9) hereof, except upon a freeway as provided in subsection (b)(10) hereof;

(4) At a speed exceeding seventy miles per hour upon a freeway as provided in subsection (b)(10) hereof;

(5) At a speed exceeding the posted speed limit upon a highway, expressway or freeway for which the Director has determined and declared a speed limit pursuant to Ohio R.C. 4511.21(I)(2) or (L)(2).

(e) In every charge of violation of this section the affidavit and warrant shall specify the time, place and speed at which the defendant is alleged to have driven, and in charges made in reliance upon subsection (c) hereof also the speed which subsections (b)(1)A. to (b)(6) hereof, or a limit declared or established pursuant to this section declares is prima-facie lawful at the time and place of such alleged violation, except that in affidavits where a person is alleged to have driven at a greater speed than will permit the person to bring the vehicle to a stop within the assured clear distance ahead the affidavit and warrant need not specify the speed at which the defendant is alleged to have driven.

(f) When a speed in excess of both a prima-facie limitation and a limitation in subsection (d) hereof is alleged, the defendant shall be charged in a single affidavit, alleging a single act, with a violation indicated of both subsections (b)(1)A. to (b)(6) hereof, or of a limit declared or established pursuant to this section by the Director or local authorities, and of the limitation in subsection (d) hereof. If the court finds a violation of subsection (b)(1)A. to (b)(6) hereof, or a limit declared or established pursuant to this section has occurred, it shall enter a judgment of conviction under such subsection and dismiss the charge under subsection (d) hereof. If it finds no violation of subsections (b)(1)A. to (b)(6) hereof or a limit declared or established pursuant to this section, it shall then consider whether the evidence supports a conviction under subsection (d) hereof.

(g) Points shall be assessed for violation of a limitation under subsection (d) hereof in accordance with Ohio R.C. 4510.036.

(h) Whenever, in accordance with Ohio R.C. 4511.21 or this section, the speed limitations as established herein have been altered, either higher or lower, and the appropriate signs giving notice have been erected as required, operators of motor vehicles shall be governed by the speed limitations set forth on such signs. It is prima-facie unlawful for any person to exceed the speed limits posted upon such signs.

(i) As used in this section:

(1) "Interstate system" has the same meaning as in 23 U.S.C.A. 101.

(2) "Commercial bus" means a motor vehicle designed for carrying more than nine passengers and used for the transportation of persons for compensation.

(3) "Noncommercial bus" includes but is not limited to a school bus, or a motor vehicle operated solely for the transportation of persons associated with a charitable or nonprofit organization.

(4) "Outerbelt" means a portion of a freeway that is part of the interstate system and is located in the outer vicinity of a major municipal corporation or group of municipal corporations, as designated by the Director.

(5) "Rural" means outside urbanized areas, as designated in accordance with 23 USC 101, and outside of a business or urban district.

(j) (1) A violation of any provision of this section is one of the following:

A. Except as otherwise provided in subsections (j)(1)B., (1)C., (2) and (3) of this section, a minor misdemeanor;

B. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two violations of any provision of this section or of any provision of Ohio R.C. 4511.21 or a municipal ordinance that is substantially similar to any provision of this section, a misdemeanor of the fourth degree;

C. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to three or more violations of any provision of this section or of any provision of Ohio R.C. 4511.21 or a municipal ordinance that is substantially similar to any provision of this section, a misdemeanor of the third degree.

(2) If the offender has not previously been convicted of or pleaded guilty to a violation of any provision of Ohio R.C. 4511.21 or of any provision of a municipal ordinance that is substantially similar to Ohio R.C. 4511.21 and operated a motor vehicle faster than thirty-five miles an hour in a business district of a municipal corporation, faster than fifty miles an hour in other portions of a municipal corporation, or faster than thirty-five miles an hour in a school zone during recess or while children are going to or leaving school during the school's opening or closing hours, a misdemeanor of the fourth degree.

(3) Notwithstanding subsection (j)(1) of this section, if the offender operated a motor vehicle in a construction zone where a sign was then posted in accordance with Ohio R.C. 4511.98, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two times the usual amount imposed for the violation. No court shall impose a fine of two times the usual amount imposed for the violation upon an offender if the offender alleges, in an affidavit filed with the court prior to the offender's sentencing, that the offender is indigent and is unable to pay the fine imposed pursuant to this subsection and if the court determines that the offender is an indigent person and unable to pay the fine.

(4) If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.21)

333.031 APPROACHING A STATIONARY PUBLIC SAFETY, EMERGENCY OR ROAD SERVICE VEHICLE.

(a) The driver of a motor vehicle, upon approaching a stationary public safety vehicle, emergency vehicle, road service vehicle, waste collection vehicle, vehicle used by the Public Utilities Commission to conduct motor vehicle inspections in accordance with Ohio R.C. 4923.04 and 4923.06 or a highway maintenance vehicle that is displaying the appropriate visual signals by means of flashing, oscillating or rotating lights, as prescribed in Section 337.16, shall do either of the following:

(1) If the driver of the motor vehicle is traveling on a street or highway that consists of at least two lanes that carry traffic in the same direction of travel as that of the driver's motor vehicle, the driver shall proceed with due caution and, if possible with due regard to the road, weather, and traffic conditions, shall change lanes into a lane that is not adjacent to that of the stationary public safety vehicle, emergency vehicle, road service vehicle, waste collection vehicle, vehicle used by the Public Utilities Commission to conduct motor vehicle inspections in accordance with Ohio R.C. 4923.04 and 4923.06 or a highway maintenance vehicle.

(2) If the driver is not traveling on a street or highway of a type described in subsection (a)(1) of this section, or if the driver is traveling on a highway of that type but it is not possible to change lanes or if to do so would be unsafe, the driver shall proceed with due caution, reduce the speed of the motor vehicle, and maintain a safe speed for the road, weather and traffic conditions.

(b) This section does not relieve the driver of a public safety vehicle, emergency vehicle, road service vehicle, waste collection vehicle, vehicle used by the Public Utilities Commission to conduct motor vehicle inspections in accordance with Ohio R.C. 4923.04 and 4923.06, or a highway maintenance vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

(c) No person shall fail to drive a motor vehicle in compliance with subsection (a)(1) or (2) of this section when so required by subsection (a) of this section.

(d) (1) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

(2) Notwithstanding Section 303.99(b), upon a finding that a person operated a motor vehicle in violation of subsection (c) of this section, the court, in addition to all other penalties provided by law, shall impose a fine of two times the usual amount imposed for the violation.

(3) If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code.

(e) The offense established under this section is a strict liability offense and Ohio R.C. 2901.20 does not apply. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense. (ORC 4511.213)

333.04 STOPPING VEHICLE; SLOW SPEED; POSTED MINIMUM SPEEDS.

(a) No person shall stop or operate a vehicle at such an unreasonably slow speed as to impede or block the normal and reasonable movement of traffic, except when stopping or reduced speed is necessary for safe operation or to comply with law.

(b) Whenever, in accordance with Ohio R.C. 4511.22(B), the minimum speed limit of a controlled-access highway, expressway or freeway has been declared and the appropriate signs giving notice have been erected as required, operators of motor vehicles shall be governed by the speed limitations set forth on such signs. No person shall operate a motor vehicle below the speed limits posted upon such signs except when necessary for safe operation or in compliance with law.

(c) In a case involving a violation of this section, the trier of fact, in determining whether the vehicle was being operated at an unreasonably slow speed, shall consider the capabilities of the vehicle and its operator.

(d) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.22)

333.05 SPEED LIMITATIONS OVER BRIDGES.

(a) No person shall operate a vehicle over any bridge or other elevated structure constituting a part of a street at a speed which is greater then the maximum speed that can be maintained with safety to such bridge or structure, when such structure is posted with authorized signs stating such maximum speed. Such signs shall be erected and maintained at a distance of at least 100 feet before each end of such structure.

(b) Upon the trial of any person charged with a violation of this section, proof of the determination of the maximum speed and the existence of such signs shall constitute prima-facie evidence of the maximum speed which can be maintained with safety to such bridge or structure.

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.23)

333.06 SPEED EXCEPTIONS FOR EMERGENCY OR SAFETY VEHICLES.

The prima-facie speed limitations set forth in Section 333.03 do not apply to emergency vehicles or public safety vehicles when they are responding to emergency calls and are equipped with and displaying at least one flashing, rotating or oscillating light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle and when the drivers

thereof sound audible signals by bell, siren or exhaust whistle. This section does not relieve the driver of an emergency vehicle or public safety vehicle from the duty to drive with due regard for the safety of all persons using the street or highway. (ORC 4511.24)

333.07 STREET RACING PROHIBITED.

(a) As used in this section, "street racing" means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other or the operation of one or more vehicles over a common selected course, from the same point to the same point, wherein timing is made of the participating vehicles involving competitive accelerations or speeds.

Persons rendering assistance in any manner to such competitive use of vehicles shall be equally charged as the participants. The operation of two or more vehicles side by side either at speeds in excess of prima-facie lawful speeds established by Section 333.03 or rapidly accelerating from a common starting point to a speed in excess of such prima-facie lawful speeds shall be prima-facie evidence of street racing.

(b) No person shall participate in street racing upon any public road, street or highway in this Municipality.

(c) Whoever violates this section is guilty of street racing, a misdemeanor of the first degree. In addition to any other sanctions, the court shall suspend the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license or nonresident operating privilege for not less than thirty days or more than three years. No judge shall suspend the first thirty days of any suspension of an offender's license, permit, or privilege imposed under this subsection. (ORC 4511.251)

333.08 OPERATION WITHOUT REASONABLE CONTROL.

(a) No person shall operate a motor vehicle, agricultural tractor, or agricultural tractor that is towing, pulling, or otherwise drawing a unit of farm machinery on any street, highway, or property open to the public for vehicular traffic without being in reasonable control of the vehicle, agricultural tractor or unit of farm machinery.

(b) Whoever violates this section is guilty of operating a motor vehicle or agricultural tractor without being in control of it, a minor misdemeanor.
(ORC 4511.202)

333.09 RECKLESS OPERATION ON STREETS, PUBLIC OR PRIVATE PROPERTY.

(a) No person shall operate a vehicle on any street or highway without due regard for the safety of persons or property.

(b) No person shall operate a vehicle on any public or private property other than streets or highways, in a reckless manner, without due regard for the safety of persons or property.

This subsection does not apply to the competitive operation of vehicles on public or private property when the owner of such property knowingly permits such operation thereon.

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a misdemeanor of the first degree.
(Ord. 14-11. Passed 4-7-14.)

333.10 SPEED LIMITS ON PRIVATE ROADS AND DRIVEWAYS; ENFORCEMENT.

(a) The owner of a private road or driveway located in a private residential area containing twenty or more dwelling units may establish a speed limit on the road or driveway by complying with all of the following requirements:

(1) The speed limit is not less than twenty-five miles per hour and is indicated by a sign that is in a proper position, is sufficiently legible to be seen by an ordinarily observant person, and meets the specifications for the basic speed limit sign included in the manual adopted by the Department of Transportation pursuant to Ohio R.C. 4511.09;

(2) The owner has posted a sign at the entrance of the private road or driveway that is in plain view and clearly informs persons entering the road or driveway that they are entering private property, a speed limit has been established for the road or driveway, and the speed limit is enforceable by law enforcement officers under State or municipal law.

(b) No person shall operate a vehicle upon a private road or driveway as provided in subsection (a) hereof at a speed exceeding any speed limit established and posted pursuant to subsection (a) hereof.

(c) When a speed limit is established and posted in accordance with subsection (a) hereof, any law enforcement officer may apprehend a person violating the speed limit of the residential area by utilizing any of the means described in Ohio R.C. 4511.091 or by any other accepted method of determining the speed of a motor vehicle and may stop and charge the person with exceeding the speed limit.

(d) Points shall be assessed for violation of a speed limit established and posted in accordance with subsection (a) hereof only when the violation involves a speed of five miles per hour or more in excess of the posted speed limit.

(e) As used in this section:

(1) "Owner" includes but is not limited to a person who holds title to the real property in fee simple, a condominium owners' association, a property owner's association, the board of directors or trustees of a private community, and a nonprofit corporation governing a private community.

(2) "Private residential area containing twenty or more dwelling units" does not include a Chautauqua Assembly as defined in Ohio R.C. 4511.90.

(Ord. 90-88. Passed 10-15-90.)

(f) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

333.11 POLICE ON PATROL ARRESTING SPEEDERS (POPAS).

(a) The Director of Public Service and Development is authorized to direct the Chief of Police to create a unit of "Police On Patrol Arresting Speeders" (POPAS), who would enforce Section 333.03, specifically, and any other City or State law generally.

(b) The fines collected pursuant to citations, by the POPAS unit, shall be utilized to pay the expense of having and operating such a unit. Fines received from the Clerk of Courts for the POPAS Unit shall be deposited in Fund No. 716 P.O.P.A.S. - Special Revenue Fund. (Ord. 94-84. Passed 10-3-94.)

333.12 OPERATION IN VIOLATION OF IMMOBILIZATION ORDER.

(a) No person shall operate a motor vehicle or permit the operation of a motor vehicle upon any public or private property used by the public for vehicular travel or parking knowing or having reasonable cause to believe that the motor vehicle has been ordered immobilized pursuant to an immobilization order issued under Ohio R.C. 4503.233.

(b) A motor vehicle that is operated by a person during a violation of subsection (a) hereof shall be criminally forfeited in accordance with the procedures contained in Ohio R.C. 4503.234.

(c) Whoever violates this section is guilty of a misdemeanor of the second degree. (ORC 4503.236)

333.13 TEXTING WHILE DRIVING PROHIBITED.

(a) No person shall drive a motor vehicle on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication.

(b) Subsection (a) of this section does not apply to any of the following:

(1) A person using a handheld electronic wireless communications device in that manner for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;

(2) A person driving a public safety vehicle who uses a handheld electronic wireless communications device in that manner in the course of the person's duties;

(3) A person using a handheld electronic wireless communications device in that manner whose motor vehicle is in a stationary position and who is outside a lane of travel;

(4) A person reading, selecting, or entering a name or telephone number in a handheld electronic wireless communications device for the purpose of making or receiving a telephone call;

(5) A person receiving wireless messages on a device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic or weather alerts; or data used primarily by the motor vehicle;

(6) A person receiving wireless messages via radio waves;

(7) A person using a device for navigation purposes;

(8) A person conducting wireless interpersonal communication with a device that does not require manually entering letters, numbers, or symbols or reading text messages, except to activate, deactivate, or initiate the device or a feature or function of the device;

(9) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;

(10) A person using a handheld electronic wireless communications device in conjunction with a voice-operated or hands-free device feature or function of the vehicle.

(c) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of subsection (a) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

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

(e) A prosecution for a violation of Ohio R.C. 4511.204 does not preclude a prosecution for a violation of a substantially equivalent municipal ordinance based on the same conduct. However, if an offender is convicted of or pleads guilty to a violation of Ohio R.C. 4511.204 and is also convicted of or pleads guilty to a violation of a substantially equivalent municipal ordinance based on the same conduct, the two offenses are allied offenses of similar import under Ohio R.C. 2941.25.

(f) As used in this section:

(1) "Electronic wireless communications device" includes any of the following:

A. A wireless telephone;

B. A text-messaging device;

C. A personal digital assistant;

D. A computer, including a laptop computer and a computer tablet;

E. Any other substantially similar wireless device that is designed or used to communicate text.

(2) "Voice-operated or hands-free device" means a device that allows the user to vocally compose or send, or to listen to a text-based communication without the use of either hand except to activate, or deactivate a feature or function.

(3) "Write, send or read a text-based communication" means to manually write or send, or read a text-based communication using an electronic wireless communications device, including manually writing or sending, or reading communications referred to as text messages, instant messages, or electronic mail.

(ORC 4511.204)

CHAPTER 335
Licensing; Accidents

335.01 Driver's license or commercial driver's license required.
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335.021 Ohio driver's license required for in state residents.
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335.111 Registration within thirty days of residency.
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335.13 Stopping after accident upon property other than street.
335.14 Vehicle accident resulting in damage to realty.

CROSS REFERENCES

See sectional histories for similar State law
Deposit of driver's license as bond - see Ohio R.C. 2937.221
Motor vehicle licensing law - see Ohio R.C. Ch. 4503
Driver's license law - see Ohio R.C. Ch. 4507
Power of trial court of record to suspend or revoke license for certain violations - see Ohio R.C. Ch. 4510
State point system suspension - see Ohio R.C. 4510.03.6
State accident reports - see Ohio R.C. 4509.01(J), 4509.06, 4509.74, 5502.11
Motorized bicycle operator's license - see Ohio R.C. 4511.521
Glass removal from street after accident - see TRAF. 311.01

335.01 DRIVER'S LICENSE OR COMMERCIAL DRIVER'S LICENSE REQUIRED.

(a) (1) No person, except those expressly exempted under Ohio R.C. 4507.03, 4507.04, and 4507.05, shall operate any motor vehicle upon a public road or highway or any public or private property used by the public for purposes of vehicular travel or parking in this Municipality unless the person has a valid driver's license issued under Ohio R.C. Chapter 4507 or a commercial driver's license issued under Ohio R.C. Chapter 4506.

(2) No person, except a person expressly exempted under Ohio R.C. 4507.03, 4507.04, and 4507.05, shall operate any motorcycle upon a public road or highway or any public or private property used by the public for purposes of vehicular travel or parking in this Municipality unless the person has a valid license as a motorcycle operator that was issued upon application by the Registrar of Motor Vehicles under Ohio R.C. Chapter 4507. The license shall be in the form of an endorsement, as determined by the Registrar, upon a driver's or commercial driver's license, if the person has a valid license to operate a motor vehicle or commercial motor vehicle, or in the form of a restricted license as provided in Ohio R.C. 4507.14, if the person does not have a valid license to operate a motor vehicle or commercial motor vehicle.

(b) Upon the request or motion of the prosecuting authority, a noncertified copy of the law enforcement automated data system report or a noncertified copy of a record of the Registrar of Motor Vehicles that shows the name, date of birth, and social security number of a person charged with a violation of subsection (a)(1) or (2) of this section may be admitted into evidence as prima-facie evidence that the person did not have either a valid driver's or commercial driver's license at the time of the alleged violation of subsection (a)(1) of this section or a valid license as a motorcycle operator either in the form of an endorsement upon a driver's or commercial driver's license or a restricted license at the time of the alleged violation of subsection (a)(2) of this section. The person charged with a violation of subsection (a)(1) or (2) of this section may offer evidence to rebut this prima-facie evidence.

(c) Whoever violates this section is guilty of operating a motor vehicle or motorcycle without a valid license and shall be punished as follows:

(1) If the trier of fact finds that the offender never has held a valid driver's or commercial driver's license issued by this state or any other jurisdiction, or, in a case involving the operation of a motorcycle by the offender, if the offender has never held a valid license as a motorcycle operator, either in the form of an endorsement upon a driver's or commercial driver's license or in the form of a restricted license, except as otherwise provided in this subsection, the offense is an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender shall be sentenced pursuant to Ohio R.C. 2929.21 to 2929.28, except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to Ohio R.C. 2929.26; notwithstanding division (A)(2)(a) of Ohio R.C. 2929.28, the offender may be fined up to one thousand dollars ($1,000); and, notwithstanding division (A)(3) of Ohio R.C. 2929.27, the offender may be ordered pursuant to division (C) of that section to serve a term of community service of up to five hundred hours.

The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under division (A) of Ohio R.C. 2705.02 that may be filed in the underlying case. If the offender previously has been convicted of or pleaded guilty to any violation of Ohio R.C. 4510.12 or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree.

(2) If the offender's driver's or commercial driver's license or permit or, in a case involving the operation of a motorcycle by the offender, the offender's driver's or commercial driver's license bearing the motorcycle endorsement or the offender's restricted license was expired at the time of the offense, except as otherwise provided in this subsection, the offense is a minor misdemeanor. If, within three years of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of Ohio R.C. 4510.12 or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree.

(d) The court shall not impose a license suspension for a first violation of this section or if more than three years have passed since the offender's last violation of Ohio R.C. 4510.12 or a substantially equivalent municipal ordinance.

(e) If the offender is sentenced under subsection (c)(2) hereof, if within three years of the offense the offender previously was convicted of or pleaded guilty to one or more violations of Ohio R.C. 4510.12 or a substantially equivalent municipal ordinance, and if the offender's license was expired for more than six months at the time of the offense, the court may impose a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(7) of Ohio R.C. 4510.02. (ORC 4510.12)

335.02 PERMITTING OPERATION WITHOUT VALID LICENSE; ONE LICENSE PERMITTED.

(a) No person shall permit the operation of a motor vehicle upon any public or private property used by the public for purposes of vehicular travel or parking knowing the operator does not have a valid driver's license issued to the operator by the Registrar of Motor Vehicles under Ohio R.C. Chapter 4507 or a valid commercial driver's license issued under Ohio R.C. Chapter 4506.

(b) No person shall receive a driver's license, or a motorcycle operator's endorsement of a driver's or commercial driver's license, unless and until he surrenders to the Registrar all valid licenses issued to him by another jurisdiction recognized by the State of Ohio. No person shall be permitted to have more than one valid license at any time.
(ORC 4507.02)

(c) (1) Except as otherwise provided in this subsection, whoever violates subsection (a) hereof is guilty of an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender shall be sentenced pursuant to Ohio R.C. 2929.21 to 2929.28, except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to Ohio R.C. 2929.26; notwithstanding division (A)(2)(a) of Ohio R.C. 2929.28, the offender may be fined up to one thousand dollars ($1,000) and, notwithstanding division (A)(3) of Ohio R.C. 2929.27, the offender may be ordered pursuant to division (C) of that section to serve a term of community service of up to

five hundred hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under division (A) of Ohio R.C. 2705.02 that may be filed in the underlying case. If, within three years of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of Ohio R.C. 4507.02 or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree.

(2) Whoever violates subsection (b) hereof is guilty of a misdemeanor of the first degree. (ORC 4507.02; 4507.99)

335.021 OHIO DRIVER'S LICENSE REQUIRED FOR IN STATE RESIDENTS.

(a) Any person who becomes a resident of this State, within thirty days of becoming a resident, shall surrender any driver's license issued by another state to the Registrar of Motor Vehicles or a Deputy Registrar. If such a person intends to operate a motor vehicle upon the public roads or highways, the person shall apply for a driver's license in this State. If the person fails to apply for a driver's license within thirty days of becoming a resident, the person shall not operate any motor vehicle in this Municipality under a license issued by another state.

(b) (1) Whoever violates subsection (a) of this section is guilty of a minor misdemeanor.

(2) The offense established under subsection (b)(1) of this section is a strict liability offense and strict liability is a culpable mental state for purposes of Ohio R.C. 2901.20. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.

(c) For purposes of subsection (a) of this section, "resident" means any person to whom any of the following applies:

(1) The person maintains their principal residence in this State and does not reside in this State as a result of the person's active service in the United States Armed Forces.

(2) The person is determined by the Registrar of Motor Vehicles to be a resident in accordance with standards adopted by the Registrar under Ohio R.C. 4507.01. (ORC 4507.213)

335.03 DRIVING WITH TEMPORARY INSTRUCTION PERMIT; CURFEW.

(a) No holder of a temporary instruction permit issued under Ohio R.C. 4507.05(A) shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in violation of the following conditions:

(1) If the permit is issued to a person who is at least fifteen years six months of age, but less than sixteen years of age:

A. The permit and identification card are in the holder's immediate possession;

B. The holder is accompanied by an eligible adult who actually occupies the seat beside the permit holder and does not have a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine as provided in Ohio R.C. 4511.19(A);

C. The total number of occupants of the vehicle does not exceed the total number of occupant restraining devices originally installed in the motor vehicle by its manufacturer, and each occupant of the vehicle is wearing all of the available elements of a properly adjusted occupant restraining device.

(2) If the permit is issued to a person who is at least sixteen years of age:
A. The permit and identification card are in the holder's immediate possession;
B. The holder is accompanied by a licensed operator who is at least twenty-one years of age and is actually occupying a seat beside the driver and does not have a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine as provided in Ohio R.C. 4511.19(A);
C. The total number of occupants of the vehicle does not exceed the total number of occupant restraining devices originally installed in the motor vehicle by its manufacturer, and each occupant of the vehicle is wearing all of the available elements of a properly adjusted occupant restraining device.

(b) Except as provided in subsection (b) hereof, no holder of a temporary instruction permit that is issued under Ohio R.C. 4507.05(A) and that is issued on or after July 1, 1998, and who has not attained the age of eighteen years, shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking between the hours of midnight and six a.m.

The holder of a permit issued under Ohio R.C. 4507.05(A) on or after July 1, 1998, who has not attained the age of eighteen years, may operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking between the hours of midnight and six a.m. if, at the time of such operation, the holder is accompanied by the holder's parent, guardian, or custodian, and the parent, guardian or custodian holds a current valid driver's or commercial driver's license issued by this State and is actually occupying a seat beside the permit holder, and does not have a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine as provided in Section 333.01(a).

(c) As used in this section:
(1) "Eligible adult" means any of the following:
A. An instructor of a driver education course approved by the Department of Education or a driver training course approved by the Department of Public Safety;
B. Any of the following persons who holds a current valid driver's or commercial driver's license issued by this State:
1. A parent, guardian or custodian of the permit holder;
2. A person twenty-one years of age or older who acts in loco parentis of the permit holder.
(2) "Occupant restraining device" has the same meaning as in Ohio R.C. 4513.263.

(d) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4507.05)

335.031 DRIVING WITH PROBATIONARY LICENSE; CURFEW.

(a) (1) A. No holder of a probationary driver's license who has held the license for less than twelve months shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking between the hours of midnight and six a.m. unless the holder is accompanied by the holder's parent or guardian.

B. No holder of a probationary driver's license who has held the license for twelve months or longer shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking between the hours of one a.m. and five a.m. unless the holder is accompanied by the holder's parent or guardian.

(2) A. Subject to subsection (c)(1) of this section, subsection (a)(1)A. of this section does not apply to the holder of a probationary driver's license who is doing either of the following:

1. Traveling to or from work between the hours of midnight and six a.m. provided that the holder has in the holder's immediate possession written documentation from the holder's employer.
2. Traveling to or from an official function sponsored by the school the holder attends between the hours of midnight and six a.m., provided that the holder has in the holder's immediate possession written documentation from an appropriate official of the school;
3. Traveling to or from an official religious event between the hours of midnight and six a.m., provided that the holder has in the holder's immediate possession written documentation from an appropriate official affiliated with the event.

B. Subsection (a)(1)B. of this section does not apply to the holder of a probationary driver's license who is doing either of the following:

1. Traveling to or from work between the hours of one a.m. and five a.m., provided that the holder has in the holder's immediate possession written documentation from the holder's employer.
2. Traveling to or from an official function sponsored by the school the holder attends between the hours of one a.m. and five a.m., provided that the holder has in the holder's immediate possession written documentation from an appropriate official of the school;
3. Traveling to or from an official religious event between the hours of one a.m. and five a.m., provided that the holder has in the holder's immediate possession written documentation from an appropriate official affiliated with the event.

(3) An employer, school official or official affiliated with a religious event is not liable in damages in a civil action for any injury, death or loss to person or property that allegedly arises from, or is related to, the fact that the employer, school official, or official affiliated with a religious event provided the holder of a probationary driver's license with the written documentation described in subsection (a)(2) of this section.

The Registrar of Motor Vehicles shall make available at no cost a form to serve as the written documentation described in subsection (a)(2) of this section, and employers, school officials, officials affiliated with religious events, and holders of probationary driver's licenses may utilize that form or may choose to utilize any other written documentation to meet the requirements of that subsection.

(4) No holder of a probationary driver's license who has held the license for less than twelve months shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking with more than one person who is not a family member occupying the vehicle unless the probationary license holder is accompanied by the probationary license holder's parent, guardian or custodian.

(b) It is an affirmative defense to a violation of subsection (a)(1)A. or B. of this section if, at the time of the violation, an emergency existed that required the holder of the probationary driver's license to operate a motor vehicle in violation of subsection (a)(1)A. or B. of this section; or the holder was an emancipated minor.

(c) (1) If a person is issued a probationary driver's license prior to attaining the age of seventeen years and the person pleads guilty to, is convicted of, or is adjudicated in juvenile court of having committed a moving violation during the six-month period commencing on the date on which the person is issued the probationary driver's license, the court with jurisdiction over the violation may order that the holder must be accompanied by the holder's parent or guardian whenever the holder is operating a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking for a period not to exceed six months or the date the holder attains the age of seventeen years, whichever occurs first.

(2) Any person who is subject to the operating restrictions established under subsection (c)(1) of this section as a result of a first moving violation may petition the court for driving privileges without being accompanied by the holder's parent or guardian during the period of time determined by the court under that subsection. In granting the driving privileges, the court shall specify the purposes of the privileges and shall issue the person appropriate forms setting forth the privileges granted. If a person is convicted of, pleads guilty to, or is adjudicated in juvenile court of having committed a second or subsequent moving violation, the court with jurisdiction over the violation may terminate any driving privileges previously granted under this division.

(3) No person shall violate any operating restriction imposed under subsection (c)(1) or (2) of this section.

(d) No holder of a probationary license shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking unless the total number of occupants of the vehicle does not exceed the total number of occupant restraining devices originally installed in the motor vehicle by its manufacturer, and each occupant of the vehicle is wearing all of the available elements of a properly adjusted occupant restraining device.

(e) Notwithstanding any other provision of law to the contrary, no law enforcement officer shall cause the operator of a motor vehicle being operated on any street or highway to stop the motor vehicle for the sole purpose of determining whether each occupant of the motor vehicle is wearing all of the available elements of a properly adjusted occupant restraining device as required by subsection (d) hereof, or for the sole purpose of issuing a ticket, citation, or summons if the requirement in that subsection has been or is being violated, or for causing the arrest of or commencing a prosecution of a person for a violation of that requirement.

(f) Notwithstanding any other provision of law to the contrary, no law enforcement officer shall cause the operator of a motor vehicle being operated on any street or highway to stop the motor vehicle for the sole purpose of determining whether a violation of subsection (a)(1)A. or B. hereof has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for such a violation or for causing the arrest of or commencing a prosecution of a person for such violation.

(g) As used in this section:
- (1) "Occupant restraining device" has the same meaning as in Ohio R.C. 4513.263.
- (2) "Family member" of a probationary license holder includes any of the following:
  - A. A spouse;
  - B. A child or stepchild;
  - C. A parent, stepparent, grandparent, or parent-in-law;
  - D. An aunt or uncle;
  - E. A sibling, whether or the whole or half blood or by adoption, a brother-in-law or a sister-in-law;
  - F. A son or daughter of the probationary license holder's stepparent if the stepparent has not adopted the probationary license holder;
  - G. An eligible adult, as defined in Ohio R.C. 4507.05.
- (3) "Moving violation" means any violation of any statute or ordinance that regulates the operation of vehicles, streetcars, or trackless trolleys on the highways or streets. "Moving violation" does not include a violation of Ohio R.C. 4513.263 or a substantially equivalent municipal ordinance, or a violation of any statute or ordinance regulating pedestrians or the parking of vehicles, vehicle size or load limitations, vehicle fitness requirements, or vehicle registration.

(h) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4507.071)

335.032 USE OF ELECTRONIC WIRELESS COMMUNICATION DEVICE PROHIBITED WHILE DRIVING.

(a) No holder of a temporary instruction permit who has not attained the age of eighteen years and no holder of a probationary driver's license shall drive a motor vehicle on any street, highway, or property used by the public for purposes of vehicular traffic or parking while using in any manner an electronic wireless communications device.

(b) Subsection (a) of this section does not apply to either of the following:
- (1) A person using an electronic wireless communications device for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;
- (2) A person using an electronic wireless communications device whose motor vehicle is in a stationary position and the motor vehicle is outside a lane of travel;
- (3) A person using a navigation device in a voice-operated or hands-free manner who does not manipulate the device while driving.

(c) (1) Except as provided in subsection (c)(2) of this section, whoever violates subsection (a) of this section shall be fined one hundred fifty dollars ($150.00). In addition, the court shall impose a class seven suspension of the offender's driver's license or permit for a definite period of sixty days.

(2) If the person previously has been adjudicated a delinquent child or a juvenile traffic offender for a violation of this section, whoever violates this section shall be fined three hundred dollars ($300.00). In addition, the court shall impose a class seven suspension of the person's driver's license or permit for a definite period of one year.

(d) The filing of a sworn complaint against a person for a violation of Ohio R.C. 4511.205 does not preclude the filing of a sworn complaint for a violation of a substantially equivalent municipal ordinance for the same conduct. However, if a person is adjudicated a delinquent child or a juvenile traffic offender for a violation of Ohio R.C. 4511.205 and is also adjudicated a delinquent child or a juvenile traffic offender for a violation of a substantially equivalent municipal ordinance for the same conduct, the two offenses are allied offenses of similar import under Ohio R.C. 2941.25.

(e) As used in this section, "electronic wireless communications device" includes any of the following:

(1) A wireless telephone;
(2) A personal digital assistant;
(3) A computer, including a laptop computer and a computer tablet;
(4) A text-messaging device;
(5) Any other substantially similar electronic wireless device that is designed or used to communicate via voice, image, or written word.
(ORC 4511.205)

335.04 CERTAIN ACTS PROHIBITED.

(a) No person shall do any of the following:

(1) Display, or cause or permit to be displayed, or possess any identification card, driver's or commercial driver's license, temporary instruction permit or commercial driver's license temporary instruction permit knowing the same to be fictitious, or to have been canceled, suspended or altered;
(2) Lend to a person not entitled thereto, or knowingly permit a person not entitled thereto to use any identification card, driver's or commercial driver's license, temporary instruction permit or commercial driver's license temporary instruction permit issued to the person so lending or permitting the use thereof;
(3) Display or represent as one's own, any identification card, driver's or commercial driver's license, temporary instruction permit or commercial driver's license temporary instruction permit not issued to the person so displaying the same;
(4) Fail to surrender to the Registrar of Motor Vehicles, upon the Registrar's demand, any identification card, driver's or commercial driver's license, temporary instruction permit or commercial driver's license temporary instruction permit that has been suspended or canceled;
(5) In any application for an identification card, driver's or commercial driver's license, temporary instruction permit or commercial driver's license temporary instruction permit, or any renewal or duplicate thereof, knowingly conceal a material fact, or present any physician's statement required under Ohio R.C. 4507.08 or 4507.081 when knowing the same to be false or fictitious.

(b) Whoever violates this section is guilty of a misdemeanor of the first degree.
(ORC 4507.30)

335.05 WRONGFUL ENTRUSTMENT OF A MOTOR VEHICLE.

(a) No person shall permit a motor vehicle owned by the person or under the person's control to be driven by another if any of the following apply:

(1) The offender knows or has reasonable cause to believe that the other person does not have a valid driver's or commercial driver's license or permit or valid nonresident driving privileges.

(2) The offender knows or has reasonable cause to believe that the other person's driver's or commercial driver's license or permit or nonresident operating privileges have been suspended or canceled under Ohio R.C. Chapter 4510, or any other provision of the Ohio Revised Code or this Traffic Code.

(3) The offender knows or has reasonable cause to believe that the other person's act of driving the motor vehicle would violate any prohibition contained in Ohio R.C. Chapter 4509.

(4) The offender knows or has reasonable cause to believe that the other person's act of driving would violate Ohio R.C. 4511.19 or any substantially equivalent municipal ordinance.

(5) The offender knows or has reasonable cause to believe that the vehicle is the subject of an immobilization waiver order issued under Ohio R.C. 4503.235 and the other person is prohibited from operating the vehicle under that order.

(b) Without limiting or precluding the consideration of any other evidence in determining whether a violation of subsection (a)(1), (2), (3), (4) or (5) of this section has occurred, it shall be prima-facie evidence that the offender knows or has reasonable cause to believe that the operator of the motor vehicle owned by the offender or under the offender's control is in a category described in subsection (a)(1), (2), (3), (4) or (5) of this section if any of the following applies:

(1) Regarding an operator allegedly in the category described in subsection (a)(1), (3) or (5) of this section, the offender and the operator of the motor vehicle reside in the same household and are related by consanguinity or affinity.

(2) Regarding an operator allegedly in the category described in subsection (a)(2) of this section, the offender and the operator of the motor vehicle reside in the same household, and the offender knows or has reasonable cause to believe that the operator has been charged with or convicted of any violation of law or ordinance, or has committed any other act or omission, that would or could result in the suspension or cancellation of the operator's license, permit or privilege.

(3) Regarding an operator allegedly in the category described in subsection (a)(4) of this section, the offender and the operator of the motor vehicle occupied the motor vehicle together at the time of the offense.

(c) Whoever violates this section is guilty of wrongful entrustment of a motor vehicle and shall be punished as provided in subsections (c) to (h) of this section.

(1) Except as provided in subsection (c)(2) of this section, whoever violates subsection (a)(1), (2) or (3) of this section is guilty of an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender shall be sentenced pursuant to Ohio R.C. 2929.21 to 2929.28, except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to Ohio R.C. 2929.26; notwithstanding division (A)(2)(a) of Ohio R.C. 2929.28, the offender may be fined up to one thousand dollars ($1,000); and,

notwithstanding division (A)(3) of Ohio R.C. 2929.27, the offender may be ordered pursuant to division (C) of that section to serve a term of community service of up to five hundred hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under division (A) of Ohio R.C. 2705.02.

(2) A. If, within three years of a violation of subsection (a)(1), (2) or (3) of this section, the offender previously has pleaded guilty to or been convicted of two or more violations of division (A)(1), (2) or (3) of Ohio R.C. 4511.203 or a substantially equivalent municipal ordinance, the offender is guilty of a misdemeanor of the first degree.

B. Whoever violates subsection (a)(4) or (5) of this section is guilty of a misdemeanor of the first degree.

(3) For any violation of this section, in addition to the penalties imposed under Section 303.99, the court may impose a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license or nonresident operating privilege from the range specified in division (A)(7) of Ohio R.C. 4510.02, and, if the vehicle involved in the offense is registered in the name of the offender, the court may order one of the following:

A. Except as otherwise provided in subsection (c)(3)B. or C. of this section, the court may order, for thirty days, the immobilization of the vehicle involved in the offense and the impoundment of that vehicle's license plates. If issued, the order shall be issued and enforced under Ohio R.C. 4503.233.

B. If the offender previously has been convicted of or pleaded guilty to one violation of Ohio R.C. 4511.203 or a substantially equivalent municipal ordinance, the court may order, for sixty days, the immobilization of the vehicle involved in the offense and the impoundment of that vehicle's license plates. If issued, the order shall be issued and enforced under Ohio R.C. 4503.233.

C. If the offender previously has been convicted of or pleaded guilty to two or more violations of Ohio R.C. 4511.203 or a substantially equivalent municipal ordinance, the court may order the criminal forfeiture to the state of the vehicle involved in the offense. If issued, the order shall be issued and enforced under Ohio R.C. 4503.234.

If title to a motor vehicle that is subject to an order for criminal forfeiture under this subsection is assigned or transferred and division (B)(2) or (3) of Ohio R.C. 4503.234 applies, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the national automobile dealer's association. The proceeds from any fine imposed under this subsection shall be distributed in accordance with division (C)(2) of Ohio R.C. 4503.234.

(d) If a court orders the immobilization of a vehicle under subsection (c) of this section, the court shall not release the vehicle from the immobilization before the termination of the period of immobilization ordered unless the court is presented with current proof of financial responsibility with respect to that vehicle.

(e) If a court orders the criminal forfeiture of a vehicle under subsection (c) of this section, upon receipt of the order from the court, neither the Registrar of Motor Vehicles nor any deputy registrar shall accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the order. The period of denial shall be five years after the date the order is issued, unless, during that five-year period, the court with jurisdiction of the offense that resulted in the order terminates the forfeiture and notifies the Registrar of the termination. If the court terminates the forfeiture and notifies the Registrar, the Registrar shall take all necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer the registration of the vehicle.

(f) This section does not apply to motor vehicle rental dealers or motor vehicle leasing dealers, as defined in Ohio R.C. 4549.65.

(g) Evidence of a conviction of, plea of guilty to, or adjudication as a delinquent child for a violation of this section or a substantially similar municipal ordinance shall not be admissible as evidence in any civil action that involves the offender or delinquent child who is the subject of the conviction, plea, or adjudication and that arises from the wrongful entrustment of a motor vehicle.

(h) For purposes of this section, a vehicle is owned by a person if, at the time of a violation of this section, the vehicle is registered in the person's name.
(ORC 4511.203)

335.06 DISPLAY OF LICENSE.

(a) The operator of a motor vehicle shall display the operator's driver's license, or furnish satisfactory proof that the operator has a driver's license, upon demand of any peace officer or of any person damaged or injured in any collision in which the licensee may be involved. When a demand is properly made and the operator has the operator's driver's license on or about the operator's person, the operator shall not refuse to display the license. A person's failure to furnish satisfactory evidence that the person is licensed under Ohio R.C. Chapter 4507 when the person does not have the person's license on or about the person's person shall be prima-facie evidence of the person's not having obtained a driver's license.

(b) (1) Except as provided in subsection (b)(2) hereof, whoever violates this section is guilty of an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender shall be sentenced pursuant to Ohio R.C. 2929.21 to 2929.28, except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to Ohio R.C. 2929.26; notwithstanding division (A)(2)(a) of Ohio R.C. 2929.28, the offender may be fined up to one thousand dollars ($1,000); and, notwithstanding division (A)(3) of Ohio R.C. 2929.27, the offender may be ordered pursuant to division (C) of that section to serve a term of community service of up to five hundred hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under division (A) of Ohio R.C. 2705.02 that may be filed in the underlying case.

(2) If, within three years of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of Ohio R.C. 4507.35 or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree. (ORC 4507.35)

335.07 DRIVING UNDER SUSPENSION OR LICENSE RESTRICTION.

(a) Except as provided under subsection (b) hereof and Sections 335.072 and 335.074, no person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under any provision of the Ohio Revised Code, other than Ohio R.C. Chapter 4509, or under any applicable law in any other jurisdiction in which the person's license or permit was issued shall operate any motor vehicle upon the public roads and highways or upon any public or private property used by the public for purposes of vehicular travel or parking within this Municipality during the period of suspension unless the person is granted limited driving privileges and is operating the vehicle in accordance with the terms of the limited driving privileges.

(b) No person shall operate any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this Municipality in violation of any restriction of the person's driver's or commercial driver's license or permit imposed under division (D) of Ohio R.C. 4506.10 or under Ohio R.C. 4507.14.

(c) Upon the request or motion of the prosecuting authority, a noncertified copy of the law enforcement automated data system report or a noncertified copy of a record of the Registrar of Motor Vehicles that shows the name, date of birth, and social security number of a person charged with a violation of subsection (a) or (b) of this section may be admitted into evidence as prima-facie evidence that the license of the person was under suspension at the time of the alleged violation of subsection (a) of this section or the person operated a motor vehicle in violation of a restriction at the time of the alleged violation of subsection (b) of this section. The person charged with a violation of subsection (a) or (b) of this section may offer evidence to rebut this prima-facie evidence.

(d) (1) Whoever violates subsection (a) or (b) hereof, is guilty of a misdemeanor of the first degree. The court may impose upon the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(7) of Ohio R.C. 4510.02.

(2) A. Except as provided in subsection (d)(2)B. or C. of this section, the court, in addition to any other penalty that it imposes on the offender and if the vehicle is registered in the offender's name and if, within three years of the offense, the offender previously has been convicted of or pleaded guilty to one violation of Ohio R.C. 4510.11 or Ohio R.C. 4510.111 or 4510.16, or a substantially equivalent municipal ordinance, the court, in addition to or independent of any other sentence that it imposes upon the offender, may order the immobilization of the vehicle involved in the offense for thirty days and the impoundment of that vehicle's license plates for thirty days in accordance with Ohio R.C. 4503.233.

B. If the vehicle is registered in the offender's name and if, within three years of the offense, the offender previously has been convicted of or pleaded guilty to two violations of Ohio R.C. 4510.11 or any combination of two violations of Ohio R.C. 4510.11 or Ohio R.C. 4510.111 or 4510.16, or of a substantially similar municipal ordinance, the court, in addition to any other sentence that it imposes on the offender may order the immobilization of the vehicle involved in the offense for sixty days and the impoundment of that vehicle's license plates for sixty days in accordance with Ohio R.C. 4503.233.

C. If the vehicle is registered in the offender's name and if, within three years of the offense, the offender previously has been convicted of or pleaded guilty to three or more violations of Ohio R.C. 4510.11, or any combination of three or more violations of Ohio R.C. 4501.11 or Ohio R.C. 4510.111 or 4510.16, or of a substantially similar municipal ordinance, the court, in addition to any other sentence that it imposes on the offender may order the criminal forfeiture of the vehicle involved in the offense to the State.

(e) Any order for immobilization and impoundment under this section shall be issued and enforced under Ohio R.C. 4503.233 and 4507.02, as applicable. The court shall not release a vehicle from immobilization ordered under this section unless the court is presented with current proof of financial responsibility with respect to that vehicle.

(f) Any order of criminal forfeiture under this section shall be issued and enforced under Ohio R.C. 4503.234. Upon receipt of the copy of the order from the court, neither the Ohio Registrar of Motor Vehicles nor a deputy registrar shall accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the declaration of forfeiture. The period of registration denial shall be five years after the date of the order, unless, during that period, the court having jurisdiction of the offense that lead to the order terminates the forfeiture and notifies the Registrar of the termination. The Registrar shall then take necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer registration of the vehicle.

(g) The offender shall provide the court with proof of financial responsibility as defined in Ohio R.C. 4509.01. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to Ohio R.C. 2929.28 in an amount not exceeding five thousand dollars ($5,000) for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense for which the offender is sentenced under this section. (ORC 4510.11)

(h) Any person whose driver's or commercial driver's license or permit or nonresident operating privileges are suspended as a repeat traffic offender under this section and who, during the suspension, operates any motor vehicle upon any public roads and highways is guilty of driving under a twelve-point suspension, a misdemeanor of the first degree. The court shall sentence the offender to a minimum term of three days in jail. No court shall suspend the first three days of jail time imposed pursuant to this subsection. (ORC 4510.037)

335.071 DRIVING UNDER OVI SUSPENSION.

(a) No person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under Ohio R.C. 4511.19, 4511.191, or 4511.196 or under Ohio R.C. 4510.07 for a conviction of a violation of a municipal OVI ordinance shall operate any motor vehicle upon the public roads or highways within this Municipality during the period of the suspension.

(b) Whoever violates this section is guilty of driving under OVI suspension. The court shall sentence the offender under Ohio R.C. Chapter 2929, subject to the differences authorized or required by this section.

(1) Except as otherwise provided in subsection (b)(2) or (3) of this section, driving under OVI suspension is a misdemeanor of the first degree. The court shall sentence the offender to all of the following:

A. A mandatory jail term of three consecutive days. The three-day term shall be imposed, unless, subject to subsection (c) of this section, the court instead imposes a sentence of not less than thirty consecutive days of house arrest with electronic monitoring. A period of house arrest with electronic monitoring imposed under this subsection shall not exceed six months. If the court imposes a mandatory three-day jail term under this subsection, the court may impose a jail term in addition to that term, provided that in no case shall the cumulative jail term imposed for the offense exceed six months.

B. A fine of not less than two hundred fifty dollars ($250.00) and not more than one thousand dollars ($1,000).

C. A license suspension under subsection (e) of this section.

(2) If, within six years of the offense, the offender previously has been convicted of or pleaded guilty to one violation of this section or one equivalent offense, driving under OVI suspension is a misdemeanor of the first degree. The court shall sentence the offender to all of the following:

A. A mandatory jail term of ten consecutive days. Notwithstanding the jail terms provided in Ohio R.C. Chapter 2929, the court may sentence the offender to a longer jail term of not more than one year. The ten-day mandatory jail term shall be imposed unless, subject to subsection (c) of this section, the court instead imposes a sentence of not less than ninety consecutive days of house arrest with electronic monitoring. The period of house arrest with electronic monitoring shall not exceed one year.

B. Notwithstanding the fines provided for in Ohio R.C. Chapter 2929, a fine of not less than five hundred dollars ($500.00) and not more than two thousand five hundred dollars ($2,500).

C. A license suspension under subsection (e) of this section.

(3) If, within six years of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of this section or two or more equivalent offenses, driving under OVI suspension is a misdemeanor of the first degree. The court shall sentence the offender to all of the following:

A. A mandatory jail term of thirty consecutive days. Notwithstanding the jail terms provided in Ohio R.C. Chapter 2929, the court may sentence the offender to a longer jail term of not more than one year. The court shall not sentence the offender to a term of house arrest with electronic monitoring in lieu of the mandatory portion of the jail term.

B. Notwithstanding the fines set forth in Ohio R.C. Chapter 2929, a fine of not less than five hundred dollars ($500.00) and not more than two thousand five hundred dollars ($2,500).

C. A license suspension under subsection (e) of this section.

(c) No court shall impose an alternative sentence of house arrest with electronic monitoring under subsection (b)(1) or (2) of this section unless, within sixty days of the date of sentencing, the court issues a written finding on the record that, due to the unavailability of space at the jail where the offender is required to serve the jail term imposed, the offender will not be able to begin serving that term within the sixty-day period following the date of sentencing.

An offender sentenced under this section to a period of house arrest with electronic monitoring shall be permitted work release during that period.

(d) Fifty per cent of any fine imposed by a court under subsection (b)(1), (2) or (3) of this section shall be deposited into the county indigent drivers alcohol treatment fund or municipal indigent drivers alcohol treatment fund under the control of that court, as created by the county or municipal corporation pursuant to division (H) of Ohio R.C. 4511.191.

(e) In addition to or independent of all other penalties provided by law or ordinance, the trial judge of any court of record or the mayor of a mayor's court shall impose on an offender who is convicted of or pleads guilty to a violation of this section a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in division (A)(7) of Ohio R.C. 4510.02.

When permitted as specified in Ohio R.C. 4510.021, if the court grants limited driving privileges during a suspension imposed under this section, the privileges shall be granted on the additional condition that the offender must display restricted license plates, issued under Ohio R.C. 4503.231, on the vehicle driven subject to the privileges, except as provided in division (B) of that section.

A suspension of a commercial driver's license under this section shall be concurrent with any period of suspension or disqualification under Ohio R.C. 3123.58 or 4506.16. No person who is disqualified for life from holding a commercial driver's license under Ohio R.C. 4506.16 shall be issued a driver's license under Ohio R.C. Chapter 4507 during the period for which the commercial driver's license was suspended under this section, and no person whose commercial driver's license is suspended under this section shall be issued a driver's license under Ohio R.C. Chapter 4507 during the period of the suspension.

(f) The offender shall provide the court with proof of financial responsibility as defined in Ohio R.C. 4509.01. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to Ohio R.C. 2929.28 in an amount not exceeding five thousand dollars ($5,000) for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense that is a misdemeanor of the first degree under this section for which the offender is sentenced. (ORC 4510.14)

(g) (1) If a person is convicted of or pleads guilty to a violation of a municipal ordinance that is substantially equivalent to Ohio R.C. 4510.14, the court, in addition to and independent of any sentence that it imposes upon the offender for the offense, if the vehicle the offender was operating at the time of the offense is registered in the offender's name, shall do whichever of the following is applicable:

A. If, within six years of the current offense, the offender has not been convicted of or pleaded guilty to a violation of Ohio R.C. 4510.14 or former division (D)(2) of Ohio R.C. 4507.02, or a municipal ordinance that is substantially equivalent to that section or former division, the court shall order the immobilization for thirty days of the vehicle involved in the offense and the impoundment for thirty days of the license plates of that vehicle in accordance with Ohio R.C. 4503.233.

B. If, within six years of the current offense, the offender has been convicted of or pleaded guilty to one violation of Ohio R.C. 4510.14 or former division (D)(2) of Ohio R.C. 4507.02, or a municipal ordinance that is substantially equivalent to that section or former division, the court shall order the immobilization for sixty days of the vehicle involved in the offense and the impoundment for sixty days of the license plates of that vehicle in accordance with Ohio R.C. 4503.233.

C. If, within six years of the current offense, the offender has been convicted of or pleaded guilty to two or more violations of Ohio R.C. 4510.14 or former division (D)(2) of Ohio R.C. 4507.02 or a municipal ordinance that is substantially equivalent to that section or former division, the court shall order the criminal forfeiture to the State of the vehicle the offender was operating at the time of the offense.

(2) An order for immobilization and impoundment of a vehicle under this section shall be issued and enforced in accordance with Ohio R.C 4503.233 and 4507.02, as applicable. The court shall not release a vehicle from immobilization ordered under this section unless the court is presented with current proof of financial responsibility with respect to that vehicle.

(3) An order for criminal forfeiture of a vehicle under this section shall be issued and enforced under Ohio R.C. 4503.234. Upon receipt of a copy of the order from the court, neither the Registrar of Motor Vehicles nor a Deputy Registrar shall accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the declaration of forfeiture. The period of registration denial shall be five years after the date of the order unless, during that period, the court having jurisdiction of the offense that led to the order terminates the forfeiture and notifies the Registrar of the termination. The Registrar then shall take the necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer registration of the vehicle. (ORC 4510.161)

(h) As used in this section:

(1) "Electronic monitoring" has the same meaning as in Ohio R.C. 2929.01.

(2) "Equivalent offense" means any of the following:

A. A violation of a municipal ordinance, law of another state, or law of the United States that is substantially equivalent to subsection (a) of this section;

B. A violation of a former law of this State that was substantially equivalent to subsection (a) of this section.

(3) "Jail" has the same meaning as in Ohio R.C. 2929.01.

(4) "Mandatory jail term" means the mandatory term in jail of three, ten, or thirty consecutive days that must be imposed under subsection (b)(1), (2) or (3) of this section upon an offender convicted of a violation of subsection (a) of this section and in relation to which all of the following apply:

A. Except as specifically authorized under this section, the term must be served in a jail.

B. Except as specifically authorized under this section, the term cannot be suspended, reduced, or otherwise modified pursuant to any provision of the Ohio Revised Code. (ORC 4510.14)

335.072 DRIVING UNDER FINANCIAL RESPONSIBILITY LAW SUSPENSION OR CANCELLATION; DRIVING UNDER A NONPAYMENT OF JUDGEMENT SUSPENSION.

(a) No person, whose driver's or commercial driver's license or temporary instruction permit or nonresident's operating privilege has been suspended or canceled pursuant to Ohio R.C. Chapter 4509, shall operate any motor vehicle within this Municipality, or knowingly permit any motor vehicle owned by the person to be operated by another person in the Municipality, during the period of the suspension or cancellation, except as specifically authorized by Ohio R.C. Chapter 4509. No person shall operate a motor vehicle within this Municipality, or knowingly

permit any motor vehicle owned by the person to be operated by another person in the Municipality, during the period in which the person is required by Ohio R.C. 4509.45 to file and maintain proof of financial responsibility for a violation of Ohio R.C. 4509.101, unless proof of financial responsibility is maintained with respect to that vehicle.

(b) No person shall operate any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this Municipality if the person's driver's or commercial driver's license or temporary instruction permit or nonresident operating privilege has been suspended pursuant to Ohio R.C. 4509.37 or 4509.40 for nonpayment of a judgment.

(c) Upon the request or motion of the prosecuting authority, a noncertified copy of the law enforcement automated data system report or a noncertified copy of a record of the Registrar of Motor Vehicles that shows the name, date of birth and social security number of a person charged with a violation of subsection (a) or (b) of this section may be admitted into evidence as prima-facie evidence that the license of the person was under either a financial responsibility law suspension at the time of the alleged violation of subsection (a) of this section or a nonpayment of judgment suspension at the time of the alleged violation of subsection (b) of this section. The person charged with a violation of subsection (a) or (b) of this section may offer evidence to rebut this prima-facie evidence.

(d) Whoever violates subsection (a) of this section is guilty of driving under financial responsibility law suspension or cancellation and shall be punished as provided in subsection (d) hereof. Whoever violates subsection (b) of this section is guilty of driving under a nonpayment of judgment suspension and shall be punished as provided in subsection (d) hereof.

(1) Except as otherwise provided in subsection (d)(2) of this section, the offense is an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender shall be sentenced pursuant to Ohio R.C. 2929.21 to 2929.28, except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to Ohio R.C. 2929.26; notwithstanding division (A)(2)(a) of Ohio R.C. 2929.28, the offender may be fined up to one thousand dollars ($1,000); and, notwithstanding division (A)(3) of Ohio R.C. 2929.27, the offender may be ordered pursuant to division (C) of that section to serve a term of community service of up to five hundred hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under division (A) of Ohio R.C. 2705.02 that may be filed in the underlying case.

(2) If, within three years of the offense, the offender previously was convicted of or pleaded guilty to two or more violations of Ohio R.C. 4510.16, or any combination of two violations of Ohio R.C. 4510.16 or Ohio R.C. 4510.11 or 4510.111, or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the fourth degree.

(3) The offender shall provide the court with proof of financial responsibility as defined in Ohio R.C. 4509.01. If the offender fails to provide that proof of financial responsibility, then in addition to any other penalties provided by law, the court may order restitution pursuant to Ohio R.C. 2929.28 in an amount not exceeding five thousand dollars ($5,000) for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during or after committing the offense for which the offender is sentenced under this section. (ORC 4510.16)

(e) No person who has knowingly failed to maintain proof of financial responsibility in accordance with Ohio R.C. 4509.101 shall produce any document or present to a peace officer an electronic wireless communications device that is displaying any text or images with the purpose to mislead a peace officer upon the request of a peace officer for proof of financial responsibility made in accordance with Ohio R.C. 4509.101. Whoever violates this subsection (e) hereof is guilty of falsification, a misdemeanor of the first degree. (ORC 4509.102)

335.073 DRIVING WITHOUT COMPLYING WITH LICENSE REINSTATEMENT REQUIREMENTS.

(a) No person whose driver's license, commercial driver's license, temporary instruction permit, or nonresident's operating privilege has been suspended shall operate any motor vehicle upon a public road or highway or any public or private property after the suspension has expired unless the person has complied with all license reinstatement requirements imposed by the court, the Bureau of Motor Vehicles, or another provision of the Ohio Revised Code.

(b) Upon the request or motion of the prosecuting authority, a noncertified copy of the law enforcement automated data system report or a noncertified copy of a record of the Registrar of Motor Vehicles that shows the name, date of birth, and social security number of a person charged with a violation of subsection (a) of this section may be admitted into evidence as prima-facie evidence that the license of the person had not been reinstated by the person at the time of the alleged violation of subsection (a) hereof. The person charged with a violation of subsection (a) hereof may offer evidence to rebut this prima-facie evidence.

(c) Whoever violates this section is guilty of failure to reinstate a license and shall be punished as follows:

(1) Except as provided in subsection (c)(2) of this section, whoever violates subsection (a) hereof is guilty of an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender shall be sentenced pursuant to Ohio R.C. 2929.21 to 2929.28, except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to Ohio R.C. 2929.26; notwithstanding division (A)(2)(a) of Ohio R.C. 2929.28, the offender may be fined up to one thousand dollars ($1,000); and, notwithstanding division (A)(3) of Ohio R.C. 2929.27, the offender may be ordered pursuant to division (C) of that section to serve a term of community service of up to five hundred hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under division (A) of Ohio R.C. 2705.02 that may be filed in the underlying case.

(2) If, within three years of a violation of subsection (a) of this section, the offender previously has pleaded guilty to or been convicted of two or more violations of Ohio R.C. 4510.21(A) or a substantially equivalent municipal ordinance, the offender is guilty of a misdemeanor of the first degree.

(3) In all cases, the court may impose upon the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary driver's license, or nonresident operating privilege from the range specified in division (A)(7) of Ohio R.C. 4510.02. (ORC 4510.21)

335.074 DRIVING UNDER LICENSE FORFEITURE OR CHILD SUPPORT SUSPENSION.

(a) No person shall operate any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this Municipality whose driver's or commercial driver's license has been suspended pursuant to Ohio R.C. 2151.354, 2151.87, 2935.27, 3123.58, 4301.99, 4510.032, 4510.22 or 4510.33.

(b) Upon the request or motion of the prosecuting authority, a noncertified copy of the law enforcement automated data system report or a noncertified copy of a record of the Registrar of Motor Vehicles that shows the name, date of birth, and social security number of a person charged with a violation of subsection (a) of this section may be admitted into evidence as prima-facie evidence that the license of the person was under suspension at the time of the alleged violation of subsection (a) of this section. The person charged with a violation of subsection (a) of this section may offer evidence to rebut this prima-facie evidence.

(c) Whoever violates subsection (a) of this section is guilty of driving under suspension and shall be punished as provided in subsection (c) of this section.

(1) Except as otherwise provided in subsection (c)(2) of this section, the offense is an unclassified misdemeanor. The offender shall be sentenced pursuant to Ohio R.C. 2929.21 to 2929.28, except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to Ohio R.C. 2929.26; notwithstanding division (A)(2)(a) of Ohio R.C. 2929.28, the offender may be fined up to one thousand dollars ($1,000); and, notwithstanding division (A)(3) of Ohio R.C. 2929.27, the offender may be ordered pursuant to division (C) of that section to serve a term of community service of up to five hundred hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under division (A) of Ohio R.C. 2705.02 that may be filed in the underlying case.

(2) If, within three years of the offense, the offender previously was convicted of or pleaded guilty to two or more violations of subsection (A) of Ohio R.C. 4510.111, or any combination of two or more violations of subsection (A) of Ohio R.C. 4510.111, or Ohio R.C. 4510.11 or 4510.16, or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the fourth degree and the offender shall provide the court with proof of financial responsibility as defined in Ohio R.C. 4509.01. If the offender fails to provide that proof of financial responsibility, then in addition to any other penalties provided by law, the court may order restitution pursuant to Ohio R.C. 2929.28 in an amount not exceeding five thousand dollars ($5,000) for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during or after committing the offense for which the offender is sentenced under this section. (ORC 4510.111)

335.08 OPERATION OR SALE WITHOUT CERTIFICATE OF TITLE.

(a) No person shall do any of the following:

(1) Operate in this Municipality a motor vehicle for which a certificate of title is required without having that certificate in accordance with Ohio R.C. Chapter 4505 or, if a physical certificate of title has not been issued for a motor vehicle, operate the motor vehicle in this Municipality knowing that the ownership information relating to the vehicle has not been entered into the automated title processing system by a clerk of a court of common pleas;

(2) Display or display for sale or sell as a dealer or acting on behalf of a dealer, a motor vehicle without having obtained a manufacturer's or importer's certificate, a certificate of title, or an assignment of a certificate of title for it as provided in Ohio R.C. Chapter 4505;

(3) Fail to surrender any certificate of title or any certificate of registration or license plates upon cancellation of the same by the Registrar of Motor Vehicles and notice of the cancellation as prescribed in Ohio R.C. Chapter 4505;

(4) Fail to surrender the certificate of title to a clerk of a court of common pleas as provided in Ohio R.C. Chapter 4505 in case of the destruction or dismantling or change of a motor vehicle in such respect that it is not the motor vehicle described in the certificate of title;

(5) Violate any rules adopted pursuant to Ohio R.C. Chapter 4505;

(6) Except as otherwise provided in Ohio R.C. Chapter 4505 and Chapter 4517, sell at wholesale a motor vehicle the ownership of which is not evidenced by an Ohio certificate of title, or the current certificate of title issued for the motor vehicle, or the manufacturer's certificate of origin, and all title assignments that evidence the seller's ownership of the motor vehicle, and an odometer disclosure statement that complies with Ohio R.C. 4505.06 and subchapter IV of the "Motor Vehicle Information and Cost Savings Act", 86 Stat. 961 (1972), 15 U.S.C. 1981;

(7) Operate in this Municipality a motor vehicle knowing that the certificate of title to the vehicle or ownership of the vehicle as otherwise reflected in the automated title processing system has been canceled.

(b) This section does not apply to persons engaged in the business of warehousing or transporting motor vehicles for the purpose of salvage disposition.

(c) Whoever violates this section shall be fined not more than two hundred dollars ($200.00) or imprisoned not more than ninety days, or both. (ORC 4505.18)

335.09 DISPLAY OF LICENSE PLATES.

(a) (1) No person who is the owner or operator of a motor vehicle shall fail to display in plain view on the front and rear of the motor vehicle a license plate that bears the distinctive number and registration mark assigned to the motor vehicle by the Ohio Director of Public Safety, including any county identification sticker and any validation sticker issued under Ohio R.C. 4503.19 and 4503.191, as follows:

A. A manufacturer of motor vehicles or dealer therein, the holder of an in transit permit, and the owner or operator of a motorcycle, motorized bicycle or moped, motor-driven cycle or motor scooter, autocycle, cab-enclosed motorcycle, manufactured home, mobile home, trailer or semitrailer shall display a license plate on the rear only.

B. A motor vehicle that is issued two license plates shall display the validation sticker only on the rear license plate, except that a commercial tractor that does not receive an apportioned license plate under the international registration plan shall display the validation sticker on the front of the commercial tractor.

C. An apportioned vehicle receiving an apportioned license plate under the international registration plan shall display the license plate only on the front of a commercial tractor and on the rear of all other vehicles.

(2) All license plates shall be securely fastened so as not to swing, and shall not be covered by any material that obstructs their visibility.

(3) No person to whom a temporary license placard or windshield sticker has been issued for the use of a motor vehicle under Ohio R.C. 4503.182, and no operator of that motor vehicle, shall fail to display the temporary license placard in plain view from the rear of the vehicle either in the rear window or on an external rear surface of the motor vehicle, or fail to display the windshield sticker in plain view on the rear window of the motor vehicle. No temporary license placard or windshield sticker shall be covered by any material that obstructs its visibility.

(b) A law enforcement officer shall only issue a ticket, citation or summons, or cause the arrest or commence a prosecution, for the failure to display a license plate in plain view on the front of a parked motor vehicle if the officer first determines that another offense has occurred and either places the operator or vehicle owner under arrest or issues a ticket, citation, or summons to the operator or vehicle owner for the other offense.

(c) (1) Except as provided in subsection (c)(2) of this section, whoever violates subsection (a) of this section is guilty of a minor misdemeanor.

(2) Whoever violates subsection (a) of this section by failing to display a license plate in plain view on the front of a motor vehicle as required under subsection (a) of this section while the motor vehicle is otherwise legally parked is guilty of a minor misdemeanor and may be fined not more than one hundred dollars ($100.00).

A person who is subject to the penalty prescribed in subsection (c)(2) of this section is not subject to the charging of points under Ohio R.C. 4510.036.

(3) The offense established under subsection (a) of this section is a strict liability offense and Ohio R.C. 2901.20 does not apply. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense. (ORC 4503.21)

335.10 EXPIRED OR UNLAWFUL LICENSE PLATES.

(a) No person who is the owner of a motor vehicle which is parked or operated upon the public streets or highways shall fail to annually file the application for registration or to pay the tax therefor, as required by Ohio R.C. Chapter 4503. (ORC 4503.11)

(b) No person shall operate, drive or park upon the public streets or highways a motor vehicle acquired from a former owner who has registered the motor vehicle, while the motor vehicle displays the distinctive number or identification mark assigned to it upon its original registration. (ORC 4549.11)

(c) No person who is the owner of a motor vehicle and a resident of Ohio shall operate, drive or park the motor vehicle upon the public streets or highways, while it displays a distinctive number or identification mark issued by or under the authority of another state, without complying with the laws of Ohio relating to the registration and identification of motor vehicles. (ORC 4549.12)

(d) No person shall park or operate any vehicle upon any public street or highway upon which is displayed an expired license plate or an expired validation sticker.

(e) No person shall park or operate any vehicle upon any public street or highway upon which are displayed any license plates not legally registered and issued for such vehicle, or upon which are displayed any license plates that were issued on an application for registration that contains any false statement by the applicant.

(f) (1) Whoever violates subsection (a) hereof is guilty of a minor misdemeanor.
(2) Whoever violates subsection (b) hereof is guilty of a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense.
(3) Whoever violates any provision of this section for which no other penalty is provided is guilty of a minor misdemeanor.
(ORC 4549.11; 4549.12)

335.11 USE OF ILLEGAL LICENSE PLATES; TRANSFER OF REGISTRATION.

(a) No person shall operate or drive a motor vehicle upon the streets in this Municipality if it displays a license plate or a distinctive number or identification mark that meets any of the following criteria:
(1) Is fictitious;
(2) Is a counterfeit or an unlawfully made copy of any distinctive number or identification mark;
(3) Belongs to another motor vehicle, provided that this section does not apply to a motor vehicle that is operated on the streets in this Municipality when the motor vehicle displays license plates that originally were issued for a motor vehicle that previously was owned by the same person who owns the motor vehicle that is operated on the streets in this Municipality, during the thirty-day period described in subsection (c) hereof.

(b) Whoever violates subsection (a)(1), (2) or (3) of this section is guilty of operating a motor vehicle bearing an invalid license plate or identification mark, a misdemeanor of the fourth degree on a first offense and a misdemeanor of the third degree on each subsequent offense. (ORC 4549.08)

(c) Upon the transfer of ownership of a motor vehicle, the registration of the motor vehicle expires, and the original owner shall immediately remove the license plates from the motor vehicle. The transfer of the registration and, where applicable, the license plates from the motor vehicle for which they originally were issued to a succeeding motor vehicle purchased by the same person in whose name the original registration and license plates were issued shall be done within a period not to exceed thirty days. During that thirty-day period, the license plates from the motor vehicle for which they originally were issued may be displayed on the succeeding motor vehicle, and the succeeding motor vehicle may be operated on the streets of the Municipality.

(d) Whoever violates subsection (c) of this section is guilty of a misdemeanor of the fourth degree. (ORC 4503.12)

335.111 REGISTRATION WITHIN THIRTY DAYS OF RESIDENCY.

(a) Within thirty days of becoming a resident of this State, any person who owns a motor vehicle operated or driven upon the public roads or highways shall register the vehicle in this State. If such a person fails to register a vehicle owned by the person, the person shall not operate any motor vehicle in this Municipality under a license issued by another state.

(b) (1) Whoever violates subsection (a) of this section is guilty of a minor misdemeanor.

(2) The offense established under subsection (b)(1) of this section is a strict liability offense and strict liability is a culpable mental state for purposes of Ohio R.C. 2901.20. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.

(c) For purposes of subsection (a) of this section, "resident" means any person to whom any of the following applies:

(1) The person maintains their principal residence in this State and does not reside in this State as a result of the person's active service in the United States Armed Forces.

(2) The person is determined by the Registrar of Motor Vehicles to be a resident in accordance with standards adopted by the Registrar under Ohio R.C. 4507.01. (ORC 4503.111)

335.12 STOPPING AFTER ACCIDENT UPON STREETS; COLLISION WITH UNATTENDED VEHICLE.

(a) (1) In the case of a motor vehicle accident or collision with persons or property on a public road or highway, the operator of the motor vehicle, having knowledge of the accident or collision, immediately shall stop the operator's motor vehicle at the scene of the accident or collision. The operator shall remain at the scene of the accident or collision until the operator has given the operator's name and address and, if the operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, to all of the following:

A. Any person injured in the accident or collision;

B. The operator, occupant, owner or attendant of any motor vehicle damaged in the accident or collision;

C. The police officer at the scene of the accident or collision.

(2) In the event an injured person is unable to comprehend and record the information required to be given under subsection (a)(1) of this section, the other operator involved in the accident or collision shall notify the nearest police authority concerning the location of the accident or collision, and the operator's name, address and the registered number of the motor vehicle the operator was operating. The operator shall remain at the scene of the accident or collision until a police officer arrives, unless removed from the scene by an emergency vehicle operated by a political subdivision or an ambulance.

(3) If the accident or collision is with an unoccupied or unattended motor vehicle, the operator who collides with the motor vehicle shall securely attach the information required to be given in this section, in writing, to a conspicuous place in or on the unoccupied or unattended motor vehicle.

(b) (1) Whoever violates subsection (a) of this section is guilty of failure to stop after an accident. Except as otherwise provided in subsection (b)(2) or (3) of this section, failure to stop after an accident is a misdemeanor of the first degree.

(2) If the accident or collision results in serious physical harm to a person, failure to stop after an accident is a felony and shall be prosecuted under appropriate State law.

(3) If the accident or collision results in the death of a person, failure to stop after an accident is a felony and shall be prosecuted under appropriate State law.

(4) In all cases, the court, in addition to any other penalties provided by law, shall impose upon the offender a class five suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(5) of Ohio R.C. 4510.02. No judge shall suspend the first six months of suspension of an offender's license, permit, or privilege required by this subsection.

The offender shall provide the court with proof of financial responsibility as defined in Ohio R.C. 4509.01. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to Ohio R.C. 2929.18 or 2929.28 in an amount not exceeding five thousand dollars ($5,000) for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the motor vehicle before, during or after committing the offense charged under this section. (ORC 4549.02)

335.13 STOPPING AFTER ACCIDENT UPON PROPERTY OTHER THAN STREET.

(a) (1) In the case of a motor vehicle accident or collision resulting in injury or damage to persons or property on any public or private property other than a public road or highway, the operator of the motor vehicle, having knowledge of the accident or collision, shall stop at the scene of the accident or collision. Upon request of any person who is injured or damaged, or any other person, the operator shall give that person the operator's name and address, and, if the operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, and, if available, exhibit the operator's driver's or commercial driver's license.

(2) If the operator of the motor vehicle involved in the accident or collision does not provide the information specified in subsection (a)(1) of this section, the operator shall give that information, within twenty-four hours after the accident or collision, to the Police Department.

(3) If the accident or collision is with an unoccupied or unattended motor vehicle, the operator who collides with the motor vehicle shall securely attach the information required under subsection (a)(1) of this section, in writing, to a conspicuous place in or on the unoccupied or unattended motor vehicle.

(b) (1) Whoever violates subsection (a) of this section is guilty of failure to stop after a nonpublic road accident. Except as otherwise provided in subsection (b)(2) or (3) of this section, failure to stop after a nonpublic road accident is a misdemeanor of the first degree.

(2) If the accident or collision results in serious physical harm to a person, failure to stop after a nonpublic road accident is a felony and shall be prosecuted under appropriate State law.

(3) If the accident or collision results in the death of a person, failure to stop after a nonpublic road accident is a felony and shall be prosecuted under appropriate State law.

(4) In all cases, the court, in addition to any other penalties provided by law, shall impose upon the offender a class five suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(5) of Ohio R.C. 4510.02. No judge shall suspend the first six months of suspension of an offender's license, permit, or privilege required by this subsection.

The offender shall provide the court with proof of financial responsibility as defined in Ohio R.C. 4509.01. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to Ohio R.C. 2929.18 or 2929.28 in an amount not exceeding five thousand dollars ($5,000) for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the motor vehicle before, during or after committing the offense charged under this section. (ORC 4549.021)

335.14 VEHICLE ACCIDENT RESULTING IN DAMAGE TO REALTY.

(a) The driver of any vehicle involved in an accident resulting in damage to real property, or personal property attached to real property, legally upon or adjacent to a public road or highway immediately shall stop and take reasonable steps to locate and notify the owner or person in charge of the property of that fact, of the driver's name and address, and of the registration number of the vehicle the driver is driving and, upon request and if available, shall exhibit the driver's or commercial driver's license.

If the owner or person in charge of the property cannot be located after reasonable search, the driver of the vehicle involved in the accident resulting in damage to the property, within twenty-four hours after the accident, shall forward to the police authority in the municipality in which the accident or collision occurred, the same information required to be given to the owner or person in control of the property and give the location of the accident and a description of the damage insofar as it is known.

(b) Whoever violates subsection (a) of this section is guilty of failure to stop after an accident involving the property of others, a misdemeanor of the first degree.

The offender shall provide the court with proof of financial responsibility as defined in Ohio R.C. 4509.01. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to Ohio R.C. 2929.28 in an amount not exceeding five thousand dollars ($5,000) for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the motor vehicle before, during or after committing the offense charged under this section. (ORC 4549.03)

CHAPTER 337
Safety and Equipment

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CROSS REFERENCES

See sectional histories for similar State law
Warning devices for commercial vehicles disabled upon freeways - see Ohio R.C. 4513.28
Slow moving vehicle emblem - see OAC Ch. 4501.13
Motorized bicycle lights and equipment - see Ohio R.C. 4511.521
Vehicle lighting - see OAC 4501-15
Use of stop and turn signals - see TRAF. 331.14
Wheel protectors for commercial vehicles - see TRAF. 339.05
Vehicles transporting explosives - see TRAF. 339.06
Towing requirements - see TRAF. 339.07
Use of studded tires and chains - see TRAF. 339.11
Bicycle equipment - see TRAF. 373.05 et seq.

337.01 DRIVING UNSAFE VEHICLES.

(a) No person shall drive or move, or cause or knowingly permit to be driven or moved, on any street any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or property.

(b) Nothing contained in this chapter shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.

(c) The provisions of this chapter with respect to equipment on vehicles do not apply to implements of husbandry, road machinery, road rollers or agricultural tractors except as made applicable to such articles of machinery. (ORC 4513.02)

(d) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.99)

337.02 LIGHTED LIGHTS; MEASUREMENT OF DISTANCES AND HEIGHTS.

(a) Every vehicle, other than a motorized bicycle, operated upon a street or highway shall display lighted lights and illuminating devices as required by this chapter during all of the following times:

(1) The time from sunset to sunrise;

(2) At any other time when, due to insufficient natural light or unfavorable atmospheric conditions, persons, vehicles, and substantial objects on the street or highway are not discernible at a distance of one thousand feet ahead;

(3) At any time when the windshield wipers of the vehicle are in use because of precipitation on the windshield.

Every motorized bicycle shall display at such times lighted lights meeting the rules adopted by the Ohio Director of Public Safety under Ohio R.C. 4511.521. No motor vehicle, during any time specified in this section, shall be operated upon a street or highway using only parking lights as illumination.

(b) Whenever in this chapter a requirement is declared as to the distance from which certain lights and devices shall render objects visible, or within which such lights or devices shall be visible, such distance shall be measured upon a straight level unlighted street under normal atmospheric conditions unless a different condition is expressly stated.

(c) Whenever in this chapter a requirement is declared as to the mounted height of lights or devices, it shall mean from the center of such light or device to the level ground upon which the vehicle stands.

(d) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause the operator of a vehicle being operated upon a street or highway to stop the vehicle solely because the officer observes that a violation of subsection (a)(3) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation or summons for a violation of that subsection, or causing the arrest of or commencing a prosecution of a person for a violation of that subsection.

(e) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4513.03)

337.03 HEADLIGHTS ON MOTOR VEHICLES AND MOTORCYCLES.

(a) Every motor vehicle, other than a motorcycle, shall be equipped with at least two headlights with at least one near each side of the front of the motor vehicle.

(b) Every motorcycle shall be equipped with at least one and not more than two headlights.

(c) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4513.04)

337.04 TAIL LIGHT; ILLUMINATION OF REAR LICENSE PLATE.

(a) Every motor vehicle, trailer, semitrailer, pole trailer or vehicle which is being drawn at the end of a train of vehicles shall be equipped with at least one tail light mounted on the rear which, when lighted, shall emit a red light visible from a distance of 500 feet to the rear, provided that in the case of a train of vehicles only the tail light on the rear-most vehicle need be visible from the distance specified.

(b) Either a tail light or a separate light shall be so constructed and placed as to illuminate with a white light the rear registration plate, when such registration plate is required, and render it legible from a distance of fifty feet to the rear. Any tail light, together with any separate light for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlights or auxiliary driving lights are lighted, except where separate lighting systems are provided for trailers for the purpose of illuminating such registration plate.

(c) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4513.05)

337.05 REAR RED REFLECTORS.

(a) Every new motor vehicle sold after September 6, 1941, and operated on a street, other than vehicles of the type mentioned in Section 337.06 or a commercial tractor to which a trailer or semitrailer is attached, shall carry at the rear, either as a part of the tail lights or separately, two red reflectors of such size and characteristics and so maintained as to be visible at night from all distances within 300 feet to fifty feet from such vehicle.

(b) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4513.06)

337.06 SAFETY LIGHTING ON COMMERCIAL VEHICLES.

(a) Buses, trucks, commercial tractors, trailers, semitrailers and pole trailers, when operated upon any street, shall be equipped with clearance lights, marker lights, reflectors and stop lights as required by State regulations. Such equipment shall be lighted at all times mentioned in Section 337.02 except that clearance lights and side marker lights need not be lighted on a vehicle operated where there is sufficient light to reveal any person or substantial object on the street at a distance of 500 feet.

Such equipment shall be in addition to all other lights specifically required by Section 337.02 to Section 337.15, inclusive. Vehicles operated under the jurisdiction of the Ohio Public Utilities Commission are not subject to this section.

(b) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4513.07)

337.07 OBSCURED LIGHTS ON VEHICLES IN COMBINATION.

(a) Whenever motor and other vehicles are operated in combination during the time that lights are required, any light, except tail lights, which by reason of its location on a vehicle of the combination would be obscured by another vehicle of the combination need not be lighted, but this section does not affect the requirement that lighted clearance lights be displayed on the front of the foremost vehicle required to have clearance lights or that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

(b) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.
(ORC 4513.08)

337.08 RED LIGHT OR RED FLAG ON EXTENDED LOADS.

(a) Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle, there shall be displayed at the extreme rear end of the load, at the times specified in Section 337.02, a red light or lantern plainly visible from a distance of at least 500 feet to the side and rear. The red light or lantern required by this section is in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than sixteen inches square.

(b) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4513.09)

337.09 LIGHTS ON PARKED OR STOPPED VEHICLES.

(a) Except in case of an emergency, whenever a vehicle is parked or stopped upon a roadway open to traffic or shoulder adjacent thereto, whether attended or unattended during the times mentioned in Section 337.02, such vehicle shall be equipped with one or more lights which shall exhibit a white or amber light on the roadway side visible from a distance of 500 feet to the front of such vehicle, and a red light visible from a distance of 500 feet to the rear. No lights need be displayed upon any such vehicle when it is stopped or parked where there is sufficient light to reveal any person or substantial object within a distance of 500 feet upon such street. Any lighted headlights upon a parked vehicle shall be depressed or dimmed.
(ORC 4513.10)

(b) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4513.99)

337.10 LIGHTS ON SLOW-MOVING VEHICLES; EMBLEM REQUIRED.

(a) All vehicles other than bicycles, including animal-drawn vehicles and vehicles referred to in Section 337.01(c), not specifically required to be equipped with lights or other lighting devices by Section 337.02 to 337.09, shall at all times specified in Section 337.02, be equipped with at least one light displaying a white light visible from a distance of not less than 1,000 feet to the front of the vehicle, and also shall be equipped with two lights displaying red light visible from a distance of not less than 1,000 feet to the rear of the vehicle, or as an alternative, one light displaying a red light visible from a distance of not less than 1,000 feet to the rear and two red reflectors visible from all distances of 600 feet to 100 feet to the rear when illuminated by the lawful lower beams of headlights.

Lights and reflectors required or authorized by this section shall meet standards adopted by the Ohio Director of Public Safety.

(b) All boat trailers, farm machinery and other machinery, including all road construction machinery, upon a street or highway, except when being used in actual construction and maintenance work in an area guarded by a flagperson, or where flares are used, or when operating or traveling within the limits of a construction area designated by the Ohio Director of Transportation, or the Municipal or County Engineer, when such construction area is marked in accordance with requirements of the Director and the Manual of Uniform Traffic Control Devices, as set forth in Ohio R.C. 4511.09, which is designed for operation at a speed of twenty-five miles per hour or less shall be operated at a speed not exceeding twenty-five miles per hour, and shall display a triangular slow-moving vehicle emblem (SMV). The emblem shall be mounted so as to be visible from a distance of not less than 500 feet to the rear. The Ohio Director of Public Safety shall adopt standards and specifications for the design and position of mounting the SMV emblem. The standards and specifications for SMV emblems referred to in this section shall correlate with and, so far as possible, conform with those approved by the American Society of Agricultural Engineers.

A unit of farm machinery that is designed by its manufacturer to operate at a speed greater than twenty-five miles per hour may be operated on a street or highway at a speed greater than twenty-five miles per hour provided it is operated in accordance with this section.

As used in this subsection (b), "machinery" does not include any vehicle designed to be drawn by an animal.

(c) The use of the SMV emblem shall be restricted to animal-drawn vehicles, and to the slow-moving vehicles specified in subsection (b) hereof operating or traveling within the limits of the highway. Its use on slow-moving vehicles being transported upon other types of vehicles or on any other type of vehicle or stationary object on the highway is prohibited.

(d) (1) No person shall sell, lease, rent or operate any boat trailer, farm machinery or other machinery defined as a slow-moving vehicle in subsection (b) hereof, except those units designed to be completely mounted on a primary power unit, which is manufactured or assembled on or after April 1, 1966, unless the vehicle is equipped with a slow-moving vehicle emblem mounting device as specified in subsection (b) hereof.

(2) No person shall sell, lease, rent, or operate on a street or highway any unit of farm machinery that is designed by its manufacturer to operate at a speed greater than twenty-five miles per hour unless the unit displays a slow-moving vehicle emblem as specified in subsection (b) of this section and a speed identification symbol that meets the specifications contained in the American Society of Agricultural Engineers Standard ANSI/ASAE S584 JAN2005, agricultural equipment; speed identification symbol (SIS).

(e) Any boat trailer, farm machinery, or other machinery defined as a slow-moving vehicle in subsection (b) of this section, in addition to the use of the slow-moving vehicle emblem, and any unit of farm machinery that is designed by its manufacturer to operate at a speed greater than twenty-five miles per hour, in addition to the display of a speed identification symbol may be equipped with a red flashing light that shall be visible from a distance of not less than one thousand feet to the rear at all times specified in Section 337.02. When a double-faced light is used, it shall display amber light to the front and red light to the rear.

In addition to the lights described in this subsection, farm machinery and motor vehicles escorting farm machinery may display a flashing, oscillating or rotating amber light, as permitted by Section 337.16, and also may display simultaneously flashing turn signals or warning lights, as permitted by that section.

(f) Every animal-drawn vehicle upon a street or highway shall at all times be equipped in one of the following ways:

(1) With a slow-moving vehicle emblem complying with subsection (b) hereof;

(2) With alternate reflective material complying with rules adopted under this subsection (f);

(3) With both a slow-moving vehicle emblem and alternate reflective material as specified in this subsection (f).

The Ohio Director of Public Safety, subject to Ohio R.C. Chapter 119, shall adopt rules establishing standards and specifications for the position of mounting of the alternate reflective material authorized by this subsection (f). The rules shall permit, as a minimum, the alternate reflective material to be black, gray or silver in color. The alternate reflective material shall be mounted on the animal-drawn vehicle so as to be visible at all times specified in Section 337.02, from a distance of not less than 500 feet to the rear when illuminated by the lawful lower beams of headlamps.

(g) Every unit of farm machinery that is designed by its manufacturer to operate at a speed greater than twenty-five miles per hour shall display a slow-moving vehicle emblem and a speed identification symbol that meets the specifications contained in the American Society of Agricultural Engineers Standard ANSI/ASAE S584 JAN2005, agricultural equipment; speed identification symbol (SIS) when the unit is operated upon a street or highway, irrespective of the speed at which the unit is operated on the street or highway. The speed identification symbol shall indicate the maximum speed in miles per hour at which the unit of farm machinery is designed by its manufacturer to operate. The display of the speed identification symbol shall be in accordance with the standard prescribed in this subsection.

If an agricultural tractor that is designed by its manufacturer to operate at a speed greater than twenty-five miles per hour is being operated on a street or highway at a speed greater than twenty-five miles per hour and is towing, pulling or otherwise drawing a unit of farm machinery, the unit of farm machinery shall display a slow-moving vehicle emblem and a speed identification symbol that is the same as the speed identification symbol that is displayed on the agricultural tractor.

(h) When an agricultural tractor that is designed by its manufacturer to operate at a speed greater than twenty-five miles per hour is being operated on a street or highway at a speed greater than twenty-five miles per hour, the operator shall possess some documentation published or provided by the manufacturer indicating the maximum speed in miles per hour at which the manufacturer designed the agricultural tractor to operate.

(i) As used in this section, "boat trailer" means any vehicle designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of twenty-five miles per hour or less.

(j) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4513.11)

337.11 SPOTLIGHT AND AUXILIARY LIGHTS.

(a) Any motor vehicle may be equipped with not more than one spotlight and every lighted spotlight shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle, nor more than 100 feet ahead of the vehicle.

(b) Any motor vehicle may be equipped with not more than three State approved auxiliary driving lights mounted on the front of the vehicle, which when used shall conform to State regulations.

(c) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4513.12)

337.12 COWL, FENDER AND BACK-UP LIGHTS.

(a) Any motor vehicle may be equipped with side cowl or fender lights or lights on each side thereof which shall emit a white or amber light without glare.

(b) Any motor vehicle may be equipped with back-up lights, either separately or in combination with another light. No back-up lights shall be continuously lighted when the motor vehicle is in forward motion.

(c) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4513.13)

337.13 DISPLAY OF LIGHTED LIGHTS.

(a) At all times mentioned in Section 337.02 at least two State approved lighted lights shall be displayed conforming to State regulations, one near each side of the front of every motor vehicle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles. (ORC 4513.14)

(b) However, on a motorcycle, there shall be displayed at least one and not more than two lighted lights as required herein.

(c) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.14)

337.14 USE OF HEADLIGHT BEAMS.

(a) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in Section 337.02, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons, vehicles and substantial objects at a safe distance in advance of the vehicle, except that upon approaching an oncoming vehicle, the lights or beams shall be so aimed that the glaring rays are not projected into the eyes of the oncoming driver.

(b) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.15)

337.15 LIGHTS OF LESS INTENSITY ON SLOW-MOVING VEHICLES.

(a) Any motor vehicle may be operated under the conditions specified in Section 337.02 when it is equipped with two lighted lights upon the front thereof capable of revealing persons and substantial objects seventy-five feet ahead in lieu of lights required in Section 337.13, provided that such vehicle shall not be operated at a speed in excess of twenty miles per hour.

(b) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.16)

337.16 NUMBER OF LIGHTS; LIMITATIONS ON FLASHING, OSCILLATING OR ROTATING LIGHTS.

(a) Whenever a motor vehicle equipped with headlights also is equipped with any auxiliary lights or spotlight or any other light on the front thereof projecting a beam of an intensity greater than 300 candle power, not more than a total of five of any such lights on the front of a vehicle shall be lighted at any one time when the vehicle is upon a highway.

(b) Any lighted light or illuminating device upon a motor vehicle, other than headlights, spotlights, signal lights or auxiliary driving lights, that projects a beam of light of an intensity greater than 300 candle power, shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(c) (1) Flashing lights are prohibited on motor vehicles, except as a means for indicating a right or a left turn, or in the presence of a vehicular traffic hazard requiring unusual care in approaching, or overtaking or passing. This prohibition does not apply to emergency vehicles, road service vehicles servicing or towing a disabled vehicle, stationary waste collection vehicles actively collecting garbage, refuse, trash or recyclable materials on the roadside, rural mail delivery vehicles, vehicles transporting preschool children as provided in Ohio R.C. 4513.182, highway maintenance vehicles, funeral hearses, funeral escort vehicles and similar equipment operated by the Department or local authorities, which shall be equipped with and display, when used on a street or highway for the special purpose necessitating such lights, a flashing, oscillating or rotating amber light, but shall not display a flashing, oscillating or rotating light of any other color, nor to vehicles or machinery permitted by Section 337.10 to have a flashing red light.

(2) When used on a street or highway, farm machinery and vehicles escorting farm machinery may be equipped with and display a flashing, oscillating, or rotating amber light, and the prohibition contained in subsection (c)(1) hereof does not apply to such machinery or vehicles. Farm machinery also may display the lights described in Section 337.10.

(d) Except a person operating a public safety vehicle, as defined in Section 301.27, or a school bus, no person shall operate, move or park upon or permit to stand within the right of way of any public street or highway any vehicle or equipment that is equipped with and displaying a flashing red or a flashing combination red and white light, or an oscillating or rotating red light, or a combination red and white oscillating or rotating light; and except a public law enforcement officer, or other person sworn to enforce the criminal and traffic laws of the State or Municipality, operating a public safety vehicle when on duty, no person shall operate, move or park upon, or permit to stand within the right of way of any street or highway any vehicle or equipment that is equipped with, or upon which is mounted, and displaying a flashing blue or a flashing combination blue and white light, or an oscillating or rotating blue light, or a combination blue and white oscillating or rotating light.

(e) This section does not prohibit the use of warning lights required by law or the simultaneous flashing of turn signals on disabled vehicles or on vehicles being operated in unfavorable atmospheric conditions in order to enhance their visibility. This section also does not prohibit the simultaneous flashing of turn signals or warning lights either on farm machinery or vehicles escorting farm machinery, when used on a street or highway.

(f) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4513.17)

337.17 FOCUS AND AIM OF HEADLIGHTS.

(a) No person shall use any lights mentioned in Section 337.02 to 337.16, inclusive, upon any motor vehicle, trailer or semitrailer unless the lights are equipped, mounted and adjusted as to focus and aim in accordance with State regulations.

(b) The headlights on any motor vehicle shall comply with the headlamp color requirements contained in federal motor vehicle safety standard number 108, 49 C.F.R. 571.108. No person shall operate a motor vehicle in violation of this subsection.

(c) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4513.19)

337.18 MOTOR VEHICLE AND MOTORCYCLE BRAKES.

(a) The following requirements govern as to brake equipment on vehicles:

(1) Every motor vehicle, other than a motorcycle, when operated upon a street or highway, shall be equipped with brakes adequate to control the movement of and to stop and hold such motor vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, then on such motor vehicles manufactured or assembled after January 1, 1942, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

(2) Every motorcycle, when operated upon a street or highway, shall be equipped with at least one adequate brake, which may be operated by hand or by foot.

(3) Every motorized bicycle shall be equipped with brakes meeting the rules adopted by the Ohio Director of Public Safety under Ohio R.C. 4511.521.

(4) When operated upon the streets or highways of this Municipality, the following vehicles shall be equipped with brakes adequate to control the movement of and to stop and to hold the vehicle designed to be applied by the driver of the towing motor vehicle from its cab, and also designed and connected so that, in case of a breakaway of the towed vehicle, the brakes shall be automatically applied:

A. Except as otherwise provided in this section, every trailer or semitrailer, except a pole trailer, with an empty weight of two thousand pounds or more, manufactured or assembled on or after January 1, 1942;

B. Every manufactured home or travel trailer with an empty weight of two thousand pounds or more, manufactured or assembled on or after January 1, 2001.

(5) Every watercraft trailer with a gross weight or manufacturer's gross vehicle weight rating of three thousand pounds or more that is manufactured or assembled on or after January 1, 2008, shall have separate brakes equipped with hydraulic surge or electrically operated brakes on two wheels.

(6) In any combination of motor-drawn trailers or semitrailers equipped with brakes, means shall be provided for applying the rearmost brakes in approximate synchronism with the brakes on the towing vehicle, and developing the required braking effort on the rearmost wheels at the fastest rate; or means shall be provided for applying braking effort first on the rearmost brakes; or both of the above means, capable of being used alternatively, may be employed.

(7) Every vehicle and combination of vehicles, except motorcycles and motorized bicycles, and except trailers and semitrailers of a gross weight of less than 2,000 pounds, and pole trailers, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular

effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other sources of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind.

(8) The same brake drums, brake shoes and lining assemblies, brake shoe anchors, and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(9) Every motor vehicle or combination of motor-drawn vehicles shall be capable at all times and under all conditions of loading of being stopped on a dry, smooth, level road free from loose material, upon application of the service or foot brake, within the following specified distances, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

	From a speed of 20 miles per hour	
	Stopping distance in feet	Deceleration in feet per second per second
Brakes on all wheels	30	14
Brakes not on all four wheels	40	10.7

(10) All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle. (ORC 4513.20)

(b) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.99)

337.19 HORN, SIREN AND THEFT ALARM SIGNAL.

(a) Every motor vehicle when operated upon a street shall be equipped with a horn which is in good working order and capable of emitting sound audible, under normal conditions, from a distance of not less than 200 feet.

(b) No motor vehicle shall be equipped with, nor shall any person use upon a vehicle, any siren, whistle or bell. Any vehicle may be equipped with a theft alarm signal device which shall be so arranged that it cannot be used as an ordinary warning signal. Every emergency or public safety vehicle shall be equipped with a siren, whistle or bell capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type approved by the Ohio Director of Public Safety. Such equipment shall not be used except when such vehicle is operated in response to an emergency call or is in the immediate pursuit of an actual or suspected violator of the law, in which case the driver of the emergency or public safety vehicle shall sound such equipment when it is necessary to warn pedestrians and other drivers of the approach thereof.

(c) No person shall use the horn of a motor vehicle except to give warning to other drivers or pedestrians.

(d) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.21)

337.20 MUFFLER; MUFFLER CUTOUT; EXCESSIVE SMOKE, GAS OR NOISE.

(a) Every motor vehicle and motorcycle with an internal combustion engine shall at all times be equipped with a muffler which is in good working order and in constant operation to prevent excessive or unusual noise, and no person shall use a muffler cutout, by-pass or similar device upon a motor vehicle on a highway. Every motorcycle muffler shall be equipped with baffle plates.

(b) No person shall own, operate or have in the person's possession any motor vehicle or motorcycle equipped with a device for producing excessive smoke or gas, or so equipped as to permit oil or any other chemical to flow into or upon the exhaust pipe or muffler of such vehicle, or equipped in any other way to produce or emit smoke or dangerous or annoying gases from any portion of such vehicle, other than the ordinary gases emitted by the exhaust of an internal combustion engine under normal operation.

(c) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.22)

337.21 REAR-VIEW MIRROR; CLEAR VIEW TO FRONT, BOTH SIDES AND REAR.

(a) Every motor vehicle and motorcycle shall be equipped with a mirror so located as to reflect to the operator a view of the street to the rear of such vehicle or motorcycle. Operators of vehicles and motorcycles shall have a clear and unobstructed view to the front and to both sides of their vehicles or motorcycles and shall have a clear view to the rear of their vehicles or motorcycles by mirror.

(b) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.23)

337.22 WINDSHIELD AND WINDSHIELD WIPER; SIGN OR POSTER THEREON.

(a) No person shall drive any motor vehicle on a street or highway, other than a motorcycle or motorized bicycle, that is not equipped with a windshield.

(b) (1) No person shall drive any motor vehicle, other than a bus, with any sign, poster or other nontransparent material upon the front windshield, sidewings, side or rear windows of such vehicle other than a certificate or other paper required to be displayed by law, except that there may be in the lower left-hand or right-hand corner of the windshield a sign, poster or decal not to exceed four inches in height by six inches in width. No sign, poster or decal shall be displayed in the front windshield in such a manner as to conceal the vehicle identification number for the motor vehicle when in accordance with federal law, that number is located inside the vehicle passenger compartment and so placed as to be readable through the vehicle glazing without moving any part of the vehicle.

(2) Subsection (b)(1) of this section does not apply to a person who is driving a passenger car with an electronic device, including an antenna, electronic tolling or other transponder, camera, directional navigation device, or other similar electronic device located in the front windshield if the device meets both of the following:

A. It does not restrict the vehicle operator's sight lines to the road and highway signs and signals.

B. It does not conceal the vehicle identification number.

(3) Subsection (b)(1) of this section does not apply to a person who is driving a commercial car with an electronic device, including an antenna, electronic tolling or other transponder, camera, directional navigation device, or other similar electronic device located in the front windshield if the device meets both of the following:

A. It does not restrict the vehicle operator's sight lines to the road and highway signs and signals.

B. It is mounted not more than six inches below the upper edge of the windshield and is outside the area swept by the vehicle's windshield wipers.

(c) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield. The device shall be maintained in good working order and so constructed as to be controlled or operated by the operator of the vehicle.

(d) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.24)

337.23 LIMITED LOAD EXTENSION ON LEFT SIDE OF PASSENGER VEHICLE.

(a) No passenger-type vehicle shall be operated on a street with any load carried on such vehicle which extends more than six inches beyond the line of the fenders on the vehicle's left side. (ORC 4513.30)

(b) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.99)

337.24 MOTOR VEHICLE STOP LIGHTS.

(a) Every motor vehicle, trailer, semitrailer, and pole trailer when operated upon a street or highway shall be equipped with two or more stop lights, except that passenger cars manufactured or assembled prior to January 1, 1967, motorcycles, and motor-driven cycles shall be equipped with at least one stop light. Stop lights shall be mounted on the rear of the vehicle, actuated upon application of the service brake, and may be incorporated with other rear lights. Such stop lights when actuated shall emit a red light visible from a distance of five hundred feet to the rear, provided that in the case of a train of vehicles only the stop lights on the rear-most vehicle need be visible from the distance specified.

Such stop lights when actuated shall give a steady warning light to the rear of a vehicle or train of vehicles to indicate the intention of the operator to diminish the speed of or stop a vehicle or train of vehicles.

When stop lights are used as required by this section, they shall be constructed or installed so as to provide adequate and reliable illumination and shall conform to the appropriate rules and regulations established under Ohio R.C. 4513.19.

Historical motor vehicles as defined in Ohio R.C. 4503.181, not originally manufactured with stop lights, are not subject to this section.

(b) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.071)

337.25 AIR CLEANER REQUIRED.

(a) No person shall operate a motor vehicle with an internal combustion engine unless the carburetion system of the vehicle is protected with an air filter, a flame arresting device, or any other accepted method of protection that is adequate for this purpose. If the original device or system is replaced, it shall be replaced with one that is equal to or better than the original equipment.

(b) This section does not apply to a person doing automotive repair work on a motor vehicle that necessitates this device being removed while the work is performed.

(c) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

337.26 CHILD RESTRAINT SYSTEM USAGE.

(a) When any child who is in either or both of the following categories is being transported in a motor vehicle, other than a taxicab or public safety vehicle as defined in Ohio R.C. 4511.01, that is required by the United States Department of Transportation to be equipped with seat belts at the time of manufacture or assembly, the operator of the motor vehicle shall have the child properly secured in accordance with the manufacturer's instructions in a child restraint system that meets federal motor safety standards:

(1) A child who is less than four years of age;

(2) A child who weighs less than forty pounds.

(b) When any child who is in either or both of the following categories is being transported in a motor vehicle, other than a taxicab, that is owned, leased or otherwise under the control of a nursery school, or day-care center, the operator of the motor vehicle shall have the child properly secured in accordance with the manufacturer's instructions in a child restraint system that meets federal motor vehicle safety standards:

(1) A child who is less than four years of age;

(2) A child who weighs less than forty pounds.

(c) When any child who is less than eight years of age and less than four feet nine inches in height, who is not required by subsection (a) or (b) of this section to be secured in a child restraint system, is being transported in a motor vehicle, other than a taxicab or public safety vehicle as defined in Ohio R.C. 4511.01 or a vehicle that is regulated under Ohio R.C. 5104.011, that is required by the United States Department of Transportation to be equipped with seat belts at the time of manufacture or assembly, the operator of the motor vehicle shall have the child properly secured in accordance with the manufacturer’s instructions on a booster seat that meets federal motor vehicle safety standards.

(d) When any child who is at least eight years of age but not older that fifteen years of age and who is not otherwise required by subsection (a), (b) or (c) hereof to be secured in a child restraint system or booster seat, is being transported in a motor vehicle, other than a taxicab or public safety vehicle as defined in Ohio R.C. 4511.01, that is required by the United States Department of Transportation to be equipped with seat belts at the time of manufacture or assembly, the operator of the motor vehicle shall have the child properly restrained either in accordance with the manufacturer’s instructions in a child restraint system that meets federal motor vehicle safety standards or in an occupant restraining device as defined in Ohio R.C. 4513.263.

(e) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of a motor vehicle being operated on any street or highway to stop the motor vehicle for the sole purpose of determining whether a violation of subsection (c) or (d) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of subsection (c) or (d) of this section or causing the arrest of or commencing a prosecution of a person for a violation of subsection (c) or (d) of this section, and absent another violation of law, a law enforcement officer's view of the interior or visual inspection of a motor vehicle being operated on any street or highway may not be used for the purpose of determining whether a violation of subsection (c) or (d) of this section has been or is being committed.

(f) The Ohio Director of Public Safety shall adopt such rules as are necessary to carry out this section.

(g) The failure of an operator of a motor vehicle to secure a child in a child restraint system, a booster seat or an occupant restraining device as required by this section is not negligence imputable to the child, is not admissible as evidence in any civil action involving the rights of the child against any other person allegedly liable for injuries to the child, is not to be used as a basis for a criminal prosecution of the operator of the motor vehicle other than a prosecution for a violation of this section, and is not admissible as evidence in any criminal action involving the operator of the motor vehicle other than a prosecution for a violation of this section.

(h) This section does not apply when an emergency exists that threatens the life of any person operating or occupying a motor vehicle that is being used to transport a child who otherwise would be required to be restrained under this section. This section does not apply to a person operating a motor vehicle who has an affidavit signed by a physician licensed to practice in this State under Ohio R.C. Chapter 4731 or a chiropractor licensed to practice in this State under Ohio R.C. Chapter 4734 that states that the child who otherwise would be required to be restrained under this section has a physical impairment that makes use of a child restraint system, booster seat or an occupant restraining device impossible or impractical, provided that the person operating the vehicle has safely and appropriately restrained the child in accordance with any recommendations of the physician or chiropractor as noted on the affidavit.

(i) Nothing in this section shall be construed to require any person to carry with the person the birth certificate of a child to prove the age of the child, but the production of a valid birth certificate for a child showing that the child was not of an age to which this section applies is a defense against any ticket, citation or summons issued for violating this section.

(j) Whoever violates subsection (a), (b), (c) or (d) of this section shall be punished as follows, provided that the failure of an operator of a motor vehicle to secure more than one child in a child restraint system, booster seat, or occupant restraining device as required by this section that occurred at the same time, on the same day, and at the same location is deemed to be a single violation of this section:

(1) Except as otherwise provided in subsection (j)(2) of this section, the offender is guilty of a minor misdemeanor and shall be fined not less than twenty-five dollars ($25.00) nor more than seventy-five dollars ($75.00).

(2) If the offender previously has been convicted of or pleaded guilty to a violation of subsection (a), (b), (c) or (d) of this section or of a state law or municipal ordinance that is substantially similar to any of those subsections, the offender is guilty of a misdemeanor of the fourth degree.
(ORC 4511.81)

337.27 DRIVERS AND PASSENGERS REQUIRED TO WEAR SEAT BELTS.

(a) As used in this section:

(1) "Automobile" means any commercial tractor, passenger car, commercial car or truck that is required to be factory-equipped with an occupant restraining device for the operator or any passenger by regulations adopted by the United States Secretary of Transportation pursuant to the "National Traffic and Motor Vehicle Safety Act of 1966," 80 Stat. 719, 15 U.S.C.A. 1392.

(2) "Occupant restraining device" means a seat safety belt, shoulder belt, harness or other safety device for restraining a person who is an operator of or passenger in an automobile and that satisfies the minimum Federal vehicle safety standards established by the United States Department of Transportation.

(3) "Passenger" means any person in an automobile, other than its operator, who is occupying a seating position for which an occupant restraining device is provided.

(4) "Commercial tractor," "passenger car," and "commercial car" have the same meanings as provided in Ohio R.C. 4501.01.

(5) "Vehicle" and "motor vehicle", as used in the definitions of the terms set forth in subsection (a)(4) hereof, have the same meanings as provided in Chapter 301.

(6) “Tort action” means a civil action for damages for injury, death, or loss to person or property. “Tort action” includes a product liability claim, as defined in Ohio R.C. 2307.71 and an asbestos claim, as defined in Ohio R.C. 2307.91, but does not include a civil action for damages for breach of contract or another agreement between persons.

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

(1) Operate an automobile on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device, or operate a school bus that has an occupant restraining device installed for use in its operator's seat unless that person is wearing all of the available elements of the device, as properly adjusted;

(2) Operate an automobile on any street or highway unless each passenger in the automobile who is subject to the requirement set forth in subsection (b)(3) hereof is wearing all of the available elements of a properly adjusted occupant restraining device;

(3) Occupy, as a passenger, a seating position on the front seat of an automobile being operated on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device;

(4) Operate a taxicab on any street or highway unless all factory-equipped occupant restraining devices in the taxicab are maintained in usable form.

(c) Subsection (b)(3) hereof does not apply to a person who is required by Section 337.26 to be secured in a child restraint device or booster seat. Subsection (b)(1) hereof does not apply to a person who is an employee of the United States Postal Service or of a newspaper home delivery service, during any period in which the person is engaged in the operation of an automobile to deliver mail or newspapers to addressees. Subsections (b)(1) and (3) hereof do not apply to a person who has an affidavit signed by a physician licensed to practice in this State under Ohio R.C. Chapter 4731 or a chiropractor licensed to practice in this State under Ohio R.C. Chapter 4734 that states that the person has a physical impairment that makes use of an occupant restraining device impossible or impractical.

(d) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of subsection (b) hereof has been or is being committed or for the sole purpose of issuing a ticket, citation or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(e) All fines collected for violations of subsection (b) hereof shall be forwarded to the Treasurer of State for deposit as provided in Ohio R.C. 4513.263.

(f) (1) Subject to subsection (f)(2) of this section, the failure of a person to wear all of the available elements of a properly adjusted occupant restraining device in violation of subsection (b)(1) or (3) or the failure of a person to ensure that each minor who is a passenger of an automobile being operated by that person is wearing all of the available elements of a properly adjusted occupant restraining device, in violation of subsection (b)(2) of this section, shall not be considered or used by the trier of fact in a tort action as evidence of negligence or contributory negligence. But the trier of fact may determine based on evidence admitted consistent with the Ohio rules of evidence that the failure contributed to the harm alleged in the tort action and may diminish a recovery of compensatory damages that represents noneconomic loss, as defined in Ohio R.C. 2307.011 in a tort action that could have been recovered but for the plaintiff's failure to wear all of the available elements of a properly adjusted occupant restraining device. Evidence of that failure shall not be used as a basis for a criminal prosecution of the person other than a prosecution for a violation of this section; and shall not be admissible as evidence in a criminal action involving the person other than a prosecution for a violation of this section.

(2) If, at the time of an accident involving a passenger car equipped with occupant restraining devices, any occupant of the passenger car who sustained injury or death was not wearing an available occupant restraining device, was not wearing all of the available elements of such a device, or was not wearing such a device as properly adjusted, then, consistent with the Rules of Evidence, the fact that the occupant was not wearing the available occupant restraining device, was not wearing all of the available elements of such a device, or was not wearing such a device as properly adjusted is admissible in evidence in relation to any claim for relief in a tort action to the extent that the claim for relief satisfies all of the following:

A. It seeks to recover damages for injury or death to the occupant.

B. The defendant in question is the manufacturer, designer, distributor or seller of the passenger car.

C. The claim for relief against the defendant in question is that the injury or death sustained by the occupant was enhanced or aggravated by some design defect in the passenger car or that the passenger car was not crashworthy.

(g) (1) Whoever violates subsection (b)(1) of this section shall be fined thirty dollars ($30.00).

(2) Whoever violates subsection (b)(3) of this section shall be fined twenty dollars ($20.00).

(3) Except as otherwise provided in this subsection, whoever violates subsection (b)(4) of this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to a violation of subsection (b)(4) of this section, whoever violates subsection (b)(4) of this section is guilty of a misdemeanor of the third degree. (ORC 4513.263)

337.28 USE OF SUNSCREENING, NONTRANSPARENT AND REFLECTORIZED MATERIALS.

(a) Requirements.

(1) No person shall operate, on any highway or other public or private property open to the public for vehicular travel or parking, lease, or rent any motor vehicle that is required to be registered in this State with any sunscreening material, or other product or material which has the effect of making the windshield or windows nontransparent or would alter the windows' color, increase its reflectivity, or reduce its light transmittance, unless the product or material satisfies one of the following exceptions:

A. Any manufacturer's tinting or glazing of motor vehicle windows or windshields that is otherwise in compliance with or permitted by "Federal Motor Vehicle Safety Standard Number 205" (FMVSS 205) in effect at the time of the manufacture of the motor vehicle until such standard is subsequently repealed or reduced. In "Federal Motor Vehicle Safety Standard Number 205" (FMVSS 205) "manufacturer" means any person engaged in the manufacturing or assembling of motor vehicles or motor vehicle equipment, including any person importing motor vehicles or motor vehicle equipment for resale. "Federal Motor Vehicle Safety Standard Number 205" (FMVSS), Code of Federal Regulations, Title 49, Part 571, can be obtained online at web site http://www.gpo.gov.

B. Any sunscreening material or other product or material applied to the windshield when used in conjunction with the safety glazing materials of such window, has a light transmittance of not less than seventy per cent plus or minus three per cent and is not red or yellow in color.

C. Any sunscreening material or other product or material applied to the side windows to the immediate right or left the driver, so long as such material, when used in conjunction with the safety glazing materials of such windows, has a light transmittance of not less than fifty per cent plus or minus three per cent and is not red or yellow in color.

D. Any sunscreening material or other product or material applied to a window not otherwise listed in subsections (a)(1)A. to C. or E. of this section, except that outside left and right rear view mirrors are required if the sunscreening material is applied to the rear window and the sunscreening material, when used in conjunction with the safety glazing material of such window, has a light tranmsmittance of less than fifty per cent plus or minus three per cent.

E. Any sunscreening material or other product or material applied along the top of the windshield and that does not extend downward beyond the AS-1 line or five inches from the top of the windshield, whichever is closer to the top, is not regulated by this section.

(2) No person shall install in any motor vehicle any glass or other material that fails to conform to the specifications of this section.

(3) No used motor vehicle dealer or new motor vehicle dealer, as defined in Ohio R.C. 4517.01, shall sell any motor vehicle that fails to conform to the specifications of this section.

(4) No reflectorized materials shall be permitted upon or in any front windshield, side windows, sidewings or rear window.

(5) No person shall operate on any highway or other public or private property open to the public for vehicular travel or parking, lease, or rent any motor vehicle that is required to be registered in this State that is equipped with privacy drapes, louvers, curtains or blinds unless the drapes, louvers, curtains or blinds are open and secure during vehicle operation.

(6) All motor vehicles, beginning with the 1990 model year, must be equipped with labels identifying sunscreening material. All sunscreening material must indicate the manufacturer's name and the percentage level of light transmission of the material permanently installed between the material and the surface to which the material is applied or affixed. Such label must be legible and must be placed in the lower left-hand corner of the vehicle window when viewed from the outside. (OAC 4501-41-03)

(b) Exemptions. The provisions of this section do not apply to:

(1) A motor vehicle registered in this State in the name of a person, or the person's parent, legal guardian or spouse who has an affidavit signed by a physician licensed to practice in this State under Ohio R.C. Chapter 4731 or an affidavit signed by an optometrist licensed to practice in this State under Ohio R.C. Chapter 4725 that states that the person has a physical condition that makes it necessary to equip such motor vehicle with sunscreening material which would be of a light transmittance and/or luminous reflectance in violation of this section. Such affidavit shall be in the possession of the person so afflicted or the driver at all times while in the motor vehicle;

(2) The windows to the rear of the driver in chauffeured limousines as defined herein;

(3) The windows to the rear of the driver in those vehicles designed and used to transport corpses which include hearses and other vehicles adapted for such use; and

(4) The manufacturer's tinting or glazing of motor vehicle windows or windshields that is otherwise in compliance with or permitted by "Federal Motor Vehicle Safety Standard Number 205" (FMVSS 205) in effect at the time of the manufacture of the motor vehicle as provided in subsection (a) hereof. "Federal Motor Vehicle Safety Standard Number 205" (FMVSS 205), Code of Federal Regulations, Title 49, Part 571, can be obtained online at web site http://www.gpo.gov. (OAC 4501-41-05)

(c) Definitions. As used in this section, certain terms are defined as follows:

(1) "Motor vehicle" has the same meaning as specified in Section 301.20.

(2) "Sunscreening material" means products or materials, including film, glazing and perforated sunscreening, which, when applied to the windshield or windows of a motor vehicle, reduce the effects of the sun with respect to light reflectance or transmittance.

(3) "Transmittance" means the ratio of the amount of total light, expressed in percentages, which is allowed to pass through the product or material, including glazing, to the amount of total light falling on the product or material and the glazing.

(4) "Windshield" means the front exterior viewing device of a motor vehicle.

(5) "Window" means any device designed for exterior viewing from a motor vehicle, except the windshield or any roof-mounted viewing device.

(6) "Manufacturer" unless otherwise specified in this section, means any person who engages in the manufacturing or assembling of sunscreening products or materials or any person who fabricates, laminates or tempers a safety glazing material, incorporating, during the manufacturing process, the capacity to reflect or reduce the transmission of light.

(7) “Chauffeured limousine” means a motor vehicle that is designed to carry nine or fewer passengers and is operated for hire on an hourly basis pursuant to a prearranged contract for the transportation of passengers on public roads and highways along a route under the control of the person hiring the vehicle and not over a defined and regular route. “Prearranged contract” means an arrangement, made in advance of boarding, to provide transportation from a specific location in a chauffeured limousine at a fixed rate per hour or trip. “Chauffeured limousine” does not include any vehicle that is used exclusively in the business of funeral directing. (OAC 4501-41-02)

(d) Penalty. Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.241)

337.29 BUMPER HEIGHTS.

(a) Definitions.

(1) "Passenger car" means any motor vehicle with motive power, designed for carrying ten persons or less, except a multipurpose passenger vehicle or motorcycle.

(2) "Multipurpose passenger vehicle" means a motor vehicle with motive power, except a motorcycle, designed to carry ten persons or less, that is constructed either on a truck chassis or with special features for occasional off-road operation.

(3) "Truck" means every motor vehicle, except trailers and semitrailers, designed and used to carry property and having a gross vehicle weight rating of 10,000 pounds or less.

(4) "Manufacturer" has the same meaning as in Ohio R.C. 4501.01.

(5) "Gross vehicle weight rating" means the manufacturer's gross vehicle weight rating established for the vehicle.

(6) "Body floor height" means the vertical distance between top of the frame rail and the bottom of the passenger compartment (cab) floor. In the event that the vehicle is a truck body, floor height will be measured by the vertical distance between the passenger compartment (cab) floor and the floor of the truck bed.

(7) "Bumper height" means the vertical distance between the ground and the highest point of the bottom of the bumper, measured when the vehicle is laden on a level surface with the vehicle tires inflated to the manufacturer's recommended pressure.

(8) "Frame" means the main longitudinal structural members of the chassis of the vehicle or, for vehicles with unitized body construction, the lowest main longitudinal structural members of the body of the vehicle.

(9) “Wheel track distance” means the distance on the ground between the center of the tire tread on one side of the vehicle, and the center of the tire tread on the opposite side. (OAC 4501-43-02)

(b) Prohibitions; Application.

(1) No person shall operate upon a street or highway any passenger car, multipurpose passenger vehicle, or truck registered in this State that does not conform to the requirements of this section.

(2) No person shall modify any motor vehicle registered in this State in such a manner as to cause the vehicle body or chassis to come in contact with the ground, expose the fuel tank to damage from collision, or cause the wheels to come in contact with the body under normal operation, and no person shall disconnect any part of the original suspension system of the vehicle to defeat the safe operation of that system including the installation of inverted, altered or modified suspension system component parts which results in elevation of the height of the vehicle bumper or frame unit which is not in compliance with this section.

(3) No person shall operate upon a street or highway any passenger car, multipurpose passenger vehicle or truck registered in this State without a bumper on the front and rear of the vehicle if such vehicle was equipped with bumpers as standard equipment by the manufacturer.

(4) No person shall operate upon a street or highway any passenger car, multipurpose passenger vehicle or truck registered in this State if the difference in height between the body floor and the top of the frame exceeds four inches.

(5) Nothing contained in this section shall be construed to prohibit either of the following:

A. The installation upon a passenger car, multipurpose passenger vehicle or truck registered in this State of heavy duty equipment, including shock absorbers and overload springs as long as such equipment does not cause the vehicle to be in violation of this section;

B. The operation on a street or highway of a passenger car, multipurpose passenger vehicle or truck registered in this State with normal wear to the suspension system if the normal wear does not adversely affect the control of the vehicle.

(6) This section does not apply to any specially designed or modified passenger car, multipurpose passenger vehicle or truck when operated off a street or highway in races and similar events.

(7) A specially designed or modified passenger car, multipurpose passenger vehicle or truck which does not conform to this section shall not be operated on a street or highway.

(OAC 4501-43-03)

(c) Specifications.

(1) The horizontal bumper shall be at least 4.5 inches in vertical height, centered on the vehicle's centerline, and extend no less than the width of the respective wheel track distances. Bumpers shall be horizontal load bearing bumpers and attached to the vehicle frame to effectively transfer impact when engaged.

(2) Maximum bumper heights shall be determined by the type of vehicle at time of manufacture. If other than a passenger vehicle, the maximum bumper height shall be determined by the gross vehicle weight rating (GVWR) at the time of manufacture. The height shall be measured in terms of the vertical distance between the ground and the bottom of the bumper. Maximum bumper heights are as follows:

	Front (inches)	Rear (inches)
Passenger Vehicles	22	22
All Other Vehicles:		
4,500 lbs. and under GVWR	24	26
4,501 lbs. to 7,500 lbs. GVWR	27	29
7,501 lbs. to 10,000 lbs. GVWR	28	31

(3) If the body and/or truck bed height is altered the difference in height between the body floor and/or the truck bed floor to the top of the frame rail shall not exceed four inches.

(4) For any vehicle with bumpers or attaching components which have been modified or altered from the original manufacturer's design in order to conform with the maximum bumper requirements of this section, the bumper height shall be measured from a level surface to the bottom of the vehicle frame rail at the most forward and rearward points of the frame rail. Frame rail height if bumper modified or altered:

	Front (inches)	Rear (inches)
Passenger Vehicles	22	22
All Other Vehicles:		
4,500 lbs. and under GVWR	24	26
4,501 lbs. to 7,500 lbs. GVWR	27	29
7,501 lbs. to 10,000 lbs. GVWR	28	31

(5) The height restriction in this subsection (c) applies to the distance from the ground to the bottom of the frame rail under any one or more of the following conditions:

A. A motor vehicle is not equipped with a front and rear bumper.

B. The bumper height relative to the frame rails has been altered.

C. A supplemental bumper has been installed or an addition to the original or replacement has been made. (OAC 4501-43-04)

(d) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.99)

337.30 DIRECTIONAL SIGNALS REQUIRED.

(a) (1) No person shall operate any motor vehicle manufactured or assembled on or after January 1, 1954, unless the vehicle is equipped with electrical or mechanical directional signals.

(2) No person shall operate any motorcycle or motor-driven cycle manufactured or assembled on or after January 1, 1968, unless the vehicle is equipped with electrical or mechanical directional signals.

(b) "Directional signals" means an electrical or mechanical signal device capable of clearly indicating an intention to turn either to the right or to the left and which shall be visible from both the front and rear.

(c) All mechanical signal devices shall be self-illuminating devices when in use at the times mentioned in Section 337.02.

(d) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.261)

CHAPTER 339
Commercial and Heavy Vehicles

339.01 Oversize or overweight vehicle operation on State routes; State permit.
339.02 Operation of vehicles over 10,000 pounds; excess load permit.
339.03 Maximum width, height and length.
339.04 Route and load information.
339.05 Wheel protectors.
339.06 Vehicles transporting explosives.
339.07 Towing requirements.
339.08 Loads dropping or leaking; removal required; tracking mud.
339.09 Shifting load; loose loads.
339.10 Vehicles with spikes, lugs and chains.
339.11 Use of studded tires and chains.

CROSS REFERENCES

See sectional histories for similar State law
Weighing vehicle; removal of excess load - see Ohio R.C. 4513.33
Arrest notice of driver - see Ohio R.C. 5577.14
Slower moving vehicles to be driven in right-hand lane - see TRAF. 331.01(b)

339.01 OVERSIZE OR OVERWEIGHT VEHICLE OPERATION ON STATE ROUTES; STATE PERMIT.

(a) No person shall operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in Ohio R.C. 5577.01 to 5577.09, inclusive, or otherwise not in conformity with Ohio R.C. 4513.01 to 4513.37, inclusive, upon any State route within the Municipality, except pursuant to special written permit issued by the Ohio Director of Transportation, or upon any local truck route. Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer.

No holder of a permit issued by the Ohio Director of Transportation shall be required to obtain any local permit or license or pay any local fee or charge for movement on any State route within the Municipality; however, it shall be unlawful to operate any such vehicle or combination of vehicles upon any roadway within the Municipality which is not a State route, except as provided in Section 339.02. (ORC 4513.34)

(b) (1) No person shall violate the terms of a permit issued under this section that relate to gross load limits.

(2) No person shall violate the terms of a permit issued under this section that relate to axle load by more than 2000 pounds per axle or group of axles.

(3) No person shall violate the terms of a permit issued under this section that relate to an approved route except upon order of a law enforcement officer or authorized agent of the issuing authority.

(c) Whoever violates any provision of this section for which no other penalty is provided is guilty of a minor misdemeanor. (ORC 4513.99)

339.02 OPERATION OF VEHICLES OVER 10,000 POUNDS; EXCESS LOAD PERMIT.

(a) No person shall drive or operate any vehicle designed to be used for the conveyance, transfer or delivery of freight, merchandise or other substances and materials usually hauled in such vehicles, exceeding a gross weight of 10,000 pounds, including the weight of the vehicle, whether loaded or unloaded, upon any street or other public place in the Municipality except on designated and marked State and Federal routes, whether temporary or permanent. However, when the loaded contents of such vehicles exceeding such weights are for delivery to, or such vehicles are called to remove merchandise or other material from any business house or other place not located on such State or Federal routes, then such vehicles may be driven and operated on the streets and other public places not designated or marked as State or Federal routes, but only between the place of delivery or removal of freight and merchandise and the nearest intersecting State or Federal route. The operators of such vehicles shall be required, upon requesr of any member of the Police Department or other person authorized by the Municipality, to give full and true information as to the route they are following and the names of the cosignor and consignee, and place of delivery or removal, and the location of any consignment being hauled or goods being removed.

(b) It shall be the duty of the drivers of all such vehicles exceeding such weights entering the Municipality upon a street other than a State or Federal route, to proceed immediately by the shortest way possible to the nearest State or Federal route leading in the direction in which such vehicle is proceeding.

(c) All streets and highways leading into the Municipality shall be properly posted warning operators of vehicles exceeding such weights that they must follow State and Federal routes, temporary or permanent.
(Ord. 59-1. Passed 1-5-59.)

(d) The Director of Public Service and Development upon application and the payment of a fee of ten dollars ($10.00) to the City by the owner or person having charge thereof, may grant permission for the moving of vehicles, objects and structures in excess of the limits set forth in this section. The Director may grant such permission subject to such conditions and restrictions as in his judgment are necessary for the preservation and protection of the streets, roadways, bridges, culverts and other public property.
(Ord. 78-6. Passed 3-20-78.)

(e) Any police officer, having reason to believe that the weight of a vehicle and load is unlawful, is authorized to require the driver to stop and submit to a weighing of the same, either by means of a portable or stationary scales, and may require that such vehicle be driven to the nearest scales. Whenever such officer, upon weighing a vehicle and load as provided herein, determines that the weight is unlawful, such officer may require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle to such limit as is permitted under this section.
(Ord. 59-1. Passed 1-5-59.)

(f) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

339.03 MAXIMUM WIDTH, HEIGHT AND LENGTH.

(a) No vehicle shall be operated upon the public highways, streets, bridges and culverts within the Municipality, whose dimensions exceed those specified in this section.

(b) No such vehicle shall have a width in excess of:

(1) 104 inches for passenger bus type vehicles operated exclusively within municipal corporations;

(2) 102 inches, excluding such safety devices as are required by law, for passenger bus type vehicles operated over freeways, and such other State roads with minimum pavement widths of twenty-two feet, except those roads or portions of roads over which operation of 102-inch buses is prohibited by order of the Ohio Director of Transportation;

(3) 132 inches for traction engines;

(4) 102 inches for recreational vehicles, excluding safety devices and retracted awnings and other appurtenances of six inches or less in width and except that the Director may prohibit the operation of 102-inch recreational vehicles on designated State highways or portions of highways;

(5) 102 inches, including load, for all other vehicles, except that the Director may prohibit the operation of 102-inch vehicles on such State highways or portions of State highways as the Director designates.

(c) No such vehicle shall have a length in excess of:

(1) 66 feet for passenger bus type vehicles and articulated passenger bus type vehicles operated by a regional transit authority pursuant to Ohio R.C. 306.30 to 306.54;

(2) 45 feet for all other passenger bus type vehicles;

(3) 53 feet for any semitrailer when operated in a commercial tractor-semitrailer combination, with or without load, except that the Director may, by journal entry, prohibit the operation of any such commercial tractor-semitrailer combination on such State highways or portions of State highways as the Director designates;

(4) 28.5 feet for any semitrailer or trailer when operated in a commercial tractor-semitrailer-trailer or commercial tractor-semitrailer-semitrailer combination, except that the Director may prohibit the operation of any such commercial tractor-semitrailer-trailer or commercial tractor-semitrailer-semitrailer combination on such State highways or portions of State highways as the Director designates;

(5) A. 97 feet for drive-away saddlemount vehicle transporter combinations and drive-away saddlemount with fullmount vehicle transporter combinations when operated on any interstate, United States route, or State route, including reasonable access travel on all other roadways for a distance not to exceed one road mile from any interstate, United States route, or State route, not to exceed three saddlemounted vehicles, but which may include one fullmount;

B. 75 feet for drive-away saddlemount vehicle transporter combinations and drive-away saddlemount with fullmount vehicle transporter combinations, when operated on any roadway not designated as an interstate, United States route, or State route, not to exceed three saddlemounted vehicles, but which may include one fullmount;

(6) 65 feet for any other combination of vehicles coupled together, with or without load, except as provided in subsections (c)(3) and (4) and in subsection (e) hereof;

(7) 45 feet for recreational vehicles.
(8) 50 feet for all other vehicles except trailers and semitrailers, with or without load.

(d) No such vehicle shall have a height in excess of thirteen feet six inches, with or without load.

(e) An automobile transporter or boat transporter shall be allowed a length of sixty-five feet and a stinger-steered automobile transporter or stinger-steered boat transporter shall be allowed a length of seventy-five feet, except that the load thereon may extend no more than four feet beyond the rear of such vehicles and may extend no more than three feet beyond the front of such vehicles, and except further that the Director may prohibit the operation of any stinger-steered automobile transporter or stinger-steered boat transporter or a B-train assembly on any State highway or portion of any State highway that the Director designates.

(f) The widths prescribed in subsection (b) shall not include side mirrors, turn signal lamps, marker lamps, handholds for cab entry and egress, flexible fender extensions, mud flaps, splash and spray suppressant devices, and load-induced tire bulge.

The width prescribed in subsection (b)(5) shall not include automatic covering devices, tarp and tarp hardware, and tiedown assemblies, provided these safety devices do not extend more than three inches from each side of the vehicle.

The lengths prescribed in subsections (c)(2) to (8) hereof shall not include safety devices, bumpers attached to the front or rear of such bus or combination, nonproperty carrying devices or components that do not extend more than twenty-four inches beyond the rear of the vehicle and are needed for loading or unloading, B-train assembly used between the first and second semitrailer of a commercial tractor-semitrailer-semitrailer combination, energy conservation devices as provided in any regulations adopted by the Secretary of the United States Department of Transportation, or any noncargo-carrying refrigeration equipment attached to the front of trailers and semitrailers. In special cases, vehicles whose dimensions exceed those prescribed by this section may operate in accordance with rules adopted by the Ohio Director of Transportation.

(g) This section does not apply to fire engines, fire trucks or other vehicles or apparatus belonging to any municipal corporation or to the volunteer fire department of any municipal corporation or used by such department in the discharge of its functions. This section does not apply to vehicles and pole trailers used in the transportation of wooden and metal poles, nor to the transportation of pipes or well-drilling equipment, nor to farm machinery and equipment. The owner or operator of any vehicle, machinery or equipment not specifically enumerated in this section but the dimensions of which exceed the dimensions provided by this section, when operating the same on the highways and streets of this State shall comply with the rules of the Director governing such movement, that the Director may adopt. Ohio R.C. 119.01 to 119.13 apply to any rules the Director adopts under this section, or the amendment or rescission of the rules, and any person adversely affected shall have the same right of appeal as provided in those sections.

This section does not require the State, the Municipality, County, township or any railroad or other private corporation to provide sufficient vertical clearance to permit the operation of such vehicle, or to make any changes in or about existing structures now crossing streets, roads and other public thoroughfares in the Municipality.

(h) As used in this section, "recreational vehicle" has the same meaning as in Ohio R.C. 4501.01. (ORC 5577.05)

(i) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense or subsequent offense, the person is guilty of a misdemeanor of the fourth degree. (ORC 5577.99)

339.04 ROUTE AND LOAD INFORMATION.

Drivers of vehicles described in this chapter shall be required, upon request by a police officer, to give full and true information as to the route they are following and the name of the consignor and consignee and place of delivery or removal and the location of any consignment being hauled or goods being removed, and upon a designation by such police officer of a route to be followed, shall immediately adopt and pursue such route.

339.05 WHEEL PROTECTORS.

(a) No person shall drive or operate, or cause to be driven or operated, any commercial car, trailer or semitrailer, used for the transportation of goods or property, the gross weight of which, with load, exceeds three tons, upon the streets, bridges and culverts within this Municipality unless such vehicle is equipped with suitable metal protectors or substantial flexible flaps on the rearmost wheels of such vehicle or combination of vehicles to prevent, as far as practicable, the wheels from throwing dirt, water or other materials on the windshields of following vehicles. Such protectors or flaps shall have a ground clearance of not more than one-third of the distance from the center of the rearmost axle to the center of the flaps under any conditions of loading of the vehicle, and they shall be at least as wide as the tires they are protecting. If the vehicle is so designed and constructed that such requirements are accomplished by means of fenders, body construction or other means of enclosure, then no such protectors or flaps are required. Rear wheels not covered at the top by fenders, bodies or other parts of the vehicle shall be covered at the top by protective means extending at least to the center line of the rearmost axle.
(ORC 5577.11)

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

339.06 VEHICLES TRANSPORTING EXPLOSIVES.

(a) Any person operating any vehicle transporting explosives upon a street or highway shall at all times comply with the following requirements:

(1) Such vehicle shall be marked or placarded on each side and on the rear with the word "EXPLOSIVES" in letters not less than eight inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four inches square marked with the word "DANGER" in white letters six inches high, or shall be marked or placarded in accordance with Section 177.823 of the United States Department of Transportation Regulations.

(2) Such vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at convenient points on such vehicle. (ORC 4513.29)

(b) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4513.99)

339.07 TOWING REQUIREMENTS.

(a) When one vehicle is towing another vehicle, the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby, and such drawbar or other connection shall not exceed fifteen feet from one vehicle to the other, except the connection between any two vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered.

(b) When one vehicle is towing another and the connection consists only of a chain, rope or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve inches square.

(c) In addition to such drawbar or other connection, each trailer and each semitrailer which is not connected to a commercial tractor by means of a fifth wheel shall be coupled with stay chains or cables to the vehicle by which it is being drawn. The chains or cables shall be of sufficient size and strength to prevent the towed vehicle's parting from the drawing vehicle in case the drawbar or other connection should break or become disengaged. In case of a loaded pole trailer, the connecting pole to the drawing vehicle shall be coupled to the drawing vehicle with stay chains or cables of sufficient size and strength to prevent the towed vehicle's parting from the drawing vehicle.

(d) Every trailer or semitrailer, except pole and cable trailers and pole and cable dollies operated by a public utility, as defined in Ohio R.C. 5727.01, shall be equipped with a coupling device which shall be so designed and constructed that the trailer will follow substantially in the path of the vehicle drawing it, without whipping or swerving from side to side. Vehicles used to transport agricultural produce or agricultural production materials between a local place of storage and supply and the farm, when drawn or towed on a street or highway at a speed of twenty-five miles per hour or less, and vehicles designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of twenty-five miles per hour or less shall have a drawbar or other connection, including the hitch mounted on the towing vehicle, which shall be of sufficient strength to pull all the weight towed thereby. Only one such vehicle used to transport agricultural produce or agricultural production materials as provided in this section may be towed or drawn at one time, except as follows:

(1) An agricultural tractor may tow or draw more than one such vehicle;

(2) A pickup truck or straight truck designed by the manufacturer to carry a load of not less than one-half ton and not more than two tons may tow or draw not more than two such vehicles that are being used to transport agricultural produce from the farm to a local place of storage. No vehicle being so towed by such a pickup truck or straight truck shall be considered to be a motor vehicle. (ORC 4513.32)

(e) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4513.99)

339.08 LOADS DROPPING OR LEAKING; REMOVAL REQUIRED; TRACKING MUD.

(a) No vehicle shall be driven or moved on any street, highway or other public place unless such vehicle is so constructed, loaded or covered as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand or other substances may be dropped for the purpose of securing traction, or water or other substances may be sprinkled on a roadway in cleaning or maintaining such roadway.

(b) Except for a farm vehicle used to transport agricultural produce or agricultural production materials or a rubbish vehicle in the process of acquiring its load, no vehicle loaded with garbage, swill, cans, bottles, waste paper, ashes, refuse, trash, rubbish, waste, wire, paper, cartons, boxes, glass, solid waste or any other material of an unsanitary nature that is susceptible to blowing or bouncing from a moving vehicle shall be driven or moved on any street, highway or other public place unless the load is covered with a sufficient cover to prevent the load or any part of the load from spilling onto the street, highway or other public place.
(ORC 4513.31)

(c) No person shall operate any vehicle so as to track or drop mud, stones, gravel or other similar material on any street, highway or other public place.

(d) It shall be the duty of the driver of a vehicle who unlawfully drops or deposits mud, stones, gravel or other similar material or permits the load or any portion thereof to be dropped or deposited upon any street, highway or other public place to immediately remove the same or cause it to be removed. (ORC 4513.31)

(e) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4513.99)

339.09 SHIFTING LOAD; LOOSE LOADS.

(a) In addition to any other lawful requirements of load distribution, no person shall operate any vehicle upon a street or highway unless such vehicle is so laden as to prevent its contents from shifting or otherwise unbalancing the vehicle to such an extent as to interfere with the safe operation of the same.

(b) No motor vehicle or trailer shall be driven unless the tailboard or tailgate, tarpaulins, chains (except ground or contact chains), ropes, stakes, poles, and the like, or any part of the load, are securely fastened to prevent dangling, flapping, swinging or falling from the side, end or top of the load or body. All projecting cargo shall be properly guarded by a red flag or cloth or a red light or lantern as required by Section 337.08.

(c) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

339.10 VEHICLES WITH SPIKES, LUGS AND CHAINS.

(a) No person shall drive over the improved streets of this Municipality a traction engine or tractor with tires or wheels equipped with ice picks, spuds, spikes, chains or other projections of any kind extending beyond the cleats, or no person shall tow or in any way pull another vehicle over the improved streets of this Municipality, which towed or pulled vehicle has tires or wheels equipped with ice picks, spuds, spikes, chains or other projections of any kind. "Traction engine" or "tractor," as used in this section, applies to all self-propelling engines equipped with metal-tired wheels operated or propelled by any form of engine, motor or mechanical power. (ORC 5589.08)

(b) Whoever violates this section is guilty of a minor misdemeanor. (ORC 5589.99)

339.11 USE OF STUDDED TIRES AND CHAINS.

(a) For purposes of this section, "studded tire" means any tire designed for use on a vehicle, and equipped with metal studs or studs of wear-resisting material that project beyond the tread of the traction surface of the tire. "Motor vehicle," "street or highway," "public safety vehicle" and "school bus" have the same meanings as given those terms in Chapter 301.

(b) (1) Except as provided in subsection (b)(2) hereof, no person shall operate any motor vehicle, other than a public safety vehicle or bus, that is equipped with studded tires on any street or highway, except during the period extending from November 1 of each year through April 15 of the succeeding year.

(2) A person may operate a motor vehicle that is equipped with retractable studded tires with the studs retracted at any time of the year, but shall operate the motor vehicle with the studs extended only as provided in subsection (b)(1) hereof.

(c) This section does not apply to the use of tire chains when there is snow or ice on the streets or highways where such chains are being used, or the immediate vicinity thereof. (ORC 5589.081)

(d) Whoever violates this section is guilty of a minor misdemeanor. (ORC 5589.99)

CHAPTER 341
Commercial Drivers

341.01 Definitions.
341.02 Exemptions.
341.03 Prerequisites to operation of a commercial motor vehicle.
341.04 Prohibitions.
341.05 Criminal offenses.
341.06 Employment of drivers of commercial vehicles.

CROSS REFERENCES

See sectional histories for similar State law
Disqualification - see Ohio R.C. 4506.16
Suspension or revocation of license - see Ohio R.C. 4507.16
Warning devices when disabled on freeways - see Ohio R.C. 4513.28
Arrest notice of driver - see Ohio R.C. 5577.14
Load limits - see TRAF. Ch. 339

341.01 DEFINITIONS.

As used in this chapter:

(a) "Alcohol concentration" means the concentration of alcohol in a person's blood, breath or urine. When expressed as a percentage, it means grams of alcohol per the following:
  (1) One hundred milliliters of whole blood, blood serum, or blood plasma;
  (2) Two hundred ten liters of breath;
  (3) One hundred milliliters of urine.

(b) "Commercial driver's license" means a license issued in accordance with Ohio R.C. Chapter 4506 that authorizes an individual to drive a commercial motor vehicle.

(c) "Commercial motor vehicle" means any motor vehicle designed or used to transport persons or property that meets any of the following qualifications:
  (1) Any combination of vehicles with a gross vehicle weight or combined gross vehicle weight rating of 26,001 pounds or more, provided the gross vehicle weight or gross vehicle weight rating of the vehicle or vehicles being towed is in excess of 10,000 pounds;
  (2) Any single vehicle with a gross vehicle weight or gross vehicle weight rating of 26,001 pounds or more;
  (3) Any single vehicle or combination of vehicles that is not a class A or class B vehicle, but is designed to transport sixteen or more passengers including the driver;

(4) Any school bus with a gross vehicle weight or gross vehicle weight rating of less than 26,001 pounds that is designed to transport fewer than sixteen passengers including the driver;

(5) Is transporting hazardous materials for which placarding is required under subpart F of 49 C.F.R. part 172, as amended;

(6) Any single vehicle or combination of vehicles that is designed to be operated and to travel on a public street or highway and is considered by the Federal Motor Carrier Safety Administration to be a commercial motor vehicle, including, but not limited to, a motorized crane, a vehicle whose function is to pump cement, a rig for drilling wells, and a portable crane.

(d) "Controlled substance" means all of the following:

(1) Any substance classified as a controlled substance under the "Controlled Substances Act," 80 Stat. 1242 (1970), 21 U.S.C.A. 802(6), as amended;

(2) Any substance included in schedules I through V of 21 C.F.R. part 1308, as amended;

(3) Any drug of abuse.

(e) "Disqualification" means any of the following:

(1) The suspension, revocation, or cancellation of a person's privileges to operate a commercial motor vehicle;

(2) Any withdrawal of a person's privileges to operate a commercial motor vehicle as the result of a violation of state or local law relating to motor vehicle traffic control other than parking, vehicle weight, or vehicle defect violations;

(3) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. 391.

(f) "Drive" means to drive, operate or be in physical control of a motor vehicle.

(g) "Driver" means any person who drives, operates or is in physical control of a commercial motor vehicle or is required to have a commercial driver's license.

(h) "Driver's license" means a license issued by the Ohio Bureau of Motor Vehicles that authorizes an individual to drive.

(i) "Drug of abuse" means any controlled substance, dangerous drug as defined in Ohio R.C. 4729.01 or over-the-counter medication that, when taken in quantities exceeding the recommended dosage, can result in impairment of judgment or reflexes.

(j) "Employer" means any person, including the Federal Government, any state and a political subdivision of any state, that owns or leases a commercial motor vehicle or assigns a person to drive such a motor vehicle.

(k) "Endorsement" means an authorization on a person's commercial driver's license that is required to permit the person to operate a specified type of commercial motor vehicle.

(l) "Farm truck" means a truck controlled and operated by a farmer for use in the transportation to or from a farm, for a distance of not more than one hundred fifty miles, of products of the farm, including livestock and its products, poultry and its products, floricultural and horticultural products, and in the transportation to the farm, from a distance of not more than one hundred fifty miles, of supplies for the farm, including tile, fence, and every other thing or commodity used in agricultural, floricultural, horticultural, livestock and poultry production, and livestock, poultry and other animals and things used for breeding, feeding, or other purposes connected with the operation of the farm, when the truck is operated in accordance with this subsection and is not used in the operations of a motor carrier, as defined in Ohio R.C. 4923.01.

(m) "Fatality" means the death of a person as the result of a motor vehicle accident occurring not more than three hundred sixty-five days prior to the date of a death.
(n) "Felony" means any offense under federal or state law that is punishable by death or specifically classified as a felony under the law of this State, regardless of the penalty that may be imposed.
(o) "Foreign jurisdiction" means any jurisdiction other than a state.
(p) "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single or a combination vehicle. The gross vehicle weight rating of a combination vehicle is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of each towed unit.
(q) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 C.F.R. part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. part 73, as amended.
(r) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, except that such term does not include a vehicle, machine, tractor, trailer or semitrailer operated exclusively on a rail.
(s) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, local, Canadian or Mexican jurisdiction declaring that a driver, commercial motor vehicle or commercial motor carrier operation is out of service as defined in 49 C.F.R. 390.5.
(t) "Public safety vehicle" has the same meaning as in divisions (E)(1) and (3) of Ohio R.C. 4511.01.
(u) "Recreational vehicle" includes every vehicle that is defined as a recreational vehicle in Ohio R.C. 4501.01 and is used exclusively for purposes other than engaging in business for profit.
(v) "School bus" has the same meaning as in Ohio R.C. 4511.01.
(w) "State" means a state of the United States and includes the District of Columbia.
(x) "Tester" means a person or entity acting pursuant to a valid agreement entered into pursuant to Ohio R.C. 4506.09.
(y) "United States" means the fifty states and the District of Columbia.
(z) "Vehicle" has the same meaning as in Ohio R.C. 4511.01.
(ORC 4506.01)

341.02 EXEMPTIONS.

Section 341.02 has been deleted from the Codified Ordinances. Former Ohio R.C. 4506.02 from which Section 341.02 was derived was repealed by Am. Sub. H.B. No. 68, effective June 29, 2005. The exemptions are now contained in Section 341.03.

341.03 PREREQUISITES TO OPERATION OF A COMMERCIAL MOTOR VEHICLE.

(a) Except as provided in subsections (b) and (c) of this section, the following shall apply:

(1) No person shall drive a commercial motor vehicle on a highway in this Municipality unless the person holds, and has in the person's possession, any of the following:

A. A valid commercial driver's license with proper endorsements for the motor vehicle being driven, issued by the Registrar of Motor Vehicles, or by another jurisdiction recognized by this State;

B. A valid examiner's commercial driving permit issued under Ohio R.C. 4506.13;

C. A valid restricted commercial driver's license and waiver for farm-related service industries issued under Ohio R.C. 4506.24;

D. A valid commercial driver's license temporary instruction permit issued by the Registrar, provided that the person is accompanied by an authorized state driver's license examiner or tester or a person who has been issued and has in the person's immediate possession a current, valid commercial driver's license and who meets the requirements of Ohio R.C. 4506.06(B).

(2) No person who has been a resident of this State for thirty days or longer shall drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

(b) Nothing in subsection (a) of this section applies to any qualified person when engaged in the operation of any of the following:

(1) A farm truck;

(2) Fire equipment for a fire department, volunteer or nonvolunteer fire company, fire district, or joint fire district;

(3) A public safety vehicle used to provide transportation or emergency medical service for ill or injured persons;

(4) A recreational vehicle;

(5) A commercial motor vehicle within the boundaries of an eligible unit of local government, if the person is employed by the eligible unit of local government and is operating the commercial motor vehicle for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting, but only if either the employee who holds a commercial driver's license issued under Ohio R.C. Chapter 4506 and ordinarily operates a commercial motor vehicle for these purposes is unable to operate the vehicle, or the employing eligible unit of local government determines that a snow or ice emergency exists that requires additional assistance;

(6) A vehicle operated for military purposes by any member or uniformed employee of the armed forces of the United States or their reserve components, including the Ohio national guard. This exception does not apply to United States reserved technicians.

(7) A commercial motor vehicle that is operated for nonbusiness purposes. "Operated for nonbusiness purposes" means that the commercial motor vehicle is not used in commerce as "commerce" is defined in 49 C.F.R. 383.5, as amended, and is not regulated by the Public Utilities Commission pursuant to Ohio R.C. Chapter 4905, 4921, or 4923.

(8) A motor vehicle that is designed primarily for the transportation of goods and not persons, while that motor vehicle is being used for the occasional transportation of personal property by individuals not for compensation and not in the furtherance of a commercial enterprise.

(9) A police SWAT team vehicle.

(10) A police vehicle used to transport prisoners.

(c) Nothing contained in subsection (b)(5) of this section shall be construed as preempting or superseding any law, rule, or regulation of this State concerning the safe operation of commercial motor vehicles.

(d) Whoever violates this section is guilty of a misdemeanor of the first degree. (ORC 4506.03)

341.04 PROHIBITIONS.

(a) No person shall do any of the following:

(1) Drive a commercial motor vehicle while having in the person's possession or otherwise under the person's control more than one valid driver's license issued by this State, any other state or by a foreign jurisdiction;

(2) Drive a commercial motor vehicle on a highway in this Municipality in violation of an out-of-service order, while the person's driving privilege is suspended, revoked or canceled, or while the person is subject to disqualification;

(3) Drive a motor vehicle on a highway in this Municipality under authority of a commercial driver's license issued by another state or a foreign jurisdiction, after having been a resident of this State for thirty days or longer.

(b) Whoever violates this section is guilty of a misdemeanor of the first degree. (ORC 4506.04)

341.05 CRIMINAL OFFENSES.

(a) No person who holds a commercial driver's license, or commercial driver's license temporary instruction permit or who operates a motor vehicle for which a commercial driver's license or permit is required shall do any of the following:

(1) Drive a commercial motor vehicle while having a measureable or detectable amount of alcohol or of a controlled substance in the person's blood, breath or urine;

(2) Drive a commercial motor vehicle while having an alcohol concentration of four-hundredths of one per cent or more by whole blood or breath;

(3) Drive a commercial motor vehicle while having an alcohol concentration of forty-eight-thousandths of one per cent or more by blood serum or blood plasma;

(4) Drive a commercial motor vehicle while having an alcohol concentration of fifty-six-thousandths of one per cent or more by urine;

(5) Drive a motor vehicle while under the influence of a controlled substance;

(6) Drive a motor vehicle in violation of Ohio R.C. 4511.19 or a municipal OVI ordinance as defined in Ohio R.C. 4511.181;

(7) Use a motor vehicle in the commission of a felony;

(8) Refuse to submit to a test under Ohio R.C. 4506.17 or 4511.191;

(9) Operate a commercial motor vehicle while the person's commercial driver's license or permit or other commercial driving privileges are revoked, suspended, canceled, or disqualified;

(10) Cause a fatality through the negligent operation of a commercial motor vehicle, including, but not limited to, the offenses of aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter;

(11) Fail to stop after an accident in violation of Sections 335.12 to 335.14;

(12) Drive a commercial motor vehicle in violation of any provision of Ohio R.C. 4511.61 to 4511.63 or any federal or local law or ordinance pertaining to railroad-highway grade crossings;

(13) Use a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance as defined in Ohio R.C. 3719.01 or the possession with intent to manufacture, distribute, or dispose a controlled substance.

(b) Whoever violates this section is guilty of a misdemeanor of the first degree. (ORC 4506.15)

341.06 EMPLOYMENT OF DRIVERS OF COMMERCIAL VEHICLES.

(a) Each employer shall require every applicant for employment as a driver of a commercial motor vehicle to provide the applicant's employment history for the ten years preceding the date the employment application is submitted to the prospective employer. The following information shall be submitted:

(1) A list of the names and addresses of the applicant's previous employers for which the applicant was the operator of a commercial motor vehicle;
(2) The dates the applicant was employed by these employers;
(3) The reason for leaving each of these employers.

(b) No employer shall knowingly permit or authorize any driver employed by the employer to drive a commercial motor vehicle during any period in which any of the following apply:

(1) The driver's commercial driver's license is suspended, revoked or canceled by any state or a foreign jurisdiction;
(2) The driver has lost the privilege to drive, or currently is disqualified from driving, a commercial motor vehicle in any state or foreign jurisdiction;
(3) The driver, the commercial motor vehicle the driver is driving, or the motor carrier operation is subject to an out-of-service order in any state or foreign jurisdiction;
(4) The driver has more than one driver's license.

(c) No employer shall knowingly permit or authorize a driver to operate a commercial motor vehicle in violation of Section 341.05.

(d) No employer shall knowingly permit or authorize a driver to operate a commercial motor vehicle if the driver does not hold a valid, current commercial driver's license or commercial driver's license temporary instruction permit bearing the proper class or endorsements for the vehicle. No employer shall knowingly permit or authorize a driver to operate a commercial motor vehicle in violation of the restrictions on the driver's commercial driver's license or commercial driver's license temporary instruction permit.

(e) (1) Whoever violates subsection (a), (b) or (d) of this section is guilty of a misdemeanor of the first degree.
(2) Whoever violates subsection (c) of this section may be assessed a fine not to exceed ten thousand dollars. (ORC 4506.20)

CHAPTER 343
Transportation of Radioactive Materials

343.01 Purpose and definitions.
343.02 Permit required.
343.03 Notice.
343.04 Issuance of permit.
343.99 Penalty.

CROSS REFERENCES
Motor vehicle defined - see TRAF. 301.20
Commercial and heavy vehicles - see TRAF. Ch. 339

343.01 PURPOSE AND DEFINITIONS.

(a) The purpose of this chapter is to provide minimum standards and regulations insuring the safe shipment and transportation of radioactive materials through the City.

(b) For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directive.

(1) "Radioactive materials" mean any material or combination of materials, which spontaneously emits ionizing radiation. Materials in which the estimated specific activity is not greater than 0.002 microcuries per gram of materials and in which the radioactivity is essentially uniformly distributed, are not considered to be radioactive materials.

(2) "Large quantity radioactive materials" mean a quantity the aggregate radioactivity of which exceeds that specified in the 10 Code of Federal Regulations (C.F.R.) Part 71 entitled "Packaging of Radioactive Material for Transport", Section 71.4(F).

(3) "Curie" means an expression of the quantity of radioaction in terms of the number of atoms which disintegrate per second; a curie is that quantity of radioactive materials which decays such that thirty-seven (37) billion atoms disintegrate per second.

(4) "Millicurie" means one thousandth of a curie.

(5) "Motor vehicle" means any vehicle defined as a "motor vehicle" in Section 301.20.

(6) "Person" means any individual, partnership, or corporation engaged in the transportation of passengers or property, as common, contract or private carrier, or freight forwarder, as those terms are used in the Interstate Commerce Act, as amended.

(Ord. 78-41. Passed 12-18-78.)

343.02 PERMIT REQUIRED.

(a) A permit issued by the Director of Public Service and Development or a designee thereof shall be required for the shipping or transportation of the following radioactive material by motor vehicle into, within, through or out of the City of Fairview Park.

(1) Plutonium isotopes in any quantity and form exceeding two (2) grams or twenty (20) curies, whichever is less;

(2) Uranium enriched in the isotope U-235 exceeding twenty-five (25) atomic percent of the total uranium content in quantities where the U-235 content exceeds one kilogram;

(3) Any elements with atomic number eighty-nine (89) or greater, the activity of which exceeds twenty (20) curies;

(4) Spent reactor fuel elements or mixed fission products associated with such fuel elements the activity of which exceeds twenty (20) curies;

(5) Large quantity radioactive materials;

(6) Any quantity, arrangement and packaging combination of fissile material specified by the United States Nuclear Regulatory Commission as a "Fissile Class III" shipment in 10 C.F.R. Part 71 entitled "Packaging of Radioactive Materials for Transportation", Section 71.4(d)(3); or

(7) Any shipment or transportation of radioactive materials that is required by the appropriate regulating agency to be accompanied by an escort for safety reasons.

(b) This section shall not apply to radioactive materials shipped or transported by or for the United States Government for military or security purposes or which are related to national defense. (Ord. 78-41. Passed 12-18-78.)

343.03 NOTICE.

When those radioactive materials requiring a permit as specified in this chapter are to be shipped or transported into, within, through or out of the City of Fairview Park, the shipper or carrier, or person otherwise responsible shall first notify the Director of Public Service and Development or a designee thereof, in a form provided, two weeks prior to the date of shipment. The form shall include the date of shipment, type and quantity of radioactive materials involved, method of transportation, route, starting point, destination and such other information as the Director or a designee may reasonably require. Any information which cannot be supplied two weeks prior to shipment or transportation, shall be supplied promptly by the person responsible for such shipment or transportation when such information becomes available to him. Nothing herein shall be construed as requiring the disclosure of any defense information or restricted data as defined in the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974, as amended. (Ord. 78-41. Passed 12-18-78.)

343.04 ISSUANCE OF PERMIT.

(a) The Director of Public Service and Development or a designee thereof, shall not issue a permit to any person for the shipment or transportation of those radioactive materials specified in this chapter, unless:

(1) There is a showing that the radioactive material has been or will be containerized and packaged, and all warning labels affixed to the outer container holding the radioactive material and the motor vehicle transporting such material, in conformity with the regulations of the United States Department of Transportation, United States Nuclear Regulatory Commission or other related Federal or State agencies regardless of whether the shipment is being made intra-City, intra-State or inter-State; and

(2) There is a showing that the shipment or transportation of radioactive materials is necessitated by urgent public policy or national security interests transcending public safety and health concerns of the City. For the purpose of this section an "urgent public policy" shall not include interests other than medical and educational interests, unless expressly authorized in writing by the United States Department of Transportation, or by any other appropriate Federal or State agency which may be required by the Director or a designee. Such authorization shall state that the particular interest involved is, in the opinion of the agency, permitted by Federal or State regulations pertaining to the shipment or transportation of radioactive materials, and that the interest involved justifies the apparent risks resulting from such shipment or transportation.

(b) Radioactive materials which are permitted to be shipped or transported through the City pursuant to this chapter shall be shipped or transported through the City over such route or routes, or at such time or times of the day, consistent with the public health, safety and welfare, and the convenience of the shipper or carrier, as the Director or a designee may direct.
(Ord. 78-41. Passed 12-18-78.)

343.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the first degree. (Ord. 78-41. Passed 12-18-78.)

CHAPTER 351
Parking Generally

351.01 Police may remove unattended vehicle which obstructs traffic.
351.02 Registered owner prima-facie liable for unlawful parking.
351.03 Prohibited standing or parking places.
351.04 Parking near curb; handicapped locations on public and private lots and garages.
351.05 Manner of angle parking.
351.06 Selling, washing or repairing vehicle upon roadway.
351.07 Unattended vehicle: duty to stop engine, remove key, set brake and turn wheels.
351.08 Opening vehicle door on traffic side.
351.09 Standing or parking in truck zones limited.
351.10 Bus stops and taxicab stands.
351.11 Parking in alleys and narrow streets; exceptions.
351.12 Prohibition against parking on streets or highways.
351.13 Motor carriers.
351.14 Moving other person's vehicle into prohibited parking space.
351.15 Trailer parking.
351.16 All-night parking.
351.17 Snow emergency.
351.18 Placing snow on streets.
351.19 Waiver.
351.20 Parking on posted private property.
351.21 Parking in yards.

CROSS REFERENCES

See sectional histories for similar State law
Owner nonliability, lease defense - see Ohio R.C. 4511.071
Police may remove ignition key from unattended vehicle - see TRAF. 303.03
Parking near stopped fire apparatus - see TRAF. 331.27
Lights on parked or stopped vehicles - see TRAF. 337.09

351.01 POLICE MAY REMOVE UNATTENDED VEHICLE WHICH OBSTRUCTS TRAFFIC.

Whenever any police officer finds a vehicle unattended upon any street, bridge or causeway, or in any tunnel, where such vehicle constitutes an obstruction to traffic, such officer may provide for the removal of such vehicle to the nearest garage or other place of safety. (ORC 4511.67)

351.02 REGISTERED OWNER PRIMA-FACIE LIABLE FOR UNLAWFUL PARKING.

In any hearing on a charge of illegally parking a motor vehicle, testimony that a vehicle bearing a certain license plate was found unlawfully parked as prohibited by the provisions of this Traffic Code, and further testimony that the record of the Ohio Registrar of Motor Vehicles shows that the license plate was issued to the defendant, shall be prima-facie evidence that the vehicle which was unlawfully parked, was so parked by the defendant. A certified registration copy, showing such fact, from the Registrar shall be proof of such ownership.

351.03 PROHIBITED STANDING OR PARKING PLACES.

(a) No person shall stand or park a vehicle, except when necessary to avoid conflict with other traffic or to comply with the provisions of this Traffic Code, or while obeying the directions of a police officer or a traffic control device, in any of the following places:

(1) On a sidewalk, curb or street lawn area, except a bicycle;
(2) In front of a public or private driveway;
(3) Within an intersection;
(4) Within ten feet of a fire hydrant;
(5) On a crosswalk;
(6) Within twenty feet of a crosswalk at an intersection;
(7) Within thirty feet of, and upon the approach to, any flashing beacon, stop sign or traffic control device;
(8) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the end of a safety zone, unless a different length is indicated by a traffic control device;
(9) Within fifty feet of the nearest rail of a railroad crossing;
(10) Within twenty feet of a driveway entrance to any fire station and, on the side of the street opposite the entrance to any fire station, within seventy-five feet of the entrance when it is properly posted with signs;
(11) Alongside or opposite any street excavation or obstruction when such standing or parking would obstruct traffic;
(12) Alongside any vehicle stopped or parked at the edge or curb of a street;
(13) Upon any bridge or other elevated structure upon a street, or within a street tunnel;
(14) At any place where signs prohibit stopping, standing or parking, or where the curbing or street is painted yellow, or at any place in excess of the maximum time limited by signs;
(15) Within one foot of another parked vehicle;
(16) On a roadway having less than twenty feet in width;
(17) In any private driveway, alleyway or areaway between buildings, when, in the opinion of the Fire Warden, such parking constitutes a fire hazard or an obstruction to or interference with operation of the fire-fighting equipment of the Municipality, upon proper written notice to the owner thereof;

(18) Upon the side of the street on which fire hydrant are placed, unless the roadway exceed thirty feet in width, when signs are erected giving notice thereof;
(19) Within twenty-five feet of any motor coach or bus stop;
(20) Within fifty feet of any hazardous or congested place, when such standing, stopping or parking would increase such hazard;
(21) Within fifty feet of any school grounds or playgrounds, when such standing, stopping or parking would cause a hazardous condition;
(22) Between the sidewalk and roadway;
(23) Municipal property, unless otherwise specified.
(Ord. 59-1. Passed 1-4-59; Ord. 60-67. Passed 9-6-60.)

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree. (ORC 4511.68)

351.04 PARKING NEAR CURB; HANDICAPPED LOCATIONS ON PUBLIC AND PRIVATE LOTS AND GARAGES.

(a) Every vehicle stopped or parked upon a roadway where there is an adjacent curb shall be stopped or parked with the curb side wheels of the vehicle parallel with and not more than twelve inches from the curb, unless it is impossible to approach so close to the curb; in such case the stop shall be as close to the curb as possible and only for the time necessary to discharge and receive passengers or to load or unload merchandise.

(b) (1) This subsection does not apply to streets or parts thereof where angle parking is lawfully permitted. However, no angle parking shall be permitted on a state route unless an unoccupied roadway width of not less than twenty-five feet is available for free-moving traffic.
(2) A. No angled parking space that is located on a state route within a municipal corporation is subject to elimination, irrespective of whether there is or is not at least twenty-five feet of unoccupied roadway width available for free-moving traffic at the location of that angled parking space, unless the municipal corporation approves of the elimination of the angled parking space.
B. Replacement, repainting or any other repair performed by or on behalf of the municipal corporation of the lines that indicate the angled parking space does not constitute an intent by the municipal corporation to eliminate the angled parking space.

(c) (1) A. Except as provided in subsection (c)(1)B. hereof, no vehicle shall be stopped or parked on a road or highway with the vehicle facing in a direction other than the direction of travel on that side of the road or highway.
B. The operator of a motorcycle may back the m otorcycle into an angled parking space so that when the motorcycle is parked it is facing in a direction other than the direction of travel on the side of the road or highway.

(2) The operator of a motorcycle may back the motorcycle into a parking space that is located on the side of, and parallel to, a road or highway. The motorcycle may face any direction when so parked. Not more than two motorcycles at a time shall be parked in a parking space as described in subsection (c)(2) of this section irrespective of whether or not the space is metered.

(d) Notwithstanding any provision of this Code or any rule, air compressors, tractors, trucks and other equipment, while being used in the construction, reconstruction, installation, repair or removal of facilities near, on, over or under a street, may stop, stand or park where necessary in order to perform such work, provided a flagperson is on duty, or warning signs or lights are displayed as may be prescribed by the Ohio Director of Transportation.

(e) Special parking locations and privileges for persons with disabilities that limit or impair the ability to walk, also known as handicapped parking spaces or disability parking spaces shall be provided and designated by the Municipality and all agencies and instrumentalities thereof at all offices and facilities, where parking is provided, whether owned, rented or leased, and at all publicly owned parking garages. The locations shall be designated through the posting of an elevated sign, whether permanently affixed or movable, imprinted with the international symbol of access and shall be reasonably close to exits, entrances, elevators and ramps. All elevated signs posted in accordance with this subsection and Ohio R.C. 3781.111 (C) shall be mounted on a fixed or movable post, and the distance from the ground to the bottom edge of the sign shall measure not less than five feet. If a new sign or a replacement sign designating a special parking location is posted on or after October 14, 1999, there also shall be affixed upon the surface of that sign or affixed next to the designating sign a notice that states the fine applicable for the offense of parking a motor vehicle in the special designated parking location if the motor vehicle is not legally entitled to be parked in that location.

(f) (1) A. No person shall stop, stand or park any motor vehicle at special parking locations provided under subsection (e) hereof, or at special clearly marked parking locations provided in or on privately owned parking lots, parking garages, or other parking areas and designated in accordance with subsection (e) hereof, unless one of the following applies:

1. The motor vehicle is being operated by or for the transport of a person with a disability that limits or impairs the ability to walk and is displaying a valid removable windshield placard or special license plates;
2. The motor vehicle is being operated by or for the transport of a handicapped person and is displaying a parking card or special handicapped license plates.

B. Any motor vehicle that is parked in a special marked parking location in violation of subsection (f)(1)A. of this section may be towed or otherwise removed from the parking location by the Police Department. A motor vehicle that is so towed or removed shall not be released to its owner until the owner presents proof of ownership of the motor vehicle and pays all towing and storage fees normally imposed by the Municipality for towing and storing motor vehicles. If the motor vehicle is a leased vehicle, it shall not be released to the lessee until the lessee presents proof that that person is the lessee of the motor vehicle and pays all towing and storage fees normally imposed by the Municipality for towing and storing motor vehicles.

C. If a person is charged with a violation of subsection (f)(1)A. of this section, it is an affirmative defense to the charge that the person suffered an injury not more than seventy-two hours prior to the time the person was issued the ticket or citation and that, because of the injury, the person meets at least one of the criteria contained in Ohio R.C. 4503.44(A)(1).

(2) No person shall stop, stand or park any motor vehicle in an area that is commonly known as an access aisle, which area is marked by diagonal stripes and is located immediately adjacent to a special parking location provided under subsection (e) of this section or at a special clearly marked parking location provided in or on a privately owned parking lot, parking garage, or other parking area and designated in accordance with that subsection.

(g) When a motor vehicle is being operated by or for the transport of a person with a disability that limits or impairs the ability to walk and is displaying a removable windshield placard or a temporary removable windshield placard or special license plates, or when a motor vehicle is being operated by or for the transport of a handicapped person and is displaying a parking card or special handicapped license plates, the motor vehicle is permitted to park for a period of two hours in excess of the legal parking period permitted by local authorities, except where local ordinances or police rules provide otherwise or where the vehicle is parked in such a manner as to be clearly a traffic hazard.

(h) As used in this section:

(1) "Handicapped person" means any person who has lost the use of one or both legs, or one or both arms, who is blind, deaf or so severely handicapped as to be unable to move without the aid of crutches or a wheelchair, or whose mobility is restricted by a permanent cardiovascular, pulmonary or other handicapping condition.

(2) "Person with a disability that limits or impairs the ability to walk" has the same meaning as in Ohio R.C. 4503.44.

(3) "Special license plates" and "removable windshield placard" mean any license plates or removable windshield placard or temporary removable windshield placard issued under Ohio R.C. 4503.41 or 4503.44, and also mean any substantially similar license plates or removable windshield placard or temporary removable windshield placard issued by a state, district, country or sovereignty.

(i) (1) Whoever violates subsection (a) or (c) of this section is guilty of a minor misdemeanor.

(2) A. Whoever violates subsection (f)(1)A.1. or 2. of this section is guilty of a misdemeanor and shall be punished as provided in subsection (i)(2)A. and B. of this section. Except as otherwise provided in subsection (i)(2)A. of this section, an offender who violates subsection (f)(1)A.1. or 2. of this section shall be fined not less than two hundred fifty dollars ($250.00) nor more than five hundred dollars ($500.00). An offender who violates subsection (f)(1)A.1. or 2. of this section shall be fined not more than one hundred dollars ($100.00) if the offender, prior to sentencing, proves either of the following to the satisfaction of the court:

1. At the time of the violation of subsection (f)(1)A.1. of this section, the offender or the person for whose transport the motor vehicle was being operated had been issued a removable windshield placard that then was valid or special license plates that then were valid but the offender or the person neglected to display the placard or license plates as described in subsection (f)(1)A.1. of this section.
2. At the time of the violation of subsection (f)(1)A.2. of this section, the offender or the person for whose transport the motor vehicle was being operated had been issued a parking card that then was valid or special handicapped license plates that then were valid but the offender or the person neglected to display the card or license plates as described in subsection (f)(1)A.2. of this section.

B. In no case shall an offender who violates subsection (f)(1)A.1. or 2. of this section be sentenced to any term of imprisonment.

An arrest or conviction for a violation of subsection (f)(1)A.1. or 2. of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(3) Whoever violates subsection (f)(2) of this section shall be fined not less than two hundred fifty dollars ($250.00) nor more than five hundred dollars ($500.00).

In no case shall an offender who violates subsection (f)(2) of this section be sentenced to any term of imprisonment. An arrest or conviction for a violation of subsection (f)(2) of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness. (ORC 4511.69)

351.05 MANNER OF ANGLE PARKING.

(a) Upon streets where angle parking is permitted, no person shall stop, stand or park a vehicle other than at the angle to the curb or edge of the roadway as is indicated by appropriate signs or markings.

(b) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

351.06 SELLING, WASHING OR REPAIRING VEHICLE UPON ROADWAY.

(a) No person shall stop, stand or park a vehicle upon any roadway for the principal purpose of:

(1) Displaying such vehicle for sale;
(2) Washing, greasing or repairing such vehicle except repairs necessitated by an emergency.

(b) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

351.07 UNATTENDED VEHICLE: DUTY TO STOP ENGINE, REMOVE KEY, SET BRAKE AND TURN WHEELS.

(a) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, effectively setting the parking brake, and, when the motor vehicle is standing upon any grade, turning the front wheels to the curb or side of the highway.

The requirements of this section relating to the stopping of the engine, locking of the ignition and removing the key from the ignition of a motor vehicle do not apply to any of the following:

(1) A motor vehicle that is parked on residential property;
(2) A motor vehicle that is locked, regardless of where it is parked;
(3) An emergency vehicle;
(4) A public safety vehicle.

(b) No person shall park upon any private parking lot used in connection with a business establishment unless he shall first lock the ignition, remove the key therefrom and take such key with him, unless an attendant is on duty in the private parking lot, and persons parking such motor vehicle are specifically directed by the attendant to leave the key in the car. (Ord. 73-8. Passed 3-5-73.)

(c) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

351.08 OPENING VEHICLE DOOR ON TRAFFIC SIDE.

(a) No person shall open the door of a vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree. (ORC 4511.70(C), (D))

351.09 STANDING OR PARKING IN TRUCK ZONES LIMITED.

(a) No person shall stop, stand or park any vehicle other than a commercial car in any place marked as a truck zone during the hours when such zone is reserved for loading purposes.

(b) No person shall stop, stand or park a commercial car for any purpose or length of time other than for the expeditious unloading and delivery or pickup and loading of materials in any place marked as a truck zone during the hours when the provisions applicable to truck zones are in effect. In no case shall the stop for loading and unloading of materials exceed thirty minutes. (Ord. 59-1. Passed 1-5-59.)

(c) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

351.10 BUS STOPS AND TAXICAB STANDS.

(a) No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand when any such stop or stand has been officially designated and appropriately posted, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone, and then only for a period not to exceed three minutes, if such stopping is not prohibited therein by posted signs.

(b) The operator of a bus shall not stop, stand or park such vehicle upon any street at any place for the purpose of loading or unloading passengers or their baggage other than at a bus stop so designated and posted as such, except in case of an emergency.

(c) The operator of a bus shall enter a bus stop on a public street in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of such vehicle not further than eighteen inches from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

(d) The operator of a taxicab shall not stand or park such vehicle upon any street at any place other than in a taxicab stand so designated and posted as such. This provision shall not prevent the operator of a taxicab from temporarily stopping in accordance with other stopping or parking provisions at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers.

(e) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

351.11 PARKING IN ALLEYS AND NARROW STREETS; EXCEPTIONS.

(a) No person shall stop, stand or park any vehicle upon a street, other than an alley, in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for free movement of vehicular traffic, except that a driver may stop temporarily during the actual loading or unloading of passengers or when directed to by a police officer or traffic control signal.

Except as otherwise provided by law, no person shall stop, stand or park a vehicle within an alley except while actually loading and unloading, and then only for a period not to exceed thirty minutes.

(b) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

351.12 PROHIBITION AGAINST PARKING ON STREETS OR HIGHWAYS.

(a) Upon any street or highway outside a business or residence district, no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main traveled part of the street or highway if it is practicable to stop, park or so leave such vehicle off the paved or main traveled part of such street or highway. In every event, a clear and unobstructed portion of the street or highway opposite such standing vehicle shall be left for the free passage of other vehicles, and a clear view of such stopped vehicle shall be available from a distance of 200 feet in each direction upon such street or highway.

This section does not apply to the driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a street or highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in such position.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree. (ORC 4511.66)

351.13 MOTOR CARRIERS.

(a) A motor carrier and its agents and employees shall not park any motor vehicle used in the business of such motor carrier on any street, except for a period of time not exceeding three minutes while actually discharging or taking on passengers, or for a period of time not exceeding ten minutes while engaging in receiving or discharging goods, wares or merchandise. (Ord. 59-1. Passed 1-5-59.)

(b) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

351.14 MOVING OTHER PERSON'S VEHICLE INTO PROHIBITED PARKING SPACE.

(a) No person shall move a vehicle not owned by or lawfully in the charge of such person into an area in which parking is prohibited or away from a curb such a distance as is not lawful. (Ord. 59-1. Passed 1-5-59.)

(b) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

351.15 TRAILER PARKING.

(a) No person shall stand or park upon a street any commercial trailer which is detached from the tractor or other means of locomotion except for the minimum period required in the usual course of business for making delivery of or loading merchandise for delivery. (Ord. 65-11. Passed 3-15-65.)

(b) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

351.16 ALL-NIGHT PARKING.

(a) No person shall park any motor vehicle on the streets of the City between 2:00 a.m. and 6:00 a.m., except physicians and clergymen and emergency calls. (Ord. 65-11. Passed 3-15-65.)

(b) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

351.17 SNOW EMERGENCY.

(a) The Director of Public Service and Development is hereby authorized to designate any and all streets within the City on which parking shall be prohibited during snow emergencies.

(b) A snow emergency shall go into effect when there exists two inches or more of accumulated snow as determined by the United States Weather Bureau. Such snow emergency shall be in effect until expressly lifted by the Director.

(c) The Director is hereby directed to post signs on the major thoroughfares leading into the City notifying the public that parking is prohibited on the streets of the City while a snow emergency is in effect.

(d) The Director is authorized to announce to the press and radio and television stations within the Cleveland area that a snow emergency is in effect and, therefore, parking on all streets in forbidden in order to facilitate the clearing of streets. No person shall park any vehicle on any street in the City during the time a snow emergency is in effect.
(Ord. 77-4. Passed 3-7-77.)

(e) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

351.18 PLACING SNOW ON STREETS.

(a) No person shall cause or permit snow to be moved, placed or stored over or upon any portion of a dedicated street or road, except that snow may be stored upon the paved or unpaved tree lawn or curb lawn area adjacent to the premises from which the snow is being removed. (Ord. 70-4. Passed 1-19-70.)

(b) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

351.19 WAIVER.

(a) Except as otherwise provided in this section, any person who has received notice to appear and answer to, for violating any provision of this chapter shall upon filing personally with the Chief of Police or his designee a written plea of guilty, commonly known as a waiver, within twenty-four hours after such notification, Sundays or legal holidays excepted, may for such offense pay a fine of fifteen dollars ($15.00) without costs, or within forty-eight hours after such notification, Sundays and legal holidays excepted, may for such offense pay a fine of twenty-five dollars ($25.00) without costs, or within seventy-two hours after such notification, Sundays and legal holidays excepted, may for such offense pay a fine of fifty dollars ($50.00) without costs.

(b) Any person who has received notice to appear and answer to, for violating Section 351.03(a)(4) or (17) shall upon filing personally with the Chief of Police or his designee a written plea of guilty, commonly known as a waiver, within twenty-four hours after such notification, Sundays or legal holidays excepted, may for such offense pay a fine of twenty-five dollars ($25.00) without costs, or within forty-eight hours after such notification, Sundays and legal holidays excepted, may for such offense pay a fine of fifty dollars ($50.00) without costs, or within seventy-two hours after such notification, Sundays and legal holidays excepted, may for such offense pay a fine of seventy-five dollars ($75.00) without costs.

(c) Any person who has received notice to appear and answer to a violation of Section 351.04(f) shall upon filing personally with the Chief of Police or his designee a written plea of guilty, commonly known as a waiver, within twenty-four hours after such notification, Sundays or legal holidays excepted, may for such offense pay a fine of fifty dollars ($50.00) without costs, or within forty-eight hours after such notification, Sundays and legal holidays excepted, may for such offense pay a fine of seventy-five dollars ($75.00) without costs, or within seventy-two hours after such notification, Sundays and legal holidays excepted, may for such offense pay a fine of one hundred dollars ($100.00) without costs.

(d) Upon the failure of any person to appear and make such plea and deposit the necessary funds as provided in subsections (a), (b) or (c) hereof, within the maximum period designated to appear and answer to a violation of this chapter, a warrant may be issued for the arrest of the offender, and upon conviction of the offense such person shall be subject to the penalty provided in Section 303.99(a)(1).
(Ord. 16-22. Passed 10-3-16.)

351.20 PARKING ON POSTED PRIVATE PROPERTY.

(a) If an owner of private property posts on the property in a conspicuous manner, prohibition against parking on the property or conditions and regulations under which parking is permitted, no person shall do either of the following:

(1) Park a vehicle on the property without the owner's consent;

(2) Park a vehicle on the property in violation of any condition or regulation posted by the owner.

(b) Whoever violates this section is guilty of a minor misdemeanor.
(ORC 4511.681)

351.21 PARKING IN YARDS.

(a) No person shall stand or park a motor vehicle outside on any lot as defined in Section 1105.12(a) and (b) of the Fairview Park Codified Ordinances except on a driveway or other areas on such lot approved for parking pursuant to the Codified Ordinances of the City of Fairview Park. (Ord. 03-09. Passed 2-3-03.)

(b) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

TITLE NINE - Pedestrians, Bicycles and Motorcycles

Chap. 371. Pedestrians.
Chap. 373. Bicycles and Motorcycles.
Chap. 375. Bicycle Registration.
Chap. 377. Snowmobiles, Off-Highway Motorcycles, and All Purpose Vehicles.

CHAPTER 371
Pedestrians

371.01 Right of way in crosswalk.
371.02 Right of way of blind person.
371.03 Crossing roadway outside crosswalk; diagonal crossings at intersections.
371.04 Moving upon right half of crosswalk.
371.05 Walking and standing on streets; running and jogging.
371.06 Use of highway for soliciting; riding on outside of vehicles.
371.07 Right of way on sidewalk.
371.08 Yielding to public safety vehicle.
371.09 Walking on highway while under the influence.
371.10 On bridges or railroad crossings.
371.11 Persons operating motorized wheelchairs.
371.12 Electric personal assistive mobility devices.

CROSS REFERENCES

See sectional histories for similar State law
Pedestrian defined - see TRAF. 301.22
Pedestrian prohibited on freeways - see TRAF. 303.06
Obedience to traffic control devices - see TRAF. 313.01, 313.03
Pedestrian control signals - see TRAF. 313.05

371.01 RIGHT OF WAY IN CROSSWALK.

(a) When traffic control signals are not in place, not in operation or are not clearly assigning the right of way, the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield or if required by Section 313.09, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.

(c) Subsection (a) hereof does not apply under the conditions stated in Section 371.03(b).

(d) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

(e) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.46)

371.02 RIGHT OF WAY OF BLIND PERSON.

(a) As used in this section "blind person" or "blind pedestrian" means a person having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

The driver of every vehicle shall yield the right of way to every blind pedestrian guided by a guide dog, or carrying a cane which is predominately white or metallic in color, with or without a red tip.

(b) No person, other than a blind person, while on any public highway, street, alley or other public thoroughfare shall carry a white metallic cane, with or without a red tip.

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.47)

371.03 CROSSING ROADWAY OUTSIDE CROSSWALK; DIAGONAL CROSSINGS AT INTERSECTIONS.

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all traffic upon the roadway.

(c) Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(d) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic control devices pertaining to such crossing movements.

(e) This section does not relieve the operator of a vehicle from exercising due care to avoid colliding with any pedestrian upon any roadway.

(f) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree. (ORC 4511.48)

371.04 MOVING UPON RIGHT HALF OF CROSSWALK.

(a) Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree. (ORC 4511.49)

371.05 WALKING AND STANDING ON STREETS; RUNNING AND JOGGING.

(a) No person shall purposely walk, run, jog, stand on or otherwise be in or upon any public street or highway open to motor vehicle traffic other than in a safety zone, in such a manner as to obstruct or interfere with the free passage of vehicular traffic, or to cause an actual or imminent hazardous condition as to any vehicle or person.

(b) No person shall run or jog in any public street or highway open to motor vehicle traffic other than in a safety zone, during the time from one-half hour after sunset to one-half hour before sunrise, or at any other time when there is not sufficient natural light to render discernible persons, vehicles and substantial objects on the street or highway at a distance of 500 feet ahead, unless such person is wearing reflecting clothing or a reflective device. The reflective clothing or a reflecting device shall be worn on the person and be of sufficient size and reflective capacity to be seen at a distance of not less than 500 feet to the person's front and rear, when illuminated by two standard automobile headlights operating at the lawful lower beam setting.

(c) No person shall walk, run or jog upon any two-way public street or highway open to motor vehicle traffic other than on the left side of the public street or highway, facing traffic.

(d) For the purposes of this section, the public street or highway shall not include the sidewalk or a crosswalk. (Ord. 85-42. Passed 6-17-85.)

(e) Whoever violates any provision of this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

371.06 USE OF HIGHWAY FOR SOLICITING; RIDING ON OUTSIDE OF VEHICLES.

(a) No person while on a roadway outside a safety zone shall solicit a ride from the driver of any vehicle.

(b) (1) Except as provided in subsection (b)(2) hereof, no person shall stand on a highway for the purpose of soliciting employment, business or contributions from the occupant of any vehicle.

(2) Council, by ordinance, may authorize the issuance of a permit to a charitable organization to allow a person acting on behalf of the organization to solicit charitable contributions from the occupant of a vehicle by standing on a highway, other than a freeway, as provided in Ohio R.C. 4511.051(A), that is under the jurisdiction of the Municipality. The permit shall be valid for only one period or time, which shall be specified in the permit, in any calendar year. Council also may specify the locations where contributions may be solicited and may impose any other restrictions on or requirements regarding the manner in which the solicitations are to be conducted that Council considers advisable.

(3) As used herein, "charitable organization" means an organization that has received from the Internal Revenue Service a currently valid ruling or determination letter recognizing the tax-exempt status of the organization pursuant to Section 501(c)(3) of the "Internal Revenue Code."

(c) No person shall hang onto, or ride on the outside of any motor vehicle while it is moving upon a roadway, except mechanics or test engineers making repairs or adjustments, or workers performing specialized highway or street maintenance or construction under authority of a public agency.

(d) No operator shall knowingly permit any person to hang onto, or ride on the outside of, any motor vehicle while it is moving upon a roadway, except mechanics or test engineers making repairs or adjustments, or workers performing specialized highway or street maintenance or construction under authority of a public agency.

(e) No driver of a truck, trailer or semitrailer shall knowingly permit any person who has not attained the age of sixteen years to ride in the unenclosed or unroofed cargo storage area of the driver's vehicle if the vehicle is traveling faster than twenty-five miles per hour, unless either of the following applies:

(1) The cargo storage area of the vehicle is equipped with a properly secured seat to which is attached a seat safety belt that is in compliance with federal standards for an occupant restraining device as defined in Ohio R.C. 4513.263(A)(2), the seat and seat safety belt were installed at the time the vehicle was originally assembled and the person riding in the cargo storage area is in the seat and is wearing the seat safety belt;

(2) An emergency exists that threatens the life of the driver or the person being transported in the cargo storage area of the truck, trailer or semitrailer.

(f) No driver of a truck, trailer or semitrailer shall permit any person, except for those workers performing specialized highway or street maintenance or construction under authority of a public agency to ride in the cargo storage area or on a tailgate of the driver's vehicle while the tailgate is unlatched.

(g) (1) Except as otherwise provided in this subsection, whoever violates any provision of subsections (a) to (d) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates any provision of subsections (a) to (d) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates any provision of subsections (a) to (d) of this section is guilty of a misdemeanor of the third degree.

(2) Whoever violates subsection (e) or (f) of this section is guilty of a minor misdemeanor. (ORC 4511.51)

371.07 RIGHT OF WAY ON SIDEWALK.

(a) The driver of a vehicle shall yield the right of way to any pedestrian on a sidewalk.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under Section 303.991 of the Traffic Code. (ORC 4511.441)

371.08 YIELDING TO PUBLIC SAFETY VEHICLE.

(a) Upon the immediate approach of a public safety vehicle as stated in Section 331.21, every pedestrian shall yield the right of way to the public safety vehicle.

(b) This section shall not relieve the driver of a public safety vehicle from the duty to exercise due care to avoid colliding with any pedestrian.

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree. (ORC 4511.452)

371.09 WALKING ON HIGHWAY WHILE UNDER THE INFLUENCE.

(a) A pedestrian who is under the influence of alcohol, any drug of abuse, or any combination of them, to a degree that renders the pedestrian a hazard shall not walk or be upon a highway.

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree. (ORC 4511.481)

371.10 ON BRIDGES OR RAILROAD CROSSINGS.

(a) No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate or barrier after a bridge operation signal indication has been given.

(b) No pedestrian shall pass through, around, over or under any crossing gate or barrier at a railroad grade crossing or bridge while the gate or barrier is closed or is being opened or closed.

(c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(ORC 4511.511)

371.11 PERSONS OPERATING MOTORIZED WHEELCHAIRS.

(a) Every person operating a motorized wheelchair shall have all of the rights and duties applicable to a pedestrian that are contained in this Traffic Code, except those provisions which by their nature can have no application.
(ORC 4511.491)

(b) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(ORC 4511.99)

371.12 ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES.

(a) (1) Electric personal assistive mobility devices may be operated on the public streets, highways, sidewalks, and paths and portions of roadways set aside for the exclusive use of bicycles in accordance with this section.

(2) Except as otherwise provided in this section, those sections of this Traffic Code that by their nature are applicable to an electric personal assistive mobility device apply to the device and the person operating it whenever it is operated upon any public street, highway, sidewalk, or path or upon any portion of a roadway set aside for the exclusive use of bicycles.

(b) No operator of an electric personal assistive mobility device shall do any of the following:

(1) Fail to yield the right-of-way to all pedestrians and human-powered vehicles at all times;

(2) Fail to give an audible signal before overtaking and passing a pedestrian;

(3) Operate the device at night unless the device or its operator is equipped with or wearing both of the following:

A. A lamp pointing to the front that emits a white light visible from a distance of not less than five hundred feet;

B. A red reflector facing the rear that is visible from all distances from one hundred feet to six hundred feet when directly in front of lawful lower beams of head lamps on a motor vehicle.

(4) Operate the device on any portion of a street or highway that has an established speed limit of fifty-five miles per hour or more;

(5) Operate the device upon any path set aside for the exclusive use of pedestrians or other specialized use when an appropriate sign giving notice of the specialized use is posted on the path;

(6) If under eighteen years of age, operate the device unless wearing a protective helmet on the person's head with the chin strap properly fastened;

(7) If under sixteen years of age, operate the device unless, during the operation, the person is under the direct visual and audible supervision of another person who is eighteen years of age or older and is responsible for the immediate care of the person under sixteen years of age.

(c) No person who is under fourteen years of age shall operate an electric personal assistive mobility device.

(d) No person shall distribute or sell an electric personal assistive mobility device unless the device is accompanied by a written statement that is substantially equivalent to the following: "WARNING: TO REDUCE THE RISK OF SERIOUS INJURY, USE ONLY WHILE WEARING FULL PROTECTIVE EQUIPMENT - HELMET, WRIST GUARDS, ELBOW PADS, AND KNEE PADS". (ORC 4511.512)

(e) "Electric personal assistive mobility device" means a self-balancing two non-tandem wheeled device that is designed to transport only one person, has an electric propulsion system of an average of seven hundred fifty watts, and when ridden on a paved level surface by an operator who weighs one hundred seventy pounds has a maximum speed of less than twenty miles per hour. (ORC 4501.01)

(f) Whoever violates subsection (b) or (c) hereof is guilty of a minor misdemeanor and shall be punished as follows:

(1) The offender shall be fined ten dollars ($10.00).

(2) If the offender previously has been convicted of or pleaded guilty to a violation of division (B) or (C) of Ohio R.C. 4511.512 or a substantially similar municipal ordinance, the court, in addition to imposing the fine required under subsection (f)(1) hereof, shall do one of the following:

A. Order the impoundment for not less than one day but not more than thirty days of the electric personal assistive mobility device that was involved in the current violation of that section. The court shall order the device to be impounded at a safe indoor location designated by the court and may assess storage fees of not more than five dollars ($5.00) per day, provided the total storage, processing, and release fees assessed against the offender or the device in connection with the device's impoundment or subsequent release shall not exceed fifty dollars ($50.00).

B. If the court does not issue an impoundment order pursuant to subsection (f)(2)A. hereof, issue an order prohibiting the offender from operating any electric personal assistive mobility device on the public streets, highways, sidewalks, and paths and portions of roadways set aside for the exclusive use of bicycles for not less than one day but not more than thirty days.

(g) Whoever violates subsection (d) hereof is guilty of a minor misdemeanor. (ORC 4511.512)

CHAPTER 373
Bicycles and Motorcycles

373.01 Bicycle defined.
373.02 Code application to bicycles and skateboards.
373.03 Parental responsibility.
373.04 Bicycle registration.
373.05 Compliance with traffic signal, control devices required.
373.06 Lights, signal device and brakes; riding on seats; handlebars; helmets and glasses.
373.07 Attaching bicycle, skateboard or sled to vehicle.
373.08 Riding regulations.
373.09 Reckless operation; speed.
373.10 Emerging from alley or driveway.
373.11 Carrying articles.
373.12 Parking.
373.13 Duty to lock bicycles.
373.14 Stolen bicycles.
373.15 Impounding.
373.16 Sale of impounded bicycles.
373.17 Motorized bicycle operation, equipment and license.
373.18 Reckless operation or riding of skateboards; speed; prohibitions.
373.19 Paths exclusively for bicycles.
373.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law
Bicycle defined - see TRAF. 301.04
Motorcycle defined - see TRAF. 301.19
Bicycles prohibited on freeways - see TRAF. 303.06
Motorcycle operator's license required - see TRAF. 335.01(a)
Motorcycle headlight - see TRAF. 337.03
Motorcycle brakes - see TRAF. 337.18(b)

373.01 BICYCLE DEFINED.

"Bicycle" and "motorized bicycle" have the same meaning as defined in Section 301.04. (Ord. 78-9. Passed 4-3-78.)

373.02 CODE APPLICATION TO BICYCLES AND SKATEBOARDS.

Every person riding a bicycle shall be subject to the provisions of this Traffic Code and the traffic laws of the State applicable to the driver of a vehicle, except those provisions which by their nature can have no application.

The provisions of this Traffic Code which are applicable to bicycles apply whenever a bicycle is operated upon any street, sidewalk, right-of-way or upon any path set aside for the exclusive or non-exclusive use of bicycles. The provisions of this Traffic Code which are applicable to skateboards apply whenever a skateboard is ridden or operated upon any street, sidewalk, right-of-way or upon any path set aside for the exclusive or nonexclusive use of skateboards. (Ord. 91-1. Passed 2-4-91.)

373.03 PARENTAL RESPONSIBILITY.

The parents of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this chapter.
(Ord. 73-55. Passed 9-4-73.)

373.04 BICYCLE REGISTRATION.

No bicycle shall be operated in the City without a registration as required by Chapter 375.
(Ord. 73-55. Passed 9-4-73.)

373.05 COMPLIANCE WITH TRAFFIC SIGNAL, CONTROL DEVICES REQUIRED.

(a) Any person operating a bicycle shall obey the instructions of official traffic signals, signs and other control devices applicable to vehicles, unless otherwise directed by a police officer.

(b) Whenever authorized signs are erected that no right, left or "U" turns are permitted, no person operating a bicycle shall disobey the direction of any such sign, except where such person dismounts from the bicycle to make such turn, in which event such person shall then obey the regulations applicable to pedestrians.
(Ord. 73-55. Passed 9-4-73.)

373.06 LIGHTS AND REFLECTOR ON BICYCLE; BRAKES.

(a) Every bicycle when in use at the times specified in Section 337.02, shall be equipped with the following:

(1) A lamp on the front that shall emit a white light visible from a distance of at least 500 feet to the front;

(2) A red reflector on the rear of a type approved by the Ohio Director of Public Safety that shall be visible from all distances from 100 feet to 600 feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle;

(3) A lamp emitting a red light visible from a distance of 500 feet to the rear shall be used in addition to the red reflector;

(4) An essentially colorless reflector on the front of a type approved by the Director;

(5) Either with tires with retroreflective sidewalls or with an essentially colorless or amber reflector mounted on the spokes of the front wheel and an essentially colorless or red reflector mounted on the spokes of the rear wheel. Each reflector shall be visible on each side of the wheel from a distance of 600 feet when directly in front of lawful lower beams of head lamps on a motor vehicle. Retroreflective tires or reflectors shall be of a type approved by the Director.

(b) No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least 100 feet, except that a bicycle shall not be equipped with nor shall any person use upon a bicycle any siren or whistle.
(ORC 4511.56(B))

(c) Every bicycle shall be equipped with a brake which enables the operator to make the brake wheel skid on dry, level, clean pavement.

(d) A person operating a bicycle or motorcycle shall not ride other than upon the permanent and regular seat attached thereto, nor carry any other person upon such bicycle or motorcycle other than upon a firmly attached and regular seat thereon, nor shall any person ride upon a bicycle or motorcycle other than upon such a firmly attached and regular seat.

(e) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle.

(f) No bicycle or motorcycle shall be used to carry more persons at one time than the number for which it is designed and equipped, nor shall any motorcycle be operated on a highway when the handle bars or grips are more than fifteen inches higher than the seat or saddle for the operator.

(g) No person shall operate or be a passenger on a snowmobile or motorcycle without using safety glasses or other protective eye device. No person who is under the age of eighteen years, or who holds a motorcycle operator's endorsement or license bearing a "novice" designation that is currently in effect as provided in Ohio R.C. 4507.13, shall operate a motorcycle on a highway, or be a passenger on a motorcycle, unless wearing a protective helmet on his head, and no other person shall be a passenger on a motorcycle operated by such a person unless similarly wearing a protective helmet. The helmet, safety glasses or other protective eye device shall conform with regulations prescribed and promulgated by the Ohio Director of Public Safety. The provisions of this subsection or a violation thereof shall not be used in the trial of any civil action.
(ORC 4511.53; Ord. 78-27. Passed 6-19-78.)

373.07 ATTACHING BICYCLE, SKATEBOARD OR SLED TO VEHICLE.

No person riding upon any motorcycle, bicycle, coaster, skateboard, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway.

No operator shall knowingly permit any person riding upon any motorcycle, bicycle, coaster, skateboard, roller skates, sled or toy vehicle to attach the same or himself to any vehicle while it is moving upon any roadway. This section does not apply to the towing of a disabled vehicle. (Ord. 91-1. Passed 2-4-91.)

373.08 RIDING REGULATIONS.

It shall be legal to ride a bicycle upon a sidewalk, street or public way, or upon any path set aside for the exclusive use of bicycles, subject to the following:

(a) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable obeying all traffic rules applicable to vehicles and exercising due care when passing a standing vehicle or one proceeding in the same direction. (ORC 4511.55(A))

(b) Whenever a designated path for bicycles has been provided adjacent to a street, bicycle riders shall use such path and shall not use the street.

(c) Any person operating a bicycle may ride upon the sidewalk rather than the roadway when sidewalks are available and not congested with pedestrian traffic. If the sidewalk is congested with pedestrian traffic, the bicycle operator using the sidewalk shall walk the bicycle.
(Ord. 73-55. Passed 9-4-73.)

(d) At no time shall a bicyclist under the age of twelve years operate a bicycle on a street. (Ord. 73-74. Passed 10-1-73.)

(e) No person shall ride a bicycle upon a sidewalk, upon or along which signs have been erected by authority of the Director of Service and Development prohibiting such bicycle riding.

(f) Whenever a person is riding a bicycle upon a sidewalk, street, roadway or any pedestrian way, such person shall yield the right of way to any pedestrian and shall give audible signal before attempting to overtake and pass a pedestrian or another bicycle. This audible signal must be given only by a bell or other warning device capable of giving an audible signal and shall be given at such a distance and in such a manner as not to startle persons being overtaken and passed.

(g) Whenever a person is riding a bicycle on a sidewalk, the rider shall dismount and shall walk the bicycle across an intersection or a street.

(h) Whenever a person is riding a bicycle upon a sidewalk, the person, before overtaking and passing a blind person carrying a white cane or guided by a dog, shall dismount and overtake or pass on foot.

(i) When a bicycle is operated on a street, the operator shall give hand signals before turning, changing lanes or stopping. Such signals shall conform with the motor vehicle laws of Ohio.
(Ord. 73-55. Passed 9-4-73.)

373.09 RECKLESS OPERATION; SPEED.

No person shall operate a bicycle:

(a) Without due regard for the safety and rights of pedestrians and drivers and occupants of all other vehicles and so as to endanger the life, limb or property of any person while in the lawful use of the streets or sidewalks or any other public or private property.

(b) Without both hands upon the handle bars except when necessary to give the required hand and arm signals or as provided in Section 373.11.

(c) At a speed greater than is reasonable and prudent under the conditions then existing.
(Ord. 73-55. Passed 9-4-73.)

373.10 EMERGING FROM ALLEY OR DRIVEWAY.

The operator of a bicycle emerging from an alley, driveway or building shall, upon approaching a sidewalk or the sidewalk area extending across any alley or driveway, yield the right of way to all pedestrians approaching on such sidewalk area and upon entering the street shall yield the right of way to all vehicles approaching such street.
(Ord. 73-55. Passed 9-4-73.)

373.11 CARRYING ARTICLES.

No person operating a bicycle shall carry any package, bundle or article which prevents the operator from having complete control of such bicycle or keeping at least one hand on the handlebars.

373.12 PARKING.

(a) A bicycle shall be parked in a designated bicycle parking area when they are provided. No person shall park a bicycle upon a sidewalk in such a manner as to unduly interfere with pedestrian traffic, or upon a roadway other than against the curb.

(b) When a designated parking area is not provided, bicycles shall be parked in such a manner as not to interfere with building entrances nor upon a sidewalk.
(Ord. 73-55. Passed 9-4-73.)

373.13 DUTY TO LOCK BICYCLES.

No bicycles shall remain unlocked when parked upon any public street, public sidewalk, public driveway, public playground or any other public property.
(Ord. 73-55. Passed 9-4-73.)

373.14 STOLEN BICYCLES.

No person shall steal any bicycles or purposely take, ride or operate any bicycle without the consent of the owner thereof, or buy or conceal any bicycle that has been stolen knowing it to have been stolen.
(Ord. 73-55. Passed 9-4-73.)

373.15 IMPOUNDING.

(a) Whenever any person operates a bicycle in violation of any section of this Traffic Code, the bicycle may be seized by any member of the Police Department and the Chief of Police shall have the authority to impound any bicycle at the Police Station.

(b) When any bicycle has been seized and so impounded, notice shall be made forthwith by the officer in charge to the owner of the bicycle or in the event the person is a minor under the age of eighteen years such notice shall be made to the parent or guardian of the licensee of the bicycle. Notice shall contain a full explanation of the reason for seizing and impounding the bicycle.

(c) Any bicycle impounded under the provisions of this Traffic Code shall be surrendered to the owner or to the parents or guardian of any minor upon showing sufficient proof of ownership of the bicycle, and upon paying an impounding fee of five dollars ($5.00), but nothing herein shall relieve any offender of any penalty that may be imposed under the penalty section of this Traffic Code.

(d) It shall be the duty of the police officer or the person in charge of records to keep in an appropriate book or file the names and addresses of all owners of bicycles impounded, if known. (Ord. 73-55. Passed 9-4-73.)

373.16 SALE OF IMPOUNDED BICYCLES.

All impounded bicycles, if unclaimed after publication is made in a newspaper in Cuyahoga County, shall be sold at public auction or disposed of by the Police Chief on application to and order of the Court of Common Pleas pursuant to Ohio R.C. 2933.41.

373.17 MOTORIZED BICYCLE OPERATION, EQUIPMENT AND LICENSE.

(a) No person shall operate a motorized bicycle upon any street or highway or any public or private property used by the public for purposes of vehicular travel or parking, unless all of the following conditions are met:

(1) The person possesses a valid license or permit authorizing such operation and which is issued by the Ohio Registrar of Motor Vehicles under Ohio R.C. Chapter 4506 or 4507 or Ohio R.C. 4511.521;

(2) The motorized bicycle is equipped in accordance with rules adopted by the Ohio Director of Public Safety and is in proper working order;

(3) The person, if he is under eighteen years of age, is wearing a protective helmet on his head with the chin strap properly fastened, and the motorized bicycle is equipped with a rear-view mirror;

(4) The person operates the motorized bicycle when practicable within three feet of the right edge of the roadway obeying all traffic rules applicable to vehicles; and

(5) The motorized bicycle displays on the rear of such bicycle the current license plate or validation sticker furnished by the Ohio Director of Public Safety under Ohio R.C. 4503.191.

(b) No person operating a motorized bicycle shall carry another person upon the motorized bicycle.

(c) No person operating a motorized bicycle shall knowingly permit any person riding upon another motorized bicycle, bicycle, motorcycle, coaster, skateboard, roller skates, sled or toy vehicle to attach the same or himself to any motorized bicycle while it is moving upon any street or highway or any public or private property used by the public for purposes of vehicular travel or parking. (Ord. 91-1. Passed 2-4-91.)

373.18 RECKLESS OPERATION OR RIDING OF SKATEBOARDS; SPEED; PROHIBITIONS.

(a) No person shall ride or operate a skateboard without due regard for the safety and rights of pedestrians and so as to create a risk of physical harm to persons or property of any other person lawfully using the streets, sidewalks or other public areas.

(b) No person shall ride or operate a skateboard at a speed greater than that which is reasonable and prudent under the conditions then existing.

(c) No person shall ride or operate a skateboard at or on any place where a sign has been posted prohibiting such riding or operation.
(Ord. 91-1. Passed 2-4-91.)

373.19 PATHS EXCLUSIVELY FOR BICYCLES.

No person shall operate a motor vehicle, snowmobile, or all-purpose vehicle upon any path set aside for the exclusive use of bicycles, when an appropriate sign giving notice of such use is posted on the path.

Nothing in this section shall be construed to affect any rule of the Ohio Director of Natural Resources governing the operation of motor vehicles, snowmobiles, all-purpose vehicles, and bicycles on lands under his jurisdiction. (ORC 4511.713)

373.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty and penalties applicable to misdemeanor classifications.)

(a) Bicycles and Motorcycles. Whoever violates any provision of Section 373.14 is guilty of a misdemeanor of the third degree. Whoever violates any provision of Chapter 373 may have his bicycle impounded for a period of not more than thirty days and the court may prohibit such person from riding a bicycle for a period of not more than thirty days.
(Ord. 78-6. Passed 3-20-78.)

(b) Skateboards. Whoever violates any provision of Section 373.18 is guilty of a minor misdemeanor and shall for the first offense be issued a written warning; on a second offense within one year after the first ofrense may be fined an amount not to exceed ten dollars ($10.00); on each subsequent offense may be fined an amount not to exceed one hundred dollars ($100.00). Whoever violates Section 373.18 for three or more times within one year may have his/her skateboard impounded for a period of not more than thirty days.
(Ord. 91-1. Passed 2-4-91.)

CHAPTER 375
Bicycle Registration

375.01 Registration required; fee.
375.02 Disposition of fees.
375.03 Registration plate or decal.
375.04 Registration plate or decal lost or destroyed.
375.05 Registration stations authorized.
375.06 Rental agencies.
375.07 Impounding.
375.08 Repair shops to record serial numbers.
375.99 Penalty.

CROSS REFERENCES
Power to license - see Ohio R.C. 4511.07(H)
Registration required - see TRAF. 373.04
Bicycle operation - see TRAF. Ch. 373

375.01 REGISTRATION REQUIRED; FEE.

(a) After October 1, 1973, no bicycle shall be operated in the City without a registration therefor as provided in this chapter. Such registration shall be applied for to the Chief of Police, or someone designated by him, by every owner of a bicycle upon a form provided by the Chief. The application for registration of a bicycle shall contain the name and address of the applicant and the name, color, and serial number or other identifying marks of the bicycle and other information as the Chief deems pertinent.

(b) The Chief of Police shall not issue a registration for any bicycle when he knows or has reasonable grounds to believe that the applicant is not the owner of or entitled to the possession of such bicycle, or that such bicycle is not in safe operating condition. The Chief or someone designated by him shall keep a record of the number of each registration, the date issued, the name of the person to whom issued, the model and number on the frame of the bicycle for which issued and a record of all bicycle registration fees collected by him. A minor, upon making application for a bicycle registration, shall furnish to the Chief or someone designated by him a certification by a parent or guardian either upon the application or upon a separate form, that the information stated thereon is true.

(c) No person who is the owner of a bicycle shall be permitted to use such bicycle unless it is registered in a manner satisfactory to the Chief.

(d) A registration fee of one dollar ($1.00) shall be paid to the Chief for each registration granted. The registration provided for in this section shall be valid for a period of seven years from the date of issuance, or until ownership of such registered bicycle changes, whichever occurs first. This provision shall not apply to any bicycle in transit within the City provided that such bicycles have been registered in some other municipality in accordance with the terms of an ordinance similar to the foregoing if such exists, or if the owner is a resident of another community. If a private business issues registration, then a fifty cent (50¢) fee shall be retained by the issuer for his cost.
(Ord. 73-68. Passed 7-16-73.)

375.02 DISPOSITION OF FEES.
The Chief of Police shall pay monthly to the Director of Finance all fees received pursuant to the provisions of this chapter and shall take the Director of Finance's receipt therefor, which shall be kept as a part of the Police Department's record of such registrations.
(Ord. 73-68. Passed 7-16-73.)

375.03 REGISTRATION PLATE OR DECAL.
(a) The Chief of Police shall issue a registration plate or decal together with a certificate bearing the name and address of the owner, the make and manufacturer's serial number, type or model and the date issued. The owner shall cause such registration plate or decal to be firmly attached to the bicycle for which issued, in such position as to be plainly visible. No person shall destroy or remove a registration plate or decal from a bicycle.

(b) On bicycles not containing a manufacturer's serial number the Chief shall establish a serial number system and cause such number to be permanently stamped on the bicycle frame, for which an extra charge of two dollars ($2.00) shall be charged. The Chief may furnish each registrant with a copy of the provisions of this chapter and other information as he deems appropriate. (Ord. 73-68. Passed 7-16-73.)

375.04 REGISTRATION PLATE OR DECAL LOST OR DESTROYED.
In the event a registration plate or decal is lost or destroyed the Chief of Police, if satisfied of such fact, shall issue a new registration plate or decal upon the application of the owner of the bicycle for which a fee of one dollar ($1.00) shall be charged.
(Ord. 73-68. Passed 7-16-73.)

375.05 REGISTRATION STATIONS AUTHORIZED.
In addition to establishing a registration station at the City Hall, the Chief of Police is hereby authorized to establish stations for the registration of bicycles hereunder as he deems necessary for the convenience of applicants.
(Ord. 73-68. Passed 7-16-73.)

375.06 RENTAL AGENCIES.

A rental agency shall not rent or offer any bicycle for rent unless the bicycle is registered and a registration plate or decal is attached thereto.
(Ord. 73-68. Passed 7-16-73.)

375.07 IMPOUNDING.

Any officer of the Police Department is hereby authorized to impound any bicycle found in violation of this chapter. An impounded bicycle shall not be released to a minor.
(Ord. 73-68. Passed 7-16-73.)

375.08 REPAIR SHOPS TO RECORD SERIAL NUMBERS.

No person, corporation or firm in the business of selling and/or repairing bicycles shall sell, repair, dispose of or transfer the ownership of any bicycle without keeping a written record of the seller, purchasers, make, manufacturer's serial number and type or model thereof. Such record shall be kept for a period of three years and shall be available to the Chief of Police upon request. (Ord. 73-68. Passed 7-16-73.)

375.99 PENALTY.

(EDITOR'S NOTE: See Seciton 303.99 for misdemeanor classifications and penalties.)

CHAPTER 377
Snowmobiles, Off-Highway Motorcycles and All Purpose Vehicles

377.01 Definitions.
377.02 Equipment.
377.03 Code application; prohibited operation.
377.04 Permitted operation.
377.05 Licensing requirements of operator.
377.06 Registration of vehicles.
377.07 Accident reports.
377.08 Certificate of title.

CROSS REFERENCES

See sectional histories for similar State law
Lights, brakes and muffler - see OAC Ch. 4501.29
Power of trial court of record to impound registration certificate for certain violations - see Ohio R.C 4519.47
Power to regulate; municipal licensing prohibited - see Ohio R.C. 4519.48
Street or highway defined - see TRAF. 301.42
Required usage of helmets and safety glasses - see TRAF. 373.02(f)

377.01 DEFINITIONS.

As used in this chapter:

(a) "Snowmobile" means any self-propelled vehicle designed primarily for use on snow or ice, and steered by skis, runners or caterpillar treads. (ORC 4519.01(A))

(b) "All purpose vehicle" means any self-propelled vehicle designed primarily for cross-country travel on land and water, or on more than one type of terrain, and steered by wheels or caterpillar treads, or any combination thereof, including vehicles that operate on a cushion of air, vehicles commonly known as all-terrain vehicles, all season vehicles, mini-bikes and trail bikes. "All-purpose vehicle" does not include a utility vehicle as defined in Ohio R.C. 4501.01 or any vehicle principally used in playing golf, any motor vehicle or aircraft required to be registered under Ohio R.C. Chapter 4503 or Chapter 4561, and any vehicle excepted from definition as a motor vehicle by Section 301.20 of this Traffic Code. (ORC 4519.01(B))

(c) "Owner" means any person, firm or corporation, other than a lienholder or dealer, having title to a snowmobile, off-highway motorcycle, or all purpose vehicle, or other right to the possession thereof. (ORC 4519.01(C))

(d) "Operator" means any person who operates or is in actual physical control of a snowmobile, off-highway motorcycle or all purpose vehicle.

(e) "Limited access highway" or "freeway" means a highway especially designed for through traffic and over which abutting property owners have no easement or right of access by reason of the fact that their property abuts upon such highway, and access to which may be allowed only at highway intersections designated by the Ohio Director of Transportation. (ORC 5511.02)

(f) "Interstate highway" means any part of the interstate system of highways as defined in subsection (e), 90 Stat. 431 (1976), 23 U.S.C.A. 103, and amendments thereof.

(g) "Off-highway motorcycle" means every motorcycle, as defined in Ohio R.C. 4511.01, that is designed to be operated primarily on lands other than a street or highway. (ORC 4519.01)

377.02 EQUIPMENT.

(a) Equipment of snowmobiles, off-highway motorcycles, and all purpose vehicles shall include, but not necessarily be limited to requirements for the following items:

(1) At least one headlight having a minimum candlepower of sufficient intensity to reveal persons and objects at a distance of at least 100 feet ahead under normal atmospheric conditions during hours of darkness;

(2) At least one red taillight having a minimum candlepower of sufficient intensity to be plainly visible from a distance of 500 feet to the rear under normal atmospheric conditions during hours of darkness;

(3) Adequate brakes. Every snowmobile, while traveling on packed snow, shall be capable of carrying a driver who weighs 175 pounds or more, and, while carrying such driver, be capable of stopping in not more than forty feet from an initial steady speed of twenty miles per hour, or locking its traction belt.

(4) A muffler system capable of precluding the emission of excessive smoke or exhaust fumes, and of limiting the engine noise of vehicles. On snowmobiles manufactured after January 1, 1973, such requirement shall include sound dampening equipment such that noise does not exceed eighty-two decibels on the "A" scale at fifty feet as measured according to SAE J192 (September 1970).

(b) No person shall operate any snowmobile, off-highway motorcycle, or all purpose vehicle in violation of this section, except that equipment specified in subsections (a)(1) and (2) hereof shall not be required on snowmobiles, off-highway motorcycles, or all purpose vehicles operated during the daylight hours.

(c) Except as otherwise provided in this subsection, whoever violates subsection (b) of this section shall be fined not more than fifty dollars ($50.00). If the offender within the preceding year previously has committed a violation of subsection (b) of this section, whoever violates subsection (b) of this section shall be fined not less than fifteen dollars ($15.00) nor more than one hundred dollars ($100.00), imprisoned not more than three days, or both.
(ORC 4519.20)

377.03 CODE APPLICATION; PROHIBITED OPERATION.

(a) The applicable provisions of this Traffic Code shall be applied to the operation of snowmobiles, off-highway motorcycles, and all purpose vehicles; except that no snowmobile, off-highway motorcycle, or all purpose vehicle shall be operated as follows:

(1) On any street or highway except for emergency travel only during such time and in such manner as the State or local authority having jurisdiction over such street or highway shall designate, and except as provided in Section 377.04;

(2) Upon any property owned or leased by the Municipality except in areas designated for such purposes;

(3) On any private property, or in any nursery or planting area, without the permission of the owner or other person having the right to possession of the property;

(4) On any land or waters controlled by the State, except at those locations where a sign has been posted permitting such operation;

(5) On tracks or right of way of any operating railroad;

(6) While transporting any firearm, bow or other implement for hunting, that is not unloaded and securely encased;

(7) For the purpose of chasing, pursuing, capturing or killing any animal or wild fowl;

(8) During the time from sunset to sunrise, unless displaying lighted lights as required by Section 377.02.

(b) Whoever violates this section shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), imprisoned not less than three nor more than thirty days, or both. (ORC 4519.40)

377.04 PERMITTED OPERATION.

Snowmobiles, off-highway motorcycles, and all purpose vehicles may be operated as follows:

(a) To make a crossing of a highway, other than a freeway or limited access highway, whenever the crossing can be made in safety and will not interfere with the movement of vehicular traffic approaching from any direction on the highway, and provided that the operator yields the right of way to any approaching traffic that presents an immediate hazard;

(b) On highways in the County or Township road systems whenever the local authority having jurisdiction over such highway so permits;

(c) Off and alongside a street or highway for limited distances from the point of unloading from a conveyance to the point at which the snowmobile, off-highway motorcycle, or all purpose vehicle is intended and authorized to be operated.

(d) On the berm or shoulder of a highway, other than a highway as designated in Ohio R.C. 4519.40(A), when the terrain permits such operation to be undertaken safely and without the necessity of entering any traffic lane;

(e) On the berm or shoulder of a county or township road, while traveling from one area of operation of the snowmobile, off-highway motorcycle, or all-purpose vehicle to another such area. (ORC 4519.41)

377.05 LICENSING REQUIREMENTS OF OPERATOR.

(a) No person who does not hold a valid, current motor vehicle driver's or commercial driver's license, motorcycle operator's endorsement or probationary license issued under Ohio R.C. Chapter 4506 or 4507, or a valid, current driver's license issued by another jurisdiction, shall operate a snowmobile, off-highway motorcycle, or all purpose vehicle on any street or highway, on any portion of the right of way thereof, or on any public land or waters. This subsection shall not be construed to permit the holder of such a license to operate a snowmobile, off-highway motorcycle, or all purpose vehicle in violation of Section 377.03.

(b) No person who is less than sixteen years of age shall operate a snowmobile, off-highway motorcycle, or all purpose vehicle on any land or waters other than private property or waters owned by or leased to such person's parent or guardian, unless accompanied by another person who is eighteen years of age, or older, and who holds a license as provided in subsection (a) hereof, except that the Ohio Department of Natural Resources may permit such operation on State controlled land under its jurisdiction when such person is less than sixteen years of age and is accompanied by a parent or guardian who is a licensed driver eighteen years of age or older.

(c) Whoever violates this section shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), imprisoned not less than three nor more than thirty days, or both. (ORC 4519.44)

377.06 REGISTRATION OF VEHICLES.

(a) Except as provided in Ohio R.C 4519.02(B), (C) and (D), no person shall operate any snowmobile, off-highway motorcycle, or all purpose vehicle unless the snowmobile, off-highway motorcycle, or all purpose vehicle is registered and numbered in accordance with Ohio R.C. 4519.03 and 4519.04.

(b) Except as otherwise provided in this subsection, whoever violates subsection (a) of this section shall be fined not more than twenty-five dollars ($25.00). If the offender previously has been convicted of or pleaded guilty to a violation of subsection (a) of this section, whoever violates subsection (a) of this section shall be fined not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00). (ORC 4519.02)

377.07 ACCIDENT REPORTS.

(a) The operator of a snowmobile, off-highway motorcycle, or all purpose vehicle involved in any accident resulting in bodily injury to or death of any person or damage to the property of any person in excess of one hundred dollars ($100.00) shall report the accident within forty-eight hours to the Chief of Police, and, within thirty days, shall forward a written report of the accident to the Ohio Registrar of Motor Vehicles on a form prescribed by the Registrar. If the operator is physically incapable of making the reports and there is another participant in the accident not so incapacitated, the participant shall make the reports. In the event that there is no other participant, and the operator is other than the owner, the owner, within the prescribed periods of time, shall make the reports.

Any law enforcement officer or other person authorized by Ohio R.C. 4519.42 and 4519.43, who investigates or receives information of an accident involving a snowmobile, off-highway motorcycle, or all purpose vehicle shall forward to the Registrar a written report of the accident within forty-eight hours. (ORC 4519.46)

(b) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.

377.08 CERTIFICATE OF TITLE.

(a) No person shall do any of the following:

(1) Operate in this Municipality an off-highway motorcycle or all-purpose vehicle without having a certificate of title for the off-highway motorcycle or all-purpose vehicle, if such a certificate is required by Ohio R.C. Chapter 4519 to be issued for the off-highway motorcycle or all-purpose vehicle, or, if a physical certificate of title has not been issued for it, operate an off-highway motorcycle or all-purpose vehicle knowing that the ownership information relating to the motorcycle or vehicle has not been entered into the automated title processing system by a clerk of a court of common pleas;

(2) Operate in this Municipality an off-highway motorcycle or all-purpose vehicle if a certificate of title to the off-highway motorcycle or all-purpose vehicle has been issued and then has been canceled;

(3) Fail to surrender any certificate of title upon cancellation of it by the Registrar of Motor Vehicles and notice of the cancellation as prescribed in Ohio R.C. Chapter 4519;

(4) Fail to surrender the certificate of title to a clerk of the court of common pleas as provided in Ohio R.C. Chapter 4519, in case of the destruction or dismantling of, or change in, the off-highway motorcycle or all-purpose vehicle described in the certificate of title;

(5) Violate any provision of Ohio R.C. 4519.51 to 4519.70 or any lawful rules adopted pursuant to those sections;

(6) Operate in this Municipality an off-highway motorcycle or all-purpose vehicle knowing that the certificate of title to or ownership of the motorcycle or vehicle as otherwise reflected in the automated title processing system has been canceled.

(b) Whoever violates this section shall be fined not more than two hundred dollars ($200.00) or imprisoned not more than ninety days, or both.
(ORC 4519.66)

CODIFIED ORDINANCES OF FAIRVIEW PARK

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CODIFIED ORDINANCES OF FAIRVIEW PARK

PART FIVE - GENERAL OFFENSES CODE

CHAPTER 501
General Provisions and Penalty

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See sectional histories for similar State law
Limitation of prosecution for income tax violations - see Ohio R.C. 718.06
Modification of sentence - see Ohio R.C. 2929.10(C), (D)
Penalty considerations - see Ohio R.C. 2929.22
Citation issuance for minor misdemeanors - see Ohio R.C. 2935.26 et seq.

501.01 DEFINITIONS.

As used in the Codified Ordinances:

(a) "Force" means any violence, compulsion or constraint physically exerted by any means upon or against a person or thing.

(b) "Deadly force" means any force that carries a substantial risk that it will proximately result in the death of any person.

(c) "Physical harm to persons" means any injury, illness or other physiological impairment, regardless of its gravity or duration.

(d) "Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use.

(e) "Serious physical harm to persons" means any of the following:

(1) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

(2) Any physical harm that carries a substantial risk of death;

(3) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(4) Any physical harm that involves some permanent disfigurement, or that involves some temporary, serious disfigurement;

(5) Any physical harm that involves acute pain of such duration as to result in substantial suffering, or that involves any degree of prolonged or intractable pain.

(f) "Serious physical harm to property" means any physical harm to property that does either of the following:

(1) Results in substantial loss to the value of the property, or requires a substantial amount of time, effort or money to repair or replace;

(2) Temporarily prevents the use or enjoyment of the property, or substantially interferes with its use and enjoyment for an extended period of time.

(g) "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

(h) "Substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

(i) "Offense of violence" means any of the following:

(1) A violation of Ohio R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2905.32, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, 2923.161, 2903.34(A)(1), 2911.12(A)(1) to (3) or 2919.22(B)(1) to (4), or felonious sexual penetration in violation of former Ohio R.C. 2907.12;

(2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section listed in subsection (i)(1) hereof;

(3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed, purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(4) A conspiracy or attempt to commit, or complicity in committing any offense under subsection (i)(1), (2) or (3) hereof.

(j) (1) "Property" means any property, real or personal, tangible or intangible, and any interest or license in that property. "Property" includes, but is not limited to, cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human readable form, trade secrets, trademarks, copyrights, patents, and property protected by a trademark, copyright, or patent. “Financial instruments associated with computers” include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities, or any computer system representations of any of them.

(2) As used in this section, “trade secret” has the same meaning as in Ohio R.C. 1333.61, and “telecommunications service” and “information service” have the same meanings as in Ohio R.C. 2913.01.

(3) As used in this section, “cable television service”, “computer”, “computer software”, “computer system”, “computer network”, “data”, and “telecommunications device” have the same meanings as in Ohio R.C. 2913.01.

(k) "Law enforcement officer" means any of the following:

(1) A sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under Ohio R.C. 3735.31(D) or State highway patrol trooper;

(2) An officer, agent or employee of the State or any of its agencies, instrumentalities or political subdivisions, upon whom, by statute, Charter or ordinance, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;

(3) A mayor or manager in the mayor's or manager's capacity as chief conservator of the peace within the mayor's or manager's municipal corporation;

(4) A member of an auxiliary police force organized by county, township or municipal law enforcement authorities, within the scope of the member's appointment or commission;

(5) A person lawfully called pursuant to Ohio R.C. 311.07 to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;

(6) A person appointed by a mayor pursuant to Ohio R.C. 737.01 as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;

(7) A member of the organized militia of this State or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;

(8) A prosecuting attorney, assistant prosecuting attorney, secret service officer or municipal prosecutor;

(9) A veterans' home police officer appointed under Ohio R.C. 5907.02;

(10) A member of a police force employed by a regional transit authority under Ohio R.C. 306.35(Y);

(11) A special police officer employed by a port authority under Ohio R.C. 4582.04 or 4582.28;

(12) The Senate Sergeant of Arms and or Assistant Sergeant at Arms;

(13) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in Section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States Department of Transportation as provided in Parts 1542 and 1544 of Title 49 of the Code of Federal Regulations, as amended.

(l) "Privilege" means an immunity, license or right conferred by law, or bestowed by express or implied grant, or arising out of status, position, office or relationship, or growing out of necessity.

(m) "Contraband" means any property that is illegal for a person to acquire or possess under a statute, ordinance, or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property's involvement in an offense. "Contraband" includes, but is not limited to, all of the following:

(1) Any controlled substance, as defined in Ohio R.C. 3719.01, or any device, or paraphernalia;

(2) Any unlawful gambling device, or paraphernalia;

(3) Any dangerous ordnance or obscene material.

(n) A person is "not guilty by reason of insanity" relative to a charge of an offense only if the person proves, in the manner specified in Ohio R.C. 2901.05, that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts.

(o) (1) A. Subject to subsection (o)(2) hereof, as used in any section contained in Part Five - General Offenses Code that sets forth a criminal offense, "person" includes all of the following:

1. An individual, corporation, business trust, estate, trust, partnership, and association;
2. An unborn human who is viable.

B. As used in any section contained in Part Five - General Offenses Code that does not set forth a criminal offense, "person" includes an individual, corporation, business trust, estate, trust, partnership and association.

C. As used in subsection (o)(1)A. hereof:

1. "Unborn human" means an individual organism of the species Homo sapiens from fertilization until live birth.
2. "Viable" means the stage of development of a human fetus at which there is a realistic possibility of maintaining and nourishing of a life outside the womb with or without temporary artificial life-sustaining support.

(2) Notwithstanding subsection (o)(1)A. hereof, in no case shall the portion of the definition of the term "person" that is set forth in subsection (o)(1)A.2. hereof be applied or construed in any section contained in Part Five - General Offenses Code that sets forth a criminal offense in any of the following manners:

A. Except as otherwise provided in subsection (o)(2)A. hereof, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of Ohio R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21, or 2903.22, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate Ohio R.C. 2919.12, division (B) of Ohio R.C. 2919.13, or Ohio R.C. 2919.151, 2919.17 or 2919.18, may be punished as a violation of Ohio R.C. 2919.12, division (B) of Ohio R.C. 2919.13, or Ohio R.C. 2919.151, 2919.17 or 2919.18, as applicable. Consent is sufficient under this subsection if it is of the type otherwise adequate to permit medical treatment to the pregnant woman, even if it does not comply with Ohio R.C. 2919.12.

B. In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:

1. Her delivery of a stillborn baby;
2. Her causing, in any other manner, the death in utero of a viable, unborn human that she is carrying;

3. Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is a viable, unborn human;
4. Her causing her child who is born alive to sustain one or more injuries while the child is a viable, unborn human;
5. Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to a viable, unborn human that she is carrying.

(p) "School safety zone" consists of a school, school building, school premises, school activity, and school bus.

(q) "School", "school building" and "school premises" have the same meaning as in Ohio R.C. 2925.01.

(r) "School activity" means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district; a governing authority of a community school established under Ohio R.C. Chapter 3314; a governing body of an educational service center; or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under Ohio R.C. 3301.07.

(s) "School bus" has the same meaning as in Ohio R.C. 4511.01.
(ORC 2901.01)

501.02 CLASSIFICATION OF OFFENSES.

As used in the Codified Ordinances:

(a) Offenses include misdemeanors of the first, second, third and fourth degree, minor misdemeanors and offenses not specifically classified.

(b) Regardless of the penalty that may be imposed, any offense specifically classified as a misdemeanor is a misdemeanor.

(c) Any offense not specifically classified is a misdemeanor if imprisonment for not more than one year may be imposed as a penalty.

(d) Any offense not specifically classified is a minor misdemeanor if the only penalty that may be imposed is one of the following:

(1) For an offense committed prior to January 1, 2004, a fine not exceeding one hundred dollars ($100.00);

(2) For an offense committed on or after January 1, 2004, a fine not exceeding one hundred fifty dollars ($150.00), community service under division (D) of Ohio R.C. 2929.27, or a financial sanction other than a fine under Ohio R.C. 2929.28.
(ORC 2901.02)

501.03 COMMON LAW OFFENSES ABROGATED.

(a) No conduct constitutes a criminal offense against the Municipality unless it is defined as an offense in the Codified Ordinances or any other Municipal ordinance.

(b) An offense is defined when one or more sections of the Codified Ordinances state a positive prohibition or enjoin a specific duty, and provide a penalty for violation of such prohibition or failure to meet such duty.

(c) This section does not affect the power of a court to punish for contempt or to employ any sanction authorized by law to enforce an order, civil judgment or decree.
(ORC 2901.03)

501.04 RULES OF CONSTRUCTION.

(a) Except as otherwise provided in subsection (c) hereof, sections of the Codified Ordinances defining offenses or penalties shall be strictly construed against the Municipality and liberally construed in favor of the accused.

(b) Rules of criminal procedure and sections of the Ohio Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy and sure administration of justice.

(c) Any provision of a section of the Codified Ordinances that refers to a previous conviction of or plea of guilty to a violation of a section of the Codified Ordinances or Ohio Revised Code or of a division of a section of the Codified Ordinances or Ohio Revised Code shall be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of this State, another state, or the United States or under an existing or former municipal ordinance.

(d) Any provision of the Codified Ordinances that refers to a section, or to a division of a section, of the Codified Ordinances that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this State, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense. (ORC 2901.04)

501.05 CRIMINAL LAW JURISDICTION.

(a) A person is subject to misdemeanor prosecution and punishment in this Municipality if any of the following occur:

(1) The person commits an offense under the laws of this Municipality, any element of which takes place in this Municipality.

(2) While in this Municipality, the person attempts to commit, or is guilty of complicity in the commission of, an offense in another jurisdiction, which offense is an offense under both the laws of this Municipality or this State and the other jurisdiction, or, while in this Municipality, the person conspires to commit an offense in another jurisdiction, which offense is an offense under both the laws of this Municipality or this State and the other jurisdiction, and a substantial overt act in furtherance of the conspiracy is undertaken in this Municipality by the person or another person involved in the conspiracy, subsequent to the person's entrance into the conspiracy. In any case in which a person attempts to commit, is guilty of complicity in the commission of, or conspires to commit an offense in another jurisdiction as described in this subsection, the person is subject to criminal prosecution and punishment in this Municipality for the attempt, complicity, or conspiracy, and for any resulting offense that is committed or completed in the other jurisdiction.

(3) While out of this Municipality, the person conspires or attempts to commit, or is guilty of complicity in the commission of, an offense in this Municipality.

(4) While out of this Municipality, the person omits to perform a legal duty imposed by the laws of this Municipality, which omission affects a legitimate interest of the Municipality in protecting, governing or regulating any person, property, thing, transaction or activity in this Municipality.

(5) While out of this Municipality, the person unlawfully takes or retains property and subsequently brings any of the unlawfully taken or retained property into this Municipality.

(6) While out of this Municipality, the person unlawfully takes or entices another and subsequently brings the other person into this Municipality.

(7) The person, by means of a computer, computer system, computer network, telecommunication, telecommunications device, telecommunications service, or information service, causes or knowingly permits any writing, data, image, or other telecommunication to be disseminated or transmitted into this Municipality in violation of the law of this Municipality.

(b) This Municipality includes the land and water within its boundaries and the air space above such land and water, and real property outside the corporate limits, with respect to which this Municipality has either exclusive or concurrent legislative jurisdiction. Where the boundary between this Municipality and another jurisdiction is disputed, the disputed territory is conclusively presumed to be within this Municipality for purposes of this section.

(c) When an offense is committed under the laws of this Municipality, and it appears beyond a reasonable doubt that the offense or any element of the offense took place either in this Municipality or in another jurisdiction or jurisdictions, but it cannot reasonably be determined in which it took place, the offense or element is conclusively presumed to have taken place in this Municipality for purposes of this section.

(d) When a person is subject to criminal prosecution and punishment in this Municipality for an offense committed or completed outside of this Municipality, the person is subject to all specifications for that offense that would be applicable if the offense had been committed within this Municipality.

(e) Any act, conduct, or element that is a basis of a person being subject under this section to criminal prosecution and punishment in this Municipality need not be committed personally by the person as long as it is committed by another person who is in complicity or conspiracy with the person.

(f) This section shall be liberally construed, consistent with constitutional limitations, to allow this Municipality the broadest possible jurisdiction over offenses and persons committing offenses in, or affecting, this Municipality.

(g) For purposes of subsection (a)(2) of this section, an overt act is substantial when it is of a character that manifests a purpose on the part of the actor that the object of the conspiracy should be completed.

(h) As used in this section, "computer", "computer system", "computer network", "information service", "telecommunication", "telecommunications device", "telecommunications service", "data", and "writing" have the same meaning as in Ohio R.C. 2913.01. (ORC 2901.11)

501.06 LIMITATION OF CRIMINAL PROSECUTION.

(a) Except as otherwise provided in this section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:

(1) For misdemeanor other than a minor misdemeanor, two years;

(2) For a minor misdemeanor, six months.

(b) If the period of limitation provided in subsection (a) hereof has expired, prosecution shall be commenced for an offense of which an element is fraud or breach of a fiduciary duty, within one year after discovery of the offense either by an aggrieved person, or by his legal representative who is not himself a party to the offense.

(c) (1) If the period of limitation provided in this section has expired, prosecution shall be commenced for the following offenses during the following specified periods of time:

A. For an offense involving misconduct in office by a public servant at any time while the accused remains a public servant, or within two years thereafter;

B. For an offense by a person who is not a public servant but whose offense is directly related to the misconduct in office of a public servant, at any time while that public servant remains a public servant, or within two years thereafter.

(2) As used in this subsection:

A. An "offense is directly related to the misconduct in office of a public servant" includes, but is not limited to, a violation of Ohio R.C. 101.71, 101.91, 121.61 or 2921.13, division (F) or (H) of Ohio R.C. 102.03, division (A) of Ohio R.C. 2921.02, division (A) or (B) of Ohio R.C. 2921.43, or division (F) or (G) of Ohio R.C. 3517.13, that is directly related to an offense involving misconduct in office of a public servant.

B. "Public servant" has the same meaning as in Section 525.01.

(d) An offense is committed when every element of the offense occurs. In the case of an offense of which an element is a continuing course of conduct, the period of limitation does not begin to run until such course of conduct or the accused's accountability for it terminates, whichever occurs first.

(e) A prosecution is commenced on the date an indictment is returned or an information filed, or on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of an information unless reasonable diligence is exercised to issue and execute process on the same. A prosecution is not commenced upon issuance of a warrant, summons, citation or other process, unless reasonable diligence is exercised to execute the same.

(f) The period of limitation shall not run during any time when the corpus delicti remains undiscovered.

(g) The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused absented himself from this Municipality or concealed his identity or whereabouts is prima-facie evidence of his purpose to avoid prosecution.

(h) The period of limitation shall not run during any time a prosecution against the accused based on the same conduct is pending in this State, even though the indictment, information or process that commenced the prosecution is quashed or the proceedings on the indictment, information or process are set aside or reversed on appeal.

(i) The period of limitation for a violation of any provision of this General Offenses Code that involves a physical or mental wound, injury, disability or condition of a nature that reasonably indicates abuse or neglect of a child under eighteen years of age or of a child with a developmental disability or physical impairment under twenty-one years of age shall not begin to run until either of the following occurs:

(1) The victim of the offense reaches the age of majority.

(2) A public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred has been notified that abuse or neglect is known, suspected, or believed to have occurred. (ORC 2901.13)

(j) This section shall not apply to prosecutions commenced within the period of limitations set forth in Ohio R.C. 718.12(B) for violations of the Municipal income tax ordinance.

501.07 REQUIREMENTS FOR CRIMINAL LIABILITY.

(a) Except as provided in subsection (b) hereof, a person is not guilty of an offense unless both of the following apply:

(1) The person's liability is based on conduct that includes either a voluntary act, or an omission to perform an act or duty that the person is capable of performing;

(2) The person has the requisite degree of culpability for each element as to which a culpable mental state is specified by the language defining the offense.

(b) When the language defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct described in the section, then culpability is not required for a person to be guilty of the offense. The fact that one subsection of a section plainly indicates a purpose to impose strict liability for an offense defined in that subsection does not by itself plainly indicate a purpose to impose strict criminal liability for an offense defined in other subsections of the section that do not specify a degree of culpability.

(c) (1) When language defining an element of an offense that is related to knowledge or intent or to which mens rea could fairly be applied neither specifies culpability nor plainly indicates a purpose to impose strict liability, the element of the offense is established only if a person acts recklessly.

(2) Subsection (c)(1) of this section does not apply to offenses defined in the Traffic Code.

(3) Subsection (c)(1) of this section does not relieve the prosecution of the burden of proving the culpable mental state required by any definition incorporated into the offense.

(d) Voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a criminal offense. Voluntary intoxication does not relieve a person of a duty to act if failure to act constitutes a criminal offense. Evidence that a person was voluntarily intoxicated may be admissible to show whether or not the person was physically capable of performing the act with which the person is charged.

(e) As used in this section:

(1) Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of the possessor's control of the thing possessed for a sufficient time to have ended possession.

(2) Reflexes, convulsions, body movements during unconsciousness or sleep, and body movements that are not otherwise a product of the actor's volition, are involuntary acts.

(3) "Culpability" means purpose, knowledge, recklessness or negligence, as defined in Section 501.08.

(4) "Intoxication" includes, but is not limited to, intoxication resulting from the ingestion of alcohol, a drug, or alcohol and a drug.

(ORC 2901.21)

501.08 CULPABLE MENTAL STATES.

(a) A person acts purposely when it is the person's specific intention to cause a certain result, or when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is the offender's specific intention to engage in conduct of that nature.

(b) A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

(c) A person acts recklessly when, with heedless indifference to the consequences, the person perversely disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person perversely disregards a substantial and unjustifiable risk that such circumstances are likely to exist.

(d) A person acts negligently when, because of a substantial lapse from due care, the person fails to perceive or avoid a risk that the person's conduct may cause a certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a substantial lapse from due care, the person fails to perceive or avoid a risk that such circumstances may exist.

(e) When the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge or purpose is also sufficient culpability for such element. When recklessness suffices to establish an element of an offense, then knowledge or purpose is also sufficient culpability for such element. When knowledge suffices to establish an element of an offense, then purpose is also sufficient culpability for such element. (ORC 2901.22)

501.09 ATTEMPT.

(a) No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense.

(b) It is no defense to a charge under this section that, in retrospect, commission of the offense that was the object of the attempt was either factually or legally impossible under the attendant circumstances, if that offense could have been committed had the attendant circumstances been as the actor believed them to be.

(c) No person who is convicted of committing a specific offense or of complicity in the commission of an offense, shall be convicted of an attempt to commit the same offense in violation of this section.

(d) It is an affirmative defense to a charge under this section that the actor abandoned the actor's effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose.

(e) Whoever violates this section is guilty of an attempt to commit an offense. An attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved in the drug abuse offense is an offense of the same degree as the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt. An attempt to commit any other misdemeanor is a misdemeanor of the next lesser degree than the misdemeanor attempted. In the case of an attempt to commit an offense other than a violation of Ohio R.C. Chapter 3734 that is not specifically classified, an attempt is a misdemeanor of the first degree if the offense attempted is a felony under the Ohio Revised Code, and a misdemeanor of the fourth degree if the offense attempted is a misdemeanor. An attempt to commit a minor misdemeanor is not an offense under this section.

(f) As used in this section, "drug abuse offense" has the same meaning as in Ohio R.C. 2925.01. (ORC 2923.02)

501.10 COMPLICITY.

(a) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:

(1) Solicit or procure another to commit the offense;

(2) Aid or abet another in committing the offense;

(3) Cause an innocent or irresponsible person to commit the offense.

(b) It is no defense to a charge under this section that no person with whom the accused was in complicity has been convicted as a principal offender.

(c) No person shall be convicted of complicity under this section unless an offense is actually committed, but a person may be convicted of complicity in an attempt to commit an offense in violation of Section 501.09.

(d) If an alleged accomplice of the defendant testifies against the defendant in a case in which the defendant is charged with complicity in the commission of or an attempt to commit an offense, an attempt to commit an offense or an offense, the court when it charges the jury, shall state substantially the following:

> "The testimony of an accomplice does not become inadmissible because of his complicity, moral turpitude or self-interest, but the admitted or claimed complicity of a witness may affect his credibility and make his testimony subject to grave suspicion, and require that it be weighed with great caution.
>
> "It is for you, as jurors, in the light of all the facts presented to you from the witness stand, to evaluate such testimony and to determine its quality and worth or its lack of quality and worth."

(e) It is an affirmative defense to a charge under this section that, prior to the commission of or attempt to commit the offense, the actor terminated his complicity, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

(f) Whoever violates this section is guilty of complicity in the commission of an offense, and shall be prosecuted and punished as if he were a principal offender. A charge of complicity may be stated in terms of this section, or in terms of the principal offense.
(ORC 2923.03)

501.11 ORGANIZATIONAL CRIMINAL LIABILITY.

(a) An organization may be convicted of an offense under any of the following circumstances:

(1) The offense is a minor misdemeanor committed by an officer, agent or employee of the organization acting in its behalf and within the scope of his office or employment, except that if the section defining the offense designates the officers, agents or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, such provisions shall apply.

(2) A purpose to impose organizational liability plainly appears in the section defining the offense, and the offense is committed by an officer, agent or employee of the organization acting in its behalf and within the scope of his office or employment, except that if the section defining the offense designates the officers, agents or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, such provisions shall apply.

(3) The offense consists of an omission to discharge a specific duty imposed by law on the organization.

(4) If, acting with the kind of culpability otherwise required for the commission of the offense, its commission was authorized, requested, commanded, tolerated or performed by the board of directors, trustees, partners or by a high managerial officer, agent or employee acting in behalf of the organization and within the scope of his office or employment.

(b) When strict liability is imposed for the commission of an offense, a purpose to impose organizational liability shall be presumed, unless the contrary plainly appears.

(c) In a prosecution of an organization for an offense other than one for which strict liability is imposed, it is a defense that the high managerial officer, agent or employee having supervisory responsibility over the subject matter of the offense exercised due diligence to prevent its commission. This defense is not available if it plainly appears inconsistent with the purpose of the section defining the offense.

(d) As used in this section, "organization" means a corporation for profit or not for profit, partnership, limited partnership, joint venture, unincorporated association, estate, trust or other commercial or legal entity. "Organization" does not include an entity organized as or by a governmental agency for the execution of a governmental program. (ORC 2901.23)

501.12 PERSONAL ACCOUNTABILITY FOR ORGANIZATIONAL CONDUCT.

(a) An officer, agent or employee of an organization as defined in Section 501.11 may be prosecuted for an offense committed by such organization, if he acts with the kind of culpability required for the commission of the offense, and any of the following apply:

(1) In the name of the organization or in its behalf, he engages in conduct constituting the offense, or causes another to engage in such conduct, or tolerates such conduct when it is of a type for which he has direct responsibility;

(2) He has primary responsibility to discharge a duty imposed on the organization by law, and such duty is not discharged.

(b) When a person is convicted of an offense by reason of this section, he is subject to the same penalty as if he had acted in his own behalf. (ORC 2901.24)

501.13 DEPOSIT FOR WARRANT OF ARREST.

(a) Any person other than police officers of the City desiring to make complaint by affidavit, to prosecute another for the violation of any City ordinance or State statute shall be required to deposit ten dollars ($10.00) with the Clerk of Court before a warrant of arrest shall be issued. However, whenever the Prosecutor, in his discretion, is satisfied that the public peace and welfare requires immediate prosecution, or that the complainant is acting in good faith and unable to post such deposit, he may waive the provisions of this section.

(b) A complainant or prosecuting witness who has posted a deposit as required in this section and during the pendency of such proceeding does appear as a witness against the accused, and otherwise cooperates in such prosecution, shall be entitled to a refund of the deposit made. (Ord. 74-36. Passed 5-6-74.)

501.14 CONSPIRACY.

(a) No person, with purpose to commit or to promote or facilitate the commission of aggravated murder, murder, kidnapping, abduction, compelling prostitution, promoting prostitution, trafficking in persons, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, engaging in a pattern of corrupt activity, corrupting another with drugs, a felony drug trafficking, manufacturing, processing or possession offense, theft of drugs, or illegal processing of drug documents, the commission of a felony offense of unauthorized use of a vehicle, illegally transmitting multiple commercial electronic mail messages or unauthorized access of a computer in violation of Ohio R.C. 2923.421 or the commission of a violation of any provision of Ohio R.C. Chapter 3734, other than Ohio R.C. 3734.18, that relates to hazardous wastes, shall do either of the following:

(1) With another person or persons, plan or aid in planning the commission of any of the specified offenses;

(2) Agree with another person or persons that one or more of them will engage in conduct that facilitates the commission of any of the specified offenses.

(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the accused or a person with whom the accused conspired, subsequent to the accused's entrance into the conspiracy. For purposes of this section, an overt act is substantial when it is of a character that manifests a purpose on the part of the actor that the object of the conspiracy should be completed.

(c) When the offender knows or has reasonable cause to believe that a person with whom the offender conspires also has conspired or is conspiring with another to commit the same offense, the offender is guilty of conspiring with that other person, even though the other person's identity may be unknown to the offender.

(d) It is no defense to a charge under this section that, in retrospect, commission of the offense that was the object of the conspiracy was impossible under the circumstances.

(e) A conspiracy terminates when the offense or offenses that are its objects are committed or when it is abandoned by all conspirators. In the absence of abandonment, it is no defense to a charge under this section that no offense that was the object of the conspiracy was committed.

(f) A person who conspires to commit more than one offense is guilty of only one conspiracy, when the offenses are the object of the same agreement or continuous conspiratorial relationship.

(g) When a person is convicted of committing or attempting to commit a specific offense or of complicity in the commission of or attempt to commit the specific offense, the person shall not be convicted of conspiracy involving the same offense.

(h) (1) No person shall be convicted of conspiracy upon the testimony of a person with whom the defendant conspired, unsupported by other evidence.

(2) If a person with whom the defendant allegedly has conspired testifies against the defendant in a case in which the defendant is charged with conspiracy and if the testimony is supported by other evidence, the court, when it charges the jury, shall state substantially the following:

"The testimony of an accomplice that is supported by other evidence does not become inadmissible because of the accomplice's complicity, moral turpitude, or self-interest, but the admitted or claimed complicity of a witness may affect the witness' credibility and make the witness' testimony subject to grave suspicion, and requires that it be weighed with great caution.

It is for you, as jurors, in light of all the facts presented to you from the witness stand, to evalute such testimony and to determine its quality and worth or its lack of quality and worth".

(3) "Conspiracy", as used in subsection (h)(1) of this section, does not include any conspiracy that results in an attempt to commit an offense or in the commission of an offense.

(i) The following are affirmative defenses to a charge of conspiracy:

(1) After conspiring to commit an offense, the actor thwarted the success of the conspiracy under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose.

(2) After conspiring to commit an offense, the actor abandoned the conspiracy prior to the commission of or attempt to commit any offense that was the object of the conspiracy, either by advising all other conspirators of the actor's abandonment, or by informing any law enforcement authority of the existence of the conspiracy and of the actor's participation in the conspiracy.

(j) Whoever violates this section is guilty of conspiracy, which is a misdemeanor of the first degree, when the most serious offense that is the object of the conspiracy is a felony of the fifth degree.

(k) This section does not define a separate conspiracy offense or penalty where conspiracy is defined as an offense by one or more sections of this Code, other than this section. In such a case, however:

(1) With respect to the offense specified as the object of the conspiracy in the other section or sections, subsection (a) hereof defines the voluntary act or acts and culpable mental state necessary to constitute the conspiracy;

(2) Subsections (b) to (i) hereof are incorporated by reference in the conspiracy offense defined by the other section or sections of this Code.

(l) (1) In addition to the penalties that otherwise are imposed for conspiracy, a person who is found guilty of conspiracy to engage in a pattern of corrupt activity is subject to divisions (B)(2) and (3) of Ohio R.C. 2923.32, division (A) of Ohio R.C. 2981.04 and division (D) of Ohio R.C. 2981.06.

(2) If a person is convicted of or pleads guilty to conspiracy and if the most serious offense that is the object of the conspiracy is a felony drug trafficking, manufacturing, processing or possession offense, in addition to the penalties or sanctions that may be imposed for the conspiracy under subsection (j) hereof and Ohio R.C. Chapter 2929, both of the following apply:

A. The provisions of divisions (D), (F) and (G) of Ohio R.C. 2925.03, division (D) of Ohio R.C. 2925.04, division (D) of Ohio R.C. 2925.05, division (D) of Ohio R.C. 2925.06 and division (E) of Ohio R.C. 2925.11 that pertain to mandatory and additional fines, driver's or commercial driver's license or permit suspensions, and professionally licensed persons and that would apply under the appropriate provisions of those divisions to a person who is convicted of or pleads guilty to the felony drug trafficking, manufacturing, processing, or possession offense that is the most serious offense that is the basis of the conspiracy shall apply to the person who is convicted of or pleads guilty to the conspiracy as if the person had been convicted or pleaded guilty to the felony drug trafficking, manufacturing, processing or possession offense that is the most serious offense that is the basis of the conspiracy.

B. The court that imposes sentence upon the person who is convicted of or pleads guilty to the conspiracy shall comply with the provisions identified as being applicable under subsection (l)(2) of this section, in addition to any other penalty or sanction that it imposes for the conspiracy under subsection (j) of this section and Ohio R.C. Chapter 2929.

(m) As used in this section:

(1) "Felony drug trafficking, manufacturing, processing or possession offense" means any of the following that is a felony:

A. A violation of Ohio R.C. 2925.03, 2925.04, 2925.05, or 2925.06;

B. A violation of Ohio R.C. 2925.11 that is not a minor drug possession offense.

(2) "Minor drug possession offense" has the same meaning as in Ohio R.C. 2925.01. (ORC 2923.01)

501.99 PENALTIES FOR MISDEMEANORS.

(a) Financial Sanctions. In addition to imposing court costs pursuant to Ohio R.C. 2947.23, the court imposing a sentence upon an offender for a misdemeanor committed under the Codified Ordinances, including a minor misdemeanor, may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section. If the court in its discretion imposes one or more financial sanctions, the financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Restitution. Unless the misdemeanor offense is a minor misdemeanor or could be disposed of by the traffic violations bureau serving the court under Traffic Rule 13, restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. The court may not impose restitution as a sanction pursuant to this section if the offense is a minor misdemeanor or could be disposed of by the traffic violations bureau serving the court under Traffic Rule 13. If the court requires restitution, the court shall order that the restitution be made to the victim in open court or to the adult probation department that serves the jurisdiction or the clerk of the court on behalf of the victim.

If the court imposes restitution, the court shall determine the amount of restitution to be paid by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation

report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense.

If the court decides to impose restitution, the court shall hold an evidentiary hearing on restitution if the offender, victim or survivor disputes the amount of restitution. If the court holds an evidentiary hearing, at the hearing the victim or survivor has the burden to prove by a preponderance of the evidence the amount of restitution sought from the offender.

All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender. No person may introduce evidence of an award of restitution under this section in a civil action for purposes of imposing liability against an insurer under Ohio R.C. 3937.18.

If the court imposes restitution, the court may order that the offender pay a surcharge, of not more than five per cent of the amount of the restitution otherwise ordered, to the entity responsible for collecting and processing restitution payments.

The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(2) Fines. A fine in the following amount:

A. For a misdemeanor of the first degree, not more than one thousand dollars ($1,000);

B. For a misdemeanor of the second degree, not more than seven hundred fifty dollars ($750.00);

C. For a misdemeanor of the third degree, not more than five hundred dollars ($500.00);

D. For a misdemeanor of the fourth degree, not more than two hundred fifty dollars ($250.00);

E. For a minor misdemeanor, not more than one hundred fifty dollars ($150.00).

(3) Reimbursement of costs of sanctions.

A. Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including, but not limited to, the following:

1. All or part of the costs of implementing any community control sanction, including a supervision fee under Ohio R.C. 2951.021;

2. All or part of the costs of confinement in a jail or other residential facility, including, but not limited to, a per diem fee for room and board, the costs of medical and dental treatment, and the costs of repairing property damaged by the offender while confined.

B. The amount of reimbursement ordered under subsection (a)(3)A. of this section shall not exceed the total amount of reimbursement the offender is able to pay and shall not exceed the actual cost of the sanctions. The court may collect any amount of reimbursement the offender is required to pay under that subsection. If the court does not order reimbursement under that subsection, confinement costs may be assessed pursuant to a repayment policy adopted under Ohio R.C. 2929.37. In addition, the offender may be required to pay the fees specified in Ohio R.C. 2929.38 in accordance with that section. (ORC 2929.28)

(b) Jail Terms.

(1) Except as provided in Ohio R.C. 2929.22 or 2929.23 of the Revised Code, and unless another term is required or authorized pursuant to law, if the sentencing court imposing a sentence upon an offender for a misdemeanor elects or is required to impose a jail term on the offender pursuant to this General Offenses Code, the court shall impose a definite jail term that shall be one of the following:

A. For a misdemeanor of the first degree, not more than one hundred eighty days;

B. For a misdemeanor of the second degree, not more than ninety days;

C. For a misdemeanor of the third degree, not more than sixty days;

D. For a misdemeanor of the fourth degree, not more than thirty days.

(2) A. A court that sentences an offender to a jail term under this section may permit the offender to serve the sentenced in intermittent confinement or may authorize a limited release of the offender as provided in Ohio R.C. 2929.26(B). The court retains jurisdiction over every offender sentenced to jail to modify the jail sentence imposed at any time, but the court shall not reduce any mandatory jail term.

B. 1. If a prosecutor, as defined in Ohio R.C. 2935.01, has filed a notice with the court that the prosecutor wants to be notified about a particular case and if the court is considering modifying the jail sentence of the offender in that case, the court shall notify the prosecutor that the court is considering modifying the jail sentence of the offender in that case. The prosecutor may request a hearing regarding the court's consideration of modifying the jail sentence of the offender in that case, and, if the prosecutor requests a hearing, the court shall notify the eligible offender of the hearing.

2. If the prosecutor requests a hearing regarding the court's consideration of modifying the jail sentence of the offender in that case, the court shall hold the hearing before considering whether or not to release the offender from the offender's jail sentence.

(3) If a court sentences an offender to a jail term under this section and the court assigns the offender to a county jail that has established a county jail industry program pursuant to Ohio R.C. 5147.30, the court shall specify, as part of the sentence, whether the offender may be considered for participation in the program. During the offender's term in the county jail, the court retains jurisdiction to modify its specification regarding the offender's participation in the county jail industry program.

(4) If a person is sentenced to a jail term pursuant to this section, the court may impose as part of the sentence pursuant to Ohio R.C. 2929.28 a reimbursement sanction, and, if the local detention facility in which the term is to be served is covered by a policy adopted pursuant to Ohio R.C. 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 and Ohio R.C. 2929.37, both of the following apply:

A. The court shall specify both of the following as part of the sentence:

1. If the person is presented with an itemized bill pursuant to Ohio R.C. 2929.37 for payment of the costs of confinement, the person is required to pay the bill in accordance with that section.

2. If the person does not dispute the bill described in subsection (b)(4)A.1. of this section and does not pay the bill by the times specified in Ohio R.C. 2929.37, the clerk of the court may issue a certificate of judgment against the person as described in that section.

B. The sentence automatically includes any certificate of judgment issued as described in subsection (b)(4)A.2. of this section. (ORC 2929.24)

(c) Organizations. Regardless of the penalties provided in subsections (a) and (b) hereof, an organization convicted of an offense pursuant to Section 501.11 shall be fined, in accordance with this section. The court shall fix the fine as follows:

Type of Misdemeanor	Maximum Fine
First degree	$5000.00
Second degree	4000.00
Third degree	3000.00
Fourth degree	2000.00
Minor	1000.00
Misdemeanor not specifically classified	2000.00
Minor misdemeanor not specifically classified	1000.00

(1) When an organization is convicted of an offense that is not specifically classified, and the section defining the offense or penalty plainly indicates a purpose to impose the penalty provided for violation upon organizations, then the penalty so provided shall be imposed in lieu of the penalty provided in this subsection (c).

(2) When an organization is convicted of an offense that is not specifically classified, and the penalty provided includes a higher fine than the fine that is provided in this subsection (c), then the penalty imposed shall be pursuant to the penalty provided for the violation of the section defining the offense.

(3) This subsection (c) does not prevent the imposition of available civil sanctions against an organization convicted of an offense pursuant to Section 501.11, either in addition to or in lieu of a fine imposed pursuant to this subsection (c). (ORC 2929.31)

(d) In addition to any other penalty prescribed by law, the Court shall impose a term of mandatory actual imprisonment of thirty consecutive days if the offender has previously been convicted of a drug abuse offense. The thirty day term of mandatory actual imprisonment shall be served prior to any other term of imprisonment imposed by the Court.
(Ord. 89-14. Passed 12-4-89.)

(e) Mandatory Fines; License Suspension; Notification Regarding Professionally Licensed Person for Drug Abuse Offenses.

(1) In addition to the penalty prescribed by subsection (c) hereof and notwithstanding the fines otherwise required to be imposed pursuant to subsection (a) hereof, the Court shall impose a mandatory fine of one thousand dollars ($1,000) if the violation of Chapter 513 was a misdemeanor of the first degree, a mandatory fine of seven hundred fifty dollars ($750.00) if the violation of Chapter 513 was a misdemeanor of the second degree, a mandatory fine of five hundred dollars ($500.00) if the violation of Chapter 513 was a misdemeanor of the third degree, a mandatory fine of two hundred fifty dollars ($250.00) if the violation of Chapter 513 was a misdemeanor of the fourth degree, and a mandatory fine of one hundred dollars ($100.00) if the violation of Chapter 513 was a minor misdemeanor.

(2) No Court shall impose a mandatory fine pursuant to subsection (d)(1) hereof upon an offender who alleges in an affidavit filed with the Court prior to his sentencing that he is indigent and is unable to pay any mandatory fine imposed pursuant to subsection (d)(1) hereof, if the Court determines the offender is an indigent person and is unable to pay the fine.

(3) In addition to any other penalty imposed for a violation of Chapter 513, the Court may suspend for up to five years the driver's or commercial driver's license, of any person who is convicted of or has pleaded guilty to a violation of Chapter 513.

(4) If the offender is a professionally licensed person or a person who has been admitted to the bar of the Supreme Court of Ohio in compliance with its prescribed and published rules, in addition to any other penalty imposed for a violation of Chapter 513, the Court forthwith shall comply with Ohio R.C. 2925.38. "Disciplinary counsel", "Certified Grievance Committee", "professional license" and "professionally licensed person" shall have the same meanings as in Section 513.01.

(Ord. 90-99. Passed 1-7-91.)

CHAPTER 505
Animals

505.01 Animals running at large.
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CROSS REFERENCES
See sectional histories for similar State law
Owner or keeper liable for damages - see Ohio R.C. 951.10
Dog registration - see Ohio R.C. 955.01
Discharging firearms prohibited - see GEN. OFF. 549.12
Noise control - see GEN. OFF. 557.03(l)

505.01 ANIMALS RUNNING AT LARGE.

The entry of any dog or cat upon any public or private property within the limits of the City, other than the property of the owner or person in charge or control of such dog or cat shall constitute running at large, unless such dog or cat, is securely leashed or under such control by a reasonable person as to prevent the animal from being or creating a nuisance. No person, being the owner or in charge or control of any dog or cat shall permit such animal to run at large within the City limits.

505.02 NUISANCE CONDITIONS PROHIBITED.

(a) No person shall keep or harbor any animal in the City so as to create offensive odors, excessive noise or unsanitary conditions which are a menace to the health, comfort or safety of the public, or otherwise permit the commission or existence of a nuisance as hereinafter defined.

(b) No person shall intentionally or recklessly provide food within the Municipality to any wild or feral animal so as to create noxious or offensive odors or unsanitary conditions, endanger the health, comfort or safety of any other person, or contribute to the damage of real or personal property of any other person.

(c) Any animal, which by biting or frequent and habitual barking, howling or yelping, or in any way or manner injures or disturbs the quiet of any person or the community, or which disturbs or endangers the comfort, repose or health of persons, is hereby declared to be a nuisance. No owner or person having custody of such animal shall harbor or permit it to commit such nuisance.

(d) Any animal which scratches, digs or defecates upon any lawn, tree, shrub, plant building or any other public or private property, other than the property of the owner or person in charge or control of such animal, is hereby declared to be a nuisance.

(e) No person being the owner or in charge or control of any dog shall allow or permit such dog to commit a nuisance on any school grounds, City park or other public property, or upon any private property other than that of the owner or person in charge or control of such dog without the permission of the owner of such property. Where the owner or person in charge or control of such dog immediately removes all feces deposited by such dog and disposes of the same in a sanitary manner, such nuisance shall be considered abated.
(Ord. 16-44. Passed 12-19-16.)

505.03 ABATEMENT OF NUISANCE.

No person, being the owner or in charge or control of any animal shall continue to keep or harbor within this City any animal which is or creates a nuisance as defined by Section 505.02, unless such animal is confined or otherwise kept under such strict control as to abate the nuisance.
(Ord. 74-36. Passed 5-6-74.)

505.04 ANNUAL REGISTRATION OF DOGS; TAGS REQUIRED.

(a) Except for guide dogs registered under Ohio R.C. 955.011 and dogs kept by an institution or organization for teaching and research purposes under Ohio R.C. 955.16, no person shall own, keep or harbor a dog more than three months of age without annually registering such dog with the County Auditor. Failure of any dog at any time to wear a valid registration tag shall be prima-facie evidence of lack of registration and subject such dog to impounding and disposition as provided by Ohio R.C. 955.16.

(b) Whoever violates this section is guilty of a minor misdemeanor for a first offense and a misdemeanor of the fourth degree for each subsequent offense. (ORC 955.99(D)).

505.05 VICIOUS ANIMALS.

In addition to other penalties applicable to this chapter, the Municipal Court may order the owner or person in custody or possession of any animal which is determined by the Court to be vicious, or a perennial and continued nuisance, or which constitutes a serious threat to the health or safety of the public, to forthwith remove such animal from the City. If such animal is not removed from the City in compliance with such order, the Court may order the Chief of Police to cause the animal to be impounded and destroyed.
(Ord. 74-36. Passed 5-6-74.)

505.06 IMPOUNDING.

In addition to other penalties applicable to violations of this chapter, it shall be the duty of the Police Department to take up and impound every dog or cat found in violation of Sections 505.01 to 505.05. If a dog is not wearing a valid license tag, the Police Department may turn it over to an officer charged by law with the custody and disposal of such dogs. If such dog is wearing such a tag, the Police Department shall immediately give the licensee, if he can be found, written notice that the dog has been taken up. The dog or cat shall not be released except upon payment of five dollars ($5.00) to cover the cost of taking it up, plus such additional costs as may be incurred by the City for impounding in an amount not to exceed ten dollars ($10.00). Any dog or cat not reclaimed within five days of receipt of notice by the licensee or within five days of taking it up, if the licensee cannot be found, shall be destroyed or otherwise disposed of.

505.07 QUARANTINE OF ANIMALS.

Whenever any animal has bitten any person, the Chief of Police may order such animal quarantined in the County dog kennels or in a veterinarian's kennels for a period not longer than ten days from the time of the biting. No owner or person in custody or possession of such an animal shall fail to cause an animal to be quarantined in conformity with such order.
(Ord. 74-36. Passed 5-6-74.)

505.08 MAXIMUM NUMBER OF DOGS PERMITTED.

Not more than two dogs, excepting puppies not over three months old, may be kept in any single-family dwelling, or in any separate suite in a two-family dwelling, multiple-family dwelling or apartment, within this City. "Dwelling" and "suite" as used in this section, include the lot or parcel of land on which the house or building containing the suite is located, and also all out-buildings located on the lot or parcel.
(Ord. 74-36. Passed 5-6-74.)

505.09 BEES.

The maintaining of bees or the erection, placing or maintaining of beehives on any parcel of land within this City is declared to be a nuisance and unlawful unless the bees or beehives are kept and maintained in accordance with the following regulations:

(a) No more than three colonies of bees or beehives shall be placed or maintained on any one parcel of land.

(b) No beehive shall be placed or maintained within fifty feet of any building other than the buildings owned or occupied by the keeper of the hives or bees, nor within twenty feet of any boundary line of the parcel.

(c) Every beehive or colony of bees placed or maintained on premises shall be located at least ten feet above the ground or shall be so screened as effectively to require bees entering or leaving the hives to fly at least ten feet above the level of the ground at the nearest boundary of the parcel owned or occupied by the keeper of the bees unless hives are more than 200 feet from any building.
(Ord. 74-36. Passed 5-6-74.)

505.10 DOGS IN PUBLIC PARKS.

(a) No person owning, keeping, or in charge or control of any dog shall permit such dog to go, enter or remain, without a leash upon any public parks within the City, to wit: Bain Park, Bohlken Park, Grannis Park, Nelson Russ Park, Morton Park, and any other City park hereafter established.

(1) Any dog must be on a leash that is extended no farther than six feet and must wear a collar or harness that must be specifically made or manufactured to be the proper size and strength for that particular dog.

(2) Any dog must be under control of a person who possesses discretion and physical strength sufficient to exercise reasonable restraint and control conforming to the animal's weight, size and strength.

(3) Any person walking a dog on paved paths shall yield way to any and all traffic on the paths without dogs and shall obey any other rules related to traffic on paved paths posted at the park.

(b) Dogs shall be prohibited from the following areas within city parks:

(1) Playground equipment and 30 feet immediately surrounding;

(2) On designated soccer fields, baseball fields, football fields, tennis courts, basketball courts or other designated athletic areas while in use;

(3) Within 30 feet of splash pad and pavilion area of Morton Park.

(c) Any person bringing a dog into a park or exercising control of a dog while in a park shall promptly clean up any waste from the dog and place it in the receptacles provided.
(Ord. 17-05. Passed 3-20-17.)

505.11 CRUELTY TO ANIMALS.

(a) No person shall:

(1) Torture an animal, deprive one of necessary sustenance, unnecessarily or cruelly beat, needlessly mutilate or kill, or impound or confine an animal without supplying it during such confinement with a sufficient quantity of good wholesome food and water.

(2) Impound or confine an animal without affording it, during such confinement access to shelter from wind, rain, snow or excessive direct sunlight if it can reasonably be expected that the animal would otherwise become sick or in some other way suffer. This subsection (a)(2) does not apply to animals impounded or confined prior to slaughter. For the purpose of this section, “shelter” means a man-made enclosure, windbreak, sunshade or natural windbreak or sunshade that is developed from the earth’s contour, tree development or vegetation.

(3) Carry or convey an animal in a cruel or inhuman manner.

505.12 POISONING ANIMALS.

No person shall maliciously, or willfully and without the consent of the owner, administer poison, except a licensed veterinarian acting in such capacity, to any animal that is the property of another. No person shall, willfully and without the consent of the owner, place any poisoned food where it may easily be found and eaten by children or domestic animals, either upon his own lands or the lands of another.
(Ord. 74-36. Passed 5-6-74.)

505.13 CERTAIN ANIMALS PROHIBITED.

No person shall keep any horses, mules, cattle, sheep, goats, pigs, swine or fowl within the corporate limits of the City.
(Ord. 74-36. Passed 5-6-74.)

505.14 HUNTING PROHIBITED.

No person shall hunt, kill or attempt to kill any animal or fowl by the use of firearms, bow and arrow, air rifle or any other means within the corporate limits of the City.

505.15 KILLING OR INJURING ANIMALS.

(a) No person shall maliciously, or willfully, and without the consent of the owner, kill or injure a farm animal, dog, cat or other domestic animal that is the property of another. This section does not apply to a licensed veterinarian acting in an official capacity.

(b) Whoever violates this section, if the value of the animal killed or the injury done amounts to less than three hundred dollars ($300.00), is guilty of a misdemeanor of the second degree; if the value of the animal killed or the injury done amounts to three hundred dollars ($300.00) or more, such person is guilty of a misdemeanor of the first degree.
(Ord. 83-17. Passed 2-21-83.)

505.16 REPORT OF ESCAPE OF EXOTIC OR DANGEROUS ANIMAL.

(a) The owner or keeper of any member of a species of the animal kingdom that escapes from his custody or control and that is not indigenous to this State or presents a risk of serious physical harm to persons or property, or both, shall, within one hour after he discovers or reasonably should have discovered the escape, report it to:

(1) A law enforcement officer of the Municipality and the sheriff of the county where the escape occurred; and
(2) The Clerk of the Municipal Legislative Authority.

(b) If the office of the Clerk of the Legislative Authority is closed to the public at the time a report is required by subsection (a) hereof, then it is sufficient compliance with subsection (a) hereof if the owner or keeper makes the report within one hour after the office is next open to the public.

(c) Whoever violates this section is guilty of a misdemeanor of the first degree. (ORC 2927.21)

505.17 DANGEROUS AND VICIOUS DOGS.

(a) As used in this section:

(1) A. "Dangerous dog" means a dog that, without provocation, and subject to subsection (a)(1)B. hereof, has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, while that dog is off the premises of its owner, keeper or harborer and not under the reasonable control of its owner, keeper, harborer or some other responsible person, or not physically restrained or confined in a locked pen which has a top, locked fenced yard or other locked enclosure which has a top.

B. "Dangerous dog" does not include a police dog that has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.

(2) "Menacing fashion" means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.

(3) "Police dog" means a dog that has been trained, and may be used, to assist one or more law enforcement officers in the performance of their official duties.

(4) A. "Vicious dog" means a dog that, without provocation and subject to subsection (a)(4)B. hereof, meets any of the following:

1. Has killed or caused serious injury to any persons;
2. Has caused injury, other than killing or serious injury to any person, or has killed another dog;
3. Is a pit bull terrier, the ownership, keeping or harboring of such a dog shall be prima-facie evidence of the ownership, keeping or harboring of a vicious dog.

B. "Vicious dog" does not include either of the following:

1. A police dog that has killed or caused serious injury to any person or that has caused injury, other than killing or serious injury, to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;
2. A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper or harborer of the dog.

C. "Pit bull terrier" as used herein includes, but is not limited to, any American Pit Bull Terrier, any Bull Terrier, any Staffordshire Bull Terrier or American Staffordshire Terrier breed of dog, or any mixed breed of dog which contains as an element of its breeding the breed of American Pit Bull Terrier, Bull Terrier, Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of American Pit Bull Terrier, Bull Terrier, Staffordshire Bull Terrier or American Staffordshire Terrier.

(5) "Without provocation" means that a dog was not teased, tormented or abused by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity. (ORC 955.11)

(b) No owner, keeper or harborer of a dangerous or vicious dog shall fail to do either of the following:

(1) While that dog is on the premises of the owner, keeper or harborer, securely confine it at all times in a building, in a locked pen which has a top, locked fenced yard or other locked enclosure which has a top, except that a dangerous dog may, in the alternative, be tied with a leash or tether so that the dog is adequately restrained;

(2) While that dog is off the premises of the owner, keeper or harborer, keep it on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:

A. Keep that dog in a locked pen which has a top, locked fenced yard or other locked enclosure which has a top;

B. Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie or affix the leash or tether to the ground or stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;

C. Muzzle that dog.

(c) No owner, keeper or harborer of a vicious dog shall fail to obtain liability insurance with an insurer authorized to write liability insurance in this State providing coverage in each occurrence, subject to a limit, exclusive of interest and costs, of not less than fifty thousand dollars ($50,000) because of damage or bodily injury to or death of a person caused by the vicious dog. (ORC 955.22)

(d) No owner, keeper or harborer of a dangerous or vicious dog, shall sell, give, barter or otherwise dispose of such dog without first advising the prospective transferee that it is a dangerous or vicious dog.

(e) If a violation of subsection (b) hereof involves a dangerous dog, whoever violates that subsection is guilty of a misdemeanor of the fourth degree on a first offense and of a misdemeanor of the third degree on each subsequent offense. Additionally, the court may order the offender to personally supervise the dangerous dog that he owns, keeps or harbors, to cause that dog to complete dog obedience training, or to do both, and the court may order the offender to obtain liability insurance pursuant to subsection (c) hereof. The court, in the alternative, may order the dangerous dog to be humanely destroyed by a licensed veterinarian, the Dog Warden or the humane society.

(f) If a violation of subsection (b) hereof involves a vicious dog, whoever violates that subsection is guilty of one of the following:

(1) A misdemeanor of the first degree on a first offense. Additionally, the court may order the vicious dog to be humanely destroyed by a licensed veterinarian, the Dog Warden or the humane society.

(2) A misdemeanor of the first degree if the dog causes injury other than killing or serious injury, to any person.

(g) Whoever violates subsection (c) hereof is guilty of a misdemeanor of the first degree. (ORC 955.99)

Whoever violates subsection (d) hereof is guilty of a misdemeanor of the fourth degree. (Ord. 88-8. Passed 5-2-88.)

505.18 RABIES VACCINATION OF DOGS AND CATS REQUIRED.

(a) Any person owning, keeping or harboring any dog or cat over the age of three months, shall be required to have such animal currently immunized against rabies by a licensed veterinarian.

(b) All owners or keepers as described in subsection (a) hereof shall maintain a record of such immunization as provided by a veterinarian. Such record will be provided upon request to any law enforcement officer of the City of Fairview Park.

(c) Whoever violates subsection (a) hereof is guilty of a misdemeanor of the fourth degree. Whoever violates subsection (b) hereof is guilty of a minor misdemeanor. Penalties shall be imposed as provided in Section 501.99. (Ord. 98-4. Passed 2-17-98.)

505.19 DEAD ANIMALS.

(a) No person and/or property owner within the City of Fairview Park shall dress, butcher or display any dead animal or fowl, including any such animal or parts thereof killed and tagged pursuant to a hunting license issued by the State of Ohio or any other state, and so as to expose such dressed or butchered animal to the view of any person on public or private property.

(b) Whoever violates this Section 505.19 of the Code is guilty of a minor misdemeanor for the first offense and if convicted of a second offense is guilty of a fourth degree misdemeanor. When such offense includes more than one animal, each animal will be considered to be a separate violation and each day a separate offense.
(Ord. 05-67. Passed 1-17-06.)

505.20 ANIMAL NEGLECT.

(a) No person who confines or who is the custodian or caretaker of an animal shall negligently do any of the following:

(1) Torture, torment, needlessly mutilate or maim, cruelly beat, poison, needlessly kill, or commit an act of cruelty against an animal;

(2) Deprive an animal of necessary sustenance, or confine an animal without supplying it during the confinement with sufficient quantities of good, wholesome food and clean, potable water;

(3) Impound or confine an animal without affording it, during the impoundment or confinement, with access to adequate shelter to protect the animal from heat, cold, wind, rain, snow, excessive moisture, or excessive direct sunlight, if it can reasonably be expected that the animal would become sick or suffer in any other way as a result of the failure to afford adequate shelter.

A. It shall be prima facie evidence that an animal does not have adequate shelter from the cold if the animal is observed in conditions where the temperature is equal to or less than 32 degrees Fahrenheit and the animal is visibly shivering for at least 5 continuous minutes.

B. It shall also be prima facie evidence that an animal does not have adequate shelter from excessive moisture where the temperature is equal to or less than 32 degrees Fahrenheit and the animal does not have an area of clean, dry bedding sufficient to allow the animal to lie down comfortably.

(4) Keep an animal in an enclosure which does not, at minimum, permit the animal to stand, turn around, and lie down to its full length comfortably.

(5) Keep an animal in an enclosure without adequate ventilation and change of wholesome air.

(6) Keep an animal in a place that is unsanitary, including a place where there is an accumulation of feces or other waste, or foul odor, or insect or rodent infestation.

(b) "Cruelty," "torment," and "torture" include every act, omission, or neglect by which unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief.

(c) Any act, omission or neglect prohibited by this section or any subsections herein may be charged as a separate offense for each animal so affected.

(d) Whoever violates any provision of this section or any subsections herein shall be guilty of animal neglect. Animal neglect shall be a misdemeanor of the second degree on a first offense. Animal neglect shall be a first degree misdemeanor if the offender has been previously convicted of this section or any subsections herein, any offense listed under Chapter 959 of the Ohio Revised Code, or any other state or local ordinance relating to animals, other than a minor misdemeanor. Animal neglect shall also be a first degree misdemeanor if (a) the offense was a contributing factor leading to the death of the animal; (b) the offense was a contributing factor leading to some permanent harm or disability to the animal; or (c) the offense was of such severity or nature that it could be reasonably expected that the animal would have died as a result of the neglect if not for the intervention of a humane agent, dog warden or other law enforcement officer.
(Ord. 11-18. Passed 5-16-11.)

505.21 ANIMAL CRUELTY.

(a) No person shall knowingly cause unnecessary or unjustifiable pain or suffering to an animal.

(b) Any act prohibited by this section or any subsections herein may be charged as a separate offense for each animal so affected.

(c) Whoever violates any provision of this section shall be guilty of animal cruelty, a misdemeanor of the first degree.
(Ord. 11-18. Passed 5-16-11.)

505.22 ANIMAL ABANDONMENT.

(a) No person may negligently leave an animal at a location without making reasonable provision for the animal's continued care. It shall not be a defense to an alleged violation of this section for a person to leave an animal at an animal care facility without the consent of that animal care facility, unless the animal is left in an area specifically designated by the animal care facility for such purposes. For the purpose of this section, "animal care facility" shall mean a veterinary office, animal shelter or other organization or business whose primary purpose is providing care for animals.

(b) Any act prohibited by this section or any subsections herein may be charged as a separate offense for each animal so affected.

(c) Whoever violates this Section shall be guilty of animal abandonment, a misdemeanor of the second degree. Animal abandonment shall be a misdemeanor of the first degree if the offender has been previously convicted of this section, any offense listed under Chapter 959 of the Ohio Revised Code, or any other state or local ordinance relating to animals, other than a minor misdemeanor. (Ord. 11-18. Passed 5-16-11.)

505.23 DOG TETHER.

(a) No person who is the owner or keeper of a dog shall negligently chain or otherwise tether a dog outdoors, or permit that dog to be chained or tethered outdoors, unless the tether is of a reasonable length, and is placed in such a manner that the tether could not be reasonably expected to become tangled, or otherwise restrict the dog's freedom of movement within that area.

(b) No person who is the owner or keeper of a dog shall negligently tether a dog outdoors, or permit a dog to be tethered outdoors, for more than nine consecutive hours in any one calendar day.

(c) No person who is the owner or keeper of a dog shall negligently tether a dog outdoors, or permit a dog to be tethered outdoors, by means of a choke collar or pinch collar.

(d) Whoever violates this section shall be guilty of a minor misdemeanor on a first offense, and a misdemeanor of the fourth degree on any subsequent offense.
(Ord. 11-18. Passed 5-16-11.)

505.24 DOG SHELTER DESIGN STANDARDS.

(a) No person who keeps a dog outside unattended for more than one hour in temperatures of 32 degrees Fahrenheit or less shall fail to provide such dog with a dog house or other shelter which is designed, constructed and maintained in accordance with the following requirements:

(1) The shelter shall be completely enclosed and insulated except for a single entrance large enough for the dog to enter.

(2) The entrance shall be reasonably designed and constructed to prevent wind and precipitation from entering the shelter.

(3) Suitable drainage shall be provided so that water cannot be reasonably expected to gather and stand within ten feet of the shelter, and so the dog has access to a dry area at all times.

(4) The house shall be constructed in accordance with the size of the dog being housed. It shall fit snugly but allow adequate space for the animal to stand up, turn around and lie down in a comfortable position. Dry, comfortable bedding shall be available at all times.

(5) Dogs confined to pens shall have not less than 150 square feet of pen space for each dog so confined.

(b) Whoever violates this section shall be guilty of a minor misdemeanor on a first offense, and a misdemeanor of the fourth degree on any subsequent offense. An alleged violation of the dog shelter design standards is a violation of construction and design standards, and shall be separate and apart from any allegation that a dog is actually kept without adequate shelter.
(Ord. 11-18. Passed 5-16-11.)

505.25 FAILURE TO RESTRAIN DOG IN A MOTOR VEHICLE.

(a) No person who is the operator of a motor vehicle shall negligently permit a dog to ride in the unenclosed bed of a pickup truck, or the unenclosed portion of any motor vehicle, unless that dog is being adequately restrained so that it could not be reasonably expected that the dog could exit the motor vehicle while the motor vehicle is in operation.

(b) Whoever violates this Section shall be guilty of a minor misdemeanor on a first offense, and a misdemeanor of the fourth degree on any subsequent offense. Failure to restrain dog in a motor vehicle shall be a misdemeanor of the second degree if the dog or a person is injured as a result of the offense.
(Ord. 11-18. Passed 5-16-11.)

505.99 PENALTY.

(a) Except as otherwise specifically provided for, whoever violates any provision of this chapter is guilty of a minor misdemeanor. (See Section 501.99 for penalties applicable to any misdemeanor classification.)

(b) In addition to any other penalty imposed by a court, for any person convicted of Sections 505.20, 505.21 or 505.23, the court may also impose any or all of the following conditions upon sentencing:

(1) The offender pay restitution to the impounding agency or any other person who provided veterinary care or other care, including reasonably necessary euthanasia services, to an animal as a result of the offense.

(2) The offender be ordered to forfeit any or all of the animals in that person's ownership or care.

(3) As a condition of probation, the offender be required to submit to a mental health assessment and/or treatment.

(4) The court also may prohibit or place limitations or other conditions on the person's ability to own or care for animals, or to reside in a place where animals are kept, for a specified or indefinite period of time, and may, as a condition of probation, require the offender to submit to random announced and unannounced inspections of the offender's residence or other properties to ensure compliance with such restrictions.
(Ord. 11-18. Passed 5-16-11.)

CHAPTER 509
Disorderly Conduct and Peace Disturbance

509.01 Riot.
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509.17 Vacating athletic fields.
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CROSS REFERENCES

See sectional histories for similar State law
Use of force to suppress riot - see Ohio R.C. 2917.05
Cordoning off riot areas, prohibiting sales of firearms and explosives - see Ohio R.C. 3761.16
Emergency suspension of permits and sales by Director of Liquor Control - see Ohio R.C 4301.251
Criminal trespass - see GEN. OFF. 541.05
Noise control - see GEN. OFF. Ch. 557

509.01 RIOT.

(a) No person shall participate with four or more others in a course of disorderly conduct in violation of Section 509.03:

(1) With purpose to commit or facilitate the commission of a misdemeanor, other than disorderly conduct;

(2) With purpose to intimidate a public official or employee into taking or refraining from official action, or with purpose to hinder, impede or obstruct a function of government;

(3) With purpose to hinder, impede or obstruct the orderly process of administration or instruction at an educational institution, or to interfere with or disrupt lawful activities carried on at such institution.

(b) No person shall participate with four or more others with purpose to do an act with unlawful force or violence, even though such act might otherwise be lawful.

(c) Whoever violates this section is guilty of riot, a misdemeanor of the first degree. (ORC 2917.03)

509.011 INCITING TO VIOLENCE.

(a) No person shall knowingly engage in conduct designed to urge or incite another to commit any offense of violence, when either of the following apply:

(1) The conduct takes place under circumstances that create a clear and present danger that any offense of violence will be committed;

(2) The conduct proximately results in the commission of any offense of violence.

(b) Whoever violates this section is guilty of inciting to violence. If the offense of violence that the other person is being urged or incited to commit is a misdemeanor, inciting to violence is a misdemeanor of the first degree. (ORC 2917.01)

509.02 FAILURE TO DISPERSE.

(a) Where five or more persons are participating in a course of disorderly conduct in violation of Section 509.03, and there are other persons in the vicinity whose presence creates the likelihood of physical harm to persons or property or of serious public inconvenience, annoyance or alarm, a law enforcement officer or other public official may order the participants and such other persons to disperse. No person shall knowingly fail to obey such order.

(b) Nothing in this section requires persons to disperse who are peaceably assembled for a lawful purpose.

(c) (1) Whoever violates this section is guilty of failure to disperse.

(2) Except as otherwise provided in subsection (c)(3) hereof, failure to disperse is a minor misdemeanor.

(3) Failure to disperse is a misdemeanor of the fourth degree if the failure to obey the order described in subsection (a) hereof, creates the likelihood of physical harm to persons or is committed at the scene of a fire, accident, disaster, riot, or emergency of any kind. (ORC 2917.04)

509.03 DISORDERLY CONDUCT; INTOXICATION.

(a) No person shall recklessly cause inconvenience, annoyance or alarm to another by doing any of the following:

(1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;

(2) Making unreasonable noise or offensively coarse utterance, gesture or display, or communicating unwarranted and grossly abusive language to any person, which by its very utterance or usage inflicts injury or tends to incite an immediate breach of the peace;

(3) Insulting, taunting or challenging another, under circumstances in which such conduct is likely to provoke a violent response;

(4) Hindering or preventing the movement of persons on a public street, road, highway or right of way, or to, from, within or upon public or private property, so as to interfere with the rights of others, and by any act that serves no lawful and reasonable purpose of the offender;

(5) Creating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or property, by any act that serves no lawful and reasonable purpose of the offender.

(b) No person, while voluntarily intoxicated shall do either of the following:

(1) In a public place or in the presence of two or more persons, engage in conduct likely to be offensive or to cause inconvenience, annoyance or alarm to persons of ordinary sensibilities, which conduct the offender, if the offender were not intoxicated, should know is likely to have that effect on others;

(2) Engage in conduct or create a condition that presents a risk of physical harm to the offender or another, or to the property of another.

(c) Violation of any statute or ordinance of which an element is operating a motor vehicle, locomotive, watercraft, aircraft or other vehicle while under the influence of alcohol or any drug of abuse, is not a violation of subsection (b) hereof.

(d) If a person appears to an ordinary observer to be intoxicated, it is probable cause to believe that person is voluntarily intoxicated for purposes of subsection (b) hereof.

(e) (1) Whoever violates this section is guilty of disorderly conduct.
(2) Except as otherwise provided in this subsection (e)(3), disorderly conduct is a minor misdemeanor.
(3) Disorderly conduct is a misdemeanor of the fourth degree if any of the following applies:
A. The offender persists in disorderly conduct after reasonable warning or request to desist.
B. The offense is committed in the vicinity of a school or in a school safety zone.
C. The offense is committed in the presence of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person who is engaged in the person's duties at the scene of a fire, accident, disaster, riot or emergency of any kind.
D. The offense is committed in the presence of any emergency facility person who is engaged in the person's duties in an emergency facility.

(f) As used in this section:
(1) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in Ohio R.C. 2133.21.
(2) "Emergency facility person" is the singular of "emergency facility personnel" as defined in Ohio R.C. 2909.04.
(3) "Emergency facility" has the same meaning as in Ohio R.C. 2909.04.
(4) "Committed in the vicinity of a school" has the same meaning as in Ohio R.C. 2925.01. (ORC 2917.11)

509.04 DISTURBING A LAWFUL MEETING.

(a) No person, with purpose to prevent or disrupt a lawful meeting, procession or gathering, shall do either of the following:
(1) Do any act which obstructs or interferes with the due conduct of such meeting, procession or gathering;
(2) Make any utterance, gesture or display which outrages the sensibilities of the group.

(b) Whoever violates this section is guilty of disturbing a lawful meeting, a misdemeanor of the fourth degree. (ORC 2917.12)

509.05 MISCONDUCT AT AN EMERGENCY.

(a) No person shall knowingly do any of the following:
(1) Hamper the lawful operations of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person, engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind;

(2) Fail to obey the lawful order of any law enforcement officer engaged in the law enforcement officer's duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind.

(b) Nothing in this section shall be construed to limit access or deny information to any news media representative in the lawful exercise of the news media representative's duties.

(c) Whoever violates this section is guilty of misconduct at an emergency. Except as otherwise provided in this subsection, misconduct at an emergency is a misdemeanor of the fourth degree. If a violation of this section creates a risk of physical harm to persons or property, misconduct at an emergency is a misdemeanor of the first degree.

(d) As used in this section:

(1) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in Ohio R.C. 2133.21.

(2) "Emergency facility person" is the singular of "emergency facility personnel" as defined in Ohio R.C. 2909.04.

(3) "Emergency facility" has the same meaning as in Ohio R.C. 2909.04.

509.06 INDUCING PANIC.

(a) No person shall cause the evacuation of any public place, or otherwise cause serious public inconvenience or alarm, by doing any of the following:

(1) Initiating or circulating a report or warning of an alleged or impending fire, explosion, crime or other catastrophe, knowing that such report or warning is false;

(2) Threatening to commit any offense of violence;

(3) Committing any offense, with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm.

(b) Division (a) hereof does not apply to any person conducting an authorized fire or emergency drill.

(c) Whoever violates this section is guilty of inducing panic, a misdemeanor of the first degree. If inducing panic results in physical harm to any person, economic harm of one thousand dollars ($1,000) or more, if the public place involved in a violation of this section is a school or an institution of higher education, or if the violation pertains to a purported, threatened or actual use of a weapon of mass destruction, inducing panic is a felony and shall be prosecuted under appropriate State law.

(d) Any act that is a violation of this section and any other section of the Codified Ordinances may be prosecuted under this section, the other section, or both sections.

(e) As used in this section:

(1) "Economic harm" means any of the following:

A. All direct, incidental, and consequential pecuniary harm suffered by a victim as a result of criminal conduct. "Economic harm" as described in this division includes, but is not limited to, all of the following:

1. All wages, salaries, or other compensation lost as a result of the criminal conduct;

2. The cost of all wages, salaries, or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;

3. The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct;
4. The loss of value to tangible or intangible property that was damaged as a result of the criminal conduct.

B. All costs incurred by the Municipality as a result of, or in making any response to, the criminal conduct that constituted the violation of this section or Section 509.07, including, but not limited to, all costs so incurred by any law enforcement officers, firefighters, rescue personnel, or emergency medical services personnel of the state or the political subdivision.

(2) "School" means any school operated by a board of education or any school for which the state board of education prescribes minimum standards under 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 violation of this section is committed.

(3) "Weapon of mass destruction" means any of the following:

A. Any weapon that is designed or intended to cause death or serious physical harm through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

B. Any weapon involving a disease organism or biological agent;

C. Any weapon that is designed to release radiation or radioactivity at a level dangerous to human life;

D. Any of the following, except to the extent that the item or device in question is expressly excepted from the definition of "destructive device" pursuant to 18 U.S.C. 921(a)(4) and regulations issued under that section:

1. Any explosive, incendiary, or poison gas bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or similar device;
2. Any combination of parts either designed or intended for use in converting any item or device into any item or device described in division (e)(3)D.1. of this section and from which an item or device described in that division may be readily assembled.

(4) "Biological agent" has the same meaning as in Ohio R.C. 2917.33.

(5) "Emergency medical services personnel" has the same meaning as in Ohio R.C. 2133.21.

(6) "Institution of higher education" means any of the following:

A. A state university or college as defined in Ohio R.C. 3345.12(A)(1), community college, state community college, university branch, or technical college;

B. A private, nonprofit college, university or other post-secondary institution located in this State that possesses a certificate of authorization issued by the Ohio Board of Regents pursuant to Ohio R.C. Chapter 1713.

C. A post-secondary institution with a certificate of registration issued by the State Board of Career Colleges and Schools under Ohio R.C. Chapter 3332. (ORC 2917.31)

509.07 MAKING FALSE ALARMS.

(a) No person shall do any of the following:

(1) Initiate or circulate a report or warning of an alleged or impending fire, explosion, crime or other catastrophe, knowing that the report or warning is false and likely to cause public inconvenience or alarm;

(2) Knowingly cause a false alarm of fire or other emergency to be transmitted to or within any organization, public or private, for dealing with emergencies involving a risk of physical harm to persons or property;

(3) Report to any law enforcement agency an alleged offense or other incident within its concern, knowing that such offense did not occur.

(b) This section does not apply to any person conducting an authorized fire or emergency drill.

(c) Whoever violates this section is guilty of making false alarms, a misdemeanor of the first degree. If a violation of this section results in economic harm of one thousand dollars ($1,000) or more, or if a violation of this section pertains to a purported, threatened, or actual use of a weapon of mass destruction, making false alarms is a felony and shall be prosecuted under appropriate State law.

(d) Any act that is a violation of this section and any other section of the Codified Ordinances may be prosecuted under this section, the other section, or both sections.

(e) As used in this section, "economic harm" and "weapon of mass destruction" have the same meanings as in Section 509.06. (ORC 2917.32)

509.08 FALSE INFORMATION.

(a) No person, for the purpose of tuition-free attendance at a public school or for the purpose of obtaining any other public service, admission or benefit, or avoiding any public duty or obligation, shall knowingly give or assist in giving to any public officer or employee any false or incorrect name, address, family relationship or other false or incorrect information.

(b) Whoever violates this section is guilty of a misdemeanor of the third degree. (Ord. 74-36. Passed 5-6-74.)

509.09 ANNOYANCE.

(a) No person shall accost or follow, or by words or gestures invade or disturb the privacy of, or threaten or annoy, any person within the City.

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

509.10 DISTURBING THE PEACE; NOISES.

(a) No person shall disturb the peace and good order of the City by fighting, quarreling, wrangling, riotous assemblage, threatening violence to the person or property of others, riot, tumult, lascivious, obscene, profane or scandalous language, gambling, intoxication, drunkenness, lewd or lascivious behavior, indecent exposure of his person, or by abusing his family, or any member thereof by inflicting personal violence or any other gross abuse.

(b) No person shall, between the hours of 11:00 p.m. and 7:00 a.m., create any noise or cause the creation of noise, to the annoyance of persons in the City.

(c) No person shall, after a request to desist, make, continue or cause to be made by the use of any horn, bell, radio, loud speaker or by the operation of any instrument or devise, any unreasonably loud, disturbing and unnecessary noise or noises of such a character, intensity and duration as to disturb the peace and quiet of the community or to be detrimental to the life and health of any individual, and no person shall willfully conduct himself in a noisy, boisterous or other disorderly manner by either words or acts which disturb the good order and quiet of the community. (Ord. 74-36. Passed 5-6-74.)

(d) Whoever violates this section is guilty of a minor misdemeanor, the penalty for which shall be a minimum fine of twenty-five dollars ($25.00) and a maximum fine of one hundred dollars ($100.00). (Ord. 81-35. Passed 5-18-81.)

509.11 USE OF SOUND AMPLIFYING DEVICES.

(a) No person shall operate any device for the reproduction or amplification of the voice or any other sounds so as to be heard upon any street of the City, in such a manner as to annoy or reasonably tend to annoy any person. This shall not apply to radio receiving sets designed to be used and heard only by occupants of the vehicle or aircraft in which they are installed.

(b) Whoever violates this section is guilty of a minor misdemeanor.
(Ord. 74-36. Passed 5-6-74.)

509.12 SOUND TRUCKS.

(a) No person shall, either as principal, agent or employee, play, use or operate for any purpose in or upon any public street, or so as to be heard upon any public street within the City, any device known as a sound truck, loud speaker or sound amplifier, or any other instrument of any kind which emits loud or raucous noises.

(b) Whoever violates this section is guilty of a minor misdemeanor.
(Ord. 74-36. Passed 5-6-74.)

509.13 SEARCHLIGHTS.

(a) No person shall, either as principal, agent or employee, use or operate for advertising purposes or for any other purpose whatever, on or upon any public street within the City, nor so near to the street as to distract or reasonably tend to distract the attention of pedestrians or operators of vehicles upon the street, any searchlight or other device throwing a beam of light.

(b) Whoever violates this section is guilty of a minor misdemeanor.
(Ord. 74-36. Passed 5-6-74.)

509.14 LIGHTS IN RESIDENTIAL AREAS.

(a) No person in charge of or in control of any privately owned premises in the City shall permit exterior lighting of such premises unnecessarily to shine, glare, reflect or be directed into or towards any other premises used for residence purposes.

(b) Whoever violates this section is guilty of a minor misdemeanor.
(Ord. 74-36. Passed 5-6-74.)

509.15 EMERGENCY CURFEWS.

(a) In case of riot, civil disorder or violence, or other emergency in the City, or in any adjacent municipality, the Mayor may order that no person shall loiter or remain about or upon any public street, park, playground, public school property, public library property or any other publicly owned property in the City between the hours designated in the order. Such order may be applicable to the entire City or any designated portion thereof as the Mayor shall determine for the safety and welfare of the people and property, both public and private. No person having knowledge of an order issued hereunder shall violate such order.

(b) Whoever violates this section is guilty of a misdemeanor of the first degree. (Ord. 74-36. Passed 5-6-74.)

509.16 MINORS' CURFEW.

(a) No child under the age of thirteen shall be upon the streets or sidewalks or any public property or any place open to the public within the City between the hours of 10:00 p.m. and 5:00 a.m. of the following morning. No child under the age of sixteen but of or over the age of thirteen shall be upon the streets or sidewalks or any public property or any place open to the public within the City between the hours of 11:00 p.m. and 5:00 a.m. of the following morning. No child under the age of eighteen but of or over the age of sixteen shall be upon the streets or sidewalk or any public property or any place open to the public within the City between the hours of 12:00 midnight and 5:00 a.m. Monday through Friday and 1:00 a.m. and 5:00 a.m. Saturday and Sunday.

The provisions of this section do not apply to a minor accompanied by his parent, guardian or person in loco parentis having the care and custody of the minor, or where the minor is upon an emergency errand or business trip directed or ordered by his parent or guardian or person in loco parentis having the care and custody of the minor.

(b) No parent or guardian of any child under the age of thirteen and no person in loco parentis having the care and custody of any child under the age of thirteen shall allow such child to be upon the streets or sidewalks or any public property or any place open to the public within the City between the hours of 10:00 p.m. and 5:00 a.m. of the following morning. No parent or guardian of any child under the age of sixteen but of or over the age of thirteen and no person in loco parentis having the care and custody of any child under the age of sixteen shall allow such child to be upon the streets or sidewalks or any public property or any place open to the public within the City between the hours of 11:00 p.m. and 5:00 a.m. of the following morning. No child under the age of eighteen but of or over the age of sixteen or no person in loco parentis having the care and custody of any child under the age of eighteen shall allow such child to be upon the streets or sidewalks or any public property or any place open to the public between the hours of 12:00 midnight and 5:00 a.m. Monday through Friday and 1:00 a.m. and 5:00 a.m. Saturday and Sunday.

The provisions of this section do not apply to a minor accompanied by his parent or guardian or person in loco parentis having the care and custody of the minor, or where the minor is upon an emergency errand or upon a business trip directed or ordered by his parent or guardian or person in loco parentis having the care and custody of the minor.

(c) Any school, church, lodge or other organization, or parent or guardian who desires to hold any entertainment for minors under the age of eighteen years and which entertainment requires such minors to be out at a later hour than that called for in this section shall register in advance in person with the Chief of Police or an officer designated by him to have the minors stay out to this later hour. The application shall state the time the entertainment shall end. The minors who attend this function shall be off the streets or sidewalks or any public property or any place open to the public within the City one-half hour after the function is ended.

(d) The provisions of this section establishing the hours of curfew shall be prominently displayed in all places open to the public.

(e) Any child found in violation of this section shall be taken to the Police Department and the parent, guardian or person in loco parentis shall be notified to come to such Department and take personal charge of this child. The child shall be released only to such parent, guardian or person in loco parentis or to the juvenile authorities.

(f) Any parent or guardian whose child violates this section or any person in loco parentis having the care and custody of any child who violates this section shall be advised in writing of the violation, for the first offense. For a second or subsequent offense, any parent, guardian or person in loco parentis who violates this section is guilty of a minor misdemeanor. Any operator of any place open to the public or any agent or employee of such operator who violates this section shall be advised in writing of the violation for the first offense. For a second or subsequent offense, any operator of any place open to the public or any agent or employee of such operator who violates this section is guilty of a minor misdemeanor. Any child who violates this section shall for a second or subsequent offense be prosecuted in Juvenile Court pursuant to the provisions of Ohio R.C. 2151.022.
(Ord. 81-101. Passed 12-7-81.)

509.17 VACATING ATHLETIC FIELDS.

(a) No individual, organization or group occupying an athletic field without a permit to do so, shall refuse or fail to vacate such athletic field when requested to by the holder of a valid permit issued by the office of the Director of Recreation.

(b) Whoever violates this section is guilty of a minor misdemeanor.
(Ord. 89-40. Passed 5-15-89.)

509.18 CRIMINAL ACTIVITY NUISANCES.

(a) The following activities occurring from a single property, and allowed to continue unabated by an owner, occupant, renter, lessee or invitee of the owner or occupant of such property, are hereby declared to be public nuisances:

(1) Any animal violation under Chapter 505 of the Codified Ordinances;
(2) Any disorderly conduct, disturbance of the peace, or other violation of Chapter 509 of the Codified Ordinances;
(3) Any drug violation under Chapter 513 of the Codified Ordinances;
(4) Any gambling violation under Chapter 517 of the Codified Ordinances;
(5) Any health, safety or sanitation violation under Chapter 521 of the Codified Ordinances;
(6) Any obstruction of official business violation under Chapter 525 of the Codified Ordinances;
(7) Any alcohol violations under Chapter 529 of the Codified Ordinances;
(8) Any sex offenses under Chapter 533 of the Codified Ordinances;
(9) Any offense against another person under Chapter 537 of the Codified Ordinances;
(10) Any offense against property under Chapter 541 of the Codified Ordinances;
(11) Any violation of the streets and sidewalks under Chapter 543 of the Codified Ordinances;
(12) Any theft or fraud violation under Chapter 545 of the Codified Ordinances;
(13) Any violation of Chapter 547 of the Codified Ordinances;
(14) Any weapons, explosives, firearms or handgun violation under Chapter 549 or Chapter 553 of the Codified Ordinances;

(15) Any noise violation under Chapter 557 of the Codified Ordinances;
(16) Any violation of the Fair Housing Code under Chapter 563 of the Codified Ordinances;
(17) Any violation of the Hotel and Motel rules under Chapter 705 of the Codified Ordinances;
(18) Any violation of Apartment rules under Chapter 707 of the Codified Ordinances;
(19) Any violation of the Hotel and Motel Definition under Section 1351.14 of the Codified Ordinances;
(20) Any fireworks violation under Section 1519.04 of the Codified Ordinances.

(b) The Chief of Police or his designee, upon finding that four or more nuisance activities declared in this section have occurred within any twelve month period, may cause a written notice and order to be served on the owner of the property declaring that such property is a nuisance property. The notice and order shall set forth the nature of the nuisance, the estimated costs to abate any further nuisance, and state that the owner may avoid being charged the costs of abatement by taking steps to prevent any further nuisance activity as set forth in this section. The notice shall further state that if a fifth or subsequent nuisance activity as declared in this section occurs within twelve months of the dates of the first four activities, the City may abate the nuisance by responding to the activities using administrative and law enforcement actions, and the costs of such abatement shall be assessed on the nuisance property. Notice shall be served as set forth in Section 501.99.

(c) If within twelve months after the first of the four nuisance activities referred to in subsection (b) of this section has occurred, a fifth nuisance activity as declared in this section occurs, the City may abate the nuisance by responding to the activity using administrative and law enforcement actions, and the costs of such abatement shall be assessed on the nuisance property in the same manner as in Section 501.99 of the Codified Ordinances, and the costs shall be calculated as set forth in subsection (e) hereof. The City shall provide notice to the owner of the nuisance property of the City's intent to assess the costs of abatement against the owner's property at least thirty (30) days before such costs are certified to the County for assessment against the property, and such notice shall contain a description of the nuisance activity that is basis for the notice of intent to assess the property, and the cost to abate. Notice shall be served as set forth in Section 501.99 of the Codified Ordinances.

(d) The owner of a nuisance property who receives a notice from the Chief of Police or his designee pursuant to this section may appeal such notice by submitting a written request for reconsideration to the Chief of Police within thirty (30) days of the date of the notice. If the Chief of Police finds that the facts presented do not support the declaration of a nuisance, the Chief shall rescind the notice. Otherwise, the Chief shall deny the request and refer the appeal for hearing by the Board of Zoning and Building Appeals. Any such appeal shall not stay any actions by the City to abate the first or any subsequent nuisance activity. In any such appeal, the City must show a preponderance of the evidence that each violation stated in the notice being appealed has occurred, and that the declaration of the property as a nuisance property or of the intent of the City to assess the property for abatement costs, whichever is applicable, is justified. The City shall be deemed to have failed to have met this standard if the owner demonstrates by a preponderance of evidence that:

(1) He or she was not the owner at the time of any of the nuisance activity that is the basis for the notice; or

(2) He or she had knowledge of the nuisance activity, but has promptly and vigorously taken all actions necessary to abate each nuisance, including, without limitation, compliance with the requirements of Ohio R.C. 5321.17(C) and 5321.04(A)(9); or

(3) He or she had no knowledge of the nuisance activity and could not, with reasonable care and diligence, have known of the nuisance activity; and upon receipt of the notice of the declaration of the property as a nuisance property, he or she promptly took all actions necessary to abate the nuisance, including, without limitation, compliance with the requirements of Ohio R.C. 5321.17(C) and 5321.04(A)(9).

(e) Costs of abatement shall be assessed based upon the hourly wage of the police officer or officers or ancillary City personnel involved in the abatement of the nuisance activity, plus 75%, multiplied by the number of hours required to abate the nuisance.

(f) The declaration of a nuisance property, an order to abate a nuisance, or the assessment of costs by the City on a property, do not affect or limit the City's right or authority to bring criminal prosecution or other legal action against any person for violation of the City's ordinances. (Ord. 04-33. Passed 12-20-04.)

509.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)

CHAPTER 513
Drug Abuse Control

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513.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law
Federal prosecution bar to local prosecution - see Ohio R.C. 2925.50, 3719.19
Analysis report and notarized statement as evidence - see Ohio R.C 2925.51
Criteria for granting probation - see Ohio R.C 3719.70(B)
Adulterating food with drug of abuse - see GEN. OFF. 537.13
Using weapons while under the influence - see GEN. OFF. 549.03.

513.01 DEFINITIONS.

As used in this chapter, certain terms are defined as follows:

(a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means to a person or an animal.

(b) "Controlled substance" means a drug, compound, mixture, preparation or substance included in Schedule I, II, III, IV, or V, or a controlled substance analog.

"Controlled substance analog" means a drug, compound, mixture, preparation or substance that is not specifically defined as a controlled substance in Ohio R.C. Chapter 3719 and that either has a chemical structure or composition substantially similar to any drug, compound, mixture, preparation or substance that is specifically defined as a controlled substance in Ohio R.C. Chapter 3719 or that is manufactured, designed or intended to produce an effect or effects substantially similar to that of a particular controlled substance.
(Ord. 89-36. Passed 10-16-89.)

(c) "Dispense" means sell, leave with, give away, dispose of or deliver.

(d) "Distribute" means to deal in, ship, transport or deliver but does not include administering or dispensing a drug.

(e) "Hypodermic" means a hypodermic syringe or needle, or other instrument or device for the injection of medication.

(f) "Manufacturer" means a person who manufactures a controlled substance as "manufacture" is defined in Ohio R.C. 3715.01.

(g) Except as provided in subsection (g)(2) hereof:

(1) "Marihuana" means 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. (ORC 3719.01)

(2) "Marihuana" does not include hashish.
(ORC 2925.01)

(h) "Controlled substance analog" has the same meaning as provided in Ohio R.C. 3719.01.

(i) "Official written order" means 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.

(j) "Pharmacist" means a person licensed under Ohio R.C. Chapter 4729 to engage in the practice of pharmacy.

(k) "Pharmacy" has the same meaning as in Ohio R.C. 4729.01.

(l) "Poison" means any drug, chemical, or preparation likely to be deleterious or destructive to adult human life in quantities of four grams or less.

(m) "Licensed health professional authorized to prescribe drugs", "prescriber" and "prescription" have the same meanings as in Ohio R.C. 4729.01.

(n) "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.

(o) "Schedule I", "Schedule II", "Schedule III", "Schedule IV" and "Schedule V" mean controlled substance Schedules I, II, III, IV, and V respectively, established pursuant to Ohio R.C. 3719.41, as amended pursuant to Ohio R.C. 3719.43 or 3719.44.

(p) "Wholesaler" means 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 a "wholesale distributor of dangerous drugs" as defined in Ohio R.C. 4729.01.
(ORC 3719.01)

(q) "Drug of abuse" means any controlled substance as defined in subsection (b) hereof, any harmful intoxicant as defined in subsection (x) hereof and any dangerous drug as defined in subsection (r) hereof.
(ORC 3719.011)

(r) "Dangerous drug" means any of the following:

(1) Any drug to which either of the following applies:

A. Under the "Federal Food, Drug, and Cosmetic Act", 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without 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 the drug may be dispensed only upon a prescription;

B. Under Ohio R.C. Chapter 3715 or 3719, the drug may be dispensed only upon a prescription.

(2) Any drug that contains a Schedule V narcotic drug 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. (ORC 4729.02)

(s) "Bulk amount" of a controlled substance means any of the following:

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

A. An amount equal to or exceeding ten grams or twenty-five unit doses of a compound, mixture, preparation or substance that is or contains any amount of a Schedule I opiate or opium derivative;

B. An amount equal to or exceeding ten grams of a compound, mixture, preparation or substance that is or contains any amount of raw or gum opium;

C. An amount equal to or exceeding thirty grams or ten unit doses of a compound, mixture, preparation or substance that is or contains any amount of a Schedule I hallucinogen other than tetrahydrocannabinol, or lysergic acid amide, or a Schedule I stimulant or depressant;

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

E. An amount equal to or exceeding five grams or ten unit doses of a compound, mixture, preparation or substance that is or contains any amount of phencyclidine;

F. An amount equal to or exceeding 120 grams or thirty 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, 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and the Federal Drug Abuse Control laws as defined in Ohio R.C. 3719.01, that is or contains any amount of a Schedule II depressant substance or a Schedule II hallucinogenic substance;

G. An amount equal to or exceeding three grams of a compound, mixture, preparation or substance that is or contains any amount of a Schedule II stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act and the Federal Drug Abuse Control laws;

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

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

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

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

(t) "Unit dose" means 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.

(u) "Cultivate" includes planting, watering, fertilizing or tilling.

(v) "Drug abuse offense" means any of the following:

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

(2) A violation of an existing or former law of this or any other state or of the United States, that is substantially equivalent to any section listed in subsection (v)(1) hereof;

(3) An offense under an existing or former law of this 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 or attempt to commit, or complicity in committing or attempting to commit any offense under subsection (v)(1), (2) or (3) hereof.

(w) "Felony drug abuse offense" means any drug abuse offense that would constitute a felony under the laws of this State, any other state or the United States.

(x) "Harmful intoxicant" does not include beer or intoxicating liquor, but means any of the following:

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

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

B. Any aerosol propellant;

C. Any fluorocarbon refrigerant;

D. Any anesthetic gas.

(2) Gamma Butyrolactone;

(3) 1,4 Butanediol.

(y) "Manufacture" means 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.

(z) "Possess" or "possession" means 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.

(aa) "Sample drug" means 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.

(bb) "Standard pharmaceutical reference manual" means the current edition, with cumulative changes if any, of references that are approved by the State Board of Pharmacy.

(cc) "Juvenile" means a person under eighteen years of age. (A.O.)

(dd) "School" means any school operated by a board of education or any school for which the State Board of Education prescribes minimum standards under Ohio R.C. 3301.07, any pre-school program as defined in Ohio R.C. 3301.52, any child day care as defined in Ohio R.C. 5104.01, any publicly funded child day care as defined in Ohio R.C. 5104.01, or any child day care center or center as defined in Ohio R.C. 5104.01, whether or not any instruction, extracurricular activities or training provided by the school is being conducted at the time a criminal offense is committed. (Ord. 96-98. Passed 2-3-97.)

(ee) "School premises" means 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 or the governing body of a 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.

(ff) "School building" means 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.

(gg) "Counterfeit controlled substance" means:

(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 that trademark, trade name or identifying mark; or

(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; or

(3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance; or

(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 marking, labeling, packaging, distribution or the price for which it is sold or offered for sale.

(hh) An offense is “committed in the vicinity of a school” if the offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises, regardless of whether the offender knows the offense is being committed on school premises, in a school building, or within one thousand feet of the boundaries of any school premises.

(ii) An offense is "committed in the vicinity of a juvenile" if the offender commits the offense within one hundred feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within one hundred feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense.

(jj) "Hashish" means 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. (ORC 2925.01)

(kk) "Federal Drug Abuse Control Laws" has the same meaning as in Ohio R.C. 3719.01. "Federal Food, Drug and Cosmetic Act" has the same meaning as in Ohio R.C. 4729.02.

(ll) "Disciplinary Counsel" means the Disciplinary Counsel appointed by the Board of Commissioners on Grievances and Discipline of the Supreme Court under the Rules for the Government of the Bar of Ohio.

(mm) "Certified Grievance Committee" means a duly constituted and organized committee of the Ohio State Bar Association or of one or more local Bar Associations of the State of Ohio that complies with the criteria set forth in Rule V, Section 6 of the Rules for the Government of the Bar of Ohio.

(nn) "Professional license" means any license, permit, certificate, registration, qualification, admission, temporary license, temporary permit, temporary certificate or temporary registration that is described in subsection (oo) hereof and that qualifies a person as a professional licensed person.

(oo) "Professionally licensed person" means 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 a live 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 as an auctioneer or apprentice auctioneer or licensed to operate an auction company 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, manicurist's license, managing cosmetologist's license, initial instructor's license, electrologist'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 or a funeral home license, or who has been registered for 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 registered 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 has been issued a certificate of registration or temporary registration as a physician's assistant under Ohio R.C. Chapter 4730;
(17) A person who has been issued a certificate to practice medicine or surgery or any of its branches, a certificate as a cosmetic therapist, a certificate to practice as an osteopathic physician and surgeon, or a certificate to practice 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 certificate to practice chiropractic under Ohio R.C. Chapter 4734;
(21) A person licensed to act as a real estate broker, real estate salesman, limited real estate broker or limited real estate salesman 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 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 counselor, registered as a counselor assistant, 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 licensed to practice dietetics under Ohio R.C. Chapter 4759;

(34) A person who has been issued a license or temporary permit to practice respiratory therapy under Ohio R.C. Chapter 4761; or

(35) A person who has been issued a real estate appraiser certificate under Ohio R.C. Chapter 4763.

(Ord. 90-99. Passed 1-7-91.)

(pp) "Public park" means any parcel of real property, and buildings and structures upon such real property, used and maintained for recreational purposes and owned or operated by the State or by the City.

(qq) "Public playground" means any parcel of real property with improvements or equipment thereon used and maintained for recreational purposes for children under eighteen years of age and owned or operated by the State or by the City.

(rr) "Public pool" means any swimming pool, and the buildings and structures used and maintained in conjunction with such pool, owned or operated by the State or by the City.

(ss) "Public recreation center" means any building or structure used and maintained for recreational purposes and owned or operated by the State or by the City.

(Ord. 91-71. Passed 7-1-91.)

(tt) "Senior Citizens Services Center" means any parcel of real property, and buildings and structures upon such real property, used and maintained for providing services for persons sixty-five years of age or older.

(uu) "Child day-care facility" means any parcel of real property, and buildings and structures upon such real property, used and maintained for providing child day-care services and includes "child day-care center", "type A family day-care home", "type B family day-care home" and "school child day-care center" as those terms are defined in Ohio R.C. 5104.01.

(Ord. 92-67. Passed 10-19-92.)

(vv) "Public premises" means any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort.

(ww) "Methamphetamine" means 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.

(xx) "Lawful prescription" means 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.

(yy) "Deception" and "theft offense" have the same meanings as in Ohio R.C. 2913.01. (ORC 2925.01)

513.02 GIFT OF MARIHUANA.

(a) No person shall knowingly give or offer to make a gift of twenty grams or less of marihuana. (Ord. 89-49. Passed 11-6-89.)

(b) Except as provided in subsection (c) hereof, whoever violates this section is guilty of trafficking in marihuana, a misdemeanor of the fourth degree for the first offense and a misdemeanor of the second degree for any subsequent offense.
(Ord. 90-19. Passed 5-7-90.)

(c) If the offense involves a violation of Ohio R.C. 2925.03(a)(1), (5), (7) or (10) that was committed on school premises, on the premises of a senior citizens services center, on child day-care facility premises, on public playground premises, on public pool premises, on public recreation center premises, in a school building, in a senior citizens services center, in a child day-care facility or in a public recreation center, or within 1,000 feet of the boundaries of any school premises, senior citizens services center, child day-care facility, public park, public playground, public pool or public recreation center, or that was committed within 100 feet of any juvenile or within the view of any juvenile, whether or not the offender knows the age of the juvenile, the offender knows the juvenile is within 100 feet or within view of the commission of the offense, or the juvenile views the commission of the offense, trafficking in marihuana is a misdemeanor of the first degree. (Ord. 92-67. Passed 10-19-92.)

(d) The court shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or pleads guilty to any violation of this section. If an offender's driver's or commercial driver's license or permit is suspended pursuant to this subsection, the offender, at any time after the expiration of two years from the day on which the offender's sentence was imposed, may file a motion with the sentencing court requesting termination of the suspension; upon the filing of such a motion and the court's finding of good cause for the termination, the court may terminate the suspension.
(ORC 2925.03)

513.03 DRUG ABUSE; CONTROLLED SUBSTANCE POSSESSION OR USE.

(a) No person shall knowingly obtain, possess or use a controlled substance or a controlled substance analog.

(b) This section does not apply to the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies and other persons whose conduct was in accordance with Ohio R.C. Chapters 3719, 4715, 4729, 4730, 4731 and 4741.

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

(3) Any person who sells, offers for sale, prescribes, dispenses or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug and Cosmetic Act", 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed or administered for that purpose in accordance with that Act;

(4) Any person who obtained the controlled substance pursuant to a lawful prescription issued by a licensed health professional authorized to prescribe drugs.

(c) Whoever violates this section is guilty of drug abuse:

(1) If the drug involved is a compound, mixture, preparation or substance included in Schedule III, IV or V, drug abuse is a misdemeanor of the first degree.
(Ord. 89-14. Passed 12-4-89.)

(2) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates subsection (a) hereof is guilty of possession of marihuana. Possession of marihuana is a misdemeanor if the amount of the drug involved does not exceed 200 grams. The penalty for the offense shall be determined as follows:

A. Except as otherwise provided in subsection (c)(2)B. hereof, 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.

(3) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates subsection (a) hereof is guilty of possession of hashish. Possession of hashish is a misdemeanor if the amount of the drug involved does not exceed the maximum amount specified in subsection (c)(3)B. hereof. The penalty for the offense shall be determined as follows:

A. Except as otherwise provided in subsection (c)(3)B. hereof, 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.

(d) In addition to any other sanction that is imposed for an offense under this section, the court that sentences an offender who is convicted of or pleads guilty to a violation of this section may suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.

(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 2925.11)

513.04 POSSESSING DRUG ABUSE INSTRUMENTS.

(a) No person shall knowingly make, obtain, possess or use any instrument, article or thing the customary and primary purpose of which is for the administration or use of a dangerous drug, other than marihuana, when the instrument involved is a hypodermic or syringe, whether or not of crude or extemporized manufacture or assembly, and the instrument, article or thing involved has been used by the offender to unlawfully administer or use a dangerous drug, other than marihuana, or to prepare a dangerous drug, other than marihuana, for unlawful administration or use.

(b) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies and other persons whose conduct was in accordance with Ohio R.C. Chapters 3719, 4715, 4729, 4730, 4731 and 4741.

(c) Whoever violates this section is guilty of possessing drug abuse instruments, a misdemeanor of the first degree. (ORC 2925.12)

(d) In addition to any other sanction imposed for an offense under this section, the court that sentences a person who is convicted of or pleads guilty to a violation of this section may suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.

513.05 PERMITTING DRUG ABUSE.

(a) No person, who is the owner, operator or person in charge of a locomotive, watercraft, aircraft or other vehicle as defined in Ohio R.C 4501.01(A), shall knowingly permit the vehicle to be used for the commission of a felony drug abuse offense.

(b) No person, who is the owner, lessee or occupant, or who has custody, control or supervision of premises, or real estate, including vacant land, shall knowingly permit the premises, or real estate, including vacant land, to be used for the commission of a felony drug abuse offense by another person.

(c) Whoever violates this section is guilty of permitting drug abuse, a misdemeanor of the first degree, if the offender has not previously been convicted of a drug abuse offense or if the felony drug abuse offense in question is not a violation of Ohio R.C. 2925.02 or 2925.03(A)(1), (5), (7) or (10) that was committed in either of the following ways:

(1) On school premises, in a school building, or within 1,000 feet of the boundaries of any school premises; or

(2) Within 100 feet of any juvenile or within the view of any juvenile, whether or not the offender knows the age of the juvenile, the offender knows the juvenile is within 100 feet or within view of the commission of the offense, or the juvenile views the commission of the offense.

(d) Vehicles used in violation of subsection (a) hereof shall be seized and forfeited to the Municipality, upon motion to the common pleas court. Forfeiture shall not apply to common carriers or innocent owners, nor shall it affect the rights of a holder of a valid lien. Premises, or real estate, including vacant land, used in violation of subsection (b) hereof shall be seized and forfeited to the Municipality, upon motion to the common pleas court. Forfeiture shall not apply to innocent owners, nor shall it affect the rights of a holder of a valid lien.
(Ord. 92-67. Passed 10-19-92.)

(e) In addition to any other sanction imposed for an offense under this section, the court that sentences a person who is convicted of or pleads guilty to a violation of this section may suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.

(f) Any premises or real estate that is permitted to be used in violation of subsection (b) hereof constitutes a nuisance subject to abatement pursuant to Ohio R.C. Chapter 3767.
(ORC 2925.13)

513.06 ILLEGAL CULTIVATION OF MARIHUANA.

(a) No person shall knowingly cultivate marihuana.

(b) This section does not apply to any person listed in Ohio R.C. 2925.03(B)(1) to (3) to the extent and under the circumstances described in those divisions.

(c) Whoever commits a violation of subsection (a) hereof is guilty of illegal cultivation of marihuana. Illegal cultivation of marihuana is a misdemeanor if the amount of marihuana involved does not exceed 200 grams.

(1) Except as otherwise provided in subsection (c)(2) hereof, illegal cultivation of marihuana is a minor misdemeanor, or if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the fourth degree.

(2) If the amount of marihuana involved equals or exceeds 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.

(d) In addition to any other sanction imposed for an offense under this section, the court that sentences an offender who is convicted of or pleads guilty to a violation of this section may suspend the offender's driver's or commercial driver's license or permit in accordance with division (G) of Ohio R.C. 2925.03. 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.

(e) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in an application for employment, a license, or any other right or privilege or made in connection with the person's appearance as a witness. (ORC 2925.04)

513.07 POSSESSING OR USING HARMFUL INTOXICANTS.

(a) Except for lawful research, clinical, medical, dental or veterinary purposes, no person, with purpose to induce intoxication or similar physiological effects, shall obtain, possess or use a harmful intoxicant.

(b) Whoever violates this section is guilty of abusing harmful intoxicants, a misdemeanor of the first degree. If the offender previously has been convicted of a drug abuse offense, abusing harmful intoxicants is a felony and shall be prosecuted under appropriate State law.

(c) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.
(ORC 2925.31)

513.08 ILLEGALLY DISPENSING DRUG SAMPLES.

(a) No person shall knowingly furnish another a sample drug.

(b) Subsection (a) hereof does not apply to manufacturers, wholesalers, pharmacists, owners of pharmacies, licensed health professionals authorized to prescribe drugs, and other persons whose conduct is in accordance with Ohio R.C. Chapters 3719, 4715, 4729, 4730, 4731, and 4741.

(c) Whoever violates this section is guilty of illegal dispensing of drug samples. If the drug involved in the offense is a dangerous drug or a compound, mixture, preparation, or substance included in Schedule III, IV, or V, or is marihuana, the penalty for the offense shall be determined as follows:

(1) Except as otherwise provided in subsection (c)(2) hereof, illegal dispensing of drug samples is a misdemeanor of the second degree.

(2) If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, illegal dispensing of drug samples is a misdemeanor of the first degree. (ORC 2925.36)

(d) In addition to any other sanction imposed for an offense under this section, the court that sentences an offender who is convicted of or pleads guilty to a violation of this section may suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit. (ORC 2925.36)

513.09 CONTROLLED SUBSTANCE OR PRESCRIPTION LABELS.

(a) No person shall alter, deface or remove any label affixed by a manufacturer, wholesaler, pharmacist or licensed health professional authorized to prescribe drugs who dispenses a controlled substance in a package or container, as long as any of the original contents remain, except when lawfully filling a prescription. (ORC 3719.08)

(b) Whoever violates this section is guilty of a misdemeanor of the first degree, if the offender has not previously been convicted of a violation of this section, Ohio R.C. 3719.07 or 3719.08 or a drug abuse offense. (ORC 3719.99(C))

513.10 HYPODERMIC POSSESSION, DISPLAY AND DISPENSING.

(a) Possession of a hypodermic is authorized for the following:

(1) A manufacturer or distributor of, or dealer in, hypodermics or medication packaged in hypodermics, and any authorized agent or employee of that manufacturer, distributor or dealer, in the regular course of business;

(2) Terminal distributor of dangerous drugs, in the regular course of business;

(3) A person authorized to administer injections, in the regular course of the person's profession or employment;

(4) A person, when the hypodermic was lawfully obtained and is kept and used for the purpose of self-administration of insulin or other drug prescribed for the treatment of disease by a licensed health professional authorized to prescribe drugs;

(5) A person whose use of a hypodermic is for legal research, clinical, educational or medicinal purposes;

(6) A farmer, for the lawful administration of a drug to an animal;

(7) A person whose use of a hypodermic is for lawful professional, mechanical, trade or craft purposes.

(b) No manufacturer or distributor of, or dealer in, hypodermics or medication packaged in hypodermics, or their authorized agents or employees, and no terminal distributor of dangerous drugs, shall display any hypodermic for sale. No person authorized to possess a hypodermic pursuant to division (a) of this section shall negligently fail to take reasonable precautions to prevent any hypodermic in the person's possession from theft or acquisition by any unauthorized person.
(ORC 3719.172)

(c) Whoever violates this section is guilty of a misdemeanor of the third degree. If the offender has previously been convicted of a violation of this section, Ohio R.C. 3719.05, 3719.06, 3719.13, 3719.172(B) or (E), or 3719.31 or a drug abuse offense, a violation is a misdemeanor of the first degree. (ORC 3719.99(D))

513.11 HARMFUL INTOXICANTS; POSSESSING NITROUS OXIDE IN MOTOR VEHICLE.

(a) As used in this section, “motor vehicle”, “street” and “highway” have the same meanings as in Ohio R.C. 4511.01.

(b) Unless authorized under Ohio R.C. Chapter 3719, 4715, 4729, 4731, 4741 or 4765, no person shall possess an open cartridge of nitrous oxide in either of the following circumstances:

(1) While operating or being a passenger in or on a motor vehicle on a street, highway, or other public or private property open to the public for purposes of vehicular traffic or parking;

(2) While being in or on a stationary motor vehicle on a street, highway, or other public or private property open to the public for purposes of vehicular traffic or parking.

(c) Whoever violates this section is guilty of possessing nitrous oxide in a motor vehicle, a misdemeanor of the fourth degree.
(ORC 2925.33)

513.12 DRUG PARAPHERNALIA.

(a) As used in this section, "drug paraphernalia" means any equipment, product or material of any kind that is used by the offender, intended by the offender for use or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled substance in violation of this chapter or Ohio R.C. Chapter 2925. "Drug paraphernalia" includes, but is not limited to, any of the following equipment, products or materials that are used by the offender, intended by the offender for use or designated by the offender for use, in any of the following manners:

(1) A kit for propagating, cultivating, growing or harvesting any species of a plant that is a controlled substance or from which a controlled substance can be derived;

(2) A kit for manufacturing, compounding, converting, producing, processing or preparing a controlled substance;

(3) Any object, instrument, or device for manufacturing, compounding, converting, producing, processing, or preparing methamphetamine;

(4) An isomerization device for increasing the potency of any species of a plant that is a controlled substance;

(5) Testing equipment for identifying, or analyzing the strength, effectiveness or purity of, a controlled substance;

(6) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose or lactose, for cutting a controlled substance;

(7) A separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining, marihuana;

(8) A blender, bowl, container, spoon or mixing device for compounding a controlled substance;

(9) A capsule, balloon, envelope or container for packaging small quantities of a controlled substance;
(10) A container or device for storing or concealing a controlled substance;
(11) A hypodermic syringe, needle or instrument for parenterally injecting a controlled substance into the human body;
(12) 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 an object 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 object, concerning its use;
(2) The proximity in time or space of the object, or of the act relating to the object, to a violation of any provision of this chapter or Ohio R.C. Chapter 2925;
(3) The proximity of the object to any controlled substance;
(4) The existence of any residue of a controlled substance on the object;
(5) Direct or circumstantial evidence of the intent of the owner, or of anyone in control, of the object, to deliver it to any person whom the owner or person in control of the object knows intends to use the object 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 object, 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 object was intended or designed by the offender for use as drug paraphernalia;
(6) Any oral or written instruction provided with the object concerning its use;
(7) Any descriptive material accompanying the object and explaining or depicting its use;
(8) National or local advertising concerning the use of the object;
(9) The manner and circumstances in which the object is displayed for sale;
(10) Direct or circumstantial evidence of the ratio of the sales of the object to the total sales of the business enterprise;
(11) The existence and scope of legitimate uses of the object in the community;
(12) Expert testimony concerning the use of the object.

(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 the person knows or reasonably should know that the equipment, product or material will be used as drug paraphernalia.

(3) No person shall place an advertisement in any newspaper, magazine, handbill or other publication that is published and printed and circulates primarily within this State, if the person knows that the purpose of the advertisement is to promote the illegal sale in the State of the equipment, product or material that the offender intended or designed for use as drug paraphernalia.

(d) 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, 4729, 4730, 4731, and 4741. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by Section 513.10.

(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.

(f) Whoever violates any provision of subsection (c) hereof is guilty of a misdemeanor of the first degree. (Ord. 89-48. Passed 1-16-90.)

(g) In addition to any other sanction imposed upon an offender for a violation of this section, the court may suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.
(ORC 2925.14)

513.13 COUNTERFEIT CONTROLLED SUBSTANCES.

(a) No person shall knowingly possess any counterfeit controlled substance.

(b) As used in this section, "counterfeit controlled substance" means:

(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 such trademark, trade name or identifying mark; or

(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; or

(3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance; or

(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 marking, labeling, packaging, distribution or the price for which it is sold or offered for sale.

(c) Whoever violates this section is guilty of possession of counterfeit controlled substance, a misdemeanor of the first degree, if the offender has not previously been convicted of a violation of this chapter or of Ohio R.C. Chapter 2925.
(Ord. 90-99. Passed 1-7-91.)

513.14 SALE AND POSSESSION OF CLOVE CIGARETTES PROHIBITED.

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

(1) Give, sell, possess for sale, distribute, produce, or manufacture any cigarette or tobacco product that contains, in whole or in part, cloves, clove oil or eugenol.

(2) Possess or use any cigarette or tobacco product that contains, in whole or in part, cloves, clove oil or eugenol.

(b) Whoever violates subsection (a)(1) hereof is guilty of the illegal sale, possession for sale, distribution, production or manufacture of clove cigarettes or tobacco products. If the offender has not been previously convicted of or pleads guilty to a violation of subsection (a)(1) hereof, he shall be guilty of a misdemeanor of the second degree. If the offender has been previously convicted of or pleads guilty to a violation of subsection (a)(1) hereof, he shall be guilty of a misdemeanor of the first degree.

(c) Whoever violates subsection (a)(2) hereof is guilty of the illegal use or possession of clove cigarettes or tobacco products. If the offender has not been previously convicted of or pleads guilty to a violation of subsection (a)(2) hereof, he shall be guilty of a misdemeanor of the fourth degree. If the offender has been previously convicted of or pleads guilty to a violation of subsection (a)(2) hereof, he shall be guilty of a misdemeanor of the third degree.
(Ord. 85-63. Passed 10-21-85.)

513.15 CRIMINAL SOLICITATION OF A CONTROLLED SUBSTANCE.

(a) No person, with intent to purchase or otherwise obtain or possess a controlled substance, shall knowingly induce, solicit, entice or procure another person who is eighteen years of age or older, whether or not the offender knows the age of such other person, to exchange the controlled substance for property, services, money or any other item, thing or benefit of value.

(b) No person, with intent to purchase or otherwise obtain or possess a controlled substance, shall knowingly induce, solicit, entice or procure another person who is a juvenile, whether or not the offender knows the age of such juvenile to do either of the following:

(1) Exchange the controlled substance for property, services, money or any other item, thing or benefit of value; or

(2) Act or otherwise serve as an intermediary, or otherwise aid or assist, in the purchasing or otherwise obtaining the controlled substance for the offender.

(c) This section does not apply to any person who purchases or otherwise obtains a controlled substance pursuant to a prescription issued by a practitioner. This section also does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with Ohio R.C. Chapters 3719, 4715, 4729, 4731 and 4741.

(d) Whoever violates subsection (a) hereof is guilty of criminal solicitation of a controlled substance. If the offender has not been previously convicted of or pled guilty to a violation of subsection (a) hereof, he shall be guilty of a misdemeanor of the second degree. If the offender has been previously convicted of or pled guilty to a violation of subsection (a) hereof, he shall be guilty of a misdemeanor of the first degree.

(e) Whoever violates subsection (b) hereof is guilty of criminal solicitation of a controlled substance from a juvenile and is guilty of a misdemeanor of the first degree.
(Ord. 89-15. Passed 7-1-91.)

513.16 LOITERING FOR THE PURPOSE OF ENGAGING IN DRUG-RELATED ACTIVITY.

(a) No person shall loiter in or near any street, premises open to the public, or any public or private place in a manner and under circumstances manifesting the purpose to engage in drug-related activity contrary to any of the provisions of Ohio R.C. Chapter 2925 or this chapter.

(b) Among the circumstances which may be considered in determining whether such purpose is manifested are:

(1) Such person is a known unlawful drug user, possessor or seller. As used herein, "known unlawful drug user, possessor or seller" is a person who has, within the knowledge of the arresting law enforcement officer, been convicted in any court of this State of any violation involving the use, possession or sale of a drug of abuse as defined in Ohio R.C. Chapter 2925 or this chapter, or such person has been convicted of any violation of any of the provisions of Ohio R.C. Chapter 2925 or this chapter or of a substantially similar law or ordinance of this or any other state or of any other political subdivision of this or any other state; or a person who displays physical characteristics of drug intoxication, or usage;

(2) Such person is currently subject to a court order prohibiting his presence in a significant unlawful drug-related activity geographic area;
(3) Such person acts in such a manner as to raise a reasonable suspicion that he is about to or is then engaged in unlawful drug-related activity;
(4) Such person is physically identified by or is known by the law enforcement officer as a member of an association of persons which has as its purpose unlawful drug-related activity;
(5) Such person transfers objects or packages in a furtive manner;
(6) Such person takes flight or manifestly endeavors to conceal himself upon the appearance of a law enforcement officer;
(7) Such person manifestly endeavors to conceal any object or thing which reasonably could be involved in unlawful drug-related activity;
(8) Such person possesses any instrument, article or thing whose customary or primary purpose is for the sale, administration or use of a drug of abuse;
(9) The area involved is known to the law enforcement officer to be an area of unlawful drug use and/or trafficking;
(10) The premises involved are known to the law enforcement officer as a place of unlawful drug-related activity;
(11) Any vehicle involved is registered to a person known by the law enforcement officer to be a drug of abuse user, possessor or seller, or a person for whom there is an outstanding arrest warrant for a crime involving unlawful drug-related activity.

(c) If any provision of this section is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision, or the application thereof, which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

(d) Whoever violates this section is guilty of loitering for the purpose of engaging in drug-related activity, a misdemeanor of the third degree.
(Ord. 90-83. Passed 10-15-90.)

513.17 ABUSE OF CONTROLLED SUBSTANCE ANALOGS; PROHIBITIONS.

(a) No person shall knowingly do any of the following:
(1) By force, threat or deception administer to another or induce another to use a controlled substance analog;
(2) By any means, administer or furnish to another or induce or cause another to use a controlled substance analog;
(3) Sell or offer to sell a controlled substance analog;
(4) Prepare for shipment, ship, transport, deliver, prepare for distribution or distribute a controlled substance analog;
(5) Cultivate, manufacture, or otherwise engage in the production of a controlled substance analog;
(6) Obtain, possess or use a controlled substance analog;

(7) Provide money or other item of value to another person with the purpose that the recipient of the money or item of value would use them to obtain a controlled substance analog; or

(8) Induce, solicit, entice or procure another person to exchange a controlled substance analog for money or other item of value or act or otherwise serve as an intermediary, or otherwise aid or assist in the purchasing or obtaining the controlled substance analog for the offender.

(b) This section does not apply to any person who purchases or otherwise obtains a controlled substance analog pursuant to a prescription issued by a practitioner. This section also does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with Ohio R.C. Chapters 3719, 4715, 4729, 4731 and 4741.

(c) The provisions of this section shall not apply to any analog of a drug, compound, mixture, preparation or substance now or hereinafter contained within Schedules I, II, III, IV and V established pursuant to Ohio R.C. 3719.41 and as amended pursuant to Ohio R.C. 3719.43 or 3719.44.

(d) Whoever violates this section is guilty of abuse of controlled substance analogs, a misdemeanor of the first degree.
(Ord. 90-99. Passed 1-7-91.)

513.18 ANABOLIC STEROID WARNING REQUIRED OF ATHLETIC FACILITIES.

(a) As used in this section:

(1) "Anabolic steroid" has the same meaning as in Ohio R.C. 3719.41.

(2) "Athletic facility" means both of the following:

A. A privately owned athletic training, exercise or sports facility or stadium that is open to the public;

B. A publicly owned sports facility or stadium.

(b) The following warning shall be conspicuously posted in each locker room of every athletic facility:

"WARNING: IMPROPER USE OF ANABOLIC STEROIDS MAY CAUSE SERIOUS OR FATAL HEALTH PROBLEMS, SUCH AS HEART DISEASE, STROKE, CANCER, GROWTH DEFORMITIES, INFERTILITY, PERSONALITY CHANGES, SEVERE ACNE, AND BALDNESS. POSSESSION, SALE OR USE OF ANABOLIC STEROIDS WITHOUT A VALID PRESCRIPTION IS A CRIME PUNISHABLE BY A FINE AND IMPRISONMENT."

(c) No privately owned athletic facility shall fail to post the warning required by this section.

(d) Whoever violates subsection (c) of this section is guilty of a misdemeanor of the fourth degree. (Ord. 91-94. Passed 10-7-91.)

513.19 OFFENDER MAY BE REQUIRED TO PAY FOR CONTROLLED SUBSTANCE TESTS.

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 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)

513.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)

CHAPTER 517
Gambling

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CROSS REFERENCES

See sectional histories for similar State law
Lotteries prohibited; exception - see Ohio Const., Art. XV, Sec. 6
Contributing to delinquency of minors - see Ohio R.C. 2151.41
Search warrants - see Ohio R.C. 2933.21(E)
Licensing charitable bingo games - see Ohio R.C. 2915.08

517.01 DEFINITIONS.

As used in this chapter:

(a) "Bookmaking" means the business of receiving or paying off bets.

(b) "Bet" means the hazarding of anything of value upon the result of an event, undertaking or contingency, but does not include a bona fide business risk.

(c) "Scheme of chance" means a slot machine unless authorized under Ohio R.C. Chapter 3772, lottery unless authorized under Ohio R.C. Chapter 3770, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit. "Scheme of chance" includes the use of an electronic device to reveal the results of a game entry if valuable consideration is paid, directly or indirectly, for a chance to win a prize. Valuable consideration is deemed to be paid for a chance to win a prize in the following instances:

(1) Less than fifty per cent of the goods or services sold by a scheme of chance operator in exchange for game entries are used or redeemed by participants at any one location;

(2) Less than fifty per cent of participants who purchase goods or services at any one location do not accept, use or redeem the goods or services sold or purportely sold;
(3) More than fifty per cent of prizes at any one location are revealed to participants through an electronic device simulating a game of chance or a “casino game” as defined in Ohio R.C. 3772.01;
(4) The good or service sold by a scheme of chance operator in exchange for a game entry cannot be used or redeemed in the manner advertised;
(5) A participant pays more than fair market value for goods or services offered by a scheme of chance operator in order to receive one or more game entries;
(6) A participant may use the electronic device to purchase additional game entries;
(7) A participant may purchase additional game entries by using points or credits won as prizes while using the electronic device;
(8) A scheme of chance operator pays out in prize money more than twenty per cent of the gross revenue received at one location; or
(9) A participant makes a purchase or exchange in order to obtain any good or service that may be used to facilitate play on the electronic device.

As used in this subsection, “electronic device” means a mechanical, video, digital or electronic machine or device that is capable of displaying information on a screen or other mechanism and that is owned, leased or otherwise possessed by any person conducting a scheme of chance, or by that person’s partners, affiliates, subsidiaries or contractors.

(d) "Game of chance" means poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo.

(e) "Game of chance conducted for profit” means any game of chance designed to produce income for the person who conducts or operates the game of chance, but does not include bingo.

(f) "Gambling device" means any of the following:
(1) A book, totalizer or other equipment for recording bets;
(2) A ticket, token or other device representing a chance, share or interest in a scheme of chance or evidencing a bet;
(3) A deck of cards, dice, gaming table, roulette wheel, slot machine, or other apparatus designed for use in connection with a game of chance;
(4) Any equipment, device, apparatus or paraphernalia specially designed for gambling purposes;
(5) Bingo supplies sold or otherwise provided, or used, in violation of this chapter.

(g) "Gambling offense" means the following:
(1) A violation of Ohio R.C. 2915.02 to 2915.092, 2915.10 or 2915.11;
(2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States substantially equivalent to any section listed in subsection (g)(1) hereof or a violation of Ohio R.C. 2915.06 as it existed prior to July 1, 1996;
(3) An offense under an existing or former municipal ordinance or law of this or any other state or the United States, of which gambling is an element;
(4) A conspiracy or attempt to commit, or complicity in committing an offense under subsection (g)(1), (2) or (3) hereof.

(h) Except as otherwise provided in this chapter, "charitable organization" means either of the following:

(1) An organization that is and has received from the Internal Revenue Service a determination letter that currently is in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(2) A volunteer rescue service organization, volunteer firefighter's organization, veteran's organization, fraternal organization, or sporting organization that is exempt from federal, income taxation under subsection 501(c)(4), (c)(7), (c)(8), (c)(10) or (c)(19) of the Internal Revenue Code.

To qualify as a charitable organization, an organization shall have been in continuous existence as such in this State for a period of two years immediately preceding either the making of an application for a bingo license under Ohio R.C. 2915.08 or the conducting of any game of chance as provided in division (D) of Ohio R.C. 2915.02.

(i) "Religious organization" means any church, body of communicants or group that is not organized or operated for profit, that gathers in common membership for regular worship and religious observances.

(j) "Veteran's organization" means any individual post or state headquarters of a national veteran's association or an auxiliary unit of any individual post of a national veteran's association, which post, state headquarters, or auxiliary unit is incorporated as a nonprofit corporation and either has received a letter from the state headquarters of the national veteran's association indicating that the individual post or auxiliary unit is in good standing with the national veteran's association or has received a letter from the national veteran's association indicating that the state headquarters is in good standing with the national veteran's association. As used in this subsection, "national veteran's association" means any veteran's association that has been in continuous existence as such for a period of at least five years and either is incorporated by an act of the United States congress or has a national dues-paying membership of at least five thousand persons.

(k) "Volunteer firefighter's organization" means any organization of volunteer firefighters, as defined in Ohio R.C. 146.01, that is organized and operated exclusively to provide financial support for a volunteer fire department or a volunteer fire company and that is recognized or ratified by a county, municipal corporation, or township.

(l) "Fraternal organization" means any society, order, state headquarters, or association within this State, except a college or high school fraternity, that is not organized for profit, that is a branch, lodge or chapter of a national or state organization, that exists exclusively for the common business of sodality of its members.

(m) "Volunteer rescue service organization" means any organization of volunteers organized to function as an emergency medical service organization as defined in Ohio R.C. 4765.01.

(n) "Charitable bingo game" means any bingo game described in subsection (o)(1) or (2) of this section that is conducted by a charitable organization that has obtained a license pursuant to Ohio R.C. 2915.08 and the proceeds of which are used for a charitable purpose.

(o) "Bingo" means either of the following:

(1) A game with all of the following characteristics:

A. The participants use bingo cards or sheets, including paper formats and electronic representation or image formats, that are divided into twenty-five spaces arranged in five horizontal and five vertical rows of spaces, with each space, except the central space, being designated by a combination of a letter and a number and with the central space being designated as a free space.

B. The participants cover the space on the bingo cards or sheets that correspond to combinations of letters and numbers that are announced by a bingo game operator.

C. A bingo game operator announces combinations of letters and numbers that appear on objects that a bingo game operator selects by chance, either manually or mechanically from a receptacle that contains seventy-five objects at the beginning of each game, each object marked by a different combination of a letter and a number that corresponds to one of the seventy-five possible combinations of a letter and a number that can appear on the bingo cards or sheets.

D. The winner of the bingo game includes any participant who properly announces during the interval between the announcements of letters and numbers as described in subsection (o)(1)C. hereof, that a predetermined and preannounced pattern of spaces has been covered on a bingo card or sheet being used by a participant.

(2) Instant bingo, punch boards and raffles.

(p) "Conduct" means to back, promote, organize, manage, carry on, sponsor, or prepare for the operation of bingo or a game of chance, a scheme of chance, or a sweepstakes.

(q) "Bingo game operator" means any person, except security personnel, who performs work or labor at the site of bingo, including, but not limited to, collecting money from participants, handing out bingo cards or sheets or objects to cover spaces on bingo cards or sheets, selecting from a receptacle the objects that contain the combination of letters and numbers that appear on bingo cards or sheets, calling out the combinations of letters and numbers, distributing prizes, selling or redeeming instant bingo tickets or cards, supervising the operation of a punch board, selling raffle tickets, selecting raffle tickets from a receptacle and announcing the winning numbers in a raffle, and preparing, selling, and serving food or beverages.

(r) "Participant" means any person who plays bingo.

(s) "Bingo session" means a period that includes both of the following:

(1) Not to exceed five continuous hours for the conduct of one or more games described in subsection (o)(1) of this section, instant bingo, and seal cards;

(2) A period for the conduct of instant bingo and seal cards for not more than two hours before and not more than two hours after the period described in subsection (s)(1) of this section.

(t) "Gross receipts" means all money or assets, including admission fees, that a person receives from bingo without the deduction of any amounts for prizes paid out or for the expenses of conducting bingo. "Gross receipts" does not include any money directly taken in from the sale of food or beverages by a charitable organization conducting bingo, or by a bona fide auxiliary unit or society of a charitable organization conducting bingo, provided all of the following apply:

(1) The auxiliary unit or society has been in existence as a bona fide auxiliary unit or society of the charitable organization for at least two years prior to conducting bingo.

(2) The person who purchases the food or beverage receives nothing of value except the food or beverage and items customarily received with the purchase of that food or beverage.

(3) The food and beverages are sold at customary and reasonable prices.

(u) "Security personnel" includes any person who either is a sheriff, deputy sheriff, marshal, deputy marshal, township constable, or a police officer of a municipal corporation or has successfully completed a peace officer's training course pursuant to Ohio R.C. 109.71 to 109.79 and who is hired to provide security for the premises on which bingo is conducted.

(v) “Charitable purpose" means that the net profit of bingo, other than instant bingo, is used by, or is given, donated, or otherwise transferred to, any of the following:

(1) Any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(2) A veteran's organization that is a post, chapter, or organization of veterans, or an auxiliary unit or society of, or a trust or foundation for, any such post, chapter, or organization organized in the United States or any of its possessions, at least seventy-five per cent of the members of which are veterans and substantially all of the other members of which are individuals who are spouses, widows, or widowers of veterans, or such individuals, provided that no part of the net earnings of such post, chapter, or organization inures to the benefit of any private shareholder or individual, and further provided that the net profit is used by the post, chapter, or organization for the charitable purposes set forth in division (B)(12) of Ohio R.C. 5739.02, is used for awarding scholarships to or for attendance at an institution mentioned in division (B)(12) of Ohio R.C. 5739.02, is donated to a governmental agency, or is used for nonprofit youth activities, the purchase of United States or Ohio flags that are donated to schools, youth groups, or other bona fide nonprofit organizations, promotion of patriotism, or disaster relief;

(3) A fraternal organization that has been in continuous existence in this State for fifteen years and that uses the net profit exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals if contributions for such use would qualify as a deductible charitable contribution under subsection 170 of the Internal Revenue Code;

(4) A volunteer firefighter's organization that uses the net profit for the purposes set forth in subsection (k) of this section.

(w) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U..S.C. 1, as now or hereafter amended.

(x) "Youth athletic organization" means any organization, not organized for profit, that is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are twenty-one years of age or younger by means of sponsoring, organizing, operating or contributing to the support of an athletic team, club, league or association.

(y) "Youth athletic park organization" means any organization, not organized for profit, that satisfies both of the following:

(1) It owns, operates and maintains playing fields that satisfy both of the following:

A. The playing fields are used at least one hundred days per year for athletic activities by one or more organizations not organized for profit, each of which is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are eighteen years of age or younger by means of sponsoring, organizing, operating or contributing to the support of an athletic team, club, league or association;

B. The playing fields are not used for any profit-making activity at any time during the year,

(2) It uses the proceeds of bingo it conducts exclusively for the operation, maintenance and improvement of its playing fields of the type described in paragraph (1) hereof.

(z) "Bingo supplies" means bingo cards or sheets; instant bingo tickets or cards; electronic bingo aids; raffle tickets; punch boards; seal cards; instant bingo ticket dispensers; and devices for selecting or displaying the combination of bingo letters and numbers or raffle tickets. Items that are "bingo supplies" are not gambling devices if sold or otherwise provided, and used, in accordance with this chapter. For purposes of this chapter, "bingo supplies" are not to be considered equipment used to conduct a bingo game.

(aa) “Instant bingo" means a form of bingo that shall use folded or banded tickets or paper cards with perforated break-open tabs, a face of which is covered or otherwise hidden from view to conceal a number, letter, or symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners, and may also include games in which some winners are determined by the random selection of one or more bingo numbers by the use of a seal card or bingo blower. In all “instant bingo” the prize amount and structure shall be predetermined. "Instant bingo" does not include any device that is activated by the insertion of a coin, currency, token, or an equivalent, and that contains as one of its components a video display monitor that is capable of displaying numbers, letters, symbols, or characters in winning or losing combinations.

(bb) “Seal card" means a form of instant bingo that uses instant bingo tickets in conjunction with a board or placard that contains one or more seals that, when removed or opened, reveal predesignated winning numbers, letters, or symbols.

(cc) “Raffle" means a form of bingo in which the one or more prizes are won by one or more persons who have purchased a raffle ticket. The one or more winners of the raffle are determined by drawing a ticket stub or other detachable section from a receptacle containing ticket stubs or detachable sections corresponding to all tickets sold for the raffle. “Raffle” does not include the drawing of a ticket stub or other detachable section of a ticket purchased to attend a professional sporting event if both of the following apply:

(1) The ticket stub or other detachable section is used to select the winner of a free prize given away at the professional sporting event; and

(2) The cost of the ticket is the same as the cost of a ticket to the professional sporting event on days when no free prize is given away.

(dd) "Punch board" means a board containing a number of holes or receptacles of uniform size in which are placed, mechanically and randomly, serially numbered slips of paper that may be punched or drawn from the hole or receptacle when used in conjunction with instant bingo. A player may punch or draw the numbered slips of paper from the holes or receptacles and obtain the prize established for the game if the number drawn corresponds to a winning number or, if the punch board includes the use of a seal card, a potential winning number.

(ee) "Gross profit" means gross receipts minus the amount actually expended for the payment of prize awards.

(ff) "Net profit" means gross profit minus expenses.

(gg) "Expenses" means the reasonable amount of gross profit actually expended for all of the following:

(1) The purchase or lease of bingo supplies;

(2) The annual license fee required under Ohio R.C. 2915.08;

(3) Bank fees and service charges for a bingo session or game account described in Ohio R.C. 2915.10;

(4) Audits and accounting services;

(5) Safes;

(6) Cash registers;

(7) Hiring security personnel;

(8) Advertising bingo;

(9) Renting premises in which to conduct a bingo session;

(10) Tables and chairs;

(11) Expenses for maintaining and operating a charitable organization's facilities, including, but not limited to, a post home, club house, lounge, tavern, or canteen and any grounds attached to the post home, club house, lounge, tavern, or canteen;

(12) Payment of real property taxes and assessments that are levied on a premises on which bingo is conducted;

(13) Any other product or service directly related to the conduct of bingo that is authorized in rules adopted by the Attorney General under division (B)(1) of Ohio R.C. 2915.08.

(hh) "Person" has the same meaning as in Ohio R.C. 1.59 and includes any firm or any other legal entity, however organized.

(ii) "Revoke" means to void permanently all rights and privileges of the holder of a license issued under Ohio R.C. 2915.08, 2915.081, or 2915.082 or a charitable gaming license issued by another jurisdiction.

(jj) "Suspend" means to interrupt temporarily all rights and privileges of the holder of a license issued under Ohio R.C. 2915.08, 2915.081, or 2915.082 or a charitable gaming license issued by another jurisdiction.

(kk) "Distributor" means any person who purchases or obtains bingo supplies and who does either of the following:

(1) Sells, offers for sale, or otherwise provides or offers to provide the bingo supplies to another person for use in this State;

(2) Modifies, converts, adds to, or removes parts from the bingo supplies to further their promotion or sale for use in this State.

(ll) "Manufacturer" means any person who assembles completed bingo supplies from raw materials, other items, or subparts or who modifies, converts, adds to, or removes parts from bingo supplies to further their promotion or sale.

(mm) "Gross annual revenues" means the annual gross receipts derived from the conduct of bingo described in subsection (o)(1) of this section plus the annual net profit derived from the conduct of bingo described in subsection (o)(2) of this section.

(nn) "Instant bingo ticket dispenser" means a mechanical device that dispenses an instant bingo ticket or card as the sole item of value dispensed and that has the following characteristics:

(1) It is activated upon the insertion of United States currency.
(2) It performs no gaming functions.
(3) It does not contain a video display monitor or generate noise.
(4) It is not capable of displaying any numbers, letters, symbols, or characters in winning or losing combinations.
(5) It does not simulate or display rolling or spinning reels.
(6) It is incapable of determining whether a dispensed bingo ticket or card is a winning or nonwinning ticket or card and requires a winning ticket or card to be paid by a bingo game operator.
(7) It may provide accounting and security features to aid in accounting for the instant bingo tickets or cards it dispenses.
(8) It is not part of an electronic network and is not interactive.

(oo) (1) "Electronic bingo aid" means an electronic device used by a participant to monitor bingo cards or sheets purchased at the time and place of a bingo session and that does all of the following:
A. It provides a means for a participant to input numbers and letters announced by a bingo caller.
B. It compares the numbers and letters entered by the participant to the bingo faces previously stored in the memory of the device.
C. It identifies a winning bingo pattern.
(2) "Electronic bingo aid" does not include any device into which a coin, currency, token, or an equivalent is inserted to activate play.

(pp) “Deal of instant bingo tickets" means a single game of instant bingo tickets all with the same serial number.

(qq) (1) "Slot machine” means either of the following:
A. Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player who gives the thing of value in the hope of gain;
B. Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct bingo or a scheme or game of chance.
(2) “Slot machine” does not include a skill-based amusement machine or an instant bingo ticket dispenser.

(rr) “Net profit from the proceeds of the sale of instant bingo" means gross profit minus the ordinary, necessary, and reasonable expense expended for the purchase of instant bingo supplies, and, in the case of instant bingo conducted by a veteran’s, fraternal or sporting organization, minus the payment by that organization of real property taxes, and assessments levied on a premises on which instant bingo is conducted.

(ss) "Charitable instant bingo organization" means an organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and is a charitable organization as defined in this section. A "charitable instant bingo organization" does not include a charitable organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and that is created by a veteran's organization, a fraternal organization, or a sporting organization in regards to bingo conducted or assisted by a veteran's organization, a fraternal organization, or a sporting organization pursuant to Ohio R.C. 2915.13.

(tt) "Game flare" means the board or placard that accompanies each deal of instant bingo tickets and that has printed on or affixed to it the following information for the game:

(1) The name of the game;
(2) The manufacturer's name or distinctive logo;
(3) The form number;
(4) The ticket count;
(5) The prize structure, including the number of winning instant bingo tickets by denomination and the respective winning symbol or number combinations for the winning instant bingo tickets;
(6) The cost per play;
(7) The serial number of the game.

(uu) (1) "Skill-based amusement machine" means mechanical, video, digital, or electronic device that rewards the player or players, if at all, only with merchandise prizes or with redeemable vouchers redeemable only for merchandise prizes, provided that with respect to rewards for playing the game all of the following apply:

A. The wholesale value of a merchandise prize awarded as a result of the single play of a machine does not exceed ten dollars;
B. Redeemable vouchers awarded for any single play of a machine are not redeemable for a merchandise prize with a wholesale value of more than ten dollars;
C. Redeemable vouchers are not redeemable for a merchandise prize that has a wholesale value of more than ten dollars times the fewest number of single plays necessary to accrue the redeemable vouchers required to obtain that prize; and
D. Any redeemable vouchers or merchandise prizes are distributed at the site of the skill-based amusement machine at the time of play.

A card for the purchase of gasoline is a redeemable voucher for purposes of division (uu)(1) of this section even if the skill-based amusement machine for the play of which the card is awarded is located at a place where gasoline may not be legally distributed to the public or the card is not redeemable at the location of, or at the time of playing, the skill-based amusement machine.

(2) A device shall not be considered a skill-based amusement machine and shall be considered a slot machine if it pays cash or one or more of the following apply:

A. The ability of a player to succeed at the game is impacted by the number or ratio of prior wins to prior losses of players playing the game.
B. Any reward of redeemable vouchers is not based solely on the player achieving the object of the game or the player's score;
C. The outcome of the game, or the value of the redeemable voucher or merchandise prize awarded for winning the game, can be controlled by a source other than any player playing the game.
D. The success of any player is or may be determined by a chance event that cannot be altered by player actions.

E. The ability of any player to succeed at the game is determined by game features not visible or known to the player.

F. The ability of the player to succeed at the game is impacted by the exercise of a skill that no reasonable player could exercise.

(3) All of the following apply to any machine that is operated as described in subsection (uu)(1) of this section:

A. As used in subsection (uu) of this section, "game" and "play" mean one event from the initial activation of the machine until the results of play are determined without payment of additional consideration. An individual utilizing a machine that involves a single game, play, contest, competition or tournament may be awarded redeemable vouchers or merchandise prizes based on the results of play.

B. Advance play for a single game, play, contest, competition or tournament participation may be purchased. The cost of the contest, competition, or tournament participation may be greater than a single noncontest, competition or tournament play.

C. To the extent that the machine is used in a contest, competition or tournament, that contest, competition, or tournament has a defined starting and ending date and is open to participants in competition for scoring and ranking results toward the awarding of redeemable vouchers or merchandise prizes that are stated prior to the start of the contest, competition or tournament.

(4) For purposes of subsection (uu)(1) of this section, the mere presence of a device, such as a pin-setting, ball-releasing, or scoring mechanism, that does not contribute to or affect the outcome of the play of the game does not make the device a skill-based amusement machine.

(vv) "Merchandise prize" means any item of value, but shall not include any of the following:

(1) Cash, gift cards, or any equivalent thereof;

(2) Plays on games of chance, state lottery tickets, bingo, or instant bingo;

(3) Firearms, tobacco, or alcoholic beverages; or

(4) A redeemable voucher that is redeemable for any of the items listed in subsection (vv)(1), (2) or (3) of this section.

(ww) "Redeemable voucher" means any ticket, token, coupon, receipt, or other noncash representation of value.

(xx) "Pool not conducted for profit" means a scheme in which a participant gives a valuable consideration for a chance to win a prize and the total amount of consideration wagered is distributed to a participant or participants.

(yy) "Sporting organization" means a hunting, fishing or trapping organization, other than a college or high school fraternity or sorority, that is not organized for profit, that is affiliated with a state or national sporting organization, including but not limited to, the league of Ohio sportsmen, and that has been in continuous existence in this State for a period of three years.

(zz) "Community action agency" has the same meaning as in Ohio R.C. 122.66.

(aaa) (1) "Sweepstakes terminal device" means a mechanical, video, digital or electronic machine or device that is owned, leased or otherwise possessed by any person conducting a sweepstakes, or by that person's partners, affiliates, subsidiaries, or contractors, that is intended to be used by a sweepstakes participant, and that is capable of displaying information on a screen or other mechanism. A device is a sweepstakes terminal device if any of the following apply:

A. The device uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries.
B. The device utilizes software such that the simulated game influences or determines the winning of or value of the prize.
C. The device selects prizes from a predetermined finite pool of entries.
D. The device utilizes a mechanism that reveals the content of a predetermined sweepstakes entry.
E. The device predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed.
F. The device utilizes software to create a game result.
G. The device reveals the prize incrementally, even though the device does not influence the awarding of the prize or the value of any prize awarded.
H. The device determines and associates the prize with an entry or entries at the time the sweepstakes is entered.

(2) As used in this subsection and in Section 517.02:
A. "Enter" means the act by which a person becomes eligible to receive any prize offered in a sweepstakes.
B. "Entry" means one event from the initial activation of the sweepstakes terminal device until all of the sweepstakes prize results from that activation are revealed.
C. "Prize" means any gift, award, gratuity, good, service, credit, reward or any other thing of value that may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.
D. "Sweepstakes terminal device facility" means any location in this Municipality where a sweepstakes terminal device is provided to a sweepstakes participant, except as provided in Ohio R.C. 2915.02(G).

(bbb) "Sweepstakes" means any game, contest, advertising scheme or plan, or other promotion where consideration is not required for a person to enter to win or become eligible to receive any prize, the determination of which is based upon chance. "Sweepstakes" does not include bingo as authorized under this chapter, pari-mutuel wagering as authorized by Ohio R.C. Chapter 3769, lotteries conducted by the State Lottery Commission as authorized by Ohio R.C. Chapter 3770, and casino gaming as authorized by Ohio R.C. Chapter 3772.
(ORC 2915.01)

517.02 GAMBLING.

(a) No person shall do any of the following:
(1) Engage in bookmaking, or knowingly engage in conduct that facilitates bookmaking;
(2) Establish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance;
(3) Knowingly procure, transmit, exchange, or engage in conduct that facilitates the procurement, transmission, or exchange of information for use in establishing odds or determining winners in connection with bookmaking or with any game of chance conducted for profit or any scheme of chance;

(4) Engage in betting or in playing any scheme or game of chance as a substantial source of income or livelihood;

(5) Conduct, or participate in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility and either:

A. Give to another person any item described in subsection (vv)(1), (2), (3) or (4) of Section 517.01 as a prize for playing or participating in a sweepstakes; or

B. Give to another person any merchandise prize, or a redeemable voucher for a merchandise prize, the wholesale value of which is in excess of ten dollars and which is awarded as a single entry for playing or participating in a sweepstakes. Redeemable vouchers shall not be redeemable for a merchandise prize that has a wholesale value of more than ten dollars.

(6) Conduct, or participate in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility without first obtaining a current annual "certificate of registration" from the Attorney General as required by division (F) of Ohio R.C. 2915.02.

(7) With purpose to violate subsection (a)(1), (2), (3), (4), (5) or (6) of this section, acquire, possess, control, or operate any gambling device.

(b) For purposes of subsection (a)(1) of this section, a person facilitates bookmaking if the person in any way knowingly aids an illegal bookmaking operation, including, without limitation, placing a bet with a person engaged in or facilitating illegal bookmaking. For purposes of subsection (a)(2) of this section, a person facilitates a game of chance conducted for profit or a scheme of chance if the person in any way knowingly aids in the conduct or operation of any such game or scheme, including, without limitation, playing any such game or scheme.

(c) This section does not prohibit conduct in connection with gambling expressly permitted by law.

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

(1) Games of chance, if all of the following apply:

A. The games of chance are not craps for money or roulette for money.

B. The games of chance are conducted by a charitable organization that is, and has received from the Internal Revenue Service a determination letter that is currently in effect, stating that the organization is, exempt from Federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code.

C. The games of chance are conducted at festivals of the charitable organization that are conducted not more than a total of five days a calendar year, and are conducted on premises owned by the charitable organization for a period of no less than one year immediately preceding the conducting of the games of chance, on premises leased from a governmental unit, or on premises that are leased from a veteran's or fraternal organization and that have been owned by the lessor veteran's or fraternal organization for a period of no less than one year immediately preceding the conducting of the games of chance.

A charitable organization shall not lease premises from a veteran's or fraternal organization to conduct a festival described in subsection (d)(1)C. hereof if the veteran's or fraternal organization has already leased the premises twelve times during the preceding year to charitable organizations for that purpose. If a charitable organization leases premises from a veteran's or fraternal organization to conduct a festival described in subsection (d)(1)C. hereof, the charitable organization shall not pay a rental rate for the premises per day of the festival that exceeds the rental rate per bingo session that a charitable organization may pay under Section 517.06(b)(1) when it leases premises from another charitable organization to conduct bingo games.

D. All of the money or assets received from the games of chance after deduction only of prizes paid out during the conduct of the games of chance are used by, or given, donated or otherwise transferred to, any organization that is described in subsection 509(a)(1), (2) or (3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

E. The games of chance are not conducted during, or within ten hours of, a bingo game conducted for amusement purposes only pursuant to Section 517.13.

No person shall receive any commission, wage, salary, reward, tip, donations, gratuity or other form of compensation, directly or indirectly, for operating or assisting in the operation of any game of chance.

(2) Any tag fishing tournament operated under a permit issued under Ohio R.C. 1533.92, as "tag fishing tournament" is defined in Ohio R.C. 1531.01.

(3) Bingo conducted by a charitable organization that holds a license issued under Ohio R.C. 2915.08.

(e) Subsection (d) hereof shall not be construed to authorize the sale, lease or other temporary or permanent transfer of the right to conduct games of chance, as granted by subsection (d) hereof, by any charitable organization that is granted that right.

(f) Whoever violates this section is guilty of gambling, a misdemeanor of the first degree. If the offender previously has been convicted of a gambling offense, gambling is a felony and shall be prosecuted under appropriate State law. (ORC 2915.02)

517.03 OPERATING A GAMBLING HOUSE.

(a) No person, being the owner or lessee, or having custody, control or supervision of premises, shall:

(1) Use or occupy such premises for gambling in violation of Section 517.02;

(2) Recklessly permit such premises to be used or occupied for gambling in violation of Section 517.02.

(b) Whoever violates this section is guilty of operating a gambling house, a misdemeanor of the first degree. If the offender previously has been convicted of a gambling offense, operating a gambling house is a felony and shall be prosecuted under appropriate State law.

(c) Premises used or occupied in violation of this section constitute a nuisance subject to abatement pursuant to Ohio R.C. Chapter 3767. (ORC 2915.03)

517.04 PUBLIC GAMING.

(a) No person, while at a hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort shall make a bet or play any game of chance or scheme of chance.

(b) No person, being the owner or lessee, or having custody, control, or supervision, of a hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort shall recklessly permit those premises to be used or occupied in violation of subsection (a) of this section.

(c) Subsections (a) and (b) of this section do not prohibit conduct in connection with gambling expressly permitted by law.

(d) Whoever violates this section is guilty of public gaming. Except as otherwise provided in this subsection, public gaming is a minor misdemeanor. If the offender previously has been convicted of any gambling offense, public gaming is a misdemeanor of the fourth degree.

(e) Premises used or occupied in violation of subsection (b) of this section constitute a nuisance subject to abatement under Ohio R.C. Chapter 3767. (ORC 2915.04)

517.05 CHEATING.

(a) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall engage in conduct designed to corrupt the outcome of any of the following:

(1) The subject of a bet;
(2) A contest of knowledge, skill, or endurance that is not an athletic or sporting event;
(3) A scheme or game of chance;
(4) Bingo.

(b) Whoever violates this section is guilty of cheating. Except as otherwise provided in this subsection cheating is a misdemeanor of the first degree. If the potential gain from the cheating is one thousand dollars ($1,000) or more, or if the offender previously has been convicted of any gambling offense or of any theft offense as defined in Ohio R.C. 2913.01, cheating is a felony and shall be prosecuted under appropriate State law. (ORC 2915.05)

517.06 METHODS OF CONDUCTING A BINGO GAME; PROHIBITIONS.

(a) No charitable organization that conducts bingo shall fail to do any of the following:

(1) Own all of the equipment used to conduct bingo or lease that equipment from a charitable organization that is licensed to conduct bingo, or from the landlord of a premises where bingo is conducted, for a rental rate that is not more than is customary and reasonable for that equipment;

(2) Use, or give, donate, or otherwise transfer, all of the net profit derived from bingo, other than instant bingo, for a charitable purpose listed in its license application and described in Section 517.01(v), or distribute all of the net profit from the proceeds of the sale of instant bingo as stated in its license application and in accordance with Ohio R.C. 2915.101.

(b) No charitable organization that conducts a bingo game described in Section 517.01(o)(1) shall fail to do any of the following:

(1) Conduct the bingo game on premises that are owned by the charitable organization, on premises that are owned by another charitable organization and leased from that charitable organization for a rental rate not in excess of the lesser of six hundred dollars ($600.00) per bingo session or forty-five per cent of the gross receipts of the bingo session, on premises that are leased from a person other than a charitable organization for a rental rate that is not more than is customary and reasonable for premises that are similar in location, size, and quality but not in excess of four hundred fifty dollars ($450.00) per bingo session, or on premises that are owned by a person other than a charitable organization, that are leased from that person by another charitable organization, and that are subleased from that other charitable organization by the charitable organization for a rental rate not in excess of four hundred fifty dollars ($450.00) per bingo session. No charitable organization is required to pay property taxes or assessments on premises that the charitable organization leases from another person to conduct bingo sessions. If the charitable organization leases from a person other than a charitable organization the premises on which it conducts bingo sessions, the lessor of the premises shall provide the premises to the organization and shall not provide the organization with bingo game operators, security personnel, concessions or concession operators, bingo supplies, or any other type of service. A charitable organization shall not lease or sublease premises that it owns or leases to more than three other charitable organizations per calendar week for conducting bingo sessions on the premises. A person that is not a charitable organization shall not lease premises that it owns, leases, or otherwise is empowered to lease to more than three charitable organizations per calendar week for conducting bingo sessions on the premises. In no case shall more than nine bingo sessions be conducted on any premises in any calendar week.

(2) Display its license conspicuously at the premises where the bingo session is conducted;

(3) Conduct the bingo session in accordance with the definition of bingo set forth in Section 517.01(o)(1).

(c) No charitable organization that conducts a bingo game described in Section 517.01(o)(1) shall do any of the following:

(1) Pay any compensation to a bingo game operator for operating a bingo session that is conducted by the charitable organization or for preparing, selling, or serving food or beverages at the site of the bingo session, permit any auxiliary unit or society of the charitable organization to pay compensation to any bingo game operator who prepares, sells, or serves food or beverages at a bingo session conducted by the charitable organization, or permit any auxiliary unit or society of the charitable organization to prepare, sell, or serve food or beverages at a bingo session conducted by the charitable organization, if the auxiliary unit or society pays any compensation to the bingo game operators who prepare, sell, or serve the food or beverages;

(2) Pay consulting fees to any person for any services performed in relation to the bingo session;

(3) Pay concession fees to any person who provides refreshments to the participants in the bingo session;

(4) Except as otherwise provided in subsection (c)(4) of this section, conduct more than three bingo sessions in any seven-day period. A volunteer firefighter's organization or a volunteer rescue service organization that conducts not more than five bingo sessions in a calendar year may conduct more than three bingo sessions in a seven-day period after notifying the Attorney General when it will conduct the sessions;

(5) Pay out more than six thousand dollars ($6,000) in prizes for bingo games described in Section 517.01(o)(1) during any bingo session that is conducted by the charitable organization. "Prizes" does not include awards from the conduct of instant bingo;

(6) Conduct a bingo session at any time during the eight-hour period between two a.m. and ten a.m., at any time during, or within ten hours of, a bingo game conducted for amusement only pursuant to Ohio R.C. 2915.12, at any premises not specified on its license, or on any day of the week or during any time period not specified on its license. Subsection (c)(6) of this section does not prohibit the sale of instant bingo tickets beginning at nine a.m. for a bingo session that begins at ten a.m. If circumstances make it impractical for the charitable organization to conduct a bingo session at the premises, or on the day of the week or at the time, specified on its license or if a charitable organization wants to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its license, the charitable organization may apply in writing to the Attorney General for an amended license, pursuant to division (F) of Ohio R.C. 2915.08. A charitable organization may apply twice in each calendar year for an amended license to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its license. If the amended license is granted, the organization may conduct bingo sessions at the premises, on the day of the week, and at the time specified on its amended license;

(7) Permit any person whom the charitable organization knows, or should have known, is under the age of eighteen to work as a bingo game operator;

(8) Permit any person whom the charitable organization knows, or should have known, has been convicted of a felony or gambling offense in any jurisdiction to be a bingo game operator;

(9) Permit the lessor of the premises on which the bingo session is conducted, if the lessor is not a charitable organization, to provide the charitable organization with bingo game operators, security personnel, concessions, bingo supplies, or any other type of service;

(10) Purchase or lease bingo supplies from any person except a distributor issued a license under Ohio R.C. 2915.081;

(11) A. Use or permit the use of electronic bingo aids except under the following circumstances:

1. For any single participant, not more than ninety bingo faces can be played using an electronic bingo aid or aids.
2. The charitable organization shall provide a participant using an electronic bingo aid with corresponding paper bingo cards or sheets.
3. The total price of bingo faces played with an electronic bingo aid shall be equal to the total price of the same number of bingo faces played with a paper bingo card or sheet sold at the same bingo session but without an electronic bingo aid.
4. An electronic bingo aid cannot be part of an electronic network other than a network that includes only bingo aids and devices that are located on the premises at which the bingo is being conducted or be interactive with any device not located on the premises at which the bingo is being conducted.
5. An electronic bingo aid cannot be used to participate in bingo that is conducted at a location other than the location at which the bingo session is conducted and at which the electronic bingo aid is used.
6. An electronic bingo aid cannot be used to provide for the input of numbers and letters announced by a bingo caller other than the bingo caller who physically calls the numbers and letters at the location at which the bingo session is conducted and at which the electronic bingo aid is used.

B. The Attorney General may adopt rules in accordance with Ohio R.C. Chapter 119 that govern the use of electronic bingo aids. The rules may include a requirement that an electronic bingo aid be capable of being audited by the Attorney General to verify the number of bingo cards or sheets played during each bingo session.

(12) Permit any person the charitable organization knows, or should have known, to be under eighteen years of age to play bingo described in Section 517.01(o)(1).

(d) (1) Except as otherwise provided in subsection (d)(3) hereof, no charitable organization shall provide to a bingo game operator, and no bingo game operator shall receive or accept, any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, regardless of the source, for conducting bingo or providing other work or labor at the site of bingo during a bingo session.

(2) Except as otherwise provided in subsection (d)(3) hereof, no charitable organization shall provide to a bingo game operator any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, regardless of the source, for conducting instant bingo other than at a bingo session at the site of instant bingo other than at a bingo session.

(3) Nothing in subsection (d) hereof prohibits an employee of a fraternal organization, veteran's organization, or sporting organization from selling instant bingo tickets or cards to the organization's members or invited guests, as long as no portion of the employee's compensation is paid from any receipts of bingo.

(e) Notwithstanding subsection (b)(1) of this section, a charitable organization that, prior to December 6, 1977, has entered into written agreements for the lease of premises it owns to another charitable organization or other charitable organizations for the conducting of bingo sessions so that more than two bingo sessions are conducted per calendar week on the premises, and a person that is not a charitable organization and that, prior to December 6, 1977, has entered into written agreements for the lease of premises it owns to charitable organizations for the conducting of more than two bingo sessions per calendar week on the premises, may continue to lease the premises to those charitable organizations, provided that no more than four sessions are conducted per calendar week, that the lessor organization or person has notified the Attorney General in writing of the organizations that will conduct the sessions and the days of the week and the times of the day on which the sessions will be conducted, that the initial lease entered into with each organization that will conduct the sessions was filed with the Attorney General prior to December 6, 1977, and that each organization that will conduct the sessions was issued a license to conduct bingo games by the Attorney General prior to December 6, 1977.

(f) This section does not prohibit a bingo licensed charitable organization or a game operator from giving any person an instant bingo ticket as a prize.

(g) Except as otherwise provided in this subsection, whoever violates subsection (a)(1) or (2), (b)(1), (2), or (3), (c)(1) to (11) or (d) of this section is guilty of a minor misdemeanor. If the offender previously has been convicted of a violation of subsection (a)(1) or (2), (b)(1), (2) or (3), (c)(1) to (11), or (d) of this section, a violation of subsection (a)(1) or (2), (b)(1), (2) or (3) or (c)(1) to (11) or (d) of this section is a misdemeanor of the first degree. Whoever violates subsection (c)(12) of this section is guilty of a misdemeanor of the first degree. If the offender previously has been convicted of a violation of subsection (c)(12) of this section, a violation of subsection (c)(12) is a felony and shall be prosecuted under appropriate State law.
(ORC 2915.09)

517.07 INSTANT BINGO CONDUCT.

(a) No charitable organization that conducts instant bingo shall do any of the following:

(1) Fail to comply with the requirements of divisions (A)(1), (2), and (3) of Ohio R.C. 2915.09;

(2) Conduct instant bingo unless either of the following applies:

A. That organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a), is described in subsection 501(c)(3) of the Internal Revenue Code, is a charitable organization as defined in Section 517.01, is in good standing in the State pursuant to Ohio R.C. 2915.08, and is in compliance with Ohio R.C. Chapter 1716;

B. That organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a), is described in subsection 501(c)(8), 501(c)(10), or 501(c)(19) or is a veteran's organization described in subsection 501(c)(4) of the Internal Revenue Code, and conducts instant bingo under Section 517.14.

(3) Conduct instant bingo on any day, at any time, or at any premises not specified on the organization's license issued pursuant to Ohio R.C. 2915.08;

(4) Permit any person whom the organization knows or should have known has been convicted of a felony or gambling offense in any jurisdiction to be a bingo game operator in the conduct of instant bingo;

(5) Purchase or lease supplies used to conduct instant bingo or punch board games from any person except a distributor licensed under Ohio R.C. 2915.081;

(6) Sell or provide any instant bingo ticket or card for a price different from the price printed on it by the manufacturer on either the instant bingo ticket or card or on the game flare;

(7) Sell an instant bingo ticket or card to a person under eighteen years of age;

(8) Fail to keep unsold instant bingo tickets or cards for less than three years;

(9) Pay any compensation to a bingo game operator for conducting instant bingo that is conducted by the organization or for preparing, selling, or serving food or beverages at the site of the instant bingo game, permit any auxiliary unit or society of the organization to pay compensation to any bingo game operator who prepares, sells, or serves food or beverages at an instant bingo game conducted by the organization, or permit any auxiliary unit or society of the organization to prepare, sell, or serve food or beverages at an instant bingo game conducted by the organization, if the auxiliary unit or society pays any compensation to the bingo game operators who prepare, sell, or serve the food or beverages;

(10) Pay fees to any person for any services performed in relation to an instant bingo game, except as provided in Section 517.09(d);

(11) Pay fees to any person who provides refreshments to the participants in an instant bingo game;

(12) A. Allow instant bingo tickets or cards to be sold to bingo game operators at a premises at which the organization sells instant bingo tickets or cards or to be sold to employees of a D permit holder who are working at a premises at which instant bingo tickets or cards are sold;

B. Subsection (a)(12)A. of this section does not prohibit a licensed charitable organization or a bingo game operator from giving any person an instant bingo ticket as a prize in place of a cash prize won by a participant in an instant bingo game. In no case shall an instant bingo ticket or card be sold or provided for a price different from the price printed on it by the manufacturer on either the instant bingo ticket or card or on the game flare.

(13) Fail to display its bingo license, and the serial numbers of the deal of instant bingo tickets or cards to be sold, conspicuously at each premises at which it sells instant bingo tickets or cards;

(14) Possess a deal of instant bingo tickets or cards that was not purchased from a distributor licensed under Ohio R.C. 2915.081 as reflected on an invoice issued by the distributor that contains all of the information required by Section 517.11(f);

(15) Fail, once it opens a deal of instant bingo tickets or cards, to continue to sell the tickets or cards in that deal until the tickets or cards with the top two highest tiers of prizes in that deal are sold;

(16) Possess bingo supplies that were not obtained in accordance with Ohio R.C. 2915.01 to 2915.13.

(b) A charitable organization may purchase, lease, or use instant bingo ticket dispensers to sell instant bingo tickets or cards.

(c) Whoever violates subsection (a) of this section or a rule adopted under Ohio R.C. 2915.091(C) is guilty of illegal instant bingo conduct. Except as otherwise provided in this subsection, illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of subsection (a) of this section or of such a rule, illegal instant bingo conduct is a felony and shall be prosecuted under appropriate State law. (ORC 2915.091)

517.08 RAFFLES.

(a) (1) Subject to subsection (a)(2) of this section, a charitable organization, a public school, a chartered nonpublic school, a community school, or a veteran's organization, fraternal organization, or sporting organization that is exempt from federal income taxation under subsection 501(a) and is described in subsection 501(c)(3), 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code may conduct a raffle to raise money for the organization or school and does not need a license to conduct bingo in order to conduct a raffle drawing that is not for profit.

(2) If a charitable organization that is described in subsection (a)(1) of this section, but that is not also described in subsection 501(c)(3) of the Internal Revenue Code, conducts a raffle, the charitable organization shall distribute at least fifty per cent of the net profit from the raffle to a charitable purpose described in Section 517.01(v) or to a department or agency of the federal government, the state, or any political subdivision.

(b) Except as provided in subsection (a) of this section, no person shall conduct a raffle drawing that is for profit or a raffle drawing that is not for profit.

(c) Whoever violates subsection (b) of this section is guilty of illegal conduct of a raffle. Except as otherwise provided in this subsection, illegal conduct of a raffle is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of subsection (b) of this section, illegal conduct of a raffle is a felony and shall be prosecuted under appropriate State law. (ORC 2915.092)

517.09 CHARITABLE INSTANT BINGO ORGANIZATIONS.

(a) As used in this section, "retail income from all commercial activity" means the income that a person receives from the provision of goods, services, or activities that are provided at the location where instant bingo other than at a bingo session is conducted, including the sale of instant bingo tickets. A religious organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, at not more than one location at which it conducts its charitable programs, may include donations from its members and guests as retail income.

(b) (1) If a charitable instant bingo organization conducts instant bingo other than at a bingo session, the charitable instant bingo organization shall enter into a written contract with the owner or lessor of the location at which the instant bingo is conducted to allow the owner or lessor to assist in the conduct of instant bingo other than at a bingo session, identify each location where the instant bingo other than at a bingo session is being conducted, and identify the owner or lessor of each location.

(2) A charitable instant bingo organization that conducts instant bingo other than at a bingo session is not required to enter into a written contract with the owner or lessor of the location at which the instant bingo is conducted provided that the owner or lessor is not assisting in the conduct of the instant bingo other than at a bingo session and provided that the conduct of the instant bingo other than at a bingo session at that location is not more than five days per calendar year and not more than ten hours per day.

(c) Except as provided in subsection (f) of this section, no charitable instant bingo organization shall conduct instant bingo other than at a bingo session at a location where the primary source of retail income from all commercial activity at that location is the sale of instant bingo tickets.

(d) The owner or lessor of a location that enters into a contract pursuant to subsection (b) of this section shall pay the full gross profit to the charitable instant bingo organization, in return for the deal of instant bingo tickets. The owner or lessor may retain the money that the owner or lessor receives for selling the instant bingo tickets, provided, however, that after the deal has been sold, the owner or lessor shall pay to the charitable instant bingo organization the value of any unredeemed instant bingo prizes remaining in the deal of instant bingo tickets.

The charitable instant bingo organization shall pay six per cent of the total gross receipts of any deal of instant bingo tickets for the purpose of reimbursing the owner or lessor for expenses described in this subsection.

As used in this subsection, "expenses" means those items provided for in subsections (gg)(4), (5), (6), (7), (8), (12) and (13) of Section 517.01 and that percentage of the owner's or lessor's rent for the location where instant bingo is conducted. "Expenses" in the aggregate, shall not exceed six per cent of the total gross receipts of any deal of instant bingo tickets.

As used in this subsection, "full gross profit" means the amount by which the total receipts of all instant bingo tickets, if the deal had been sold in full, exceeds the amount that would be paid out if all prizes were redeemed.

(e) A charitable instant bingo organization shall provide the Attorney General with all of the following information:

(1) That the charitable instant bingo organization has terminated a contract entered into pursuant to subsection (b) of this section with an owner or lessor of a location;

(2) That the charitable instant bingo organization has entered into a written contract pursuant to subsection (b) of this section with a new owner or lessor of a location;

(3) That the charitable instant bingo organization is aware of conduct by the owner or lessor of a location at which instant bingo is conducted that is in violation of this chapter or Ohio R.C. Chapter 2915.

(f) Subsection (c) of this section does not apply to a volunteer firefighter's organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, that conducts instant bingo other than at a bingo session on the premises where the organization conducts firefighter training, that has conducted instant bingo continuously for at least five years prior to July 1, 2003, and that, during each of those five years, had gross receipts of at least one million five hundred thousand dollars. (ORC 2915.093)

517.10 LOCATION OF INSTANT BINGO.

(a) No owner or lessor of a location shall assist a charitable instant bingo organization in the conduct of instant bingo other than at a bingo session at that location unless the owner or lessor has entered into a written contract, as described in Section 517.09, with the charitable instant bingo organization to assist in the conduct of instant bingo other than at a bingo session.

(b) The location of the lessor or owner shall be designated as a location where the charitable instant bingo organization conducts instant bingo other than at a bingo session.

(c) No owner or lessor of a location that enters into a written contract as prescribed in subsection (a) of this section shall violate any provision of Ohio R.C. Chapter 2915, or permit, aid, or abet any other person in violating any provision of Ohio R.C. Chapter 2915.

(d) No owner or lessor of a location that enters into a written contract as prescribed in subsection (a) of this section shall violate the terms of the contract.

(e) (1) Whoever violates subsection (c) or (d) of this section is guilty of illegal instant bingo conduct. Except as otherwise provided in this subsection, illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of subsection (c) or (d) of this section, illegal instant bingo conduct is a felony and shall be prosecuted under appropriate State law.

(2) If an owner or lessor of a location knowingly, intentionally, or recklessly violates subsection (c) or (d) of this section, any license that the owner or lessor holds for the retail sale of any goods on the owner's or lessor's premises that is issued by the State or a political subdivision is subject to suspension, revocation, or payment of a monetary penalty at the request of the Attorney General. (ORC 2915.094)

517.11 BINGO OR GAME OF CHANCE RECORDS.

(a) No charitable organization that conducts bingo or a game of chance pursuant to Section 517.02(d), shall fail to maintain the following records for at least three years from the date on which the bingo or game of chance is conducted:

(1) An itemized list of the gross receipts of each bingo session, each game of instant bingo by serial number, each raffle, each punch board game, and each game of chance, and an itemized list of the gross profits of each game of instant bingo by serial number;

(2) An itemized list of all expenses, other than prizes, that are incurred in conducting bingo or instant bingo, the name of each person to whom the expenses are paid, and a receipt for all of the expenses;

(3) A list of all prizes awarded during each bingo session, each raffle, each punch board game, and each game of chance conducted by the charitable organization, the total prizes awarded from each game of instant bingo by serial number, and the name, address, and social security number of all persons who are winners of prizes of six hundred dollars ($600.00) or more in value;

(4) An itemized list of the recipients of the net profit of the bingo or game of chance, including the name and address of each recipient to whom the money is distributed, and if the organization uses the net profit of bingo, or the money or assets received from a game of chance, for any charitable or other purpose set forth in Section 517.01(v), Section 517.02(d), or Ohio R.C. 2915.101, a list of each purpose and an itemized list of each expenditure for each purpose;

(5) The number of persons who participate in any bingo session or game of chance that is conducted by the charitable organization;

(6) A list of receipts from the sale of food and beverages by the charitable organization or one of its auxiliary units or societies, if the receipts were excluded from "gross receipts" Section 517.01(t);

(7) An itemized list of all expenses incurred at each bingo session, each raffle, each punch board game, or each game of instant bingo conducted by the charitable organization in the sale of food and beverages by the charitable organization or by an auxiliary unit or society of the charitable organization, the name of each person to whom the expenses are paid, and a receipt for all of the expenses.

(b) A charitable organization shall keep the records that it is required to maintain pursuant to subsection (a) of this section at its principal place of business in this State or at its headquarters in this State and shall notify the Attorney General of the location at which those records are kept.

(c) The gross profit from each bingo session or game described in Section 517.01(o)(1) or (2) shall be deposited into a checking account devoted exclusively to the bingo session or game. Payments for allowable expenses incurred in conducting the bingo session or game and payments to recipients of some or all of the net profit of the bingo session or game shall be made only by checks or electronic fund transfers drawn on the bingo session or game account.

(d) Each charitable organization shall conduct and record an inventory of all of its bingo supplies as of the first day of November of each year.

(e) The Attorney General may adopt rules in accordance with Ohio R.C. Chapter 119 that establish standards of accounting, record keeping, and reporting to ensure that gross receipts from bingo or games of chance are properly accounted for.

(f) A distributor shall maintain, for a period of three years after the date of its sale or other provision, a record of each instance of its selling or otherwise providing to another person bingo supplies for use in this State. The record shall include all of the following for each instance:

(1) The name of the manufacturer from which the distributor purchased the bingo supplies and the date of the purchase;

(2) The name and address of the charitable organization or other distributor to which the bingo supplies were sold or otherwise provided;

(3) A description that clearly identifies the bingo supplies;

(4) Invoices that include the nonrepeating serial numbers of all paper bingo cards and sheets and all instant bingo deals sold or otherwise provided to each charitable organization.

(g) A manufacturer shall maintain, for a period of three years after the date of its sale or other provision, a record of each instance of its selling or otherwise providing bingo supplies for use in this State. The record shall include all of the following for each instance:

(1) The name and address of the distributor to whom the bingo supplies were sold or otherwise provided;

(2) A description that clearly identifies the bingo supplies, including serial numbers;

(3) Invoices that include the nonrepeating serial numbers of all paper bingo cards and sheets and all instant bingo deals sold or otherwise provided to each distributor.

(h) The Attorney General, or any law enforcement agency, may do all of the following:

(1) Investigate any charitable organization or any officer, agent, trustee, member, or employee of the organization;

(2) Examine the accounts and records of the organization;

(3) Conduct inspections, audits, and observations of bingo or games of chance;

(4) Conduct inspections of the premises where bingo or games of chance are conducted;

(5) Take any other necessary and reasonable action to determine if a violation of any provision of this chapter has occurred and to determine whether Section 517.12 has been complied with.

If any law enforcement agency has reasonable grounds to believe that a charitable organization or an officer, agent, trustee, member, or employee of the organization has violated any provision of this chapter, the law enforcement agency may proceed by action in the proper court to enforce this chapter, provided that the law enforcement agency shall give written notice to the Attorney General when commencing an action as described in this subsection.

(i) No person shall destroy, alter, conceal, withhold, or deny access to any accounts or records of a charitable organization that have been requested for examination, or obstruct, impede, or interfere with any inspection, audit, or observation of bingo or a game of chance or premises where bingo or a game of chance is conducted, or refuse to comply with any reasonable request of, or obstruct, impede, or interfere with any other reasonable action undertaken by, the Attorney General or a law enforcement agency pursuant to subsection (h) of this section.

(j) Whoever violates subsection (a) or (i) of this section is guilty of a misdemeanor of the first degree. (ORC 2915.10)

517.12 BINGO OPERATOR PROHIBITIONS.

(a) No person shall be a bingo game operator unless he is eighteen years of age or older.

(b) No person who has been convicted of a felony or a gambling offense in any jurisdiction shall be a bingo game operator.

(c) Whoever violates subsection (a) hereof is guilty of a misdemeanor of the third degree.

(d) Whoever violates subsection (b) hereof is guilty of a misdemeanor of the first degree. (ORC 2915.11)

517.13 BINGO EXCEPTIONS.

(a) Ohio R.C. 2915.07 to 2915.11 or Section 517.06 et seq. of this chapter do not apply to bingo games that are conducted for the purpose of amusement only. A bingo game is conducted for the purpose of amusement only if it complies with all of the requirements specified in either subsection (a)(1) or (2) hereof:

(1) A. The participants do not pay any money or any other thing of value including an admission fee, or any fee for bingo cards, sheets, objects to cover the spaces or other devices used in playing bingo, for the privilege of participating in the bingo game or to defray any costs of the game, or pay tips or make donations during or immediately before or after the bingo game.

B. All prizes awarded during the course of the game are nonmonetary, and in the form of merchandise, goods or entitlements to goods or services only, and the total value of all prizes awarded during the game is less than one hundred dollars ($100.00).

C. No commission, wages, salary, reward, tip, donation, gratuity or other form of compensation, either directly or indirectly, and regardless of the source, is paid to any bingo game operator for work or labor performed at the site of the bingo game.

D. The bingo game is not conducted either during or within ten hours of any of the following:

1. A bingo session during which a charitable bingo game is conducted pursuant to Ohio R.C. 2915.07 to 2915.11 or Section 517.06 et seq. of this chapter;
2. A scheme or game of chance or bingo described in Section 517.01(o)(2).

E. The number of players participating in the bingo game does not exceed fifty.

(2) A. The participants do not pay money or any other thing of value as an admission fee, and no participant is charged more than twenty-five cents (25¢) to purchase a bingo card or sheet, objects to cover the spaces or other devices used in playing bingo.

B. The total amount of money paid by all of the participants for bingo cards or sheets, objects to cover the spaces or other devices used in playing bingo does not exceed one hundred dollars ($100.00).

C. All of the money paid for bingo cards or sheets, objects to cover spaces or other devices used in playing bingo is used only to pay winners monetary and nonmonetary prizes and to provide refreshments.

D. The total value of all prizes awarded during the game does not exceed one hundred dollars ($100.00).

E. No commission, wages, salary, reward, tip, donation, gratuity or other form of compensation, either directly or indirectly, and regardless of the source, is paid to any bingo game operator for work or labor performed at the site of the bingo game.

F. The bingo game is not conducted during or within ten hours of either of the following:

1. A bingo session during which a charitable bingo game is conducted pursuant to Ohio R.C. 2915.07 to 2915.11 or Section 517.06 et seq. of this chapter;
2. A scheme of chance or game of chance or bingo described in Section 517.01(o)(2).

G. All of the participants reside at the premises where the bingo game is conducted.

H. The bingo games are conducted on different days of the week and not more than twice in a calendar week.

(b) The Attorney General, or any local law enforcement agency, may investigate the conduct of a bingo game that purportedly is conducted for purposes of amusement only if there is reason to believe that the purported amusement bingo game does not comply with subsection (a) hereof. A local law enforcement agency may proceed by action in the proper court to enforce this section if the local law enforcement agency gives written notice to the Attorney General when commencing the action. (ORC 2915.12)

517.14 INSTANT BINGO CONDUCT BY A VETERAN'S OR FRATERNAL ORGANIZATION.

(a) A veteran's organization, a fraternal organization, or a sporting organization authorized to conduct a bingo session pursuant to Ohio R.C. 2915.01 to 2915.12 may conduct instant bingo other than at a bingo session if all of the following apply:

(1) The veteran's organization, fraternal organization or sporting organization limits the sale of instant bingo to twelve hours during any day, provided that the sale does not begin earlier than ten a.m. and ends not later than two a.m.

(2) The veteran's organization, fraternal organization or a sporting organization limits the sale of instant bingo to its own premises and to its own members and invited guests.

(3) The veteran's organization, fraternal organization, or sporting organization is raising money for an organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that maintains its principal place of business in this State, that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, and that is in good standing in this State and executes a written contract with that organization as required in subsection (b) of this section.

(b) If a veteran's organization, fraternal organization, or sporting organization authorized to conduct instant bingo pursuant to subsection (a) of this section is raising money for another organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that maintains its principal place of business in this State, that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, and that is in good standing in this State, the veteran's organization, fraternal organization, or sporting organization shall execute a written contract with the organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that maintains its principal place of business in this State, that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, and that is in good standing in this State in order to conduct instant bingo. That contract shall include a statement of the percentage of the net proceeds that the veteran's, fraternal or sporting organization will be distributing to the organization that is described in subsection 509(a)(1), 509(a)(2) or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that maintains its principal place of business in this State, that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, and that is in good standing in this State.

(c) (1) If a veteran's organization, fraternal organization or a sporting organization authorized to conduct instant bingo pursuant to subsection (a) of this section has been issued a liquor permit under Ohio R.C. Chapter 4303, that permit may be subject to suspension, revocation, or cancellation if the veteran's organization, fraternal organization, or a sporting organization violates a provision of this chapter or Ohio R.C. Chapter 2915.

(2) No veteran's organization, fraternal organization, or a sporting organization that enters into a written contract pursuant to subsection (b) of this section shall violate any provision of this chapter or Ohio R.C. Chapter 2915, or permit, aid, or abet any other person in violating any provision of this chapter or Ohio R.C. Chapter 2915.

(d) A veteran's organization, fraternal organization, or a sporting organization shall give all required proceeds earned from the conduct of instant bingo to the organization with which the veteran's organization, fraternal organization, or a sporting organization has entered into a written contract.

(e) Whoever violates this section is guilty of illegal instant bingo conduct. Except as otherwise provided in this subsection, illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, illegal instant bingo conduct is a felony and shall be prosecuted under appropriate State law.
(ORC 2915.13)

517.15 SKILL-BASED AMUSEMENT MACHINES.

(a) (1) No person shall give to another person any item described in Section 517.01(vv)(1), (2), (3), or (4) in exchange for a noncash prize, toy, or novelty received as a reward for playing or operating a skill-based amusement machine or for a free or reduced-prize game won on a skill-based amusement machine.

(2) Whoever violates subsection (a)(1) of this section is guilty of skill-based amusement machine prohibited conduct. Except as provided herein, a violation of subsection (a)(1) is a misdemeanor of the first degree for each redemption of a prize that is involved in the violation. If the offender previously has been convicted of a violation of subsection (a)(1), a violation of subsection (a)(1) is a felony and shall be prosecuted under appropriate State law.
(ORC 2915.06)

(b) Any regulation of skill-based amusement machines shall be governed by this chapter and Ohio R.C. Chapter 2915 and not by Ohio R.C. Chapter 1345.
(ORC 2915.061)

517.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)

CHAPTER 521
Health, Safety and Sanitation

521.01 Abandoned refrigerators and airtight containers.
521.02 Venting of heaters and burners.
521.03 Barricades and warning lights; abandoned excavations.
521.04 Notice to fill lots, remove putrid substances.
521.05 Littering and deposit of garbage, rubbish, junk, etc.
521.06 Noxious or offensive odors.
521.07 Water shortage; proclamation and restrictions.
521.08 Solid waste container restrictions.
521.09 Locking commercial trash containers.
521.10 Newspaper drop off deliveries.
521.11 Disposal of sharp waste/ hypodermic needles.
521.12 Hours of collection and transportation of solid waste.
521.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law
Excavation liability - see Ohio R.C. 723.49 et seq.
Removal of noxious weeds or litter - see Ohio R.C. 731.51 et seq.
Nuisances - see Ohio R.C. Ch. 3767
Tampering with safety devices - see GEN. OFF. 541.04

521.01 ABANDONED REFRIGERATORS AND AIRTIGHT CONTAINERS.

(a) No person shall abandon, discard, or knowingly permit to remain on premises under his control, in a place accessible to children, any abandoned or discarded icebox, refrigerator or other airtight or semiairtight container which has a capacity of one and one-half cubic feet or more and an opening of fifty square inches or more and which has a door or lid equipped with hinge, latch or other fastening device capable of securing such door or lid, without rendering such equipment harmless to human life by removing such hinges, latches or other hardware which may cause a person to be confined therein. This section shall not apply to an icebox, refrigerator or other airtight or semiairtight container located in that part of a building occupied by a dealer, warehouseman or repairman. (ORC 3767.29)

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

521.02 VENTING OF HEATERS AND BURNERS.

(a) A brazier, salamander, space heater, room heater, furnace, water heater or other burner or heater using wood, coal, coke, fuel oil, kerosene, gasoline, natural gas, liquid petroleum gas or similar fuel, and tending to give off carbon monoxide or other harmful gas:

(1) When used in living quarters, or in any enclosed building or space in which persons are usually present, shall be used with a flue or vent so designed, installed and maintained as to vent the products of combustion outdoors; except in storage, factory or industrial buildings which are provided with sufficient ventilation to avoid the danger of carbon monoxide poisoning;

(2) When used as a portable or temporary burner or heater at a construction site, or in a warehouse, shed or structure in which persons are temporarily present, shall be vented as provided in subsection (a) hereof, or used with sufficient ventilation to avoid the danger of carbon monoxide poisoning.

(b) This section does not apply to domestic ranges, laundry stoves, gas logs installed in a fireplace with an adequate flue, or hot plates, unless the same are used as space or room heaters.

(c) No person shall negligently use, or, being the owner, person in charge, or occupant of premises, negligently permit the use of a burner or heater in violation of the standards for venting and ventilation provided in this section.

(d) Subsection (a) hereof does not apply to any kerosene-fired space or room heater that is equipped with an automatic extinguishing tip-over device, or to any natural gas-fired or liquid petroleum gas-fired space or room heater that is equipped with an oxygen depletion safety shutoff system, and that has its fuel piped from a source outside of the building in which it is located, that are approved by an authoritative source recognized by the State Fire Marshal in the State Fire Code adopted by him under Ohio R.C. 3737.82.

(e) The State Fire Marshal may make rules to ensure the safe use of unvented kerosene, natural gas or liquid petroleum gas heaters exempted from subsection (a) hereof when used in assembly buildings, business buildings, high hazard buildings, institutional buildings, mercantile buildings and type R-1 and R-2 residential buildings, as these groups of buildings are defined in rules adopted by the Board of Building Standards under Ohio R.C. 3781.10. No person shall negligently use, or, being the owner, person in charge or occupant of premises, negligently permit the use of a heater in violation of any rules adopted under this subsection.

(f) The State Fire Marshal may make rules prescribing standards for written instructions containing ventilation requirements and warning of any potential fire hazards that may occur in using a kerosene, natural gas, or liquid petroleum gas heater. No person shall sell or offer for sale any kerosene, natural gas or liquid petroleum gas heater unless the manufacturer provides with the heater written instructions that comply with any rules adopted under this subsection.

(g) No product labeled as a fuel additive for kerosene heaters and having a flash point below one hundred degrees fahrenheit or thirty-seven and eight-tenths degrees centigrade shall be sold, offered for sale or used in any kerosene space heater.

(h) No device that prohibits any safety feature on a kerosene, natural gas or liquid petroleum gas space heater from operating shall be sold, offered for sale or used in connection with any kerosene, natural gas or liquid petroleum gas space heater.

(i) No person shall sell or offer for sale any kerosene-fired, natural gas or liquid petroleum gas-fired heater that is not exempt from subsection (a) hereof unless it is marked conspicuously by the manufacturer on the container with the phrase "Not Approved For Home Use."

(j) No person shall use a cabinet-type, liquid petroleum gas-fired heater having a fuel source within the heater, inside any building, except as permitted by the State Fire Marshal in the State Fire Code adopted by him under Ohio R.C. 3737.82. (ORC 3701.82)

(k) Whoever violates this section is guilty of a misdemeanor of the first degree. (ORC 3701.99(C))

521.03 BARRICADES AND WARNING LIGHTS; ABANDONED EXCAVATIONS.

(a) No person shall abandon or knowingly permit to remain on public or private property, any excavation, well, cesspool or structure which is in the process of construction, reconstruction, repair or alteration unless the same is adequately protected by suitable barricades and guarded by warning devices or lights at night so that the condition will not reasonably prove dangerous to life or limb.

(b) No person shall destroy, remove, damage or extinguish any barricade or warning light that is placed for the protection of the public so as to prevent injury to life or limb.

(c) Any owner or agent in control of a premises upon which a basement, cellar, well or cistern has been abandoned due to demolition, failure to build or any other reason shall cause the same to be filled to the ground surface with rock, gravel, earth or other suitable material.

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

521.04 NOTICE TO FILL LOTS, REMOVE PUTRID SUBSTANCES.

(a) No person shall fail to comply with the following requirements within the lawful time after service or publication of the notice or resolution is made as required by law:

To fill or drain any lot or land or remove all putrid substances therefrom, or remove all obstructions from culverts, covered drains or natural watercourses as provided in Ohio R.C. 715.47.

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

521.05 LITTERING AND DEPOSIT OF GARBAGE, RUBBISH, JUNK, ETC.

(a) No person shall, without lawful authority, place, drop, discard, throw or dispose of in any manner upon any public property or upon the premises of another, any paper, trash, garbage, waste, rubbish, refuse, junk, ashes, cans, bottles, cartons, boxes, automobile parts, furniture, glass or any substance or material which is or may become noxious, offensive, injurious or dangerous to the public health, comfort or safety.

(b) No person shall cause or allow paper, trash, garbage, waste, rubbish, refuse, junk, ashes, cans, bottles, cartons, boxes, automobile parts, furniture, glass or any other noxious or offensive materials or substances to be collected or remain in any place to the damage or prejudice of others or of the public, or unlawfully obstruct, impede, divert, corrupt or render unwholesome or impure, any natural watercourse.
(Ord. 89-5. Passed 6-19-89.)

(c) No person owning, occupying or possessing any real property in the City shall cause or place or allow to be caused or placed any paper, trash, garbage, waste, rubbish, refuse, junk or offensive materials or substances or any receptacles containing any paper, trash, garbage, waste, rubbish, refuse, junk, ashes, cans, bottles, cartons, boxes, automobile parts, furniture, glass or offensive materials or substances in a front yard or in a side yard adjacent to a public street except after 5:00p.m. the day before scheduled collection. Empty receptacles must be returned to storage no later than 6:00p.m. the day after collection for the premises. Container storage provisions shall be in accordance with Section 1325.05(b).
(Ord. 13-24. Passed 6-3-13.)

(d) (1) Whoever violates subsection (a) or subsection (b) hereof is guilty of a minor misdemeanor on a first offense. If the offender has previously been convicted of a violation of subsection (a) or (b) hereof, whoever violates subsection (a) or (b) hereof is guilty of a misdemeanor of the fourth degree.

(2) Whoever violates subsection (c) hereof is guilty of a minor misdemeanor. (Ord. 06-35. Passed 9-18-06.)

(e) Whoever violates this section, in addition to the penalty imposed pursuant to subsection (d) hereof, shall be liable for the removal or cost of removal of all paper, trash, garbage, waste, rubbish, refuse, junk, ashes, cans, bottles, cartons, boxes, automobile parts, furniture, glass or other substance or material.
(Ord. 89-5. Passed 6-19-89.)

521.06 NOXIOUS OR OFFENSIVE ODORS.

(a) No person shall erect, continue, use or maintain a dwelling, building, structure or place for a residence or for the exercise of a trade, employment or business, or for the keeping or feeding of an animal which, by occasioning noxious exhalations or noisome or offensive smells, becomes injurious to the health, comfort or property of individuals or of the public.
(ORC 3767.13)

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

521.07 WATER SHORTAGE; PROCLAMATION AND RESTRICTIONS.

(a) The Mayor is authorized to determine, at any time and from time to time, whether a water shortage exists to such an extent as to impair fire protection within this City or any part thereof. In connection with such determination, the Mayor shall also determine the extent to which it is necessary to restrict the use of water for watering lawns, trees, shrubbery and gardens, which restriction may be for all or any portion of any day during the existence of the shortage. If he finds that such a shortage exists, he shall immediately make proclamation thereof, and give public notice by newspaper, radio, or television broadcast, or by any other means which he may find practicable, of the existence of the shortage and the extent of such restriction.

Upon the termination of such shortage, the Mayor shall proclaim and give public notice thereof.

(b) During the existence of any water shortage so determined and proclaimed, no person shall use, or allow to be used on any premises in this City under his charge or control, any water furnished by the City of Cleveland, for watering any lawn, shrub, tree or garden at any time such use is restricted.

(c) Whoever violates this section is guilty of a minor misdemeanor.
(Ord. 74-36. Passed 5-6-74.)

521.08 SOLID WASTE CONTAINER RESTRICTIONS.

(a) As used in this section certain terms are defined as follows:

(1) "Solid waste" means all putrescible animal and vegetable wastes resulting from the handling, preparation and consumption of foods, waste material and refuse of every character collected or accumulated within the City including, but not limited to ashes, industrial or domestic wastes, dead animals, animal excreta, paper, rubber, plastic, glass, metal, shrubbery or tree trimmings, leaves, grass clippings, dirt, wood, stone, household appliances, furniture, brick, plaster or materials resulting from the demolition, alteration or construction of buildings or structures or any accumulation of waste matter or substances which are or may become hazardous or harmful to the public health and welfare.

(2) "Person" means a person, firm or corporation.

(b) No person shall permit any container for the collection of commercial or industrial solid waste, other than a container made available to customers in conjunction with the operation of a retail establishment, owned by him or within his possession to be accessible for entry by any person unauthorized to use such facility.

(c) Whoever violates this section is guilty of a minor misdemeanor for the first offense and a misdemeanor of the fourth degree for each subsequent offense within one year of the first offense. (Ord. 78-44. Passed 1-15-79.)

521.09 LOCKING COMMERCIAL TRASH CONTAINERS.

(a) All commercial trash containers used in the City for collection of garbage, rubbish and other waste materials, must meet the following specifications unless they are kept within a building which is kept locked or secured when employees are not present:

(1) They must be equipped with a rodent proof, tight-fitting cover.

(2) They must be equipped with a lock which may be either of the key type or combination type.

(3) They must be equipped with locking casters mounted on wheels to restrain the movement of the trash containers.

(4) They must be kept in good repair.

(b) The trash containers described in subsection (a) hereof, must be kept locked at all times, except when the container is being loaded or unloaded, filled or emptied.

(c) Any person, firm or corporation, providing a completely fenced area, guarded and/or patrolled on a continuous twenty-four hour basis for the storage of garbage, rubbish and waste materials need not provide locked containers as heretofore provided.

(d) No person shall install, sell, lease or purchase any refuse container that does not conform to the specifications set forth in this section.

(e) In accordance with this section, all newly manufactured or installed refuse containers and all existing refuse containers must meet these safety standards before June 1, 1979.

(f) Whoever violates this section is guilty of a minor misdemeanor for the first offense and a misdemeanor of the fourth degree for each subsequent offense within one year of the first offense. (Ord. 78-44. Passed 1-15-79.)

521.10 NEWSPAPER DROP OFF DELIVERIES.

(a) No person shall place or deposit newspapers in bundles or otherwise, on any sidewalk or any public right of way as a delivery drop of such articles. Delivery of newspapers to a location other than the residential property occupied by a consignee of such papers shall constitute prima-facie evidence of a violation of this section.

(b) This section does not apply to the deposit of newspapers for the purpose of Municipal garbage and rubbish collection by persons owning, occupying or possessing any real property within the City.

(c) Whoever violates this section is guilty of a minor misdemeanor. Any such violation shall constitute a separate offense on each successive day continued.
(Ord. 79-35. Passed 7-9-79.)

521.11 DISPOSAL OF SHARP WASTE/HYPODERMIC NEEDLES.

(a) "Sharp waste", as used in this section, means all used and unused hypodermic needles; all other needles, syringes, razors and broken glass that have, or are likely to have, come into contact with infectious agents through any means, including, but not limited to, treatment or inoculation of human beings or animals and medical or industrial research.

(b) All sharp waste to be collected by the City shall be prepared for disposal in the following manner:

(1) It shall be rendered completely unusable for its original purpose;
(2) It shall be placed in rigid, puncture-resistant container;
(3) It shall be securely sealed in such a manner as to insure that the seal shall not be broken when handled; and
(4) All sharp waste shall be separated from all other waste and clearly marked "sharp waste".

(c) In addition to any other penalty provided herein, if any person, firm, corporation, association, partnership or other entity fails to comply with the provisions of subsection (b) hereof, the Director of Public Service and Development shall arrange for a special collection by City employees. The entire expense of such special collection, as determined by the Director and an administrative fee of one hundred dollars ($100.00) shall be charged to such person, firm, corporation, association, partnership or other entity.

(d) In addition to the charges provided in subsection (c) hereof, any person, firm, corporation, association, partnership or other entity that violates any provision of subsection (b) hereof is guilty of a misdemeanor of the fourth degree.

(e) The Director may suspend waste collection to any person, firm, corporation, association, partnership or other entity that has violated any provision of this section three or more times for such period as determined by the Director. During such suspension, the violator shall be responsible to arrange for weekly waste collection from a private hauler. Failure to arrange for such weekly collection shall constitute a violation of this section and shall subject the violator to subsection (d) hereof.
(Ord. 90-98. Passed 1-7-91.)

521.12 HOURS OF COLLECTION AND TRANSPORTATION OF SOLID WASTE.

(a) No person, firm or corporation owning, driving or operating a vehicle collecting, hauling and/or disposing solid waste shall collect, transport or transfer solid waste or cause the collection, transportation or transfer of solid waste other than between the hours of 7:00 a.m. and 7:00 p.m. or on Saturdays after 4:00 p.m. or on Sundays.

(b) An application for an exception to any of the provisions of subsection (a) hereof may be made by any person, firm or corporation to the Director of Public Service and Development on a form provided by the Director and the payment of an application fee of twenty-five dollars ($25.00). The Director may grant an exception to any of the provisions of subsection (a) hereof only where the applicant for an exception is able to demonstrate to the Director great practical difficulty in the collection, transportation or transfer of solid waste from a specific premises between the hours or during the days set forth in subsection (a) hereof due to vehicular and pedestrian traffic and the concentration of commercial or business activity.

(c) Whoever violates this section is guilty of a misdemeanor of the fourth degree for a first offense and a misdemeanor of the third degree for each subsequent offense.
(Ord. 91-48. Passed 4-15-91.)

521.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)

CHAPTER 525
Law Enforcement and Public Office

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CROSS REFERENCES
See sectional histories for similar State law
Law enforcement officer defined - see GEN. OFF. 501.01(k)
Misconduct at an emergency - see GEN. OFF. 509.05
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525.01 DEFINITIONS.
As used in this chapter:
(a) "Public official" means any elected or appointed officer, or employee, or agent of the State or any political subdivision thereof, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges and law enforcement officers. “Public official” 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.
(b) "Public servant" means any of the following:
(1) Any public official;
(2) 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;

(3) A person who is a candidate for public office, whether or not the person is elected or appointed to the office for which the person is a candidate. A person is a candidate for purposes of this subsection if the person has been nominated according to law for election or appointment to public office, or if the person has filed a petition or petitions as required by law to have the person's name placed on the ballot in a primary, general or special election, or if the person campaigns as a write-in candidate in any primary, general or special election. "Public servant" 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.

(c) "Party official" means any person who holds an elective or appointive post in a political party in the United States or this State, by virtue of which the person directs, conducts or participates in directing or conducting party affairs at any level of responsibility.

(d) "Official proceeding" means any proceeding before a legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, and includes any proceeding before a referee, hearing examiner, commissioner, notary or other person taking testimony or a deposition in connection with an official proceeding.

(e) "Detention" means arrest, confinement in any vehicle subsequent to an arrest, confinement in any public or private facility for custody of persons charged with or convicted of a crime in this State or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this State or another state or under the laws of the United States; hospitalization, institutionalization or confinement in any public or private facility that is ordered pursuant to or under the authority of Ohio R.C. 2945.37, 2945.371, 2945.38, 2945.39 or 2945.40, 2945.401 or 2945.402; confinement in any vehicle for transportation to or from any facility of any of those natures; detention for extradition or deportation, except as provided in this subsection, supervision by any employee of any facility of any of those natures; that is incidental to hospitalization, institutionalization or confinement in the facility but that occurs outside the facility; supervision by an employee of the Department of Rehabilitation and Correction of a person on any type of release from a State correctional institution; or confinement in any vehicle, airplane, or place while being returned from outside of this State into this State by a private person or entity pursuant to a contract entered into under 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.

(f) "Detention facility" means any public or private place used for the confinement of a person charged with or convicted of any crime in this State or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this State or another state or under the laws of the United States.

(g) "Valuable thing or valuable benefit" includes, but is not limited to, a contribution. This inclusion does not indicate or imply that a contribution was not included in those terms before September 17, 1986.

(h) "Campaign committee," "contribution," "political action committee," "legislative campaign fund," "political party" and "political contributing entity" have the same meanings as in Ohio R.C. 3517.01.

(i) "Provider agreement" has the same meaning as in Ohio R.C. 5164.01. (ORC 2921.01)

525.02 FALSIFICATION.

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

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

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

(3) The statement is made with purpose to mislead a public official in performing the public official's official function.

(4) The statement is made with purpose to secure the payment of unemployment compensation; Ohio works first; prevention, retention and contingency benefits and services; disability financial assistance; retirement benefits or health care coverage from a state retirement system; 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 that person's detriment.

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

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

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

(12) The statement is made in 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.

(13) 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) It is no defense to a charge under subsection (a)(6) hereof that the oath or affirmation was administered or taken in an irregular manner.

(c) 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.

(d) (1) Whoever violates any provision of subsection (a)(1) to (8) or (10) to (13) hereof is guilty of falsification, a misdemeanor of the first degree.

(2) Whoever violates subsection (a)(9) hereof is guilty of falsification in a theft offense, a misdemeanor of the first degree. If the value of the property or services stolen is one thousand dollars ($1,000) or more, falsification in a theft offense is a felony and shall be prosecuted under appropriate State law.

(e) A person who violates this section is liable in a civil action to any person harmed by the violation for injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting the civil action commenced under this section. A civil action under this section is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of this section.
(ORC 2921.13)

525.03 IMPERSONATION OF PEACE OFFICER.

(a) As used in this section:

(1) "Peace officer" means a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation or township constable who is employed by a political subdivision of this State; a member of a police force employed by a metropolitan housing authority under Ohio R.C. 3735.31(D); a member of a police force employed by a regional transit authority under Ohio R.C. 306.35(Y), a State university law enforcement officer appointed under Ohio R.C. 3345.04; a veterans' home police officer appointed under Ohio R.C. 5907.02; a special police officer employed by a port authority under Ohio R.C. 4582.04 or 4582.28; an officer, agent, or employee of the State or any of its agencies, instrumentalities or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within limits of that statutory duty and authority; or a State highway patrol trooper whose primary duties are to preserve the peace, to protect life and property and to enforce the laws, ordinances or rules of the State or any of its political subdivisions.

(2) "Private police officer" means any security guard, special police officer, private detective or other person who is privately employed in a police capacity.

(3) "Federal law enforcement officer" means an employee of the United States who serves in a position the duties of which are primarily the investigation, apprehension or detention of individuals suspected or convicted of offenses under the criminal laws of the United States.

(4) "Investigator of the Bureau of Criminal Identification and Investigation" has the same meaning as in Ohio R.C. 2903.11.

(5) "Impersonate" means to act the part of, assume the identity of, wear the uniform or any part of the uniform of or display the identification of a particular person or of a member of a class of persons with purpose to make another person believe that the actor is that particular person or is a member of that class of persons.

(b) No person shall impersonate a peace officer, private police officer, a federal law enforcement officer or investigator of the Bureau of Criminal Identification and Investigation.

(c) No person, by impersonating a peace officer, a private police officer, a federal law enforcement officer, or Investigator of the Bureau of Criminal Identification and Investigation, shall arrest or detain any person, search any person or search the property of any person.

(d) No person, with purpose to commit or facilitate the commission of an offense, shall impersonate a peace officer, a private police officer, a federal law enforcement officer or investigator of the Bureau of Criminal Identification and Investigation or an officer, agent or employee of the State or the Municipality.

(e) It is an affirmative defense to a charge under subsection (b) hereof that the impersonation of the peace officer was for a lawful purpose.

(f) Whoever violates subsection (b) hereof is guilty of a misdemeanor of the fourth degree. Whoever violates subsections (c) or (d) hereof is guilty of a misdemeanor of the first degree. If the purpose of a violation of subsection (d) hereof is to commit or facilitate the commission of a felony, such violation is a felony and shall be prosecuted under appropriate State law. (ORC 2921.51)

525.04 COMPOUNDING A CRIME.

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

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

(1) The pending prosecution involved is for violation of Sections 545.05, 545.07, 545.09 or 545.10(b)(2), or Ohio R.C. 2913.02, 2913.11, 2913.21(B)(2) or 2913.47, of which the actor under this section was the victim.

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

(c) When a prosecuting witness abandons or agrees to abandon a prosecution under subsection (b) hereof, the abandonment or agreement in no way binds the State or Municipality to abandoning the prosecution.

(d) Whoever violates this section is guilty of compounding a crime, a misdemeanor of the first degree. (ORC 2921.21)

525.05 FAILURE TO REPORT A CRIME, INJURY OR KNOWLEDGE OF DEATH.

(a) (1) Except as provided in subsection (a)(2) hereof, no person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.

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

(b) Except for conditions that are within the scope of subsection (e) of this section, no person giving aid to a sick or injured person shall negligently fail to report to law enforcement authorities any gunshot or stab wound treated or observed by the person, or any serious physical harm to persons that the person knows or has reasonable cause to believe resulted from an offense of violence.

(c) No person who discovers the body or acquires the first knowledge of the death of a person shall fail to report the death immediately to a physician or advanced practice registered nurse whom the person knows to be treating the deceased for a condition from which death at such time would not be unexpected, or to a law enforcement officer, an ambulance service, an emergency squad, or the coroner in a political subdivision in which the body is discovered, the death is believed to have occurred, or knowledge concerning the death is obtained. For purposes of this subsection (c), "advanced practice registered nurse" does not include a certified registered nurse anesthetist.

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

(e) (1) As used in this subsection, "burn injury" means any of the following:

A. Second or third degree burns;

B. Any burns to the upper respiratory tract or laryngeal edema due to the inhalation of superheated air;

C. Any burn injury or wound that may result in death;

D. Any physical harm to persons caused by or as the result of the use of fireworks, novelties and trick noisemakers, and wire sparklers, as each is defined by Ohio R.C. 3743.01.

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

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

(4) No person who is required to report any burn injury under subsection (e)(2) or (3) of this section shall fail to file, within three working days after attending or treating the victim, a written report of the burn injury with the office of the State Fire Marshal. The report shall comply with the uniform standard developed by the State Fire Marshal pursuant to Ohio R.C. 3737.22(A)(15).

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

(f) (1) Any doctor of medicine or osteopathic medicine, hospital intern or resident, nurse, psychologist, social worker, independent social worker, social work assistant, licensed professional clinical counselor, licensed professional counselor, independent marriage and family therapist or marriage and family therapist who knows or has reasonable cause to believe that a patient or client has been the victim of domestic violence, as defined in 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 or advanced practice registered nurse-patient privilege shall not be a ground for excluding any information regarding the report containing the knowledge or belief noted under subsection (f)(1) of this section, and the information may be admitted as evidence in accordance with the Rules of Evidence.

(g) Subsections (a) and (d) of this section do not require disclosure of information, when any of the following applies:

(1) The information is privileged by reason of the relationship between attorney and client; physician and patient; advanced practice registered nurse and patient; licensed psychologist or licensed school psychologist and client; licensed professional clinical counselor, licensed professional counselor, independent social worker, social worker, independent marriage and family therapist, or marriage and family therapist and client; member of the clergy, rabbi, minister, or priest and any person communicating information confidentially to the member of the clergy, rabbi, minister, or priest for a religious counseling purpose of a professional character; husband and wife; or a communications assistant and those who are a party to a telecommunications relay service call.

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

(3) Disclosure of the information would amount to revealing a news source, privileged under 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 that member of the clergy in that member's capacity as a member of the clergy by a person seeking the aid or counsel of that member of the clergy.

(5) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program of treatment or services for drug dependent persons or persons in danger of drug dependence, which program is maintained or conducted by a hospital, clinic, person, agency, or community addiction services provider whose alcohol and drug addiction services are certified pursuant to Ohio R.C. 5119.36.

(6) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program for providing counseling services to victims of crimes that are violations of 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 subsection, "counseling services" include services provided in an informal setting by a person who, by education or experience, is competent to provide those services.

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

(i) Whoever violates subsection (a) or (b) of this section is guilty of failure to report a crime. Violation of subsection (a)(1) of this section is a misdemeanor of the fourth degree. Violation of subsection (a)(2) or (b) of this section is a misdemeanor of the second degree.

(j) Whoever violates subsection (c) or (d) of this section is guilty of failure to report knowledge of a death, a misdemeanor of the fourth degree.

(k) (1) Whoever negligently violates subsection (e) of this section is guilty of a minor misdemeanor.

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

(l) As used in this section, "nurse" includes an advanced practice registered nurse, registered nurse, and licensed practical nurse. (ORC 2921.22)

525.06 FAILURE TO AID A LAW ENFORCEMENT OFFICER.

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

(b) Whoever violates this section is guilty of failure to aid a law enforcement officer, a minor misdemeanor. (ORC 2921.23)

525.07 OBSTRUCTING OFFICIAL BUSINESS.

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

(b) Whoever violates this section is guilty of obstructing official business. Except as otherwise provided in this subsection (b), obstructing official business is a misdemeanor of the second degree. If a violation of this section creates a risk of physical harm to any person, obstructing official business is a felony and shall be prosecuted under appropriate State law. (ORC 2921.31)

525.08 OBSTRUCTING JUSTICE.

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

(1) Harbor or conceal the other person or child;
(2) Provide the other person or child with money, transportation, a weapon, a disguise, or other means of avoiding discovery or apprehension;
(3) Warn the other person or child of impending discovery or apprehension;
(4) Destroy or conceal physical evidence of the misdemeanor, or act, or induce any person to withhold testimony or information or to elude legal process summoning the person to testify or supply evidence;
(5) Communicate false information to any person.
(6) Prevent or obstruct any person, by means of force, intimidation, or deception, from performing any act to aid in the discovery, apprehension, or prosecution of the other person or child.

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

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

(d) As used in this section:
(1) "Adult" and "child" have the same meanings as in Ohio R.C. 2151.011.
(2) "Delinquent child" has the same meaning as in Ohio R.C. 2152.02.
(ORC 2921.32)

525.09 RESISTING ARREST.

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

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

(c) Whoever violates this section is guilty of resisting arrest. A violation of subsection (a) hereof is a misdemeanor of the second degree. A violation of subsection (b) hereof is a misdemeanor of the first degree. (ORC 2921.33)

525.10 HAVING AN UNLAWFUL INTEREST IN A PUBLIC CONTRACT.

(a) No public official shall knowingly do any of the following:
(1) 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;
(2) Have an interest in the profits or benefits of a public contract entered into by or for the use of the Municipality or governmental agency or instrumentality with which the public official is connected;
(3) Have an interest in the profits or benefits of a public contract that is not let by competitive bidding if required by law, and that involves more than one hundred fifty dollars ($150.00).

(b) In the absence of bribery or a purpose to defraud, a public official, member of a public official's family or any of a public official's business associates shall not be considered as having an interest in a public contract if all of the following apply:
(1) The interest of that person is limited to owning or controlling shares of the corporation, or being a creditor of the corporation or other organization that is the contractor on the public contract involved, or that is the issuer of the security in which public funds are invested;
(2) The shares owned or controlled by that person do not exceed five percent (5%) of the outstanding shares of the corporation, and the amount due that person as creditor does not exceed five percent (5%) of the total indebtedness of the corporation or other organization;
(3) That person, prior to the time the public contract is entered into, files with the Municipality 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 Municipality 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 Municipality or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public official's becoming associated with the Municipality or governmental agency or instrumentality involved;

(3) The treatment accorded the Municipality 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 Municipality 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 decisions of the Municipality or governmental agency or instrumentality with respect to the public contract.

(d) Subsection (a)(4) does not prohibit participation by a public employee in any housing program funded by public moneys 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 moneys 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 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 municipal corporation or an official designated as prosecutor in a municipal corporation to appoint assistants and employees in accordance with Ohio R.C. 733.621 and 2921.421.

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

(h) As used in this section:

(1) "Public contract" means any of the following:

A. The purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of the State, 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.

(2) "Chief legal officer" has the same meaning as in Ohio R.C. 733.621. (ORC 2921.42)

525.11 SOLICITING OR RECEIVING IMPROPER COMPENSATION.

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

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

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

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

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

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

(c) No person for the benefit of a political party, campaign committee, legislative campaign fund, 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 Municipality for a period of seven years from the date of conviction.

(f) Subsections (a), (b) and (c) hereof do not prohibit a person from making voluntary contributions to a political party, campaign committee, legislative campaign fund, 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)

525.12 DERELICTION OF DUTY.

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

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

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

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

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

(1) Allow the detention facility to become littered or unsanitary;
(2) Fail to provide persons confined in the detention facility with adequate food, clothing, bedding, shelter and medical attention;
(3) Fail to control an unruly prisoner, or to prevent intimidation of or physical harm to a prisoner by another;
(4) Allow a prisoner to escape;
(5) Fail to observe any lawful and reasonable regulation for the management of the detention facility.

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

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

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

(g) As used in this section, "public servant" includes an officer or employee of a contractor as defined in Ohio R.C. 9.08.

525.13 INTERFERING WITH CIVIL RIGHTS.

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

(b) Whoever violates this section is guilty of interfering with civil rights, a misdemeanor of the first degree.
(ORC 2921.45)

525.14 UNAUTHORIZED DISPLAY OF LAW ENFORCEMENT EMBLEMS ON MOTOR VEHICLES.

(a) No person who is not entitled to do so shall knowingly display on a motor vehicle the emblem of a law enforcement agency or an organization of law enforcement officers.

(b) Whoever violates this section is guilty of the unlawful display of the emblem of a law enforcement agency or an organization of law enforcement officers, a minor misdemeanor.
(ORC 2913.441)

525.15 ASSAULTING POLICE DOG OR HORSE OR AN ASSISTANCE DOG.

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

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

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

(b) No person shall recklessly do any of the following:
(1) Taunt, torment, or strike a police dog or horse;
(2) Throw an object or substance at a police dog or horse;
(3) Interfere with or obstruct a police dog or horse, or interfere with or obstruct a law enforcement officer who is being assisted by a police dog or horse, in a manner that does any of the following:
A. Inhibits or restricts the law enforcement officer's control of the police dog or horse;
B. Deprives the law enforcement officer of control of the police dog or horse;
C. Releases the police dog or horse from its area of control;
D. Enters the area of control of the police dog or horse without the consent of the law enforcement officer, including placing food or any other object or substance into that area;
E. Inhibits or restricts the ability of the police dog or horse to assist a law enforcement officer.
(4) Engage in any conduct that is likely to cause serious physical injury or death to a police dog or horse.
(5) If the person is the owner, keeper, or harborer of a dog, fail to reasonably restrain the dog from taunting, tormenting, chasing, approaching in a menacing fashion or apparent attitude of attack, or attempting to bite or otherwise endanger a police dog or horse that at the time of the conduct is assisting a law enforcement officer in the performance of the officer's duties or that the person knows is a police dog or horse.

(c) No person shall knowingly cause, or attempt to cause, physical harm to an assistance dog in either of the following circumstances:
(1) The dog is assisting or serving a blind, deaf or hearing impaired, or mobility impaired person at the time the physical harm is caused or attempted.
(2) The dog is not assisting or serving a blind, deaf or hearing impaired, or mobility impaired person at the time the physical harm is caused or attempted, but the offender has actual knowledge that the dog is an assistance dog.

(d) No person shall recklessly do any of the following:
(1) Taunt, torment, or strike an assistance dog;
(2) Throw an object or substance at an assistance dog;

(3) Interfere with or obstruct an assistance dog, or interfere with or obstruct a blind, deaf or hearing impaired, or mobility impaired person who is being assisted or served by an assistance dog, in a manner that does any of the following:
   A. Inhibits or restricts the assisted or served person's control of the dog;
   B. Deprives the assisted or served person of control of the dog;
   C. Releases the dog from its area of control;
   D. Enters the area of control of the dog without the consent of the assisted or served person, including placing food or any other object or substance into that area;
   E. Inhibits or restricts the ability of the dog to assist the assisted or served person.

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

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

(e) (1) Whoever violates subsection (a) hereof is guilty of assaulting a police dog or horse. If the violation results in physical harm to the police dog or horse, assaulting a police dog or horse is a misdemeanor of the first degree. If the violation does not result in death, serious physical harm, or physical harm to the police dog or horse, assaulting a police dog or horse is a misdemeanor of the second degree. If the violation results in death or serious physical harm to the police dog or horse, such violation is a felony and shall be prosecuted under appropriate State law.

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

(3) Whoever violates subsection (c) hereof is guilty of assaulting an assistance dog. If the violation results in physical harm to the dog other than death or serious physical harm, assaulting an assistance dog is a misdemeanor of the first degree. If the violation does not result in death, serious physical harm, or physical harm to the dog, assaulting an assistance dog is a misdemeanor of the second degree. If the violation results in death or serious physical harm to the dog, such violation is a felony and shall be prosecuted under appropriate State law.

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

(5) In addition to any other sanction or penalty imposed for the offense under this section, whoever violates subsection (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 subsection (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 subsection (c) or (d) of this section;

B. The cost of any damaged equipment that results from the violation;

C. If the violation did not result in the death of the police dog or horse or the assistance dog that was the subject of the violation and if, as a result of that dog or horse being the subject of the violation, the dog or horse needs further training or retraining to be able to continue in the capacity of a police dog or horse or an assistance dog, the cost of any further training or retraining of that dog or horse by a law enforcement officer or by the blind, deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog;

D. If the violation resulted in the death of the assistance dog that was the subject of the violation or resulted in serious physical harm to the police dog or horse or the assistance dog or horse that was the subject of the violation to the extent that the dog or horse needs to be replaced on either a temporary or a permanent basis, the cost of replacing that dog or horse and of any further training of a new police dog or horse or a new assistance dog by a law enforcement officer or by the blind, deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog, which replacement or training is required because of the death of or the serious physical harm to the dog or horse that was the subject of the violation.

(f) This section does not apply to a licensed veterinarian whose conduct is in accordance with 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 assistance dog.

(h) As used in this section:

(1) "Physical harm" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

(2) "Police dog or horse" means a dog or horse that has been trained, and may be used, to assist law enforcement officers in the performance of their official duties.

(3) "Serious physical harm" means any of the following:

A. Any physical harm that carries a substantial risk of death;

B. Any physical harm that causes permanent maiming or that involves some temporary, substantial maiming;

C. Any physical harm that causes acute pain of a duration that results in substantial suffering.

(4) "Assistance dog", "blind", and "mobility impaired person" have the same meanings as in Ohio R.C. 955.011.
(ORC 2921.321)

525.16 COMPLIANCE WITH AN ORDER OR SIGNAL OF A POLICE OFFICER.

(a) No person shall fail to comply with any lawful order or direction of any police officer invested with authority to direct, control or regulate traffic.

(b) No person shall operate a motor vehicle so as to willfully elude or flee a police officer receiving a visible or audible signal from a police officer to bring his motor vehicle to a stop.

(c) Whoever violates subsection (a) hereof is guilty of a misdemeanor of the first degree. Whoever violates subsection (b) hereof is guilty of a misdemeanor of the first degree if the jury or judge as trier of fact does not find any one of the following by proof beyond a reasonable doubt:

(1) In committing the offense, the offender was fleeing immediately after the commission of a felony;

(2) The operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property;

(3) The operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.

(d) As used in this section, police officer has the same meaning as in Section 301.25 of the Codified Ordinances. (Ord. 89-83. Passed 12-18-89.)

525.17 INTIMIDATION OF CRIME VICTIM OR WITNESS.

(a) No person shall knowingly attempt to intimidate or hinder the victim of a crime in the filing of prosecution of criminal charges, or a witness in a criminal case in the discharge of his duty.

(b) Subsection (a) hereof 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, or who is attempting to arbitrate or assist in the conciliation of any such dispute, either prior to or subsequent to the filing of a complaint.

(c) Whoever violates this section is guilty of intimidation of a crime victim or witness and shall be guilty of a misdemeanor of the first degree.
(ORC 2921.04; Ord. 1985-45. Passed 6-17-85.)

525.18 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 this section is guilty of making a false allegation of peace officer misconduct, a misdemeanor of the first degree.
(ORC 2921.15)

525.19 REFUSAL TO DISCLOSE PERSONAL INFORMATION IN PUBLIC PLACE.

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

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

(2) The person witnessed any of the following:

A. An offense of violence that would constitute a felony under the laws of this State;

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

C. Any attempt or conspiracy to commit, or complicity in committing, any offense identified in subsection (a)(2)A. or B. of this section;

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

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

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

(d) It is not a violation 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)

525.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)

CHAPTER 529
Liquor Control

529.01 Definitions.
529.02 Sales to and use by underage persons; securing public accommodations.
529.021 Purchase by minor; misrepresentation.
529.03 Sales to intoxicated persons.
529.04 Liquor consumption in motor vehicle.
529.05 Permit required.
529.06 Low-alcohol beverages: sale to and purchase by underage persons prohibited.
529.07 Open container prohibited.
529.08 Hours of sale or consumption.
529.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Prohibiting sale of intoxicating liquor on Sunday - see Ohio R.C. 4301.22(D)
Local option - see Ohio R.C. 4301.32 et seq., 4303.29
Disorderly conduct; intoxication - see GEN. OFF. 509.03
Using weapons while intoxicated - see GEN. OFF. 549.03

529.01 DEFINITIONS.
As used in the Codified Ordinances:
(a) "Alcohol" means ethyl alcohol, whether rectified or diluted with water or not, whatever its origin may be, and includes synthetic ethyl alcohol. Such term excludes denatured alcohol and wood alcohol.
(b) "Intoxicating liquor" and "liquor" include all liquids and compounds, other than beer as defined in subsection (c) hereof, containing one half of one percent (0.5%) or more of alcohol by volume which are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called and whether they are medicated, proprietary or patented. Such phrase includes cider and alcohol and all solids and confections which contain one-half of one percent or more of alcohol by volume.
(c) (1) "Beer" includes all beverages brewed or fermented wholly or in part from malt products and containing one-half of one percent (0.5%) or more of alcohol by volume. (ORC 4301.01)
(2) Beer, regardless of the percent of alcohol by volume, is not intoxicating liquor for purposes of this chapter. (ORC 4301.244)
(d) "Person" includes firms and corporations.
(e) "Low-alcohol beverage" means any brewed or fermented malt product, or any product made from the fermented juices of grapes, fruits, or other agricultural products, that contains either no alcohol or less than one-half of one percent (0.5%) of alcohol by volume. The beverages described in subsection (e) hereof do not include a soft drink such as root beer, birch beer, or ginger beer.
(ORC 4301.01)

529.02 SALES TO AND USE BY UNDERAGE PERSONS; SECURING PUBLIC ACCOMMODATIONS.

(a) Except as otherwise provided in this chapter or Ohio R.C. Chapter 4301, no person shall sell beer or intoxicating liquor to an underage person, or shall buy beer or intoxicating liquor for an underage person, or shall furnish it to, an underage person, unless given by a physician in the regular line of his practice or given for established religious purposes, or unless the underage person is supervised by a parent, spouse who is not an underage person or legal guardian.

In proceedings before the Liquor Control Commission, no permit holder, or no employee or agent of a permit holder, charged with a violation of this subsection shall be charged, for the same offense, with a violation of Ohio R.C. 4301.22(A)(1).

(b) No person who is the owner or occupant of any public or private place shall knowingly allow any underage person to remain in or on the place while possessing or consuming beer or intoxicating liquor, unless the intoxicating liquor or beer is given to the person possessing or consuming it by that person's parent, spouse who is not an underage person or legal guardian and the parent, spouse who is not an underage person or legal guardian is present at the time of the person's possession or consumption of the beer or intoxicating liquor.

An owner of a public or private place is not liable for acts or omissions in violation of this subsection that are committed by a lessee of that place, unless the owner authorizes or acquiesces in the lessee's acts or omissions.

(c) No person shall engage or use accommodations at a hotel, inn, cabin, campground or restaurant when he knows or has reason to know either of the following:

(1) That beer or intoxicating liquor will be consumed by an underage person on the premises of the accommodations that the person engages or uses, unless the person engaging or using the accommodations is the spouse of the underage person and is not an underage person, or is the parent or legal guardian of all of the underage persons, who consume beer or intoxicating liquor on the premises and that person is on the premises at all times when beer or intoxicating liquor is being consumed by an underage person;

(2) That a drug of abuse will be consumed on the premises of the accommodations by any person, except a person who obtained the drug of abuse pursuant to a prescription issued by a practitioner and has the drug of abuse in the original container in which it was dispensed to the person.

(d) (1) No person is required to permit the engagement of accommodations at any hotel, inn, cabin or campground by an underage person or for an underage person, if the person engaging the accommodations knows or has reason to know that the underage person is intoxicated, or that the underage person possesses any beer or intoxicating liquor and is not supervised by a parent, spouse who is not an underage person or legal guardian who is or will be present at all times when the beer or intoxicating liquor is being consumed by the underage person.

(2) No underage person shall knowingly engage or attempt to engage accommodations at any hotel, inn, cabin or campground by presenting identification that falsely indicates that the underage person is twenty-one years of age or older for the purpose of violating this section.

(e) No underage person shall knowingly order, pay for, share the cost of, attempt to purchase, possess, or consume any beer or intoxicating liquor, in any public or private place. No underage person shall knowingly be under the influence of any beer or intoxicating liquor in any public place. The prohibitions set forth in this subsection (e) hereof against an underage person knowingly possessing, consuming, or being under the influence of any beer or intoxicating liquor shall not apply if the underage person is supervised by a parent, spouse who is not an underage person, or legal guardian, or the beer or intoxicating liquor is given by a physician in the regular line of the physician's practice or given for established religious purposes.

(f) No parent, spouse who is not an underage person or legal guardian of a minor shall knowingly permit the minor to violate this section or Section 529.021(a) to (c).

(g) The operator of any hotel, inn, cabin or campground shall make the provisions of this section available in writing to any person engaging or using accommodations at the hotel, inn, cabin or campground.

(h) As used in this section:

(1) "Drug of abuse" has the same meaning as in Ohio R.C. 3719.011.

(2) "Hotel" has the same meaning as in Ohio R.C. 3731.01.

(3) "Licensed health professional authorized to prescribe drugs" and "prescription" have the same meanings as in Ohio R.C. 4729.01.

(4) "Minor" means a person under the age of eighteen years.

(5) "Underage person" means a person under the age of twenty-one years. (ORC 4301.69)

(i) Whoever violates this section is guilty of a misdemeanor of the first degree. In addition, whoever violates subsection (a) hereof shall be fined not less than five hundred dollars ($500.00). (ORC 4301.99)

529.021 PURCHASE BY MINOR; MISREPRESENTATION.

(a) Except as otherwise provided in this chapter or Ohio R.C. Chapter 4301, no person under the age of twenty-one years shall purchase beer or intoxicating liquor. (ORC 4301.63)

(b) Except as otherwise provided in this chapter or Ohio R.C. Chapter 4301, no person shall knowingly furnish any false information as to the name, age or other identification of any person under twenty-one years of age for the purpose of obtaining or with the intent to obtain, beer or intoxicating liquor for a person under twenty-one years of age, by purchase, or as a gift. (ORC 4301.633)

(c) Except as otherwise provided in this chapter or Ohio R.C. Chapter 4301, no person under the age of twenty-one years shall knowingly show or give false information concerning the person's name, age or other identification for the purpose of purchasing or otherwise obtaining beer or intoxicating liquor in any place where beer or intoxicating liquor is sold under a permit issued by the Division of Liquor Control or sold by the Division of Liquor Control. (ORC 4301.634)

(d) (1) Whoever violates any provision of this section for which no other penalty is provided is guilty of a misdemeanor of the first degree.

(2) Whoever violates subsection (a) hereof, shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00). The court imposing a fine for a violation of subsection (a) hereof may order that the fine be paid by the performance of public work at a reasonable hourly rate established by the court. The court shall designate the time within which the public work shall be completed.

(3) A. Whoever violates subsection (c) hereof is guilty of a misdemeanor of the first degree. If, in committing a first violation of that subsection, the offender presented to the permit holder or the permit holder's employee or agent a false, fictitious or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than two hundred fifty dollars ($250.00) and not more than one thousand dollars ($1,000) and may be sentenced to a term of imprisonment of not more than six months.

B. On a second violation in which, for the second time, the offender presented to the permit holder or the permit holder's employee or agent a false, fictitious or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000), and may be sentenced to a term of imprisonment of not more than six months. The court also may impose a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in Ohio R.C. 4510.02(A)(7).

C. On a third or subsequent violation in which, for the third or subsequent time, the offender presented to the permit holder or the permit holder's employee or agent a false, fictitious or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000), and may be sentenced to a term of imprisonment of not more than six months. Except as provided in this subsection, the court also may impose a class six suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in Ohio R.C. 4510.02(A)(6),

and the court may order that the suspension or denial remain in effect until the offender attains the age of twenty-one years. The court, in lieu of suspending the offenders temporary instruction permit, probationary driver's license or driver's license, instead may order the offender to perform a determinate number of hours of community service, with the court determining the actual number of hours and the nature of the community service the offender shall perform. (ORC 4301.99)

529.03 SALES TO INTOXICATED PERSONS.

(a) No permit holder and no agent or employee of a permit holder shall sell or furnish beer or intoxicating liquor to an intoxicated person.
(ORC 4301.22)

(b) Whoever violates this section is guilty of a misdemeanor of the third degree.
(ORC 4301.99)

529.04 LIQUOR CONSUMPTION IN MOTOR VEHICLE.

(a) No person shall consume any beer or intoxicating liquor in a motor vehicle. This section does not apply to persons described in Section 529.07(d). (ORC 4301.64)

(b) Whoever violates subsection (a) hereof is guilty of a misdemeanor of the fourth degree.

(c) If an offender who violates this section was under the age of eighteen years at the time of the offense, the court, in addition to any other penalties it imposes upon the offender, shall suspend the offender's temporary instruction permit, probationary driver's license, or driver's license for a period of not less than six months and not more than one year. In lieu of suspending the offender's temporary instruction permit, probationary driver's license or driver's license, the court may instead require the offender to perform community service for a number of hours to be determined by the court. If the offender is fifteen years and six months of age or older and has not been issued a temporary instruction permit or probationary driver's license, the offender shall not be eligible to be issued such a license or permit for a period of six months. If the offender has not attained the age of fifteen years and six months, the offender shall not be eligible to be issued a temporary instruction permit until the offender attains the age of sixteen years. (ORC 4301.99)

529.05 PERMIT REQUIRED.

(a) No person personally or by the person's clerk, agent or employee shall manufacture, manufacture for sale, offer, keep or possess for sale, furnish or sell, or solicit the purchase or sale of any beer or intoxicating liquor in this Municipality, or transport, import or cause to be transported or imported any beer, intoxicating liquor or alcohol on or into this Municipality for delivery, use or sale, unless the person has fully complied with Ohio R.C. Chapters 4301 and 4303 or is the holder of a permit issued by the Division of Liquor Control and in force at the time. (ORC 4303.25)

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

529.06 LOW-ALCOHOL BEVERAGES: SALE TO AND PURCHASE BY UNDERAGE PERSONS PROHIBITED.

(a) As used in this section, "underage person" means a person under eighteen years of age.

(b) No underage person shall purchase any low-alcohol beverage.

(c) No underage person shall order, pay for, share the cost of, or attempt to purchase any low-alcohol beverage.

(d) No person shall knowingly furnish any false information as to the name, age, or other identification of any underage person for the purpose of obtaining or with the intent to obtain any low-alcohol beverage for an underage person, by purchase or as a gift.

(e) No underage person shall knowingly show or give false information concerning the person's name, age, or other identification for the purpose of purchasing or otherwise obtaining any low-alcohol beverage in any place in this Municipality.

(f) No person shall sell or furnish any low-alcohol beverage to, or buy any low-alcohol beverage for, an underage person, unless given by a physician in the regular line of his practice or given for established religious purposes, or unless the underage person is accompanied by a parent, spouse who is not an underage person, or legal guardian.

(g) No person who is the owner or occupant of any public or private place shall knowingly allow any underage person to remain in or on the place while possessing or consuming any low-alcohol beverage, unless the low-alcohol beverage is given to the person possessing or consuming it by that person's parent, spouse who is not an underage person, or legal guardian, and the parent, spouse who is not an underage person, or legal guardian is present when the person possesses or consumes the low-alcohol beverage.

An owner of a public or private place is not liable for acts or omissions in violation of this division that are committed by a lessee of that place, unless the owner authorizes or acquiesces in the lessee's acts or omissions.

(h) No underage person shall knowingly possess or consume any low-alcohol beverage in any public or private place, unless accompanied by a parent, spouse who is not an underage person, or legal guardian, or unless the low-alcohol beverage is given by a physician in the regular line of the physician's practice or given for established religious purposes.

(i) No parent, spouse who is not an underage person, or legal guardian of an underage person shall knowingly permit the underage person to violate this section. (ORC 4301.631)

(j) Whoever violates any provision of this section for which no other penalty is provided is guilty of a misdemeanor of the fourth degree.

(k) Whoever violates subsection (b) hereof shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00). The court imposing a fine for a violation of subsection (b) hereof may order that the fine be paid by the performance of public work at a reasonable hourly rate established by the court. The court shall designate the time within which the public work shall be completed.
(ORC 4301.99)

529.07 OPEN CONTAINER PROHIBITED.

(a) As used in this section:

(1) "Chauffeured limousine" means a vehicle registered under Ohio R.C. 4503.24.

(2) "Street," "highway" and "motor vehicle" have the same meanings as in Ohio R.C. 4511.01.

(b) No person shall have in the person's possession an opened container of beer or intoxicating liquor in any of the following circumstances:

(1) In a State liquor store;

(2) Except as provided in subsection (c) hereof, on the premises of the holder of any permit issued by the Division of Liquor Control;

(3) In any other public place;

(4) Except as provided in subsection (d) or (e) hereof, while operating or being a passenger in or on a motor vehicle on any street, highway or other public or private property open to the public for purposes of vehicular travel or parking;

(5) Except as provided in subsection (d) or (e) hereof, while being in or on a stationary motor vehicle on any street, highway or other public or private property open to the public for purposes of vehicular travel or parking.

(c) (1) A person may have in the person's possession an opened container of any of the following:

A. Beer or intoxicating liquor that has been lawfully purchased for consumption on the premises where bought from the holder of an A-1-A, A-2, A-2(f), A-3a, D-1, D-2, D-3, D-3a, D-4, D-4a, D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, D-5j, D-5k, D-5l, D-5m, D-5n, D-5o, D-7, D8, E, F, F-2, F-5, F-7 or F-8 permit;

B. Beer, wine, or mixed beverages served for consumption on the premises by the holder of an F-3 permit, wine served as a tasting sample by an A-2 permit holder or S permit holder for consumption on the premises of a farmers market for which an F-10 permit has been issued, or wine served for consumption on the premises by the holder of an F-4 or F-6 permit;

C. Beer or intoxicating liquor consumed on the premises of a convention facility as provided in Ohio R.C. 4303.201;

D. Beer or intoxicating liquor to be consumed during tastings and samplings approved by rule of the Liquor Control Commission.

E. Spirituous liquor to be consumed for purposes of a tasting sample, as defined in Ohio R.C. 4301.171.

(2) A person may have in the person's possession on an F liquor permit premises an opened container of beer or intoxicating liquor that was not purchased from the holder of the F permit if the premises for which the F permit is issued is a music festival and the holder of the F permit grants permission for that possession on the premises during the period for which the F permit is issued. As used in this section, "music festival" means a series of outdoor live musical performances, extending for a period of at least three consecutive days and located on an area of land of at least forty acres.

(3) A. A person may have in the person's possession on a D-2 liquor permit premises an opened or unopened container of wine that was not purchased from the holder of the D-2 permit if the premises for which the D-2 permit is issued is an outdoor performing arts center, the person is attending an orchestral performance, and the holder of the D-2 permit grants permission for the possession and consumption of wine in certain predesignated areas of the premises during the period for which the D-2 permit is issued.

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

1. "Orchestral performance" means a concert comprised of a group of not fewer than forty musicians playing various musical instruments.

2. "Outdoor performing arts center" means an outdoor performing arts center that is located on not less than one hundred fifty acres of land and that is open for performances from the first day of April to the last day of October of each year.

(4) A person may have in the person's possession an opened or unopened container of beer or intoxicating liquor at an outdoor location at which the person is attending an orchestral performance as defined in subsection (c)(3)B.1. hereof if the person with supervision and control over the performance grants permission for the possession and consumption of beer or intoxicating liquor in certain predesignated areas of that outdoor location.

(5) A person may have in the person's possession on an F-9 liquor permit premises an opened or unopened container of beer or intoxicating liquor that was not purchased from the holder of the F-9 permit if the person is attending either of the following:

A. An orchestral performance and the F-9 permit holder grants permission for the possession and consumption of beer or intoxicating liquor in certain predesignated areas of the premises during the period for which the F-9 permit is issued;

B. An outdoor performing arts event or orchestral performance that is free of charge and the F-9 permit holder annually hosts not less than twenty-five other events or performances that are free of charge on the permit premises.

As used in subsection (c)(5) hereof, "orchestral performance" has the same meaning as in subsection (c)(3)B. of this section.

(6) A. A person may have in the person's possession on the property of an outdoor motorsports facility an opened or unopened container of beer or intoxicating liquor that was not purchased from the owner of the facility if both of the following apply:

1. The person is attending a racing event at the facility; and

2. The owner of the facility grants permission for the possession and consumption of beer or intoxicating liquor on the property of the facility;

B. As used in subsection (c)(6)A. of this section:

1. "Racing event" means a motor vehicle racing event sanctioned by one or more motor racing sanctioning organizations.

2. "Outdoor motorsports facility" means an outdoor racetrack to which all of the following apply:

a. It is two and four-tenths miles or more in length.

b. It is located on two hundred acres or more of land.
c. The primary business of the owner of the facility is the hosting and promoting of racing events.
d. The holder of a D-1, D-2 or D-3 permit is located on the property of the facility.

(7) A. A person may have in the person's possession an opened container of beer or intoxicating liquor at an outdoor location within an outdoor refreshment area created under Ohio R.C. 4301.82, if the opened container of beer or intoxicating liquor was purchased from a qualified permit holder to which both of the following apply:
1. The permit holder's premises is located within the outdoor refreshment area.
2. The permit held by the permit holder has an outdoor refreshment area designation.

B. Subsection (c)(7) of this section does not authorize a person to do either of the following:
1. Enter the premises of an establishment within an outdoor refreshment area while possessing an opened container of beer or intoxicating liquor acquired elsewhere;
2. Possess an opened container of beer or intoxicating liquor while being in or on a motor vehicle within an outdoor refreshment area, unless the motor vehicle is stationary and is not being operated in a lane of vehicular travel or unless the possession is otherwise authorized under subsection (d) or (e) of this section.

(8) A. A person may have in the person's possession on the property of a market, within a defined F-8 permit premises, an opened container of beer or intoxicating liquor that was purchased from a D permit premises that is located immediately adjacent to the market if both of the following apply:
1. The market grants permission for the possession and consumption of beer and intoxicating liquor within the defined F-8 permit premises;
2. The market is hosting an event pursuant to an F-8 permit and the market has notified the Division of Liquor Control about the event in accordance with division (A)(3) of Ohio R.C. 4303.208.

B. As used in subsection (c)(8) of this section, market means a market, for which an F-8 permit is held, that has been in operation since 1860.

(d) This section does not apply to a person who pays all or a portion of the fee imposed for the use of a chauffeured limousine pursuant to a prearranged contract, or the guest of such a person, when all of the following apply:
(1) The person or guest is a passenger in the limousine;
(2) The person or guest is located in the limousine, but is not occupying a seat in the front compartment of the limousine where the operator of the limousine is located;
(3) The limousine is located on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.

(e) An opened bottle of wine that was purchased from the holder of a permit that authorizes the sale of wine for consumption on the premises where sold is not an opened container for the purposes of this section if both of the following apply:

(1) The opened bottle of wine is securely resealed by the permit holder or an employee of the permit holder before the bottle is removed from the premises. The bottle shall be secured in such a manner that it is visibly apparent if the bottle has been subsequently opened or tampered with.

(2) The opened bottle of wine that is resealed in accordance with subsection (e)(1) of this section is stored in the trunk of a motor vehicle or, if the motor vehicle does not have a trunk, behind the last upright seat or in an area not normally occupied by the driver or passengers and not easily accessible by the driver.

(f) (1) Except if an ordinance or resolution is enacted or adopted under subsection (f)(2) of this section, this section does not apply to a person who, pursuant to a prearranged contract, is a passenger riding on a commercial quadricycle when all of the following apply:

A. The person is not occupying a seat in the front of the commercial quadricycle where the operator is steering or braking.

B. The commercial quadricycle is being operated on a street, highway or other public or private property open to the public for purposes of vehicular travel or parking.

C. The person has in their possession on the commercial quadricycle an opened container of beer or wine.

D. The person has in their possession on the commercial quadricycle not more than either thirty-six ounces of beer or eighteen ounces of wine.

(2) The legislative authority of a municipal corporation or township may enact an ordinance or adopt a resolution, as applicable, that prohibits a passenger riding on a commercial quadricycle from possessing an opened container or beer or wine.

(3) As used in this section, "commercial quadricycle" means a vehicle that has fully-operative pedals for propulsion entirely by human power and that meets all of the following requirements:

A. It has four wheels and is operated in a manner similar to a bicycle.

B. It has at least five seats for passengers.

C. It is designed to be powered by the pedaling of the operator and the passengers.

D. It is used for commercial purposes.

E. It is operated by the vehicle owner or an employee of the owner.

(g) This section does not apply to a person that has in the person's possession an opened container of beer or intoxicating liquor on the premises of a market if the beer or intoxicating liquor has been purchased from a D liquor permit holder that is located in the market.

As used in subsection (g) of this section, "market" means an establishment that:

(1) Leases space in the market to individual vendors, not less than fifty percent of which are retail food establishments or food service operations licensed under Ohio R.C. Chapter 3717;

(2) Has an indoor sales floor area of not less than twenty-two thousand square feet;

(3) Hosts a farmer's market on each Saturday from April through December. (ORC 4301.62)

(h) Whoever violates this section is guilty of a minor misdemeanor. (ORC 4301.99(A))

529.08 HOURS OF SALE OR CONSUMPTION.

(a) This rule shall apply to the retail sale of beer, wine, mixed beverages, or spirituous liquor.

(b) No beer, wine, mixed beverages, or spirituous liquor shall be sold or delivered by an A-1, A-1c, A-2, B-1, B-2, B-4, B-5, C-1, C-2, C-2X, D-1, D-2, D-2X, D-3 when issued without a D-3A, D-3X, D-4, D-5H, D-5K, D-8, F, F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, F-9, G or I permit holder:

(1) From Monday to Saturday between the hours of one a.m. and five thirty a.m.

(2) On Sunday between the hours of one a.m. and Sunday midnight, unless statutorily authorized otherwise.

(3) Consumption of beer, wine, mixed beverages, or spirituous liquor is also prohibited during the above hours upon the premises of the above permit holders who are authorized by their permit to sell beer, wine, mixed beverages, or spirituous liquor for on-premises consumption.

(c) No beer, wine, mixed beverages, or spirituous liquid shall be sold or delivered by an A-1A, D-3 when issued with a D-3A, D-4A, D-5, D-5A, D-5B, D-5C, D-5D, D-5E, D-5F, D-5G, D-5I, D-5J, D-5l, D-5m, D-5n, D-5o, or D-7 permit holder:

(1) From Monday to Saturday between the hours of two thirty a.m. and five thirty a.m.

(2) On Sunday between the hours of two thirty a.m. and Sunday midnight, unless statutorily authorized otherwise.

(3) Consumption of beer, wine, mixed beverages, or spirituous liquor is also prohibited during the above hours upon the premises of the above permit holders who are authorized by their permit to sell beer, wine, mixed beverages or spirituous liquor for on-premises consumption.

(d) Permit holders authorized to sell beer, wine, mixed beverages, or spirituous liquor at retail who are not specifically identified in subsection (b) or (c) above shall be subject to the provisions of subsection (b), unless statutorily authorized otherwise.

(e) The hours on Sunday during which sales, delivery, or consumption of alcoholic beverages may take place are established by statute, but in no event shall they begin prior to five thirty a.m. (OAC 4301:1-1-49)

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

529.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)

CHAPTER 533
Obscenity and Sex Offenses

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CROSS REFERENCES
See sectional histories for similar State law
Complicity - see GEN. OFF. 501.10
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Telephone harassment - see GEN. OFF. 537.10
Criminal trespass - see GEN. OFF. 541.05

533.01 DEFINITIONS.
As used in this chapter:

(a) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(b) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if such person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(c) "Sexual activity" means sexual conduct or sexual contact, or both.

(d) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(e) “Harmful to juveniles” means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

(1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex.
(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.
(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political and scientific value for juveniles.

(f) When considered as a whole, and judged with reference to ordinary adults, or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to such group, any material or performance is "obscene" if any of the following apply:
(1) Its dominant appeal is to prurient interest;
(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement or nudity in a way which tends to represent human beings as mere objects of sexual appetite;
(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty or brutality;
(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way which inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral or artistic purpose;
(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral or artistic purpose.

(g) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(h) "Nudity" means the showing, representation or depiction of human male or female genitals, pubic area or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

(i) "Juvenile" means an unmarried person under the age of eighteen.

(j) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape or similar data storage device.

(k) "Performance" means any motion picture, preview, trailer, play, show, skit, dance or other exhibition performed before an audience.

(l) "Spouse" means a person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:

(1) When the parties have entered into a written separation agreement authorized by Ohio R.C. 3103.06;

(2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage or legal separation;

(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.

(m) "Minor" means a person under the age of eighteen years.

(n) "Mental health client or patient" has the same meaning as in Ohio R.C. 2305.51.

(o) "Mental health professional" has the same meaning as in Ohio R.C. 2305.115.

(p) "Sado-masochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.

(ORC 2907.01)

533.02 PRESUMPTION OF KNOWLEDGE; ACTUAL NOTICE AND DEFENSE.

(a) An owner or manager, or agent or employee of an owner or manager, of a bookstore, newsstand, theater, or other commercial establishment engaged in selling materials or exhibiting performances, who, in the course of business does any of the acts prohibited by Section 533.11, is presumed to have knowledge of the character of the material or performance involved, if the owner, manager, or agent or employee of the owner or manager has actual notice of the nature of such material or performance, whether or not the owner, manager, or agent or employee of the owner or manager has precise knowledge of its contents.

(b) Without limitation on the manner in which such notice may be given, actual notice of the character of material or a performance may be given in writing by the chief legal officer of the jurisdiction in which the person to whom the notice is directed does business. Such notice, regardless of the manner in which it is given, shall identify the sender, identify the material or performance involved, state whether it is obscene or harmful to juveniles and bear the date of such notice.

(c) Section 533.11 does not apply to a motion picture operator or projectionist acting within the scope of employment as an employee of the owner or manager of a theater or other place for the showing of motion pictures to the general public, and having no managerial responsibility or financial interest in the operator's or projectionist's place of employment, other than wages.

(d) (1) Sections 533.11, 533.12(a) and 533.13 do not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection.

(2) Subsection (d)(1) of this section does not apply to a person who conspires with an entity actively involved in the creation or knowing distribution of material in violation of Section 533.11, 533.12 or 533.13, or who knowingly advertises the availability of material of that nature.

(3) Subsection (d)(1) of this section does not apply to a person who provides access or connection to an electronic method of remotely transferring information that is engaged in the violation of Section 533.11, 533.12 or 533.13, and that contains content that person has selected and introduced into the electronic method of remotely transferring information or content over which that person exercises editorial control.

(e) An employer is not guilty of a violation of Section 533.11, 533.12, or 533.13 based on the actions of an employee or agent of the employer unless the employee's or agent's conduct is within the scope of employee's or agent's employment or agency, and the employer does either of the following:

(1) With knowledge of the employee's or agent's conduct, the employer authorizes or ratifies the conduct.

(2) The employer recklessly disregards the employee's or agent's conduct.

(f) It is an affirmative defense to a charge under Section 533.11 or 533.13 as the section applies to an image transmitted through the internet or another electronic method of remotely transmitting information that the person charged with violating the section has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by juveniles to material that is harmful to juveniles, including any method that is feasible under available technology.

(g) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this section or related sections that can be given effect without the invalid provision or application. To this end, the provisions are severable.
(ORC 2907.35)

533.03 UNLAWFUL SEXUAL CONDUCT WITH A MINOR.

(a) No person, who is eighteen years of age or older, shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.

(b) Whoever violates this section is guilty of unlawful sexual conduct with a minor, a misdemeanor of the first degree. If the offender is four years older or more than the other person, or if the offender has previously been convicted of or pleaded guilty to a violation of Ohio R.C. 2907.02, 2907.03 or 2907.04, or former Ohio R.C. 2907.12, unlawful sexual conduct with a minor is a felony and shall be prosecuted under appropriate State law.
(ORC 2907.04)

533.04 SEXUAL IMPOSITION.

(a) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more persons to have sexual contact when any of the following applies:

(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(2) The offender knows that the other person's or one of the other person's ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.

(3) The offender knows that the other person or one of the other persons submits because of being unaware of the sexual contact.

(4) The other person or one of the other persons is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.

(5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

(b) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.

(c) Whoever violates this section is guilty of sexual imposition, a misdemeanor of the third degree. If the offender previously has been convicted of a violation of Ohio R.C. 2907.02, 2907.03, 2907.04, 2907.05, 2907.06 or 2907.12, or a substantially similar municipal ordinance, a violation of this section is a misdemeanor of the first degree. (ORC 2907.06)

533.05 IMPORTUNING.

(EDITOR'S NOTE: Former Section 533.05 has been deleted from the Codified Ordinances. Section 533.05 was identical to Ohio R.C. 2907.07(B) which the Ohio Supreme Court held to be unconstitutional in State v. Thompson, 95 Ohio St. 3rd 264 (2002).)

533.06 VOYEURISM.

(a) No person, for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise surreptitiously invade the privacy of another, to spy or eavesdrop upon another.

(b) No person, for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise surreptitiously invade the privacy of another to videotape, film, photograph, or otherwise record the other person in a state of nudity.

(c) No person shall secretly or surreptitiously videotape, film, photograph, or otherwise record another person under or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person.

(d) (1) Whoever violates this section is guilty of voyeurism.
(2) A violation of subsection (a) hereof is a misdemeanor of the third degree.
(3) A violation of subsection (b) hereof is a misdemeanor of the second degree.
(4) A violation of subsection (c) hereof is a misdemeanor of the first degree. (ORC 2907.08)

533.07 PUBLIC INDECENCY.

(a) No person shall recklessly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront others, who are in the person's physical proximity and who are not members of the person's household:
(1) Expose the person's private parts;
(2) Engage in sexual conduct or masturbation;
(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

(b) No person shall knowingly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, who is not the spouse of the offender, and who resides in the person's household:
(1) Engage in masturbation;
(2) Engage in sexual conduct;
(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation;
(4) Expose the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.

(c) (1) Whoever violates this section is guilty of public indecency and shall be punished as provided in subsections (c)(2), (3), (4) and (5) of this section.
(2) Except as otherwise provided in subsection (c)(2) of this section, a violation of subsection (a)(1) of this section is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of subsection (a)(1) of this section is a misdemeanor of the third degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to two violations of this section, a violation of subsection (a)(1) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to three or more violations of this section, a violation of subsection (a)(1) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony which shall be prosecuted under appropriate state law.

(3) Except as otherwise provided in subsection (c)(3) of this section, a violation of subsection (a)(2) or (3) of this section is a misdemeanor of the third degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of subsection (a)(2) or (3) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, a violation of subsection (a)(2) or (3) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony which shall be prosecuted under appropriate state law.

(4) Except as otherwise provided in subsection (c)(4) of this section, a violation of subsection (b)(1), (2) or (3) of this section is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of subsection (b)(1), (2) or (3) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, a violation of subsection (b)(1), (2) or (3) of this section is a felony and shall be prosecuted under appropriate state law.

(5) A violation of subsection (b)(4) of this section is a misdemeanor of the first degree unless the offender previously has been convicted of or pleaded guilty to any violation of this section in which case the violation is a felony and shall be prosecuted under appropriate state law. (ORC 2907.09)

533.08 PROCURING.

(a) No person, knowingly and for gain, shall do either of the following:

(1) Entice or solicit another to patronize a prostitute or brothel;

(2) Procure a prostitute for another to patronize, or take or direct another at his or her request to any place for the purpose of patronizing a prostitute.

(b) No person, having authority or responsibility over the use of premises, shall knowingly permit such premises to be used for the purpose of engaging in sexual activity for hire.

(c) Whoever violates this section is guilty of procuring. Except as otherwise provided in this subsection (c), procuring is a misdemeanor of the first degree. If the prostitute who is procured, patronized or otherwise involved in a violation of subsection (a)(2) of this section is under sixteen years of age at the time of the violation, regardless of whether the offender who violates subsection (a)(2) of this section knows the prostitute's age, or if a prostitute who engages in sexual activity for hire in premises used in violation of subsection (b) of this section is under sixteen years of age at the time of the violation, regardless of whether the offender who violates subsection (b) of this section knows the prostitute's age, procuring is a felony and shall be prosecuted under appropriate state law. If the prostitute who is procured, patronized or otherwise involved in a violation of subsection (a)(2) of this section is sixteen or seventeen years of age at the time of the violation or if a prostitute who engages in sexual activity for hire in premises used in violation of subsection (b) of this section is sixteen or seventeen years of age at the time of the violation, procuring is a felony and shall be prosecuted under appropriate state law.
(ORC 2907.23)

533.09 SOLICITING.

(a) No person shall solicit another who is eighteen years of age or older to engage with such other person in sexual activity for hire.

(b) Whoever violates this section is guilty of soliciting, a misdemeanor of the third degree.

(c) If a person is convicted of or pleads guilty to a violation of any provision of this section or an attempt to commit a violation of any provision of this section, and if the person, in committing or attempting to commit the violation, was in, was on, or used a motor vehicle, the court, in addition to or independent of all other penalties imposed for the violation, shall impose upon the offender a class six suspension of the person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(6) of Ohio R.C. 4510.02. In lieu of imposing upon the offender the class six suspension, the court instead may require the offender to perform community service for a number of hours determined by the court.

(d) As used in this section, "sexual activity for hire" means an implicit or explicit agreement to provide sexual activity in exchange for anything of value paid to the person engaging in such sexual activity, to any person trafficking that person, or to any person associated with either such person. (ORC 2907.24)

533.091 LOITERING TO ENGAGE IN SOLICITATION.

(a) No person, with purpose to solicit another to engage in sexual activity for hire and while in or near a public place, shall do any of the following:

(1) Beckon to, stop or attempt to stop another;
(2) Engage or attempt to engage another in conversation;
(3) Stop or attempt to stop the operator of a vehicle or approach a stationary vehicle;
(4) If the offender is the operator of or a passenger in a vehicle, stop, attempt to stop, beckon to, attempt to beckon to, or entice another to approach or enter the vehicle of which the offender is the operator or in which the offender is the passenger;
(5) Interfere with the free passage of another.

(b) As used in this section:

(1) "Vehicle" has the same meaning as in Ohio R.C. 4501.01.
(2) "Public place" means any of the following:
A. A street, road, highway, thoroughfare, bikeway, walkway, sidewalk, bridge, alley, alleyway, plaza, park, driveway, parking lot, or transportation facility;
B. A doorway or entrance way to a building that fronts on a place described in subsection (b)(2)A. hereof;
C. A place not described in subsection (b)(2)A. or B. hereof that is open to the public.

(c) Whoever violates subsection (a) hereof is guilty of loitering to engage in solicitation, a misdemeanor of the third degree. (ORC 2907.241)

533.10 PROSTITUTION.

(a) No person shall engage in sexual activity for hire.

(b) Whoever violates this section is guilty of prostitution, a misdemeanor of the third degree. (ORC 2907.25)

533.11 DISSEMINATING MATTER HARMFUL TO JUVENILES.

(a) No person, with knowledge of its character or content, shall recklessly do any of the following:

(1) Directly sell, deliver, furnish, disseminate, provide, exhibit, rent or present to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles;

(2) Directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent or present to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles;

(3) While in the physical proximity of the juvenile or law enforcement officer posing as a juvenile, allow any juvenile or law enforcement officer posing as a juvenile to review or peruse any material or view any live performance that is harmful to juveniles.

(b) The following are affirmative defenses to a charge under this section, that involves material or a performance that is harmful to juveniles but not obscene:

(1) The defendant is the parent, guardian or spouse of the juvenile involved.

(2) The juvenile involved, at the time of the conduct in question, was accompanied by the juvenile's parent or guardian who, with knowledge of its character, consented to the material or performance being furnished or presented to the juvenile.

(3) The juvenile exhibited to the defendant or the defendant's agent or employee a draft card, driver's license, birth certificate, marriage license, or other official or apparently official document purporting to show that the juvenile was eighteen years of age or over or married, and the person to whom that document was exhibited did not otherwise have reasonable cause to believe that the juvenile was under the age of eighteen and unmarried.

(c) (1) It is an affirmative defense to a charge under this section, involving material or a performance that is obscene or harmful to juveniles, that the material or performance was furnished or presented for a bona fide medical, scientific, educational, governmental, judicial or other proper purpose, by a physician, psychologist, sociologist, scientist, teacher, librarian, clergyman, prosecutor, judge or other proper person.

(2) Except as provided in subsection (b)(3) hereof, mistake of age is not a defense to a charge under this section.

(d) (1) A person directly sells, delivers, furnishes, disseminates, provides, exhibits, rents, or presents or directly offers or agrees to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present material or a performance to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of this section by means of an electronic method of remotely transmitting information if the person knows or has reason to believe that the person receiving the information is a juvenile or the group of persons receiving the information are juveniles.

(2) A person remotely transmitting information by means of a method of mass distribution does not directly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present or directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present the material or performance in question to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of this section if either of the following applies:

A. The person has inadequate information to know or have reason to believe that a particular recipient of the information or offer is a juvenile.

B. The method of mass distribution does not provide the person the ability to prevent a particular recipient from receiving the information.

(e) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this section or related sections that can be given effect without the invalid provision or application. To this end, the provisions are severable.

(f) Whoever violates this section is guilty of disseminating matter harmful to juveniles. If the material or performance involved is harmful to juveniles, except as otherwise provided in this subsection, a violation of this section is a misdemeanor of the first degree. If the material or performance involved is obscene, a violation of this section is a felony and shall be prosecuted under appropriate State law. (ORC 2907.31)

533.12 DECEPTION TO OBTAIN MATTER HARMFUL TO JUVENILES.

(a) No person, for the purpose of enabling a juvenile to obtain any material or gain admission to any performance which is harmful to juveniles shall do either of the following:

(1) Falsely represent that he is the parent, guardian or spouse of such juvenile;

(2) Furnish such juvenile with any identification or document purporting to show that such juvenile is eighteen years of age or over or married.

(b) No juvenile, for the purpose of obtaining any material or gaining admission to any performance which is harmful to juveniles, shall do either of the following:

(1) Falsely represent that he is eighteen years of age or over or married;

(2) Exhibit any identification or document purporting to show that he is eighteen years of age or over or married.

(c) Whoever violates this section is guilty of deception to obtain matter harmful to juveniles, a misdemeanor of the second degree. A juvenile who violates subsection (b) hereof shall be adjudged an unruly child, with such disposition of the case as may be appropriate under Ohio R.C. Chapter 2151. (ORC 2907.33)

533.13 DISPLAYING MATTER HARMFUL TO JUVENILES.

(a) No person who has custody, control or supervision of a commercial establishment, with knowledge of the character or content of the material involved, shall display at the establishment any material that is harmful to juveniles and that is open to view by juveniles as part of the invited general public.

(b) It is not a violation of subsection (a) hereof if the material in question is displayed by placing it behind "blinder racks" or similar devices that cover at least the lower two-thirds of the material, if the material in question is wrapped or placed behind the counter, or if the material in question otherwise is covered or located so that the portion that is harmful to juveniles is not open to the view of juveniles.

(c) Whoever violates this section is guilty of displaying matter harmful to juveniles, a misdemeanor of the first degree. Each day during which the offender is in violation of this section constitutes a separate offense.
(ORC 2907.311)

533.14 SEX OFFENDERS RESIDENCY PROHIBITION.

(a) No person shall establish a residence, occupy residential premises or maintain a residence within 1,000 feet of any School, any Licensed Daycare Center as defined by Section 5104.01 of the Ohio Revised Code, or any dedicated City Park or Park Facility as defined by Fairview Park Codified Ordinance Section 927.05(a)(2) if the following applies:

(1) The person has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or a child-victim oriented offense as defined in Section 2950.01 of the Ohio Revised Code and said person has been classified pursuant to the provisions of Chapter 2950 of the Ohio Revised Code as a Tier I, II or III Sex Offender/Child Victim Offender and is required to register his or her address with the County Sheriff's Department.

(b) In addition to any injunctive relief that the City may obtain pursuant to any other provisions of the Codified Ordinances of the City of Fairview Park and/or laws of the State of Ohio, any person who after the effective date of this ordinance violates the terms contained above, shall be guilty of a misdemeanor of the first degree which is punishable by six months in jail and/or a $1,000.00 fine for each day's continued violation. The Director of Law is hereby authorized to institute injunctive relief to end a violation of this section on behalf of and in the name of the City of Fairview Park as may be provided by any other provision of the Codified Ordinance of the City of Fairview Park and/or the laws of the State of Ohio and is not required to prove irreparable harm in order to obtain the relief.

(c) This section applies to any person described in Section 533.14(a)(1) whether or not the conviction, guilty plea or finding of guilty occurs prior to or after the effective date of this ordinance. (Ord. 09-80. Passed 1-19-10.)

533.15 UNLAWFUL ADVERTISING OF MASSAGE.

(a) No person, by means of a statement, solicitation, or offer in a print or electronic publication, sign, placard, storefront display, or other medium, shall advertise massage, relaxation massage, any other massage technique or method, or any related service, with the suggestion or promise of sexual activity.

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

(c) Nothing in this section prevents the legislative authority of a municipal corporation or township from enacting any regulation of the advertising of massage further than and in addition to the provisions of subsections (a) and (b) of this section.
(ORC 2927.17)

CHAPTER 537
Offenses Against Persons

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CROSS REFERENCES
See sectional histories for similar State law
Physical harm to persons defined - see GEN. OFF. 501.01 (c), (e)
Fighting; provoking violent response - see GEN. OFF. 509.03

537.01 NEGLIGENT HOMICIDE.

(a) No person shall negligently cause the death of another or the unlawful termination of another's pregnancy by means of a deadly weapon or dangerous ordnance as defined in Section 549.01.

(b) Whoever violates this section is guilty of negligent homicide, a misdemeanor of the first degree. (ORC 2903.05)

537.02 VEHICULAR HOMICIDE AND MANSLAUGHTER.

(a) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause the death of another or the unlawful termination of another's pregnancy in any of the following ways:

(1) A. Negligently;

B. As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense, provided that this subsection applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the speeding offense in the construction zone and does not apply as described in subsection (d) of this section.

(2) As the proximate result of committing a violation of any provision of any section contained in Title XLV of the Ohio Revised Code that is a minor misdemeanor or of a municipal ordinance that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any provision of any section contained in Title XLV of the Ohio Revised Code that is a minor misdemeanor.

(b) (1) Whoever violates subsection (a)(1) of this section is guilty of vehicular homicide. Except as otherwise provided in this subsection, vehicular homicide is a misdemeanor of the first degree. Vehicular homicide is a felony and shall be prosecuted under appropriate State law if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under Ohio R.C. Chapter 4510 or any other provision of the Ohio Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under Ohio R.C. 4507.10 or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter or assault offense. The court shall impose a mandatory jail term on the offender when required by Ohio R.C. 2903.06(E).

(2) Whoever violates subsection (a)(2) of this section is guilty of vehicular manslaughter. Except as otherwise provided in this subsection, vehicular manslaughter is a misdemeanor of the second degree. Vehicular manslaughter is a misdemeanor of the first degree if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under Ohio R.C. Chapter 4510 or any other provision of the Ohio Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under Ohio R.C. 4507.10 or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense.

(c) The court shall impose a mandatory jail term of at least fifteen days on an offender who is convicted of or pleads guilty to a violation of subsection (a)(1)B. of this section and may impose upon the offender a longer jail term as authorized pursuant to Section 501.99. The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of subsection (a)(1)A. hereof if either of the following applies:

(1) The offender previously has been convicted of or pleaded guilty to a violation of this section or Ohio R.C. 2903.06 or 2903.08.

(2) At the time of the offense, the offender was driving under suspension or cancellation under Ohio R.C. Chapter 4510 or any other provision of the Ohio Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under Ohio R.C. 4507.10.

(d) Subsection (a)(1)B. does not apply in a particular construction zone unless signs of the type described in Ohio R.C. 2903.081 are erected in that construction zone in accordance with the guidelines and design specifications established by the Director of Transportation under Ohio R.C. 5501.27. The failure to erect signs of the type described in Ohio R.C. 2903.081 in a particular construction zone in accordance with those guidelines and design specifications does not limit or affect the application of subsections (a)(1)A. or (a)(2) of this section in that construction zone or the prosecution of any person who violates any of those subsections in that construction zone.

(e) As used in this section:

(1) "Mandatory prison term" and "mandatory jail term" have the same meanings as in Ohio R.C. 2929.01.

(2) "Traffic-related homicide, manslaughter or assault offense" means a violation of Ohio R.C. 2903.04 in circumstances in which division (D) of that section applies, a violation of Ohio R.C. 2903.06 or 2903.08, or a violation of Ohio R.C. 2903.06, 2903.07 or 2903.08 as they existed prior to March 23, 2000.

(3) "Construction zone" has the same meaning as in Ohio R.C. 5501.27.

(4) "Speeding offense" means a violation of Ohio R.C. 4511.21 or a municipal ordinance pertaining to speed.

(f) For the purposes of this section, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or a prior or current specified offense, the reference to the violation of the specified law or the specified offense includes any violation of any substantially equivalent municipal ordinance, former law of this State, or current or former law of another state or the United States. (ORC 2903.06)

(g) The court imposing a sentence upon an offender for any violation of this section also shall impose a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (B) of Ohio R.C. 4510.02 that is equivalent in length to the suspension required for a violation of Ohio R.C. 2903.06 under similar circumstances.
(ORC 4510.07)

537.021 VEHICULAR ASSAULT IN A CONSTRUCTION ZONE.

(a) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause serious physical harm to another person or another's unborn as the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense. This subsection applies only if the person to whom the serious physical harm is caused or to whose unborn the serious physical harm is caused is in the construction zone at the time of the offender's commission of the speeding offense in the construction zone and does not apply as described in subsection (d) hereof.

(b) Whoever violates this section is guilty of vehicular assault. Except as provided in this subsection, vehicular assault is a misdemeanor of the first degree. Vehicular assault is a felony if, at the time of the offense, the offender was driving under a suspension imposed under Ohio R.C. Chapter 4510, or any other provision of the Ohio Revised Code or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense, and shall be prosecuted under appropriate state law.

In addition to any other sanctions imposed, the court shall impose upon the offender a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of Ohio R.C. 4510.02.

(c) The court shall impose a mandatory jail term of at least seven days on an offender who is convicted of or pleads guilty to a violation of this section and may impose upon the offender a longer jail term as authorized pursuant to Section 501.99.

(d) This section does not apply in a particular construction zone unless signs of the type described in Ohio R.C. 2903.081 are erected in that construction zone in accordance with the guidelines and design specifications established by the Director of Transportation under Ohio R.C. 5501.27.

(e) As used in this section:

(1) "Mandatory jail term" has the same meaning as in Ohio R.C. 2929.01.

(2) "Traffic-related homicide, manslaughter or assault offense" has the same meaning as in Ohio R.C. 2903.06.

(3) "Construction zone" has the same meaning as in Ohio R.C. 5501.27.

(4) "Speeding offense" has the same meaning as in Ohio R.C. 2903.06.

(f) For the purposes of this section, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or a prior or current specified offense, the reference to the violation of the specified law or the specified offense includes any violation of any substantially equivalent municipal ordinance, former law of this State, or current or former law of another state or the United States. (ORC 2903.08)

537.03 ASSAULT.

(a) No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn.

(b) No person shall recklessly cause serious physical harm to another or to another's unborn.

(c) (1) Whoever violates this section is guilty of assault, a misdemeanor of the first degree, and the court shall sentence the offender as provided in subsection (c) hereof. If the assault was committed under the circumstances provided in subsection (c)(2), (3), (4), (5), (6), (7), (8) or (9) hereof, assault is a felony and shall be prosecuted under appropriate State law.

(2) Except as otherwise provided in this subsection, if the offense is committed by a caretaker against a functionally impaired person under the caretaker's care.

(3) If the offense occurs in or on the grounds of a State correctional institution or an institution of the Department of Youth Services, the victim of the offense is an employee of the Department of Rehabilitation and Correction or the Department of Youth Services, and the offense is committed by a person incarcerated in the State correctional institution or by a person institutionalized in the Department of Youth Services Institution pursuant to a commitment to the Department of Youth Services.

(4) If the offense is committed in any of the following circumstances:

A. The offense occurs in or on the grounds of a local correctional facility, the victim of the offense is an employee of the local correctional facility or a probation department or is on the premises of the facility for business purposes or as a visitor, and the offense is committed by a person who is under custody in the facility subsequent to the person's arrest for any crime or delinquent act, subsequent to the person's being charged with or convicted of any crime, or subsequent to the person's being alleged to be or adjudicated a delinquent child.

B. The offense occurs off the grounds of a State correctional institution and off the grounds of an institution of the Department of Youth Services, the victim of the offense is an employee of the Department of Rehabilitation and Correction, the Department of Youth Services, or a probation department, the offense occurs during the employee's official work hours and while the employee is engaged in official work responsibilities, and the offense is committed by a person incarcerated in a State correctional institution or institutionalized in the Department of Youth Services who temporarily is outside of the institution for any purpose, by a parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

C. The offense occurs off the grounds of a local correctional facility, the victim of the offense is an employee of the local correctional facility or a probation department, the offense occurs during the employee's official work hours and while the employee is engaged in official work responsibilities, and the offense is committed by a person who is under custody in the facility subsequent to the person's arrest for any crime or delinquent act, subsequent to the person being charged with or convicted of any crime, or subsequent to the person being alleged to be or adjudicated a delinquent child and who temporarily is outside of the facility for any purpose or by a parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

D. The victim of the offense is a school teacher or administrator or a school bus operator, and the offense occurs in a school, on school premises, in a school building, on a school bus or while the victim is outside of school premises or a school bus and is engaged in duties or official responsibilities associated with the victim's employment or position as a school teacher or administrator or a school bus operator, including, but not limited to, driving, accompanying, or chaperoning students at or on class or field trips, athletic events, or other school extracurricular activities or functions outside of school premises.

(5) If the victim of the offense is a peace officer or an investigator of the Bureau of Criminal Identification and Investigation, a firefighter, or a person performing emergency medical service, while in the performance of their official duties.

(6) If the victim of the offense is a peace officer or an investigator of the Bureau of Criminal Identification and Investigation and if the victim suffered serious physical harm as a result of the commission of the offense.

(7) If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties.

(8) If the victim of the offense is a health care professional of a hospital, a health care worker of a hospital, or a security officer of a hospital whom the offender knows or has reasonable cause to know is a health care professional of a hospital; a health care worker of a hospital, or a security officer of a hospital, if the victim is engaged in the performance of the victim's duties, and if the hospital offers de-escalation or crisis intervention training for such professionals, workers or officers, assault is one of the following:

A. Except as otherwise provided in subsection (c)(8)B. of this section, assault committed in the specified circumstances is a misdemeanor of the first degree. Notwithstanding the fine specified in division (A)(2)(b) of Ohio R.C. 2929.28 for a misdemeanor of the first degree, in sentencing the offender under this subsection and if the court decides to impose a fine, the court may impose upon the offender a fine of not more than five thousand dollars ($5,000).

B. If the offender previously has been convicted of or pleaded guilty to one or more assault or homicide offenses committed against hospital personnel, assault committed in the specified circumstances is a felony.

(9) If the victim of the offense is a judge, magistrate, prosecutor or court official or employee whom the offender knows or has reasonable cause to know is a judge, magistrate, prosecutor or court official or employee, and if the victim is engaged in the performance of the victim's duties, assault is one of the following:

A. Except as otherwise provided in subsection (c)(9)B. of this section, assault committed in the specified circumstances is a misdemeanor of the first degree. In sentencing the offender under this subsection, if the court decides to impose a fine, notwithstanding the fine specified in division (A)(2)(b) of Ohio R.C. 2929.28 for a misdemeanor of the first degree, the court may impose upon the offender a fine of not more than five thousand dollars ($5,000).

B. If the offender previously has been convicted of or pleaded guilty to one or more assault or homicide offenses committed against justice system personnel, assault committed in the specified circumstances is a felony.

(10) If an offender who is convicted of or pleads guilty to assault when it is a misdemeanor also is convicted of or pleads guilty to a specification as described in Ohio R.C. 2941.1423 that was included in the indictment, count in the indictment or information charging the offense, the court shall sentence the offender to a mandatory jail term as provided in division (G) of Ohio R.C. 2929.24.

(d) As used in this section:

(1) "Peace officer" has the same meaning as in Ohio R.C. 2935.01.

(2) "Firefighter" has the same meaning as in Ohio R.C. 3937.41.

(3) "Emergency medical service" has the same meaning as in Ohio R.C. 4765.01.

(4) "Local correctional facility" means a county, multicounty, municipal, municipal-county or multicounty-municipal jail or workhouse. A minimum security jail established under Ohio R.C. 341.23 or 753.21, or another county, multicounty, municipal, municipal-county, or multicounty-municipal facility used for the custody of persons arrested for any crime or delinquent act, persons charged with or convicted of any crime, or persons alleged to be or adjudicated a delinquent child.

(5) "Employee of a local correctional facility" means a person who is an employee of the political subdivision or of one or more of the affiliated political subdivisions that operates the local correctional facility and who operates or assists in the operation of the facility.

(6) "School teacher or administrator" means either of the following:

A. A person who is employed in the public schools of the State under a contract described in Ohio R.C. 3311.77 or 3319.08 in a position in which the person is required to have a certificate issued pursuant to Ohio R.C. 3319.22 to 3319.311.

B. A person who is employed by a nonpublic school for which the State Board of Education prescribes minimum standards under Ohio R.C. 3301.07 and who is certified in accordance with Ohio R.C. 3301.071.

(7) "Community control sanction" has the same meaning as in Ohio R.C. 2929.01.

(8) "Escorted visit" means an escorted visit granted under Ohio R.C. 2967.27.

(9) "Post-release control" and "transitional control" have the same meanings as in Ohio R.C. 2967.01.

(10) "Investigator of the Bureau of Criminal Identification and Investigation" has the same meaning as in Ohio R.C. 2903.11.

(11) "Health care professional" and "health care worker" have the same meanings as in Ohio R.C. 2305.234.

(12) "Assault or homicide offense committed against hospital personnel" means a violation of this section or Ohio R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, 2903.13 or 2903.14 committed in circumstances in which all of the following apply:

A. The victim of the offense was a health care professional of a hospital, a health care worker of a hospital or a security officer of a hospital.

B. The offender knew or had reasonable cause to know that the victim was a health care professional of a hospital, a health care worker of a hospital, or a security officer of a hospital;

C. The victim was engaged in the performance of the victim's duties.

D. The hospital offered de-escalation or crisis intervention training for such professionals, workers or officers.

(13) "De-escalation or crisis intervention training" means de-escalation or crisis intervention training for health care professionals of a hospital, health care workers of a hospital, and security officers of a hospital to facilitate interaction with patients, members of a patient's family, and visitors, including those with mental impairments.

(14) "Assault or homicide offense committed against justice system personnel" means a violation of this section or of Ohio R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, 2903.13 or 2903.14 committed in circumstances in which the victim of the offense was a judge, magistrate, prosecutor, or court official or employee whom the offender knew or had reasonable cause to know was a judge, magistrate, prosecutor, or court official or employee, and the victim was engaged in the performance of the victim's duties.

(15) "Court official or employee" means any official or employee of a court created under the constitution or statutes of this State or of a United States court located in this State.

(16) "Judge" means a judge of a court created under the constitution or statutes of this State or of a United States court located in this State.

(17) "Magistrate" means an individual who is appointed by a court of record of this State and who has the powers and may perform the functions specified in Civil Rule 53, Criminal Rule 19, or Juvenile Rule 40, or an individual who is appointed by a United States court located in this State who has similar powers and functions.

(18) "Prosecutor" has the same meaning as in Ohio R.C. 2935.01.

(19) A. "Hospital" means, subject to subsection (d)(19)B. of this section, an institution classified as a hospital under Ohio R.C. 3701.01 in which are provided to patients diagnostic, medical, surgical, obstetrical, psychiatric, or rehabilitation care or a hospital operated by a health maintenance organization.

B. "Hospital" does not include any of the following:

1. A facility licensed under Ohio R.C. Chapter 3721, a health care facility operated by the Department of Mental Health or the Department of Developmental Disabilities, a health maintenance organization that does not operate a hospital, or the office of any private, licensed health care professional, whether organized for individual or group practice;

2. An institution for the sick that is operated exclusively for patients who use spiritual means for healing and for whom the acceptance of medical care is inconsistent with their religious beliefs, accredited by a national accrediting organization, exempt from federal income taxation under Section 501 of the "Internal Revenue Code of 1986", 100 Stat. 2085, 26 U.S.C. 1, as amended, and providing twenty-four-hour nursing care pursuant to the exemption in division (E) of Ohio R.C. 4723.32 from the licensing requirements of Ohio R.C. Chapter 4723.

(20) "Health maintenance organization" has the same meaning as in Ohio R.C. 3727.01. (ORC 2903.13)

537.04 NEGLIGENT ASSAULT.

(a) No person shall negligently, by means of a deadly weapon or dangerous ordnance as defined in Section 549.01 cause physical harm to another or to another's unborn.

(b) Whoever violates this section is guilty of negligent assault, a misdemeanor of the third degree. (ORC 2903.14)

537.05 AGGRAVATED MENACING.

(a) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association or other organization that employs the other person or to which the other person belongs.

(b) Whoever violates this section is guilty of aggravated menacing. Except as otherwise provided in this subsection (b), aggravated menacing is a misdemeanor of the first degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, aggravated menacing is a felony and shall be prosecuted under appropriate State law.

(c) As used in this section, "organization" includes an entity that is a governmental employer. (ORC 2903.21)

537.051 MENACING BY STALKING.

(a) (1) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or a family or household member of the other person or cause mental distress to the other person or a family or household member of the other person. In addition to any other basis for the other person's belief that the offender will cause physical harm to the other person or the other person's family or household member or mental distress to the other person or the other person's family or household member, the other person's belief or mental distress may be based on words or conduct of the offender that are directed at or identify a corporation, association or other organization that employs the other person or to which the other person belongs.

(2) No person, through the use of any form of written communication or any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, computer system or telecommunication device shall post a message or use any intentionally written or verbal graphic gesture with purpose to do either of the following:

A. Violate subsection (a)(1) of this section;

B. Urge or incite another to commit a violation of subsection (a)(1) of this section.

(3) No person, with sexual motivation, shall violate subsection (a)(1) or (2) of this section.

(b) Whoever violates this section is guilty of menacing by stalking.

(1) Except as otherwise provided in subsections (b)(2) and (3) of this section, menacing by stalking is a misdemeanor of the first degree.

(2) Menacing by stalking is a felony and shall be prosecuted under appropriate State law if any of the following applies:

A. The offender previously has been convicted of or pleaded guilty to a violation of this section or a violation of Section 541.051.

B. In committing the offense under subsection (a)(1), (2), or (3) of this section, the offender made a threat of physical harm to or against the victim, or as a result of an offense committed under subsection (a)(2) or (3) of this section, a third person induced by the offender's posted message made a threat of physical harm to or against the victim.

C. In committing the offense under subsection (a)(1), (2), or (3) of this section, the offender trespassed on the land or premises where the victim lives, is employed, or attends school, or as a result of an offense committed under subsection (a)(2) or (3) of this section, a third person induced by the offender's posted message trespassed on the land or premises where the victim lives, is employed, or attends school.

D. The victim of the offense is a minor.

E. The offender has a history of violence toward the victim or any other person or a history of other violent acts toward the victim or any other person.

F. While committing the offense under subsection (a)(1) of this section or a violation of subsection (a)(3) of this section is based on conduct in violation of subsection (a)(1) of this section, the offender had a deadly weapon on or about the offender's person or under the offender's control. Subsection (b)(2)F. of this section does not apply in determining the penalty for a violation of subsection (a)(2) of this section or a violation of subsection (a)(3) of this section based on conduct in violation of subsection (a)(1) of this section.

G. At the time of the commission of the offense, the offender was the subject of a protection order issued under Ohio R.C. 2903.213 or 2903.214, regardless of whether the person to be protected under the order is the victim of the offense or another person.

H. In committing the offense under subsection (a)(1), (2), or (3) of this section, the offender caused serious physical harm to the premises at which the victim resides, to the real property on which that premises is located, or to any personal property located on that premises, or as a result of an offense committed under subsection (a)(2) of this section, or an offense committed under subsection (a)(3) of this section based on a violation of subsection (a)(2) of this section, a third person induced by the offender's posted message caused serious physical harm to that premises, that real property, or any personal property on that premises.

I. Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious physical harm, or other evidence of then-present dangerousness.

(3) If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities, or duties, menacing by stalking is a felony and shall be prosecuted under appropriate State law.

(c) Ohio R.C. 2919.271 applies in relation to a defendant charged with a violation of this section.

(d) As used in this section:

(1) "Pattern of conduct" means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, or two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, directed at one or more persons employed by or belonging to the same corporation, association, or other organization. Actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's, or emergency facility person's official capacity, or the posting of messages, use of intentionally written or verbal graphic gestures, or receipt of information or data through the use of any form of written communication or an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device, may constitute a "pattern of conduct".

(2) "Mental distress" means any of the following:

A. Any mental illness or condition that involves some temporary substantial incapacity;

B. Any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.

(3) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in Ohio R.C. 2133.21.

(4) "Emergency facility person" is the singular of "emergency facility personnel" as defined in Ohio R.C. 2909.04.

(5) "Public official" has the same meaning as in Ohio R.C. 2921.01.

(6) "Computer", "computer network", "computer program", "computer system" and "telecommunications device" have the same meanings as in Ohio R.C. 2913.01.

(7) "Post a message" means transferring, sending, posting, publishing, disseminating or otherwise communicating, or attempting to transfer, send, post, publish, disseminate or otherwise communication, any message or information, whether truthful or untruthful, about an individual, and whether done under one's own name, under the name of another, or while impersonating another.

(8) "Third person" means, in relation to conduct as described in subsection (a)(2) of this section, an individual who is neither the offender nor the victim of the conduct.

(9) "Sexual motivation" has the same meaning as in Ohio R.C. 2971.01.

(10) "Organization" includes an entity that is a governmental employer.

(11) "Family or household member" means any of the following:

A. Any of the following who is residing or has resided with the person against whom the act prohibited in subsection (a)(1) of this section is committed:

1. A spouse, a person living as a spouse, or a former spouse of the person;
2. A parent, a foster parent, or a child of the person, or another person related by consanguinity or affinity to the person;
3. A parent or a child of a spouse, person living as a spouse, or former spouse of the person, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the person.

B. The natural parent of any child of whom the person against whom the act prohibited in subsection (a)(1) of this section is committed is the other natural parent or is the putative other natural parent.

(12) "Person living as a spouse" means a person who is living or has lived with the person against whom the act prohibited in subsection (a)(1) of this section is committed in a common law marital relationship, who otherwise is cohabiting with that person, or who otherwise has cohabited with the person within five years prior to the date of the alleged commission of the act in question.

(e) The Municipality does not need to prove in a prosecution under this section that a person requested or received psychiatric treatment, psychological treatment, or other mental health services in order to show that the person was caused mental distress as described in subsection (d)(2)B. of this section.

(f) (1) This section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection. In addition, any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control shall not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section.

(2) Subsection (f)(1) of this section does not create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section except as otherwise provided by law.

(3) Subsection (f)(1) of this section does not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of this section or who knowingly advertises the availability of material of that nature. (ORC 2903.211)

537.06 MENACING.

(a) No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediately family, the

other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association or other organization that employs the other person or to which the other person belongs.

(b) Whoever violates this section is guilty of menacing. Except as otherwise provided in this subsection (b), menacing is a misdemeanor of the fourth degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing is a felony and shall be prosecuted under appropriate State law.

(c) As used in this section, "organization" includes an entity that is a governmental employer. (ORC 2903.22)

537.07 ENDANGERING CHILDREN.

(a) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection or support. It is not a violation of a duty of care, protection or support under this subsection when the parent, guardian, custodian or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(b) No person shall abuse a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age.

(c) (1) No person shall operate a vehicle in violation of Section 333.01(a) of the Traffic Code when one or more children under eighteen years of age are in the vehicle. Notwithstanding any other provision of law, a person may be convicted at the same trial or proceeding of a violation of subsection (c) hereof and a violation of Section 333.01(a) of the Traffic Code that constitutes the basis of the charge of the violation of subsection (c) hereof. For purposes of Ohio R.C. 4511.191 to 4511.197 and all related provisions of law, a person arrested for a violation of subsection (c) hereof shall be considered to be under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or for operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine.

(2) As used in subsection (c) hereof:

A. "Controlled substance" has the same meaning as in Ohio R.C. 3719.01.

B. "Vehicle" has the same meaning as in Ohio R.C. 4511.01.

(d) Whoever violates this section is guilty of endangering children.

(1) Whoever violates subsection (a) or (b) hereof is guilty of a misdemeanor of the first degree. If the violation results in serious physical harm to the child involved, or if the offender previously has been convicted of an offense under this section, Ohio R.C. 2919.22 or of any offense involving neglect, abandonment, contributing to the delinquency of or physical abuse of a child, endangering children is a felony and shall be prosecuted under appropriate State law.

(2) Whoever violates subsection (c) hereof is guilty of a misdemeanor of the first degree. Endangering children is a felony and shall be prosecuted under appropriate State law if either of the following applies:

A. The violation results in serious physical harm to the child involved or the offender previously has been convicted of an offense under Ohio R.C. 2919.22 or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child.

B. The violation results in serious physical harm to the child involved and the offender previously has been convicted of a violation of Ohio R.C. 2919.22(C) or subsection (c) hereof, Ohio R.C. 2903.06, or 2903.08, Section 2903.07 as it existed prior to March 23, 2000, or Ohio R.C. 2903.04 in a case in which the offender was subject to the sanctions described in division (D) of that section.

(3) In addition to any term of imprisonment, fine, or other sentence, penalty, or sanction it imposes upon the offender pursuant to subsection (d)(2) hereof, or pursuant to any other provision of law, the court also may impose upon the offender any of the sanctions provided under Ohio R.C. 2919.22(E)(5)(d).

(e) (1) If a person violates subsection (c) hereof and if, at the time of the violation, there were two or more children under eighteen years of age in the motor vehicle involved in the violation, the offender may be convicted of a violation of subsection (c) hereof for each of the children, but the court may sentence the offender for only one of the violations.

(2) A. If a person is convicted of or pleads guilty to a violation of subsection (c) hereof but the person is not also convicted of and does not also plead guilty to a separate charge charging the violation of Section 333.01(a) of the Traffic Code that was the basis of the charge of the violation of subsection (c) hereof, both of the following apply:

1. For purposes of the provisions of the Traffic Code penalty that set forth the penalties and sanctions for a violation of Section 333.01(a) of the Traffic Code, the conviction of or plea of guilty to the violation of subsection (c) hereof shall not constitute a violation of Section 333.01(a) of the Traffic Code.

2. For purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of Section 333.01(a) of the Traffic Code and that is not described in subsection (e)(2)A.1. hereof, the conviction of or plea of guilty to the violation of subsection (c) hereof shall constitute a conviction of or plea of guilty to a violation of Section 333.01(a) of the Traffic Code.

B. If a person is convicted of or pleads guilty to a violation of subsection (c) hereof and the person also is convicted of or pleads guilty to a separate charge charging the violation of Section 333.01(a) of the Traffic Code that was the basis of the charge of the violation of subsection (c) hereof, the conviction of or plea of guilty to the violation of subsection (c) hereof shall not constitute, for purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of Section 333.01(a) of the Traffic Code, a conviction of or plea of guilty to a violation of Section 333.01(a) of the Traffic Code. (ORC 2919.22)

537.08 UNLAWFUL RESTRAINT.

(a) No person, without privilege to do so, shall knowingly restrain another of the other person's liberty.

(b) No person, without privilege to do so and with a sexual motivation, shall knowingly restrain another of the other person's liberty.

(c) Whoever violates this section is guilty of unlawful restraint, a misdemeanor of the third degree.

(d) As used in this section, "sexual motivation" has the same meaning as in Ohio R.C. 2971.01. (ORC 2905.03)

537.09 COERCION.

(a) No person, with purpose to coerce another into taking or refraining from action concerning which the other person has a legal freedom of choice, shall do any of the following:

(1) Threaten to commit any offense;

(2) Utter or threaten any calumny against any person;

(3) Expose or threaten to expose any matter tending to subject any person to hatred, contempt or ridicule, to damage any person's personal or business repute, or to impair any person's credit;

(4) Institute or threaten criminal proceedings against any person;

(5) Take or withhold, or threaten to take or withhold official action, or cause or threaten to cause official action to be taken or withheld.

(b) Subsections (a)(4) and (5) hereof shall not be construed to prohibit a prosecutor or court from doing any of the following in good faith and in the interest of justice:

(1) Offering or agreeing to grant, or granting immunity from prosecution pursuant to Ohio R.C. 2945.44;

(2) In return for a plea of guilty to one or more offenses charged or to one or more other or lesser offenses, or in return for the testimony of the accused in a case to which the accused is not a party, offering or agreeing to dismiss, or dismissing one or more charges pending against an accused, or offering or agreeing to impose, or imposing a certain sentence or modification of sentence;

(3) Imposing community control sanction on certain conditions, including without limitation requiring the offender to make restitution or redress to the victim of the offense.

(c) It is an affirmative defense to a charge under subsection (a)(3), (4) or (5) hereof that the actor's conduct was a reasonable response to the circumstances that occasioned it, and that the actor's purpose was limited to any of the following:

(1) Compelling another to refrain from misconduct or to desist from further misconduct;
(2) Preventing or redressing a wrong or injustice;
(3) Preventing another from taking action for which the actor reasonably believed the other person to be disqualified;
(4) Compelling another to take action that the actor reasonably believed the other person to be under a duty to take.

(d) Whoever violates this section is guilty of coercion, a misdemeanor of the second degree.

(e) As used in this section:

(1) "Threat" includes a direct threat and a threat by innuendo.
(2) "Community control sanction" has the same meaning as in Ohio R.C. 2929.01. (ORC 2905.12)

537.10 TELECOMMUNICATION HARASSMENT.

(a) No person shall knowingly make or cause to be made a telecommunication, or knowingly permit telecommunication to be made from a telecommunications device under the person's control, to another, if the caller does any of the following:

(1) Makes the telecommunication with purpose to harass, intimidate, or abuse, any person at the premises to which the telecommunication is made, whether or not actual communication takes place between the caller and a recipient;
(2) Describes, suggests, requests, or proposes that the caller, the recipient of the telecommunication, or any other person engage in sexual activity, and the recipient or another person at the premises to which the telecommunication is made has requested, in a previous telecommunication or in the immediate telecommunication, that the caller not make a telecommunication to the recipient or to the premises to which the telecommunication is made;
(3) During the telecommunication, violates Ohio R.C. 2903.21;
(4) Knowingly states to the recipient of the telecommunication that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the recipient's family, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides, or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting, or insures the property that will be destroyed or damaged;
(5) Knowingly makes the telecommunication to the recipient of the telecommunication, to another person at the premises to which the telecommunication is made, or to those premises, and the recipient or another person at those premises previously has told the caller not to make a telecommunication to those premises or to any person at those premises.
(6) Knowingly makes any comment, request, suggestion, or proposal to the recipient of the telecommunication that is threatening, intimidating, menacing, coercive, or obscene with the intent to abuse, threaten or harass the recipient;
(7) Without a lawful business purpose, knowingly interrupts the telecommunication service of any person;

(8) Without a lawful business purpose, knowingly transmits to any person, regardless of whether the telecommunication is heard in its entirety, any file, document or other communication that prevents that person from using the person's telephone service or electronic communication device;

(9) Knowingly makes any false statement concerning the death, injury, illness, disfigurement, reputation, indecent conduct, or criminal conduct of the recipient of the telecommunication or family or household member of the recipient with purpose to abuse, threaten, intimidate, or harass the recipient;

(10) Knowingly incites another person through a telecommunication or other means to harass or participate in the harassment of a person;

(11) Knowingly alarms the recipient by making a telecommunication without a lawful purpose at an hour or hours known to be inconvenient to the recipient and in an offensive or repetitive manner.

(b) (1) No person shall make or cause to be made a telecommunication, or permit a telecommunication to be made from a telecommunications device under the person's control, with purpose to abuse, threaten, or harass another person.

(2) No person shall knowingly post a text or audio statement or an image on an internet web site or web page for the purpose of abusing, threatening, or harassing another person.

(c) (1) Whoever violates this section is guilty of telecommunication harassment.

(2) A violation of subsections (a)(1), (2), (3), (5), (6), (7), (8), (9), (10), or (11) or (b) hereof is a misdemeanor of the first degree on a first offense. Each subsequent offense is a felony and shall be prosecuted under appropriate State law.

(3) Whoever violates subsection (a)(4) hereof is guilty of a misdemeanor of the first degree for a first offense. For each subsequent offense or if a violation of subsection (a)(4) hereof results in economic harm of one thousand dollars ($1,000) or more, a violation of subsection (a)(4) hereof is a felony and shall be prosecuted under appropriate State law.

(d) No cause of action may be asserted in any court of this State against any provider of a telecommunications service, interactive computer service as defined in Section 230 of Title 47 of the United States Code, or information service, or against any officer, employee, or agent of a telecommunication service, interactive computer service as defined in Section 230 of Title 47 of the United States Code, or information service, for any injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of this section. A provider of a telecommunications service, interactive computer service as defined in Section 230 of Title 47 of the United States Code, or information service, or an officer, employee, or agent of a telecommunications service, interactive computer service as defined in Section 230 of Title 47 of the United States Code, of information service, is immune from any civil or criminal liability for injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of this section.

(e) (1) This section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection. In addition, any person providing access or connection to or from an electric method of remotely transferring information not under that person's control shall not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that the person believes is, or will be sent, in violation of this section.

(2) Subsection (e)(1) of this section does not create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section except as otherwise provided by law.

(3) Subsection (e)(1) of this section does not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of this section or who knowingly advertises the availability of material of that nature.

(4) A provider or user of an interactive computer service, as defined in Section 230 of Title 47 of the United States Code, shall neither be treated as the publisher or speaker of any information provided by another information content provider, as defined in Section 230 of Title 47 of the United States Code, nor held civilly or criminally liable for the creation or development of information provided by another information content provider, as defined in Section 230 of Title 47 of the United States Code. Nothing in this subsection shall be construed to protect a person from liability to the extent that the person developed or created any content in violation of this section.

(f) Subsections (a)(5) to (11) and (b)(2) of this section do not apply to a person who, while employed or contracted by a newspaper, magazine, press association, news agency, news wire service, cable channel or cable operator, or radio or television station, is gathering, processing, transmitting, compiling, editing or disseminating information for the general public, within the scope of the person's employment in that capacity or the person's contractual authority in that capacity.

(g) As used in this section:

(1) "Economic harm" means all direct, incidental, and consequential pecuniary harm suffered by a victim as a result of criminal conduct. "Economic harm" includes, but is not limited to, all of the following:

A. All wages, salaries, or other compensation lost as a result of the criminal conduct;

B. The cost of all wages, salaries or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;

C. The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct;

D. The loss of value to tangible or intangible property that was damaged as a result of the criminal conduct.

(2) "Caller" means the person described in subsection (a) hereof who makes or causes to be made a telecommunication or who permits a telecommunication to be made from a telecommunications device under that person's control.

(3) "Telecommunication" and "telecommunications device" have the same meanings as in Ohio R.C. 2913.01.

(4) "Sexual activity" has the same meaning as in Ohio R.C. 2907.01.

(5) "Family or household member" means any of the following:

A. Any of the following who is residing or has resided with the recipient of the telecommunication against whom the act prohibited in subsection (a)(9) of this section is committed:

1. A spouse, a person living as a spouse, or a former spouse of the recipient;

2. A parent, a foster parent, or a child of the recipient, or another person related by consanguinity or affinity to the recipient;

3.. A parent or a child of a spouse, person living as a spouse, or former spouse of the recipient, or anther person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the recipient.

B. The natural parent of any child of whom the recipient of the telecommunication against whom the act prohibited in subsection (a)(9) of this section is committed is the other natural parent or is the putative other natural parent.

(6) "Person living as a spouse" means a person who is living or has lived with the recipient of the telecommunication against whom the act prohibited in subsection (a)(9) of this section is committed in a common law marital relationship, who otherwise is cohabiting with the recipient, or who otherwise has cohabited with the recipient within five years prior to the date of the alleged commission of the act in question.

(7) "Cable operator" has the same meaning as in Ohio R.C. 1332.21.

(h) Nothing in this section prohibits a person from making a telecommunication call to a debtor that is in compliance with the "Fair Debt Collection Practices Act", 91 Stat. 874 (1977), 15 U.S.C. 1692, as amended, or the "Telephone Consumer Protection Act", 105 Stat. 2395 (1991), 47 U.S.C. 227, as amended. (ORC 2917.21)

537.11 THREATENING OR HARASSING TELEPHONE CALLS.

(EDITOR'S NOTE: Former Ohio R.C. 4931.31 from which Section 537.11 was derived was repealed by Senate Bill 162, effective September 13, 2010. See now Section 537.10 "Telecommunication Harassment".)

537.12 MISUSE OF 9-1-1 SYSTEM.

(a) "9-1-1 system" means a system through which individuals can request emergency service using the telephone number 9-1-1. (ORC 128.01)

(b) No person shall knowingly use the telephone number of the 9-1-1 system established under Ohio R.C. Chapter 128 to report an emergency if he 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 data base that serves the public safety answering point of a 9-1-1 system established under Ohio R.C. Chapter 128, except for any of the following purposes or under any of the following circumstances:

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

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

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

(4) In the circumstance of access to a data base being given by a telephone company that is a wireline 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 data base shall be subject to the jurisdiction of the steering committee.

(5) In the circumstance of access to a data base given by a telephone company that is a wireline service provider to a state and local government in warning of a public emergency, as determined by the steering committee. The charge, terms, and conditions for the disclosure or use of that information for the purpose of access to a data base is subject to the jurisdiction of the steering committee.
(ORC 128.32)

(e) (1) Whoever violates subsection (b) hereof is guilty of a misdemeanor of the fourth degree.

(2) Whoever violates subsection (c) or (d) hereof is guilty of a misdemeanor of the fourth degree on a first offense. For each subsequent offense such person is guilty of a felony and shall be prosecuted under appropriate State law. (ORC 128.99)

537.13 ADULTERATING OF OR FURNISHING ADULTERATED FOOD OR CONFECTION.

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

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

(2) Furnish to any person any food or confection which has been adulterated in violation of subsection (a)(1) hereof. (ORC 3716.11)

(b) Whoever violates this section is guilty of a misdemeanor of the first degree. (ORC 3716.99(C))

537.14 DOMESTIC VIOLENCE.

(a) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

(b) No person shall recklessly cause serious physical harm to a family or household member.

(c) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

(d) (1) Whoever violates this section is guilty of domestic violence.

(2) Except as otherwise provided in subsection (d)(3) to (5) of this section, a violation of subsection (c) of this section is a misdemeanor of the fourth degree, and a violation of subsection (a) or (b) of this section is a misdemeanor of the first degree.

(3) Except as otherwise provided in subsection (d)(4) of this section, if the offender previously has pleaded guilty to or been convicted of domestic violence, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to domestic violence, a violation of Ohio R.C. 2903.14, 2909.06, 2909.07, 2911.12, 2911.211, or 2919.22 if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the commission of the offense, a violation of subsection (a) or (b) of this section is a felony and shall be prosecuted under appropriate state law, and a violation of subsection (c) of this section is a misdemeanor of the second degree.

(4) If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in subsection (d)(3) of this section involving a person who was a family or household member at the time of the violations or offenses, a violation of subsection (a) or (b) of this section is a felony and shall be prosecuted under appropriate state law, and a violation of subsection (c) of this section is a misdemeanor of the first degree.

(5) Except as otherwise provided in subsection (d)(3) or (4) of this section, if the offender knew that the victim of the violation was pregnant at the time of the violation, a violation of subsection (a) or (b) of this section is a felony and shall be prosecuted under appropriate State law, and a violation of subsection (c) of this section is a misdemeanor of the third degree.

(e) Notwithstanding any provision of law to the contrary, no court or unit of local government shall charge any fee, cost, deposit, or money in connection with the filing of charges against a person alleging that the person violated this section or in connection with the prosecution of any charges so filed.

(f) As used in this section:

(1) "Family or household member" means any of the following:

A. Any of the following who is residing or has resided with the offender:

1. A spouse, a person living as a spouse or a former spouse of the offender;

2. A parent, a foster parent or a child of the offender, or another person related by consanguinity or affinity to the offender;

3. A parent, or a child of a spouse, person living as a spouse, or former spouse of the offender; or another person related by consanguinity or affinity to a spouse, person living as a spouse or former spouse of the offender.

B. The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.

(2) "Person living as a spouse" means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question. (ORC 2919.25)

(g) The same relief available under the Ohio Revised Code for filing a complaint for violation of Ohio R.C. 2919.25 shall be available for filing a complaint for violation of this section.

537.15 TEMPORARY PROTECTION ORDER.

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

(1) A protection order issued or consent agreement approved pursuant to Ohio R.C. 2919.26 or 3113.31;

(2) A protection order issued pursuant to Ohio R.C. 2151.34, 2903.213 or 2903.214;

(3) A protection order issued by a court of another state.

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

(2) Except as otherwise provided in subsection (b)(3) of this section, violating a protection order is a misdemeanor of the first degree.

(3) Violating a protection order is a felony and shall be prosecuted under State law if the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for any of the following:

A. A violation of a protection order issued or consent agreement approved pursuant to Ohio R.C. 2151.34, 2903.213, 2903.214, 2919.26, or 3113.31;

B. Two or more violations of Ohio R.C. 2903.21, 2903.211, 2903.22, or 2911.211 or any combination of those offenses that involved the same person who is the subject of the protection order or consent agreement;

C. One or more violations of this section.

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

(5) If the protection order violated by the offender was an order issued pursuant to 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 subsection 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 this section and Ohio R.C. 2151.34 and 2903.214 shall not exceed three hundred thousand dollars per year.

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

(d) In a prosecution for a violation of this section, it is not necessary for the prosecution to prove that the protection order or consent agreement was served on the defendant if the prosecution proves that the defendant was shown the protection order or consent agreement or a copy of either or a judge, magistrate, or law enforcement officer informed the defendant that a protection order or consent agreement had been issued, and proves that the defendant recklessly violated the terms of the order or agreement.

(e) As used in this section, "protection order issued by a court of another state" means an injunction or another order issued by a criminal court of another state for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to another person, including a temporary order, and means an injunction or order of that nature issued by a civil court of another state, including a temporary order and a final order issued in an independent action or as a pendente lite order in a proceeding for other relief, if the court issued it in response to a complaint, petition or motion filed by or on behalf of a person seeking protection. "Protection order issued by a court of another state" does not include an order for support or for custody of a child. (ORC 2919.27)

537.16 ILLEGAL DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATE NICOTINE PRODUCTS.

(a) As used in this section:

(1) "Age verification" means a service provided by an independent third party (other than a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes) that compares information available from a commercially available database, or aggregate of databases, that regularly are used by government and businesses for the purpose of age and identity verification to personal information provided during an internet sale or other remote method of sale to establish that the purchaser is eighteen years of age or older.

(2) A. "Alternative nicotine product" means, subject to subsection (a)(2)B. of this section, an electronic cigarette or any other product or device that consists of or contains nicotine that can be ingested into the body by any means, including, but not limited to, chewing, smoking, absorbing, dissolving or inhaling.

B. "Alternative nicotine product" does not include any of the following:

1. Any cigarette or other tobacco product;

2. Any product that is a "drug" as that term is defined in 21 U.S.C. 321(g)(1);

3. Any product that is a "device" as that term is defined in 21 U.S.C. 321(h);
4. Any product that is a "combination product" as described in 21 U.S.C. 353(g).

(3) "Child" has the same meaning as in Ohio R.C. 2151.011.
(4) "Cigarette" includes clove cigarettes and hand-rolled cigarettes.
(5) "Distribute" means to furnish, give, or provide cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes.
(6) A. "Electronic cigarette" means, subject to subsection (a)(6)B. of this section, any electronic product or device that produces a vapor that delivers nicotine or any other substance to the person inhaling from the device to simulate smoking and that is likely to be offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo or electronic pipe.
B. "Electronic cigarette" does not include any item, product or device described in subsections (a)(2)B.1. to 4. of this section.
(7) "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 to 4507.52 that shows that a person is eighteen years of age or older.
(8) "Tobacco product" means any product that is made from tobacco, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco or snuff.
(9) "Vending machine" has the same meaning as "coin machine" in Ohio R.C. 2913.01.

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

(1) Give, sell or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any child;
(2) Give away, sell or distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes in any place that does not have posted in a conspicuous place a sign stating that giving, selling or otherwise distributing cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under eighteen years of age is prohibited by law;
(3) Knowingly furnish any false information regarding the name, age or other identification of any child with purpose to obtain cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes for that child;
(4) Manufacture, sell or distribute in this state any pack or other container of cigarettes containing fewer than twenty cigarettes or any package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco;
(5) Sell cigarettes or alternative nicotine products in a smaller quantity than that placed in the pack or other container by the manufacturer;
(6) Give, sell or otherwise distribute alternative nicotine products, papers used to roll cigarettes, or tobacco products other than cigarettes over the internet or through another remote method without age verification.

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

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

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

(3) Any other place not identified in subsection (c)(1) or (2) of this section, upon all of the following conditions:

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

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

(d) The following are affirmative defenses to a charge under subsection (b)(1) of this section:

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

(2) The person who gave, sold or distributed cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a child under subsection (b)(1) of this section is a parent, spouse who is eighteen years of age or older, or legal guardian of the child.

(e) It is not a violation of subsection (b)(1) or (2) of this section for a person to give or otherwise distribute to a child cigarettes, other tobacco products, alternative nicotine products or papers used to roll cigarettes while the child is participating in a research protocol if all of the following apply:

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

(2) An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol;

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

(f) (1) Whoever violates subsection (b)(1), (2), (4), (5) or (6) or (c) of this section is guilty of illegal distribution of cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this subsection, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of subsection (b)(1), (2), (4), (5) or (6) or (c) of this section, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(2) Whoever violates subsection (b)(3) of this section is guilty of permitting children to use cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this subsection, permitting children to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of subsection (b)(3) of this section, permitting children to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(g) Any cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes that are given, sold or otherwise distributed to a child in violation of this section 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)

537.17 CRIMINAL CHILD ENTICEMENT.

(a) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice or lure any child under fourteen years of age to accompany the person in any manner, including entering into any vehicle, or onto any vessel, whether or not the offender knows the age of the child, if both of the following apply:

(1) The actor does not have the express or implied permission of the parent, guardian or other legal custodian of the child in undertaking the activity;

(2) The actor is not a law enforcement officer, medic, firefighter, or other person who regularly provides emergency services, and is not an employee or agent of, or a volunteer acting under the direction of any Board of Education, or the actor is any of such persons, but, at the time the actor undertakes the activity, the actor is not acting within the scope of the actor's lawful duties in that capacity.

(b) No person, with a sexual motivation, shall violate subsection (a) of this section.

(c) No person, for any unlawful purpose other than, or in addition to, that proscribed by subsection (a) of this section, shall engage in any activity described in subsection (a) of this section.

(d) It is an affirmative defense to a charge under subsection (a) hereof that the actor undertook the activity in response to a bona fide emergency situation or that the actor undertook the activity in a reasonable belief that it was necessary to preserve the health, safety or welfare of the child.

(e) Whoever violates this section is guilty of criminal child enticement, a misdemeanor of the first degree. If the offender has previously been convicted of a violation of this section or Ohio R.C. 2905.05, 2907.02, or 2907.03, or former Section 2907.12, or Ohio R.C. 2905.01 or 2907.05 when the victim of that prior offense was under seventeen years of age at the time of the offense, criminal child enticement is a felony and shall be prosecuted under appropriate State law.

(f) As used in this section:

(1) "Sexual motivation" has the same meaning as in Ohio R.C. 2971.01.

(2) "Vehicle" has the same meaning as in Ohio R.C. 4501.01.

(3) "Vessel" has the same meaning as in Ohio R.C. 1546.01.

(ORC 2905.05)

537.18 CONTRIBUTING TO UNRULINESS OR DELINQUENCY OF A CHILD.

(a) As used in this section:

(1) "Delinquent child" has the same meaning as in Ohio R.C. 2152.02.

(2) "Unruly child" has the same meaning as in Ohio R.C. 2151.022.

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

(1) Aid, abet, induce, cause, encourage, or contribute to a child or a ward of the juvenile court becoming an unruly child or a delinquent child;

(2) Act in a way tending to cause a child or a ward of the juvenile court to become an unruly child or a delinquent child;

(3) Act in a way that contributes to an adjudication of the child as a delinquent child based on the child's violation of a court order adjudicating the child an unruly child for being an habitual truant;

(4) If the person is the parent, guardian, or custodian of a child who has the duties under 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.

(c) Whoever violates this section is guilty of contributing to the unruliness or delinquency of a child, a misdemeanor of the first degree. Each day of violation of this section is a separate offense. (ORC 2919.24)

537.19 ABUSE AND NEGLECT OF FUNCTIONALLY IMPAIRED PERSONS.

(a) As used in this section:

(1) "Gross abuse" means knowingly causing serious physical harm to a person by physical contact with the person or by the knowing inappropriate use of a physical or chemical restraint, medication or isolation of the person.

(2) "Abuse" means recklessly causing serious physical harm to a person by physical contact with the person or by the reckless inappropriate use of a physical or chemical restraint, medication or isolation of the person.

(3) "Gross neglect" means knowingly failing to provide a person with any treatment, care, goods, or services that are necessary to maintain the health or safety of the person when such failure results in serious physical harm to the person.

(4) "Neglect" means recklessly failing to provide a person with any treatment, care, goods or services that are necessary to maintain the health or safety of the person when such failure results in serious physical harm to the person.

(5) "Inappropriate use of a physical or chemical restraint" means the use of a physical restraint, chemical restraint, medication or isolation as punishment for convenience, as a substitute for treatment, or in quantities which preclude habilitation and treatment.

(6) "Physical restraint" means, but is not limited to, the use of any article, device or garment that interferes with freedom of movement and that is unable to be removed easily, or a locked door.

(7) "Chemical restraint" means any drug listed in the schedules of controlled substances under the Ohio Revised Code as a substance having a depressant effect or that alters the central nervous system to the extent that it limits physical or cognitive functioning to the degree that the person cannot attain the highest practicable physical, mental and psychosocial well-being.

(8) "Exploitation" means the unlawful or improper utilization of the resources of another for personal or monetary benefit, profit or gain.

(9) "Functionally impaired person" means any person who has a physical or mental impairment that prevents him from providing for his care or protection or whose infirmities caused by aging prevent him from providing for his own care or protection.

(b) No person who administers to or provides for the care of any other person who is functionally impaired, whether by contract, or through the receipt of payment or other consideration for the care and protection of such person, or as a result of family relationship, or by order of a court of competent jurisdiction, or on a voluntary basis, shall do any of the following:

(1) Commit gross abuse against such person.

(2) Commit abuse against such person.

(3) Commit gross neglect against such person.

(4) Commit neglect against such person.

(5) Commit exploitation against such person.

(c) Whoever violates subsection (b)(1), (3) or (5) hereof is guilty of a misdemeanor of the first degree. Whoever violates subsection (b)(2) or (4) hereof is guilty of a misdemeanor of the second degree. If the offender previously has been convicted of, or pleaded to, any violation of this section, a violation of subsection (b)(2) or (4) hereof, is a misdemeanor of the first degree.

(d) The provisions of this section shall not apply to gross abuse, abuse, gross neglect, neglect or exploitation committed against a person a resident of a care facility, as defined in Ohio R.C. 2903.33. (Ord. 91-85. Passed 10-21-91.)

537.20 TRANSMISSIONS OF ADVERTISEMENTS TO FACSIMILE DEVICES.

(a) As used in this section:

(1) "Advertisement" means a message or material intended to cause the sale of realty, goods or services.

(2) "Facsimile device" means a device that electronically or telephonically receives and copies onto paper reasonable reproductions or facsimiles of documents and photographs through connection with a telephone network.

(3) "Pre-existing business relationship" does not include transmitting an advertisement to the owner's or lessee's facsimile device.

(b) No person shall transmit an advertisement to a facsimile device unless the person has received prior permission from the owner or, if the device is leased, from the lessee of the device to which the message is to be sent to transmit the advertisement; or the person has a pre-existing business relationship with such owner or lessee.

(c) When requested by the owner or lessee, the transmission shall occur between 7:00 p.m. and 5:00 a.m. This section applies to all such advertisements intended to be so transmitted within the State of Ohio.

(d) Whoever violates this section is guilty of a minor misdemeanor for the first offense. If the offender previously has been convicted of a violation of this section or Ohio R.C. 4931.55 then such person is guilty of a misdemeanor of the first degree.
(Ord. 92-49. Passed 6-15-92.)

537.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)

CHAPTER 539
Picketing

539.01 Definition.
539.02 Obstructing traffic.
539.03 Disturbance of peace.
539.04 Threats and violence prohibited.
539.05 Picketing for hire.
539.99 Penalty.

CROSS REFERENCES
Parade permits - see TRAF. 311.02
Riot - see GEN. OFF. 509.01
Disorderly conduct - see GEN. OFF. 509.03
Disturbing the peace - see GEN. OFF. 509.10

539.01 DEFINITION.
For the purpose of this chapter, "picketing" means being or remaining on or in the vicinity of any premises or vehicle, whether upon a highway or not, for the purpose of participating in a public demonstration intended to influence any member of the public or the owner, operator or tenant of such vehicle or premises to take or refrain from any action or to protect any such action or failure to act. (Ord. 74-36. Passed 5-6-74.)

539.02 OBSTRUCTING TRAFFIC.
No person engaged in picketing shall obstruct or interfere with any person traveling upon any public highway or ground, or entering or leaving the picketed premises, nor remain in any group of persons so numerous or so located as to make it difficult or dangerous to travel on any public highway or portion thereof or to enter or leave the picketed premises, whether or not anyone actually attempts so to travel, enter or leave.
(Ord. 74-36. Passed 5-6-74.)

539.03 DISTURBANCE OF PEACE.
No person engaged in picketing shall disturb the public peace or good order by shouting or quarreling, or by producing noise by any means, mechanical or otherwise.
(Ord. 74-36. Passed 5-6-74.)

539.04 THREATS AND VIOLENCE PROHIBITED.

No person engaged in picketing shall use any threatening, abusive, profane or indecent language or gesture; or have in his possession or in any vehicle under his control, or remain in any vehicle in which there is situated, any weapon, any device for liberating gas or stench, or any intoxicating liquor. (Ord. 74-36. Passed 5-6-74.)

539.05 PICKETING FOR HIRE.

No person shall engage in picketing for hire or compensation unless he has first procured a license to do so from the Mayor or a designee thereof, except that no license shall be required for a person picketing for hire or compensation the premises or vehicle of his employer or former employer. The Mayor shall issue the license for any period not to exceed ten days requested by the applicant, and the fee for such issue shall be ten dollars ($10.00) per day of the effective period of the license. The fee shall be placed in the General Fund of the City and used only for the operation of the Police Department. A person who has procured such a license shall not be required to register as a picket. Any person who employs or pays compensation to a person picketing in violation of this section shall be deemed guilty of a violation hereof equally with the person actually picketing.
(Ord. 74-36. Passed 5-6-74.)

539.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the fourth degree. (See Section 501.99 for penalties applicable to any misdemeanor classification.)

CHAPTER 541
Property Offenses

541.01 Determining property value in arson.
541.02 Arson.
541.03 Criminal damaging or endangering.
541.035 Rewards for turfing conviction.
541.04 Criminal mischief.
541.05 Criminal trespass.
541.051 Aggravated trespass.
541.06 Destruction of shrubs, trees or crops.
541.07 Desecration.
541.08 Obstructing or tampering with fire hydrants.
541.09 Regulations as to park lands.
541.10 Advertising on private and semi-private property.
541.11 Advertising on public property.
541.12 Ethnic intimidation.
541.13 Vehicular vandalism.
541.14 Trespass on a place of public amusement.
541.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Parents' liability for destructive acts of their children - see Ohio R.C. 3109.09
Physical harm to property defined - see GEN. OFF. 501.01(d), (f)
Reimbursement for investigation or prosecution costs - see GEN. OFF. 501.99(a)
Vehicle trespass - see GEN. OFF. 545.06

541.01 DETERMINING PROPERTY VALUE IN ARSON.

(a) The following criteria shall be used in determining the value of property or amount of physical harm involved in a violation of Section 541.02.

(1) If the property is an heirloom, memento, collector's item, antique, museum piece, manuscript, document, record or other thing that is either irreplaceable or is replaceable only on the expenditure of substantial time, effort or money, the value of the property or the amount of physical harm involved is the amount that would compensate the owner for its loss.

(2) If the property is not covered under subsection (a)(1) hereof, and the physical harm is such that the property can be restored substantially to its former condition, the amount of physical harm involved is the reasonable cost of restoring the property.

(3) If the property is not covered under subsection (a)(1) hereof, and the physical harm is such that the property cannot be restored substantially to its former condition, the value of the property, in the case of personal property, is the cost of replacing the property with new property of like kind and quality, and in the case of real property or real property fixtures, is the difference in the fair market value of the property immediately before and immediately after the offense.

(b) As used in this section, "fair market value" has the same meaning as in Section 545.02(c)(3).

(c) Prima-facie evidence of the value of property, as provided in Section 545.02(d) may be used to establish the value of property pursuant to this section. (ORC 2909.11)

541.02 ARSON.

(a) No person, by means of fire or explosion, shall knowingly cause or create a substantial risk of physical harm to any property of another without the other person's consent.

(b) (1) No person, by means of fire or explosion, shall knowingly cause or create a substantial risk of physical harm to any structure of another that is not an occupied structure;

(2) It is an affirmative defense to a charge under subsection (b)(1) of this section that the defendant acted with the consent of the other person.

(c) Whoever violates this section is guilty of arson, a misdemeanor of the first degree. If the value of the property or the amount of physical harm involved is one thousand dollars ($1,000) or more, arson is a felony and shall be prosecuted under appropriate State law.
(ORC 2909.03)

541.03 CRIMINAL DAMAGING OR ENDANGERING.

(a) No person shall cause, or create a substantial risk of physical harm to any property of another without the other person's consent:

(1) Knowingly, by any means;

(2) Recklessly, by means of fire, explosion, flood, poison gas, poison, radioactive material, caustic or corrosive material, or other inherently dangerous agency or substance.

(b) Whoever violates this section is guilty of criminal damaging or endangering, a misdemeanor if the property involved is not an aircraft, an aircraft engine, propeller, appliance, spare part or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation does not create a risk of physical harm to any person, and if the property involved is not an occupied aircraft. A violation of this section is a misdemeanor of the second degree. If violation of this section creates a risk of physical harm to any person, criminal damaging or endangering is a misdemeanor of the first degree.
(ORC 2909.06)

541.035 REWARDS FOR TURFING CONVICTION.

(a) Council finds and determines that the public interest would be served by the establishment of a method of paying monetary rewards to persons who provide information to the Police Department leading to the apprehension and conviction of persons who cause physical harm or damage to property in Fairview Park by the use of motor vehicles. (Violation of Section 541.03(a)(2).)

(b) Council hereby offers a reward of one hundred dollars ($100.00) to any person or persons who provide information which leads to the apprehension and conviction of any person who knowingly or recklessly causes physical harm (damage) to the lawn area of any property in Fairview Park by the use of a motor vehicle. This offer is limited in that only one one hundred dollar ($100.00) reward will be paid for each such act and for the purposes of this section, a series of such acts which occur in close proximity to each other in time and place shall be considered to be a single act.

(c) If conflicting claims are made for this reward offered by the City of Fairview Park, the City shall be discharged from all liability on paying such reward into the Rocky River Municipal Court, which shall finally determine such claims.

(d) The moneys necessary for the payment of any reward pursuant to this section shall be and are hereby appropriated from the General Fund of the City.

(e) The Chief of Police is hereby authorized and directed to act as recipient of claims for rewards hereunder in accordance with such rules and upon such forms as he may designate.

(f) Upon written certification by the Chief of Police and the Law Director or his designee that the information provided has led to the apprehension and conviction of a person who has knowingly or recklessly caused physical harm or damage to the lawn area of any property by use of a motor vehicle, the Director of Finance is hereby authorized to satisfy the claim for reward pursuant to this section by direct payment to the person who has provided the information or by making such payment to the Rocky River Municipal Court when there are conflicting claims made. (Ord. 88-28. Passed 7-18-88.)

541.04 CRIMINAL MISCHIEF.

(a) No person shall:

(1) Without privilege to do so, knowingly move, deface, damage, destroy or otherwise improperly tamper with either of the following:

A. The property of another;

B. One's own residential real property with the purpose to decrease the value of or enjoyment of the residential real property, if both of the following apply:

1. The residential real property is subject to a mortgage.

2. The person has been served with a summons and complaint in a pending residential mortgage loan foreclosure action relating to that real property. As used in this subsection, "pending" includes the time between judgment entry and confirmation of sale.

(2) With purpose to interfere with the use or enjoyment of property of another employ a tear gas device, stink bomb, smoke generator or other device releasing a substance that is harmful or offensive to persons exposed, or that tends to cause public alarm;

(3) Without privilege to do so, knowingly move, deface, damage, destroy or otherwise improperly tamper with a bench mark, triangulation station, boundary marker or other survey station, monument or marker.

(4) Without privilege to do so, knowingly move, deface, damage, destroy or otherwise improperly tamper with any safety device, the property of another or the property of the offender when required or placed for the safety of others, so as to destroy or diminish its effectiveness or availability for its intended purpose;

(5) With purpose to interfere with the use or enjoyment of the property of another, set a fire on the land of another or place personal property that has been set on fire on the land of another, which fire or personal property is outside and apart from any building, other structure or personal property that is on that land.

(6) Without privilege to do so, and with intent to impair the functioning of any computer, computer system, computer network, computer software, or computer program, all as defined in Ohio R.C. 2909.01, knowingly do any of the following:

A. In any manner or by any means, including, but not limited to, computer hacking, alter, damage, destroy, or modify a computer, computer system, computer network, computer software, or computer program or data contained in a computer, computer system, computer network, computer software, or computer program;

B. Introduce a computer contaminant into a computer, computer system, computer network, computer software or computer program.

(b) As used in this section, "safety device" means any fire extinguisher, fire hose or fire axe, or any fire escape, emergency exit or emergency escape equipment, or any life line, life-saving ring, life preserver or life boat or raft, or any alarm, light, flare, signal, sign or notice intended to warn of danger, or emergency, or intended for other safety purposes, or any guard railing or safety barricade, or any traffic sign or signal, or any railroad grade crossing sign, signal or gate, or any first aid or survival equipment, or any other device, apparatus, or equipment intended for protecting or preserving the safety of persons or property.

(c) (1) Whoever violates this section is guilty of criminal mischief, and shall be punished as provided in subsection (c)(2) or (3) of this section.

(2) Except as otherwise provided in this subsection, criminal mischief committed in violation of subsection (a)(1), (2), (3), (4) or (5) of this section is a misdemeanor of the third degree. Except as otherwise provided in this subsection, if the violation of subsection (a)(1), (2), (3), (4) or (5) of this section creates a risk of physical harm to any person, criminal mischief committed in violation of subsection (a)(1), (2), (3), (4) or (5) of this section is a misdemeanor of the first degree. If the property involved in the violation of subsection (a)(1), (2), (3), (4) or (5) of this section is an aircraft, an aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, any other equipment, implement, or material used or intended to be used in the operation of an aircraft, or any cargo carried or intended to be carried in an aircraft, criminal mischief committed in violation of subsection (a)(1), (2), (3), (4) or (5) of this section is a felony and shall be prosecuted under appropriate State law.

(3) Except as otherwise provided in this subsection, criminal mischief committed in violation of subsection (a)(6) of this section is a misdemeanor of the first degree. If the value of the computer, computer system, computer network, computer software, computer program or data involved in the violation of subsection (a)(6) of this section or the loss to the victim resulting from the violation is one thousand dollars or more, or if the computer, computer system, computer network, computer software, computer program or data involved in the violation of subsection (a)(6) of this section is used or intended to be used in the operation of an aircraft and the violation creates a risk of physical harm to any person, criminal mischief committed in violation of subsection (a)(6) of this section is a felony and shall be prosecuted under appropriate State law.
(ORC 2909.07)

541.05 CRIMINAL TRESPASS.

(a) No person, without privilege to do so, shall do any of the following:

(1) Knowingly enter or remain on the land or premises of another;

(2) Knowingly enter or remain on the land or premises of another, the use of which is lawfully restricted to certain persons, purposes, modes or hours, when the offender knows the offender is in violation of any such restriction or is reckless in that regard;

(3) Recklessly enter or remain on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access;

(4) Being on the land or premises of another, negligently fail or refuse to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either.

(b) It is no defense to a charge under this section that the land or premises involved was owned, controlled or in custody of a public agency.

(c) It is no defense to a charge under this section that the offender was authorized to enter or remain on the land or premises involved when such authorization was secured by deception.

(d) (1) Whoever violates this section is guilty of criminal trespass, a misdemeanor of the fourth degree.

(2) Notwithstanding Section 501.99, if the person, in committing the violation of this section, used a snowmobile, off-highway motorcycle, or all-purpose vehicle, the court shall impose a fine of two times the usual amount imposed for the violation.

(3) If an offender previously has been convicted of or pleaded guilty to two or more violations of this section or a substantially equivalent municipal ordinance, or state law, and the offender, in committing each violation, used a snowmobile, off-highway motorcycle, or all-purpose vehicle, the court, in addition to or independent of all other penalties imposed for the violation, may impound the certificate of registration of that snowmobile or off-highway motorcycle or the certificate of registration and license plate of that all-purpose vehicle for not less than sixty days. In such a case, Ohio R.C. 4519.47 applies.

(e) As used in this section:

(1) "All-purpose vehicle," "off-highway motorcycle" and "snowmobile" have the same meaning as in Section 375.01 of the Traffic Code.

(2) "Land or premises" includes any land, building, structure, or place belonging to, controlled by, or in custody of another, and any separate enclosure or room, or portion thereof. (ORC 2911.21)

541.051 AGGRAVATED TRESPASS.

(a) No person shall enter or remain on the land or premises of another with purpose to commit on that land or those premises a misdemeanor, the elements of which involve causing physical harm to another person or causing another person to believe that the offender will cause physical harm to him.

(b) Whoever violates this section is guilty of aggravated trespass, a misdemeanor of the first degree. (ORC 2911.211)

541.06 DESTRUCTION OF SHRUBS, TREES OR CROPS.

(a) No person, without privilege to do so, shall recklessly cut down, destroy, girdle or otherwise injure a vine, bush, shrub, sapling, tree or crop standing or growing on the land of another or upon public land.

(b) In addition to any penalty provided, whoever violates this section is liable in treble damages for the injury caused. (ORC 901.51)

(c) Whoever violates this section is guilty of a misdemeanor of the fourth degree. (ORC 901.99(A))

541.07 DESECRATION.

(a) No person, without privilege to do so, shall purposely deface, damage, pollute or otherwise physically mistreat any of the following:

(1) The flag of the United States or of this State;

(2) Any public monument;

(3) Any historical or commemorative marker, or any structure, Indian mound or earthwork, cemetery, thing or site of great historical or archeological interest;

(4) A work of art or museum piece;

(5) Any other object of reverence or sacred devotion.

(b) Whoever violates this section is guilty of desecration, a misdemeanor of the second degree.

(c) As used in this section, "cemetery" means any place of burial and includes burial sites that contain American Indian burial objects placed with or containing American Indian human remains. (ORC 2927.11)

541.08 OBSTRUCTING OR TAMPERING WITH FIRE HYDRANTS.

(a) No person shall place or cause to be placed any building material, vehicle or obstruction of any kind within ten feet of any fire hydrant.

(b) No person, except in case of fire or unless duly authorized to do so by proper public authority, shall open, tamper with or use water from any fire hydrant.

(c) Whoever violates this section is guilty of a minor misdemeanor.
(Ord. 74-36. Passed 5-6-74.)

541.09 REGULATIONS AS TO PARK LANDS.

(a) All park lands owned or leased by or under the control of the City shall be closed to public use between sunset and sunrise daily and no person shall enter into or remain on such park lands between such hours. However, individuals, organizations and groups to whom a permit to use any of the City's parks or park facilities has been issued pursuant to regulations promulgated by the Director of Recreation may use such City parks or facilities in accordance with the terms and conditions of such permit. The Director is authorized to permit uses of certain illuminated facilities in the park areas to remain open for recreational uses beyond the normal closing time. (Ord. 76-58. Passed 10-4-76.)

(b) The Director is hereby authorized to promulgate rules and regulations covering the use and protection of the park lands owned or leased by or under the control of the City. Rules and regulations of the Director include provisions for the issuance of permits to individuals, organizations and groups for the use of the City's parks and park facilities. Such rules and regulations shall be consistent with and supplementary to all of the provisions of these Codified Ordinances, consistent with the provisions of any lease, agreement or restrictions covering any of such park lands. (Ord. 74-36. Passed 5-6-74.)

(c) Whoever violates this section is guilty of a minor misdemeanor. (Ord. 79-44. Passed 7-9-79.)

541.10 ADVERTISING ON PRIVATE AND SEMI-PRIVATE PROPERTY.

(a) No person shall stick or post any advertisement, poster, sign, handbill or placard of any description upon any buildings, or upon any tree, post, fence, billboard or any other structure or thing whatever the private property of another without permission of the occupant or owner of the same, nor paint, mark, write, print or impress, or in any manner attach any notice or advertisement or the name of any commodity or thing or any trade mark, symbol or figure of any kind upon anything whatever the property of another without first obtaining the permission of the owner of such thing on which he desires to place such notice, advertisement, name, mark or figure. This section does not apply to the posting of a handbill or notice of public sale by a Sheriff, administrator or executor or licensed auctioneer or a notice required by law to be posted.

(b) No person shall place or post any advertisement, poster, sign or handbill or placard of any description upon any motor vehicle of any kind on all properties other than private property, including, public and semi-private property, streets, alleys, shopping centers, malls and parking lots. (Ord. 74-36. Passed 5-6-74.)

(c) Whoever violates this section is guilty of a minor misdemeanor. (Ord. 82-72. Passed 1-3-83.)

541.11 ADVERTISING ON PUBLIC PROPERTY.

(a) No person shall stick, post or attach any advertisement, poster, sign, handbill or placard of any kind or description upon any telephone or electric light pole within the corporate limits, or upon any public building, vehicle, voting booth, flagging, curb, tree lawn, walk, step, stone, or sidewalk, or write, print or impress or in any manner attach any notice or advertisement of any kind upon any public building, voting booth, flagging, curb, tree lawn, step, stone or sidewalk, the property of the City, or within the street lines of the City or over which the City or Council has the care, custody or control, except such as may be required by the laws of the State. (Ord. 74-36. Passed 5-6-74.)

(b) Whoever violates this section is guilty of a minor misdemeanor. In addition to the penalty prescribed herein, any member of the Police Department shall have the authority to seize and remove or to cause the seizure and removal of any matter found in violation of this section. (Ord. 82-71. Passed 1-3-83.)

541.12 ETHNIC INTIMIDATION.

(a) No person shall violate Ohio R.C. 2903.21, 2903.22, 2909.06, 2909.07 or 2917.21(A)(3) to (5) or Sections 537.05, 537.06, 537.10(a)(3) to (5), 541.03 or 541.04 of the General Offenses Code by reason of the race, color, religion or national origin of another person or group of persons.

(b) Whoever violates this section is guilty of ethnic intimidation. Ethnic intimidation is an offense of the next higher degree than the offense the commission of which is a necessary element of ethnic intimidation.
(ORC 2927.12)

541.13 VEHICULAR VANDALISM.

(a) As used in this section:

(1) "Highway" means any highway as defined in Section 301.42 of the Traffic Code or any lane, road, street, alley, bridge, or overpass.

(2) "Alley", "street", and "vehicle" have the same meanings as in Chapter 301 of the Traffic Code.

(3) "Vessel" and "waters in this State" have the same meanings as in Ohio R.C. 1546.01.

(b) No person shall knowingly, and by any means, drop or throw any object at, onto, or in the path of any of the following:

(1) Any vehicle on a highway;

(2) Any boat or vessel on any of the waters in this State that are located in the Municipality.

(c) Whoever violates this section is guilty of vehicular vandalism. Except as otherwise provided in this subsection, vehicular vandalism is a misdemeanor of the first degree. If the violation of this section creates a substantial risk of physical harm to any person, serious physical harm to property, physical harm to any person or serious physical harm to any person, vehicular vandalism is a felony and shall be prosecuted under appropriate State law.
(ORC 2909.09)

541.14 TRESPASS ON A PLACE OF PUBLIC AMUSEMENT.

(a) As used in this section, "place of public amusement" means a stadium, theater or other facility, whether licensed or not, at which a live performance, sporting event, or other activity takes place for entertainment of the public and to which access is made available to the public, regardless of whether admission is charged.

(b) No person, without privilege to do so, shall knowingly enter or remain on any restricted portion of a place of public amusement and, as a result of that conduct, interrupt or cause the delay of the live performance, sporting event, or other activity taking place at the place of public amusement after a printed written notice has been given as provided in subsection (d)(1) of this section that the general public is restricted from access to that restricted portion of the place of public amusement. A restricted portion of a place of public amusement may include, but is not limited to, a playing field, an athletic surface, or a stage located at the place of public amusement.

(c) An owner or lessee of a place of public amusement, an agent of the owner or lessee, or a performer or participant at a place of public amusement may use reasonable force to restrain and remove a person from a restricted portion of the place of public amusement if the person enters or remains on the restricted portion of the place of public amusement and, as a result of that conduct, interrupts or causes the delay of the live performance, sporting event, or other activity taking place at the place of public amusement. This subsection does not provide immunity from criminal liability for any use of force beyond reasonable force by an owner or lessee of a place of public amusement, an agent of either the owner or lessee, or a performer or participant at a place of public amusement.

(d) (1) Notice has been given that the general public is restricted from access to a portion of a place of public amusement if a printed written notice of the restricted access has been conspicuously posted or exhibited at the entrance to that portion of the place of public amusement. If a printed written notice is posted or exhibited as described in this subsection, regarding a portion of a place of public amusement, in addition to that posting or exhibition, notice that the general public is restricted from access to that portion of the place of public amusement also may be given, but is not required to be given, by either of the following means:

A. By notifying the person personally, either orally or in writing, that access to that portion of the place of public amusement is restricted;

B. By broadcasting over the public address system of the place of public amusement an oral warning that access to that portion of the public place of amusement is restricted.

(2) If notice that the general public is restricted from access to a portion of a place of public amusement is provided by the posting or exhibition of a printed written notice as described in subsection (d)(1) of this section, the Municipality, in a criminal prosecution for a violation of subsection (b) of this section, is not required to prove that the defendant received actual notice that the general public is restricted from access to a portion of a place of public amusement.

(e) (1) Whoever violates subsection (b) of this section is guilty of criminal trespass on a place of public amusement, a misdemeanor of the first degree.

(2) In addition to any jail term, fine or other sentence, penalty, or sanction it imposes upon the offender pursuant to subsection (e)(1) of this section, a court may require an offender who violates this section to perform not less than thirty and not more than one hundred twenty hours of supervised community service work. (ORC 2911.23)

541.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)

CHAPTER 543
Streets and Sidewalks

543.01 Removal of snow, dirt, merchandise from sidewalk.
543.02 Deposit of snow.
543.03 Storage of materials in streets.
543.04 Deposit of leaves in streets.
543.05 Protecting sidewalks.
543.06 Lanterns and barricades required.
543.07 Obstructions on tree lawns or driveways.
543.08 Commercial snow removal; license and fee.
543.99 Penalty.

CROSS REFERENCES
Cleaning sidewalk at owner's expense - see Ohio R.C. 729.15
Placing snow on street - see TRAF. 351.18

543.01 REMOVAL OF SNOW, DIRT, MERCHANDISE FROM SIDEWALK.

Every owner, occupant or person in control of any lot or land within the City along the front or side of which any sidewalk is located or upon which is located any sidewalk forming a continuation of a sidewalk upon a public highway and designed for use by the public as such a continuation, shall keep the sidewalk and continuation thereof free from snow, ice, slush, dirt and mud and any other foreign substance. No owner, occupant or person in control shall place any merchandise or other object of any sort upon the sidewalk or continuation thereof, or knowingly permit such merchandise or object to remain thereon. A separate offense shall be deemed to have occurred on each day on which the sidewalk or continuation thereof is permitted to remain in a condition herein forbidden, or on which merchandise or other objects are placed or knowingly permitted to remain on the sidewalk or continuation thereof. No sidewalk or continuation thereof shall be required to be cleaned more often then once in any one day, nor before the hour of 9:00 a.m. next following the fall of any snow.
(Ord. 74-36. Passed 5-6-74.)

543.02 DEPOSIT OF SNOW.

No person removing snow from any driveway or sidewalk within the City shall deposit the same on the pavement or sidewalk of any public street or on any tree lawn in any public street, except the tree lawn immediately in front on the premises from which the snow is removed.
(Ord. 74-36. Passed 5-6-74.)

543.03 STORAGE OF MATERIAL IN STREETS.

No person shall cause to be piled, stored or left on any portion of any public highway any building material or other material or equipment of any kind, nor, being the owner or occupant of any property fronting upon a public highway, permit the placing or storing of any such material on a highway in front of the property.
(Ord. 74-36. Passed 5-6-74.)

543.04 DEPOSIT OF LEAVES IN STREETS.

No person shall deposit any leaves within any public street, except on the tree lawn between the sidewalk and the curb.
(Ord. 74-36. Passed 5-6-74.)

543.05 PROTECTING SIDEWALKS.

In the transportation of any goods, materials or equipment across any sidewalk in the City, efficient temporary planking shall be used to protect such sidewalks from breakage. Such temporary planking shall be removed at the close of each working day and the surface of the sidewalk immediately cleaned and left in a passable condition.
(Ord. 74-36. Passed 5-6-74.)

543.06 LANTERNS AND BARRICADES REQUIRED.

No contractor or other person shall leave unprotected, unguarded or without proper lighting any hole, excavation, pile of dirt, truck, equipment or other material in any of the streets of the City. (Ord. 74-36. Passed 5-6-74.)

543.07 OBSTRUCTIONS ON TREE LAWNS OR DRIVEWAYS.

No person shall place chains, wires, ropes, rocks or other obstructions as a fence or guard across any driveway or on the tree lawn between the property line and curb, on any street.
(Ord. 74-36. Passed 5-6-74.)

543.08 COMMERCIAL SNOW REMOVAL; LICENSE AND FEE.

(a) No person, firm or corporation, using a licensed vehicle for removal, collecting or hauling of snow from property within the City, shall do so without first obtaining a "snow removal license" from the City to perform or do such work.

(b) Application for a license shall be upon a form issued by the Director of Public Service and Development and a license shall be granted if the applicant is qualified to perform the work for which the application is sought, is aware of the ordinances governing snow removal, registers the year, make and model of the vehicle or vehicles used for such snow removal and shows evidence of liability insurance, as required by State law.

(c) Evidence of repeated violation of snow removal ordinances or other City ordinances shall be sufficient evidence to disqualify the applicant from receiving a license or for revoking a license. A license for any snow removal work shall be issued to the applicant by the Director upon completion of the application and of provisions set forth in subsection (b) hereof. The fee for such license shall be twenty-five dollars ($25.00).

(d) Such license shall be issued for a period of one season from October 1 of the year that it is issued, and shall expire on May 1 next following the date of issuance. Such license shall be renewed each year thereafter, for a like period upon completion of application and showing proof of insurance.

(e) The snow removal license shall state the name of the licensee, firm name in case of a partnership or corporation, place of business, expiration date, name and address of insurance company, insurance agent and telephone number and the make, model and license number of the vehicle or vehicles used in snow removal.

(f) No person, firm or corporation licensed under the provisions of this chapter shall allow or permit their or its name to be used in acquiring any permit or doing any work as described herein, or permit anyone in his or its employ to do any work unless they too have been licensed by the City.

(g) Permit shall allow licensee to remove snow from private property any time of the day or night when there exists more than two inches of snow on the ground.

(h) Snow shall not be placed or piled on a sidewalk either directly or indirectly so as to obstruct or limit its use to pedestrians.

(i) Snow shall not be placed or piled on or against any fence or living fence of an adjacent property. Snow shall remain on the property from which it is cleared or hauled out of the City. (Ord. 85-73. Passed 11-18-85.)

543.99 PENALTY.

(a) Whoever violates any provision of this chapter where another penalty is not otherwise provided is guilty of a misdemeanor of the fourth degree. (See Section 501.99 for penalties applicable to any misdemeanor classification.)

(b) Whoever violates Section 543.01 or 543.02 is guilty of a minor misdemeanor. (Ord. 81-76. Passed 6-29-81.)

CHAPTER 545
Theft and Fraud

545.01 Definitions.
545.02 Determining property value in theft offense.
545.03 Property exceptions as felony offense.
545.04 Detention of shoplifters; rights of museums and libraries.
545.05 Petty theft.
545.06 Unauthorized use of a vehicle; vehicle trespass.
545.07 Insurance fraud.
545.08 Unauthorized use of property.
545.09 Passing bad checks.
545.10 Misuse of credit cards.
545.11 Making or using slugs.
545.12 Tampering with coin machines.
545.13 Criminal simulation.
545.14 Tampering with records.
545.15 Securing writings by deception.
545.16 Personating an officer.
545.17 Defrauding creditors.
545.18 Receiving stolen property.
545.19 Possession of criminal tools.
545.20 Forgery of identification cards.
545.21 Return of library books.
545.22 Shopping carts.
545.23 Possession of property with identification marks removed.
545.24 Deceptive identification.
545.25 Tampering with and theft of utilities.
545.26 Identity fraud.
545.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Property defined - see GEN. OFF. 501.01(j)
Cheating - see GEN. OFF. 517.05
Falsification - see GEN. OFF. 525.02
Impersonating a public servant - see GEN. OFF. 525.03

545.01 DEFINITIONS.

As used in this chapter, unless the context requires that a term be given a different meaning:

(a) "Deception" means knowingly deceiving another or causing another to be deceived, by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act or omission that creates, confirms or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact.

(b) "Defraud" means to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another.

(c) "Deprive" means to do any of the following:

(1) Withhold property of another permanently, or for such period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration;

(2) Dispose of property so as to make it unlikely that the owner will recover it;

(3) Accept, use or appropriate money, property or services, with purpose not to give proper consideration in return for the money, property or services, and without reasonable justification or excuse for not giving proper consideration.

(d) "Owner" means, unless the context requires a different meaning, any person, other than the actor, who is the owner of, who has possession or control of, or who has any license or interest in property or services, even though the ownership, possession, control, license or interest is unlawful.

(e) "Services" include labor, personal services, professional services, rental services, public utility services, including wireless service as defined in Ohio R.C. 5507.01(F)(1), common carrier services, and food, drink, transportation, entertainment and cable television services.

(f) "Writing" means any computer software, document, letter, memorandum, note, paper, plate, data, film or other thing having in or upon it any written, typewritten or printed matter, and any token, stamp, seal, credit card, badge, trademark, label or other symbol of value, right, privilege, license or identification.

(g) "Forge" means to fabricate or create, in whole or in part and by any means any spurious writing, or to make, execute, alter, complete, reproduce or otherwise purport to authenticate any writing, when the writing in fact is not authenticated by that conduct.

(h) "Utter" means to issue, publish, transfer, use, put or send into circulation, deliver or display.

(i) "Coin machine" means any mechanical or electronic device designed to do both of the following:

(1) Receive a coin, bill, or token made for that purpose;

(2) In return for the insertion or deposit of a coin, bill or token, automatically dispense property, provide a service or grant a license.

(j) "Slug" means an object that, by virtue of its size, shape, composition or other quality, is capable of being inserted or deposited in a coin machine as an improper substitute for a genuine coin, bill or token made for that purpose.

(k) "Theft offense" means any of the following:

(1) A violation of Ohio R.C. 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2911.32, 2913.02, 2913.03, 2913.04, 2913.041, 2913.11, 2913.21, 2913.31, 2913.32, 2913.33, 2913.34, 2913.40, 2913.42 to 2913.45, 2913.47, 2913.48, 2913.51, 2915.05, 2915.06, or 2921.41.

(2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States substantially equivalent to any section listed in subsection (k)(1) hereof or a violation of Ohio R.C. 2913.41, 2913.81 or 2915.06 as it existed prior to July 1, 1996;

(3) An offense under an existing or former municipal ordinance or law of this or any other state or the United States involving robbery, burglary, breaking and entering, theft, embezzlement, wrongful conversion, forgery, counterfeiting, deceit or fraud;

(4) A conspiracy or attempt to commit, or complicity in committing any offense under subsection (k)(1), (2) or (3) hereof.

(l) "Computer services" includes, but is not limited to, the use of a computer system, computer network, computer program, data that is prepared for computer use or data that is contained within a computer system or computer network.

(m) "Computer" means an electronic device that performs logical, arithmetic and memory functions by the manipulation of electronic or magnetic impulses. "Computer" includes, but is not limited to, all input, output, processing, storage, computer program or communication facilities that are connected or related, in a computer system or network to an electronic device of that nature.

(n) "Computer system" means a computer and related devices, whether connected or unconnected, including, but not limited to, data input, output and storage devices, data communications links, and computer programs and data that make the system capable of performing specified special purpose data processing tasks.

(o) "Computer network" means a set of related and remotely connected computers and communication facilities that includes more than one computer system that has the capability to transmit among the connected computers and communication facilities through the use of computer facilities.

(p) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data.

(q) "Computer software" means computer programs, procedures and other documentation associated with the operation of a computer system.

(r) "Data" means a representation of information, knowledge, facts, concepts or instructions that are being or have been prepared in a formalized manner and that are intended for use in a computer, computer system or computer network. For purposes of Section 545.07, "data" has the additional meaning set forth in subsection (a) of that section.

(s) "Cable television service" means any services provided by or through the facilities of any cable television system or other similar closed circuit coaxial cable communications system, or any microwave or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system.

(t) "Gain access" means to approach, instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or computer network.

(u) "Credit card" includes, but is not limited to, a card, code, device or other means of access to a customer's account for the purpose of obtaining money, property, labor or services on credit, or for initiating an electronic fund transfer at a point-of-sale terminal, an automated teller machine or a cash dispensing machine.

(v) "Electronic fund transfer" has the same meaning as in 92 Stat. 3728, 15 U.S.C.A. 1693a, as amended.

(w) “Rented property” means personal property in which the right of possession and use of the property is for a short and possibly indeterminate term in return for consideration; the rentee generally controls the duration of possession of the property, within any applicable minimum or maximum term; and the amount of consideration generally is determined by the duration of possession of the property.

(x) “Telecommunication” means the origination, emission, dissemination, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence or any nature over any communications system by any method, including, but not limited to, a fiber optic, electronic, magnetic, optical, digital, or analog method.

(y) “Telecommunications device” means any instrument, equipment, machine, or other device that facilitates telecommunication, including, but not limited to, a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem.

(z) “Telecommunications service” means the providing, allowing, facilitating, or generating of any form of telecommunication through the use of a telecommunications device over a telecommunications system.

(aa) "Counterfeit telecommunications device" means a telecommunications device that, alone or with another telecommunications device, has been altered, constructed, manufactured, or programmed to acquire, intercept, receive, or otherwise facilitate the use of a telecommunications service or information service without the authority or consent of the provider of the telecommunications service or information service. "Counterfeit telecommunications device" includes, but is not limited to, a clone telephone, clone microchip, tumbler telephone, or tumbler microchip; a wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use of telecommunications service or information service without immediate detection; or a device, equipment, hardware, or software designed for, or capable of, altering or changing the electronic serial number in a wireless telephone.

(bb) (1) "Information service" means, subject to subsection (bb)(2) hereof, the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, including, but not limited to, electronic publishing.

(2) "Information service" does not include any use of a capability of a type described in subsection (bb)(1) hereof for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(cc) "Elderly person" means a person who is sixty-five years of age or older.

(dd) "Disabled adult" means a person who is eighteen years of age or older and has some impairment of body or mind that makes the person unfit to work at any substantially remunerative employment that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least twelve months without any present indication of recovery from the impairment, or who is eighteen years of age or older and has been certified as permanently and totally disabled by an agency of this State or the United States that has the function of so classifying persons.

(ee) "Firearm" and "dangerous ordnance" have the same meanings as in Ohio R.C. 2923.11.

(ff) "Motor vehicle" has the same meaning as in Ohio R.C. 4501.01.

(gg) "Dangerous drug" has the same meaning as in Ohio R.C. 4729.01.

(hh) "Drug abuse offense" has the same meaning as in Ohio R.C. 2925.01.

(ii) "Police dog or horse" has the same meaning as in Ohio R.C. 2921.321.

(jj) "Anhydrous ammonia" is a compound formed by the combination of two gaseous elements, nitrogen and hydrogen, in the manner described in this subsection. Anhydrous ammonia is one part nitrogen to three parts hydrogen (NH3). Anhydrous ammonia by weight is fourteen parts nitrogen to three parts hydrogen, which is approximately eighty-two per cent nitrogen to eighteen per cent hydrogen.

(kk) "Assistance dog" has the same meaning as in Ohio R.C. 955.011.

(ll) "Active duty service member" means any member of the armed forces of the United States performing active duty under Title 10 of the United States Code. (ORC 2913.01)

545.02 DETERMINING PROPERTY VALUE IN THEFT OFFENSE.

(a) If more than one item of property or service is involved in a theft offense, the value of the property or services involved for the purpose of determining the value is the aggregate value of all property or services involved in the offense.

(b) (1) When a series of offenses under Section 545.05, or a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of Section 545.05, 545.06, or 545.08, 545.10(b)(1) or (2), or Section 545.15 or 545.20 involving a victim who is an elderly person or disabled adult, is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses shall be tried as a single offense. When a series of offenses under Section 545.05, or a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of Sections 545.05 or 545.15 involving a victim who is an active duty service member or spouse of an active duty service member is committed by the offender in the offender's same employment, capacity or relationship to another, all of those offenses shall be tried as a single offense. The value of the property or services involved in the series of offenses for the purpose of determining the value is the aggregate value of all property and services involved in all offenses in the series.

(2) If an offender commits a series of offenses under Section 545.05 that involves a common course of conduct to defraud multiple victims, all of the offenses may be tried as a single offense. If an offender is being tried for the commission of a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of Section 545.05, 545.06 or 545.08, Section 545.10(b)(1) or (2), or Section 545.15 or 545.20, whether committed against one victim or more than one victim, involving a victim who is an elderly person or disabled adult, pursuant to a scheme or course of conduct, all of those offenses may be tried as a single offense. If the offender is being tried for the commission of a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of Section 545.05 or 545.15, whether committed against one victim or more than one victim, involving a victim who is an active duty service member or spouse of an active duty service member pursuant to a scheme or course of conduct, all of those offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the property or services involved for the purpose of determining the value is the aggregate value of all property and services involved in all of the offenses in the course of conduct.

(3) In prosecuting a single offense under subsection (b)(1) or (2), it is not necessary to separately allege and prove each offense in the series. Rather, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more theft offenses in the offender's same employment, capacity, or relationship to another as described in subsection (b)(1) of this section or that involve a common course of conduct to defraud multiple victims or a scheme or course of conduct as described in subsection (b)(2) of this section. While it is not necessary to separately allege and prove each offense in the series in order to prosecute a single offense under subsection (b)(1) or (2) hereof, it remains necessary in prosecuting them as a single offense to prove the aggregate value of the property or services in order to meet the requisite statutory offense level sought by the prosecution.

(c) The following criteria shall be used in determining the value of property or services involved in a theft offense:

(1) The value of an heirloom, memento, collector's item, antique, museum piece, manuscript, document, record or other thing that has intrinsic worth to its owner and that is either irreplaceable or is replaceable only on the expenditure of substantial time, effort or money, is the amount that would compensate the owner for its loss.

(2) The value of personal effects and household goods, and of materials, supplies, equipment and fixtures used in the profession, business, trade, occupation or avocation of its owner, which property is not covered under subsection (c)(1) hereof, and which retains substantial utility for its purpose regardless of its age or condition, is the cost of replacing the property with new property of like kind and quality.

(3) The value of any real or personal property that is not covered under subsections (c)(1) or (2) hereof, and the value of services, is the fair market value of the property or services. As used in this section, "fair market value" is the money consideration that a buyer would give and a seller would accept for property or services, assuming that the buyer is willing to buy and the seller is willing to sell, that both are fully informed as to all facts material to the transaction, and that neither is under any compulsion to act.

(d) Without limitation on the evidence that may be used to establish the value of property or services involved in a theft offense:

(1) When the property involved is personal property held for sale at wholesale or retail, the price at which the property was held for sale is prima-facie evidence of its value.

(2) When the property involved is a security or commodity traded on an exchange, the closing price or, if there is no closing price, the asked price, given in the latest market quotation prior to the offense, is prima-facie evidence of the value of the security or commodity.

(3) When the property involved is livestock, poultry or raw agricultural products for which a local market price is available, the latest local market price prior to the offense is prima-facie evidence of the value of the livestock, poultry or products.

(4) When the property involved is a negotiable instrument, the face value is prima-facie evidence of the value of the instrument.

(5) When the property involved is a warehouse receipt, bill of lading, pawn ticket, claim check or other instrument entitling the holder or bearer to receive property, the face value or, if there is no face value, the value of the property covered by the instrument less any payment necessary to receive the property, is prima-facie evidence of the value of the instrument.

(6) When the property involved is a ticket of admission, ticket for transportation, coupon, token or other instrument entitling the holder or bearer to receive property or services, the face value or, if there is no face value, the value of the property or services that may be received by the instrument, is prima-facie evidence of the value of the instrument.

(7) When the services involved are gas, electricity, water, telephone, transportation, shipping or other services for which the rate is established by law, the duly established rate is prima-facie evidence of the value of the services.

(8) When the services involved are services for which the rate is not established by law, and the offender has been notified prior to the offense of the rate for the services, either in writing or orally, or by posting in a manner reasonably calculated to come to the attention of potential offenders, the rate contained in the notice is prima-facie evidence of the value of the services. (ORC 2913.61)

545.03 PROPERTY EXCEPTIONS AS FELONY OFFENSE.

Regardless of the value of the property involved, and regardless of whether the offender has previously been convicted of a theft offense, the provisions of Section 545.05 or 545.18 do not apply if the property involved is any of the following:

(a) A credit card;

(b) A printed form for a check or other negotiable instrument, that on its face identifies the drawer or maker for whose use it is designed or identifies the account on which it is to be drawn, and that has not been executed by the drawer or maker or on which the amount is blank;

(c) A firearm or dangerous ordnance as defined in Ohio R.C. 2923.11;

(d) A motor vehicle identification license plate as prescribed by Ohio R.C. 4503.22, a temporary license placard or windshield sticker as prescribed by Ohio R.C. 4503.182, or any comparable license plate, placard or sticker as prescribed by the applicable law of another state or the United States;

(e) A blank form for a certificate of title or a manufacturer's or importer's certificate to a motor vehicle, as prescribed by Ohio R.C. 4505.07;

(f) A blank form for any license listed in Ohio R.C. 4507.01(A).

(ORC 2913.71)

545.04 DETENTION OF SHOPLIFTERS; RIGHTS OF MUSEUMS AND LIBRARIES.

(a) A merchant, or his employee or agent, who has probable cause to believe that items offered for sale by a mercantile establishment have been unlawfully taken by a person, may, for the purposes set forth in subsection (c) hereof, detain the person in a reasonable manner for a reasonable length of time within the mercantile establishment or its immediate vicinity.

(b) Any officer, employee or agent of a library, museum or archival institution may, for the purposes set forth in subsection (c) hereof or for the purpose of conducting a reasonable investigation of a belief that the person has acted in a manner described in subsections (b)(1) and (2) hereof, detain a person in a reasonable manner for a reasonable length of time within, or in the immediate vicinity of the library, museum or archival institution, if the officer, employee or agent has probable cause to believe that the person has either:

(1) Without privilege to do so, knowingly moved, defaced, damaged, destroyed or otherwise improperly tampered with property owned by or in the custody of the library, museum or archival institution; or

(2) With purpose to deprive the library, museum or archival institution of property owned by it or in its custody, knowingly obtained or exerted control over the property without the consent of the owner or person authorized to give consent, beyond the scope of the express or implied consent of the owner or person authorized to give consent, by deception, or by threat.

(c) An officer, agent or employee of a library, museum or archival institution pursuant to subsection (b) hereof or a merchant or his employee or agent pursuant to subsection (a) hereof may detain another person for any of the following purposes:

(1) To recover the property that is the subject of the unlawful taking, criminal mischief or theft;

(2) To cause an arrest to be made by a peace officer;

(3) To obtain a warrant of arrest.

(4) To offer the person, if the person is suspected of the unlawful taking, criminal mischief, or theft and notwithstanding any other provision of this General Offenses or the Ohio Revised Code, an opportunity to complete a pretrial diversion program and to inform the person of the other legal remedies available to the library, museum, archival institution or merchant.

(d) The officer, agent or employee of the library, museum or archival institution, or the merchant or his employee or agent acting under subsection (a) or (b) hereof shall not search the person, search or seize any property belonging to the person detained without the person's consent, or use undue restraint upon the person detained.

(e) Any peace officer may arrest without a warrant any person that he has probable cause to believe has committed any act described in subsection (b)(1) or (2) hereof or that he has probable cause to believe has committed an unlawful taking in a mercantile establishment. An arrest under this subsection shall be made within a reasonable time after the commission of the act or unlawful taking.

(f) As used in this section:

(1) "Archival institution" means any public or private building, structure or shelter in which are stored historical documents, devices, records, manuscripts or items of public interest, which historical materials are stored to preserve the materials or the information in the materials, to disseminate the information contained in the materials, or to make the materials available for public inspection or for inspection by certain persons who have a particular interest in, use for or knowledge concerning the materials.

(2) "Museum" means any public or private nonprofit institution that is permanently organized for primarily educational or aesthetic purposes, owns or borrows objects or items of public interest, and cares for and exhibits to the public the objects or items.

(3) "Pretrial diversion program" means a rehabilitative, educational program designed to reduce recidivism and promote personal responsibility that is at least four hours in length and that has been approved by any court in this State. (ORC 2935.041)

545.05 PETTY THEFT.

(a) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

(1) Without the consent of the owner or person authorized to give consent;

(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(3) By deception;

(4) By threat;

(5) By intimidation.

(b) Whoever violates this section is guilty of petty theft, a misdemeanor of the first degree. Petty theft is a felony and shall be prosecuted under appropriate State law if:

(1) The value of the property or services stolen is one thousand dollars ($1,000) or more; or

(2) The victim of the offense is an elderly person, disabled adult, active duty service member, or spouse of an active duty service member, or

(3) The property stolen is a firearm or dangerous ordnance, or

(4) The property stolen is a motor vehicle, or

(5) The property stolen is any dangerous drug, or

(6) The property stolen is a police dog or horse or an assistance dog and the offender knows or should know that the property stolen is a police dog or horse or an assistance dog, or

(7) The property stolen is anhydrous ammonia, or

(8) The property stolen is a special purpose article as defined in Ohio R.C. 4737.04 or a bulk merchandise container as defined in Ohio R.C. 4737.012.

(c) In addition to the penalties described in subsection (b) of this section, if the offender committed the violation by causing a motor vehicle to leave the premises of an establishment at which gasoline is offered for retail sale without the offender making full payment for gasoline that was dispensed into the fuel tank of the motor vehicle or into another container, the court may do one of the following:

(1) Unless subsection (c)(2) of this section applies, suspend for not more than six months the offender's driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege;

(2) If the offender's driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege has previously been suspended pursuant to subsection (c)(1) of this section, impose a class seven suspension of the offender's license, permit, or privilege from the range specified in Ohio R.C. 4510.02(A)(7), provided that the suspension shall be for at least six months.

(3) The court, in lieu of suspending the offender's driver's or commercial driver's license, probationary driver's license, temporary instruction permit, or nonresident operating privilege pursuant to subsections (c)(1) or (2) of this section, instead may require the offender to perform community service for a number of hours determined by the court.

(d) In addition to the penalties described in subsection (b) hereof, if the offender committed the violation by stealing rented property or rental services, the court may order that the offender make restitution pursuant to Ohio R.C. 2929.18 or 2929.28. Restitution may include, but is not limited to, the cost of repairing or replacing the stolen property, or the cost of repairing the stolen property and any loss of revenue resulting from deprivation of the property due to theft of rental services that is less than or equal to the actual value of the property at the time it was rented. Evidence of intent to commit theft of rented property or rental services shall be determined pursuant to the provisions of Ohio R.C. 2913.72.

(e) The sentencing court that suspends an offender's license, permit, or nonresident operating privilege under subsection (c) of this section may grant the offender limited driving privileges during the period of the suspension in accordance with Ohio R.C. Chapter 4510. (ORC 2913.02)

545.06 UNAUTHORIZED USE OF A VEHICLE; VEHICLE TRESPASS.

(a) No person shall knowingly use or operate an aircraft, motor vehicle, motorcycle, motorboat or other motor-propelled vehicle without the consent of the owner or person authorized to give consent.

(b) This section does not apply to property removed from the State or if possession is kept for more than forty-eight hours.

(c) The following are affirmative defenses to a charge under this section:

(1) At the time of the alleged offense, the actor, though mistaken, reasonably believed that the actor was authorized to use or operate the property.

(2) At the time of the alleged offense, the actor reasonably believed that the owner or person empowered to give consent would authorize the actor to use or operate the property.

(d) No person shall knowingly enter into or upon a motor vehicle, motorcycle or other motor-propelled vehicle without the consent of the owner or person authorized to give consent.

(e) Whoever violates subsection (a) hereof is guilty of unauthorized use of a vehicle, a misdemeanor of the first degree. If the victim of the offense is an elderly person or disabled adult and if the victim incurs a loss as a result of the violation, a violation of subsection (a) hereof is a felony and shall be prosecuted under appropriate State law. (ORC 2913.03)

(f) Whoever violates subsection (d) hereof is guilty of vehicle trespass, a misdemeanor of the fourth degree.

545.07 INSURANCE FRAUD.

(a) As used in this section:

(1) "Data" has the same meaning as in Section 545.01 and additionally includes any other representation of information, knowledge, facts, concepts or instructions that are being or have been prepared in a formalized manner.

(2) "Deceptive" means that a statement, in whole or in part, would cause another to be deceived because it contains a misleading representation, withholds information, prevents the acquisition of information or by any other conduct, act or omission creates, confirms or perpetuates a false impression, including, but not limited to, a false impression as to law, value, state of mind or other objective or subjective fact.

(3) "Insurer" means any person that is authorized to engage in the business of insurance in this State under Title XXXIX of the Ohio Revised Code; The Ohio Fair Plan Underwriting Association created under Ohio R.C. 3929.43; any health insuring corporation; and any legal entity that is self-insured and provides benefits to its employees or members.

(4) "Policy" means a policy, certificate, contract or plan that is issued by an insurer.

(5) "Statement" includes, but is not limited to, any notice, letter or memorandum; proof of loss; bill of lading; receipt for payment; invoice, account or other financial statement; estimate of property damage; bill for services; diagnosis or prognosis; prescription; hospital, medical or dental chart or other record; X-Ray, photograph, videotape or movie film; test result; other evidence of loss, injury or expense; computer-generated document; and data in any form.

(b) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall do either of the following:

(1) Present to, or cause to be presented to, an insurer any written or oral statement that is part of, or in support of, an application for insurance, a claim for payment pursuant to a policy or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive;

(2) Assist, aid, abet, solicit, procure or conspire with another to prepare or make any written or oral statement that is intended to be presented to an insurer as part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive.

(c) Whoever violates this section is guilty of insurance fraud a misdemeanor of the first degree. If the amount of the claim that is false or deceptive is one thousand dollars ($1,000) or more, insurance fraud is a felony and shall be prosecuted under appropriate State law.

(d) This section shall not be construed to abrogate, waive or modify Ohio R.C. 2317.02(A). (ORC 2913.47)

545.08 UNAUTHORIZED USE OF PROPERTY.

(a) No person shall knowingly use or operate the property of another without the consent of the owner or person authorized to give consent.

(b) The affirmative defenses contained in Section 545.06(c) are affirmative defenses to a charge under this section.

(c) Whoever violates this section is guilty of unauthorized use of property. Except as provided in subsection (d) hereof, unauthorized use of property is a misdemeanor of the fourth degree.

(d) If unauthorized use of property is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services, unauthorized use of property is a misdemeanor of the first degree. Unauthorized use of property is a felony and shall be prosecuted under appropriate State law if:

(1) Unauthorized use of property is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services, and if the value of the property is one thousand dollars ($1,000) or more; or

(2) If the victim of the offense is an elderly person or disabled adult. (ORC 2913.04)

545.09 PASSING BAD CHECKS.

(a) As used in this section:

(1) "Check" includes any form of debit from a demand deposit account, including, but not limited to any of the following:

A. A check, bill of exchange, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument;

B. An electronic check, electronic transaction, debit card transaction, check card transaction, substitute check, web check, or any form of automated clearing house transaction.

(2) "Issue a check" means causing any form of debit from a demand deposit account.

(b) No person, with purpose to defraud, shall issue or transfer or cause to be issued or transferred a check or other negotiable instrument, knowing that it will be dishonored or knowing that a person has ordered or will order stop payment on the check or other negotiable instrument.

(c) For purposes of this section, a person who issues or transfers a check or other negotiable instrument is presumed to know that it will be dishonored, if either of the following occurs:

(1) The drawer had no account with the drawee at the time of issue or the stated date, whichever is later.

(2) The check or other negotiable instrument was properly refused payment for insufficient funds upon presentment within thirty days after issue or the stated date, whichever is later, and the liability of the drawer, indorser or any party who may be liable thereon is not discharged by payment or satisfaction within ten days after receiving notice of dishonor.

(d) For purposes of this section, a person who issues or transfers a check, bill of exchange or other draft is presumed to have the purpose to defraud if the drawer fails to comply with Ohio R.C. 1349.16 by doing any of the following when opening a checking account intended for personal, family or household purposes at a financial institution:

(1) Falsely stating that the drawer has not been issued a valid driver's or commercial driver's license or identification card issued under Ohio R.C. 4507.50;
(2) Furnishing such license or card, or another identification document that contains false information;
(3) Making a false statement with respect to the drawer's current address or any additional relevant information reasonably required by the financial institution.

(e) In determining the value of the payment for purposes of subsection (f) of this section, the court may aggregate all checks and other negotiable instruments that the offender issued or transferred or caused to be issued or transferred in violation of subsection (a) of this section within a period of one hundred eighty consecutive days.

(f) Whoever violates this section is guilty of passing bad checks. Except as otherwise provided in this subsection, passing bad checks is a misdemeanor of the first degree. If the check or checks or other negotiable instrument or instruments are issued or transferred to a single vendor or single other person for the payment of one thousand dollars ($1,000) or more or if the check or checks or other negotiable instrument or instruments are issued or transferred to multiple vendors or persons for the payment of one thousand five hundred dollars ($1,500) or more, passing bad checks is a felony and shall be prosecuted under appropriate State law.
(ORC 2913.11)

545.10 MISUSE OF CREDIT CARDS.

(a) No person shall do any of the following:
(1) Practice deception for the purpose of procuring the issuance of a credit card, when a credit card is issued in actual reliance thereon;
(2) Knowingly buy or sell a credit card from or to a person other than the issuer.
(3) As an officer, employee, or appointee of a political subdivision or as a public servant as defined under Section 525.01, knowingly misuse a credit card account held by a political subdivision.

(b) No person, with purpose to defraud, shall do any of the following:
(1) Obtain control over a credit card as security for a debt;
(2) Obtain property or services by the use of a credit card, in one or more transactions, knowing or having reasonable cause to believe that the card has expired or been revoked, or was obtained, is retained or is being used in violation of law;
(3) Furnish property or services upon presentation of a credit card, knowing that the card is being used in violation of law;
(4) Represent or cause to be represented to the issuer of a credit card that property or services have been furnished, knowing that the representation is false.

(c) No person, with purpose to violate this section, shall receive, possess, control or dispose of a credit card.

(d) Whoever violates this section is guilty of misuse of credit cards, a misdemeanor of the first degree. Misuse of credit cards is a felony and shall be prosecuted under appropriate State law if:

(1) The cumulative retail value of the property and services involved in one or more violations of subsection (b)(2), (3) or (4) hereof, which violations involve one or more credit card accounts and occur within a period of ninety consecutive days commencing on the date of the first violation, is one thousand dollars ($1,000) or more; or

(2) The victim of the offense is an elderly person or disabled adult and the offense involves a violation of subsection (b)(1) or (2) hereof. (ORC 2913.21)

545.11 MAKING OR USING SLUGS.

(a) No person shall do any of the following:

(1) Insert or deposit a slug in a coin machine, with purpose to defraud;

(2) Make, possess or dispose of a slug, with purpose of enabling another to defraud by inserting or depositing it in a coin machine.

(b) Whoever violates this section is guilty of making or using slugs, a misdemeanor of the second degree. (ORC 2913.33)

545.12 TAMPERING WITH COIN MACHINES.

(a) No person, with purpose to commit theft or to defraud, shall knowingly enter, force an entrance into, tamper with or insert any part of an instrument into any coin machine.

(b) Whoever violates this section is guilty of tampering with coin machines, a misdemeanor of the first degree. If the offender has previously been convicted of a violation of Ohio R.C. 2911.32 or of any theft offense, tampering with coin machines is a felony and shall be prosecuted under appropriate State law. (ORC 2911.32)

545.13 CRIMINAL SIMULATION.

(a) No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:

(1) Make or alter any object so that it appears to have value because of antiquity, rarity, curiosity, source, or authorship, which it does not in fact possess;

(2) Practice deception in making, retouching, editing, or reproducing any photograph, movie film, video tape, phonograph record, or recording tape;

(3) Falsely or fraudulently make, simulate, forge, alter, or counterfeit any wrapper, label, stamp, cork, or cap prescribed by the Liquor Control Commission under Ohio R.C. Chapters 4301 and 4303, falsely or fraudulently cause to be made, simulated, forged, altered, or counterfeited any wrapper, label, stamp, cork, or cap prescribed by the Liquor Control Commission under Ohio R.C. Chapters 4301 and 4303, or use more than once any wrapper, label, stamp, cork, or cap prescribed by the Liquor Control Commission under Ohio R.C. Chapters 4301 and 4303.

(4) Utter, or possess with purpose to utter, any object that the person knows to have been simulated as provided in subsection (a)(1), (2) or (3) of this section.

(b) Whoever violates this section is guilty of criminal simulation, a misdemeanor of the first degree. If the loss to the victim is one thousand dollars ($1,000) or more, criminal simulation is a felony and shall be prosecuted under appropriate State law. (ORC 2913.32)

545.14 TAMPERING WITH RECORDS.

(a) No person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following:

(1) Falsify, destroy, remove, conceal, alter, deface or mutilate any writing, computer software, data, or record;
(2) Utter any writing or record, knowing it to have been tampered with as provided in subsection (a)(1) hereof.

(b) Whoever violates this section is guilty of tampering with records, a misdemeanor of the first degree. If the violation involves data or computer software the value of which or loss to the victim is one thousand dollars ($1,000) or more, or if the writing or record is a will unrevoked at the time of the offense, tampering with records is a felony and shall be prosecuted under appropriate State law. (ORC 2913.42)

545.15 SECURING WRITINGS BY DECEPTION.

(a) No person, by deception, shall cause another to execute any writing that disposes of or encumbers property, or by which a pecuniary obligation is incurred.

(b) Whoever violates this section is guilty of securing writings by deception, a misdemeanor of the first degree. Securing writings by deception is a felony and shall be prosecuted under appropriate State law if:
(1) The value of the property or obligation involved is one thousand dollars ($1,000) or more; or
(2) The victim of the offense is an elderly person, disabled adult, active duty service member or spouse of an active duty service member.
(ORC 2913.43)

545.16 PERSONATING AN OFFICER.

(a) No person, with purpose to defraud or knowing that he is facilitating a fraud, or with purpose to induce another to purchase property or services, shall personate a law enforcement officer, or an inspector, investigator or agent of any governmental agency.

(b) Whoever violates this section is guilty of personating an officer, a misdemeanor of the first degree. (ORC 2913.44)

545.17 DEFRAUDING CREDITORS.

(a) No person, with purpose to defraud one or more of the person's creditors, shall do any of the following:
(1) Remove, conceal, destroy, encumber, convey or otherwise deal with any of the person's property.
(2) Misrepresent or refuse to disclose to a fiduciary appointed to administer or manage the person's affairs or estate, the existence, amount or location of any of the person's property, or any other information regarding such property that the person is legally required to furnish to the fiduciary.

(b) Whoever violates this section is guilty of defrauding creditors, a misdemeanor of the first degree. If the value of the property involved is one thousand dollars ($1,000) or more, defrauding creditors is a felony and shall be prosecuted under appropriate State law.
(ORC 2913.45)

545.18 RECEIVING STOLEN PROPERTY.

(a) No person shall receive, retain or dispose of property of another, knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense.

(b) It is not a defense to a charge of receiving stolen property in violation of this section that the property was obtained by means other than through the commission of a theft offense if the property was explicitly represented to the accused person as being obtained through the commission of a theft offense.

(c) Whoever violates this section is guilty of receiving stolen property, a misdemeanor of the first degree. Receiving stolen property is a felony and shall be prosecuted under appropriate State law if:

(1) The value of the property involved is one thousand dollars ($1,000) or more; or

(2) The property involved is:

A. Listed in Section 545.03; or

B. A motor vehicle as defined in Ohio R.C. 4501.01; or

C. A dangerous drug as defined in Ohio R.C. 4729.01.

D. A special purchase article as defined in Ohio R.C. 4737.04 or a bulk merchandise container as defined in Ohio R.C. 4737.012. (ORC 2913.51)

545.19 POSSESSION OF CRIMINAL TOOLS.

(a) No person shall possess or have under the person's control any substance, device, instrument, or article, with purpose to use it criminally.

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

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

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

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

(c) Whoever violates this section is guilty of possessing criminal tools, a misdemeanor of the first degree unless the circumstances indicate that the substance, device, instrument, or article involved in the offense was intended for use in the commission of a felony. (ORC 2923.24)

545.20 FORGERY OF IDENTIFICATION CARDS.

(a) No person shall knowingly do either of the following:

(1) Forge an identification card;

(2) Sell or otherwise distribute a card that purports to be an identification card, knowing it to have been forged.

(3) As used in this section, "identification card" means a card that includes personal information or characteristics of an individual, a purpose of which is to establish the identity of the bearer described on the card, whether the words "identity," "identification," "identification card" or other similar words appear on the card.

(b) Whoever violates subsection (a) hereof is guilty of forging identification cards or selling or distributing forged identification cards. Except as otherwise provided in this subsection, forging or selling or distributing forged identification cards is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section or Ohio R.C. 2913.31 (B), forging identification cards or selling or distributing forged identification cards is a misdemeanor of the first degree and, in addition, the court shall impose upon the offender a fine of not less than two hundred fifty dollars ($250.00). (ORC 2913.31)

545.21 RETURN OF LIBRARY BOOKS.

(a) No person shall willfully or negligently detain or fail to return to a public library any book, magazine, pamphlet, manuscript, picture, clipping or other property belonging to the public library, or to pay the reasonable value thereof, within thirty days from the date of the posting by registered mail of a notice addressed to the person at the last address furnished the public library, which notice may be given at any time after the date on which the person should have returned the loaned property.

(b) An offense under this section shall be deemed to have been committed at the public library to which the property ought to have been returned.
(Ord. 74-36. Passed 5-6-74.)

545.22 SHOPPING CARTS.

(a) No person shall remove or cause or permit to be removed from any business property in the City any shopping cart or grocery cart belonging to such business entity unless same is removed by the owner, manager or employee of such business entity for the purpose of transferring parcels to a customer's vehicle, after which such shopping cart or grocery cart shall immediately be returned to the business property from which it was removed.

(b) Any shopping cart or grocery cart found unattended on any public highway, public parking lot or other public property, or any private property other than property owned or leased by the owner of the cart, is hereby declared to be a nuisance and may be impounded by the City who shall make reasonable effort to notify the owner thereof. Upon payment by the owner to the City of a service charge of ten dollars ($10.00) per shopping cart or grocery cart, the same shall be released to the owner. However, if the City returns the shopping cart or grocery cart to the owner's premises, the service charge shall be fifteen dollars ($15.00). Any cart not claimed by the owner within sixty days after impoundment shall be forfeited and may be sold by the City to cover expenses, in the manner provided by law.

(c) Whoever violates this section is guilty of a minor misdemeanor.
(Ord. 74-36. Passed 5-6-74.)

545.23 POSSESSION OF PROPERTY WITH IDENTIFICATION MARKS REMOVED.

(a) No person shall possess, receive, retain, or dispose of any property of another knowing or having reasonable cause to believe the serial number, nameplate or other identification mark of the property was removed, altered or destroyed.

(b) It is an affirmative defense to a charge under this section that the removal, alteration or destruction of the property's identification mark was:

(1) Accidental; or
(2) Intentionally done for a legitimate purpose; or
(3) Done without the knowledge of the person possessing, receiving, retaining or disposing of the property.

(c) Whoever violates this section is guilty of a misdemeanor of the second degree.
(Ord. 81-77. Passed 9-21-81.)

545.24 DECEPTIVE IDENTIFICATION.

(a) No person shall manufacture, fabricate, assemble, compile or otherwise produce, provide to another or bring into the City for purposes of providing to another any item of identification if the item of identification is a deceptive item of identification.

(b) No person with purpose to defraud or knowing that he is facilitating a fraud, shall possess, receive, retain or use for purposes of identification any item of identification that is a deceptive item of identification.

(c) No person who owns, leases, subleases or otherwise controls any premises shall knowingly permit another to use the premises to manufacture, fabricate, assemble, compile or otherwise produce or provide to others an item of identification that is a deceptive item of identification.

(d) Whoever violates subsection (a) hereof is guilty of making or providing deceptive identification, a misdemeanor of the first degree. Whoever violates subsection (b) hereof is guilty of possessing or using deceptive identification, a misdemeanor of the first degree. Whoever violates subsection (c) hereof is guilty of facilitating the making of deceptive identification, a misdemeanor of the first degree.
(Ord. 81-119. Passed 1-4-82.)

(e) As used in this section, "deceptive item of identification" means any card, placard, tag, paper or other object of whatever composition that purports to establish the identity of any person, if all of the following apply to the card, placard, tag, paper or object:

(1) It contains either:

A. An outline, map, picture or other representation of the physical characteristics or geographic boundaries of any state, or the words "official State Identification", "State Identification Card" or other words of similar import, or both; or

B. Is purportedly a genuine writing issued by any state, or any agency, department, bureau or other instrumentality of a state;

(2) It purports to identify the person by name, address, birthdate, social security number or any combination of these features; and

(3) It is manufactured, fabricated, created, completed, assembled, compiled or otherwise produced other than by any state, or any agency, department, bureau or other instrumentality of any state, or other than pursuant to a contract or agreement with a state, or any agency, department, bureau or other instrumentality of a state authorized to enter such a contract or agreement.

(f) As used in this section, "state" means any of the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any province of Canada.
(Ord. 82-16. Passed 5-3-82.)

545.25 TAMPERING WITH AND THEFT OF UTILITIES.

(a) No person shall knowingly, without the utility's consent, with intent to violate subsection (b) hereof:

(1) Tamper with a gas, electric, steam or water meter, conduit or attachment of a utility;

(2) Reconnect a gas, electric, steam, or water meter, conduit or attachment of a utility that has been disconnected by the utility.

In a prosecution under subsection (a)(1) hereof, proof that a meter, conduit or attachment of a utility has been tampered with is prima-facie evidence that the person who is obligated to pay for the service rendered through the meter, conduit or attachment, and who is in possession or control of the meter, conduit or attachment at the time the tampering occurred, has caused the tampering with intent to violate subsection (b) hereof.

In a prosecution under subsection (a)(2) hereof, proof that a meter, conduit or attachment disconnected by a utility has been reconnected without the consent of the utility is prima-facie evidence that the person in possession or control of the meter, conduit or attachment at the time of the reconnection has reconnected the meter, conduit or attachment with intent to violate subsection (b) hereof.

As used in this section, "utility" means any electric light company, gas company, natural gas company, pipe-line company, waterworks company or heating or cooling company, as defined in Ohio R.C. 4905.03(A)(4), (5), (6), (7), (8) or (9), its lessees, trustees or receivers, or any similar utility owned or operated by a political subdivision.

As used in this section, to "tamper" means to interfere with, damage or bypass a utility meter, conduit or attachment with the intent to impede the correct registration of a meter or the proper functions of a conduit or attachment so as to reduce the amount of utility service that is registered on such meter.

(b) No person shall knowingly consume any gas, electricity, steam or water that has not been correctly registered because a meter, conduit or attachment of a utility has been tampered with, or knowingly use service that has been discontinued by a utility and reconnected without the utility's consent.

(c) Such utility shall notify its customers, on an annual basis, of the consequences of tampering with or bypassing a meter.

(d) Whoever violates subsection (a) hereof is guilty of tampering with utility equipment, a misdemeanor of the first degree, provided the cost of the gas, electricity, steam or water stolen, plus the cost of repair or replacement of the meters, conduits or attachments damaged in violation of subsection (a)(1) or (a)(2) hereof is less than five hundred dollars ($500.00) and provided the offender has not previously been convicted of a violation of subsection (a) hereof. Whoever violates subsection (a) hereof shall make restitution to the utility for the cost of repair or replacement of the meters, conduits or attachments damaged and for the value of the gas, electricity, steam or water consumed.

(e) Whoever violates subsection (b) hereof is guilty of theft of utility service, a misdemeanor of the first degree, provided the value of the gas, electricity, steam or water is less than five hundred dollars ($500.00) and provided the offender has not previously been convicted of a violation of subsection (b) hereof. Whoever violates subsection (b) hereof shall make restitution to the utility for the value of the gas, electricity, steam or water consumed in violation of that subsection.

545.26 IDENTITY FRAUD.

(EDITOR'S NOTE: Former Section 545.26 has been deleted from the Codified Ordinances. Ohio R.C. 2913.49, from which Section 545.26 was derived, has been reclassified from a misdemeanor to a felony offense.)

545.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)

CHAPTER 547
Trees, Grass and Weeds

547.01 Injury to trees and shrubs.
547.02 Nuisances in connection with trees.
547.03 Planting trees and shrubs.
547.04 Grass and weeds.
547.05 Use of DDT prohibited.
547.06 Diseased or dead elm trees to be removed.
547.07 Dutch elm disease and dutch elm diseased trees declared to be nuisances.
547.08 Barbed wire fences; hazardous shrubs and hedges.
547.09 Weed or tall grass removal.
547.99 Penalty.

CROSS REFERENCES
Noxious weed removal - see Ohio R.C. 731.51 et seq.
Trees - see S.U. & P.S. Ch. 905

547.01 INJURY TO TREES AND SHRUBS.
No person shall:
(a) Remove, destroy, cut down, break, climb or injure any tree, ornamental plant or shrub in any street or public ground within the City, or any stake, wire or device protecting the same, except with and in conformance to the written permission of the Director of Public Service and Development that the proposed action is necessary to preserve the appropriate use of the street or public ground.
(b) Prune, fertilize, spray or otherwise treat any tree, ornamental plant or shrub, or to attach any rope, wire, chain, sign or other device thereto, except when employed by the City to do so, or with and in conformance to the written permission from the Director, which permission shall be given only when the Director finds that the proposed action will not substantially injure the tree, ornamental plant or shrub.
Upon application for a permit to prune any tree, plant or shrub, the Director or a subordinate designated by him, shall make an actual inspection of the tree, plant or shrub proposed to be pruned, and shall point out to the applicant, or mark with paint, or both, the branches, if any, which may be removed and the point of removal, and the designation shall constitute a part of the permit.

(c) Permit any gas, salt, brine, oil, liquid dye or other substance deleterious to tree life to come in contact with the soil surrounding the roots of any tree, ornamental plant or shrub in such manner as to kill or injure the same.

(d) Place or maintain upon the ground in any public street or place within the City any stone, concrete or other impervious material in such manner as to obstruct the free access of air and water to the roots of the tree, ornamental plant or shrub. An area of less than nine square feet of open ground around the base of the trunk of a tree three inches in diameter with an increase of one square foot of open ground for every two inches increase in diameter shall be prima-facie evidence of violation of this subsection.

(e) Cause or procure or knowingly or negligently permit a wire or other conductor charged with electricity to come in contact with any tree, ornamental shrub or plant so as to kill or injure the same, or fail to remove any wire or conductor or to cut off the current therefrom within forty-eight hours after written notice from the Director of Public Service and Development to do so, in case the Director finds it necessary to cut, prune or remove the tree.

(f) Fail to provide a good and sufficient protection for any tree, ornamental plant or shrub against any injury arising from any building operation of which he has charge.

(g) Cause or knowingly or negligently permit any animal to injure any tree, ornamental plant or shrub.

(h) Maintain any of the nuisances defined in this chapter.

(Ord. 74-36. Passed 5-6-74.)

547.02 NUISANCES IN CONNECTION WITH TREES.

The following acts, things and conditions done or existing within this City are declared to constitute nuisances:

(a) Any tree upon any street or public place or so near thereto as to permit the roots of the tree to penetrate through or under the surface.

(b) Any tree, plant or shrub, wherever located within the City, infected with any parasite, insect, fungus or pest, which may be communicated to any other tree, plant or shrub.

(c) Any tree which has fallen or is in such condition as is likely to fall on any public or private property, including the property upon which it is situated.

(Ord. 74-36. Passed 5-6-74.)

(d) Any tree, plant or shrub, including existing hedges, whose branches or trunk obstruct or impede traffic or visibility on any street or public place, branches overhanging any public sidewalk, pavement or roadway within twelve feet of such surface thereof shall be deemed prima-facie to obstruct or impede traffic thereon.

Whenever in the opinion of the Director of Public Service and Development any of the nuisances defined in this section exists, he shall cause its abatement and cause the cost of the abatement to be charged and collected in the manner provided by City ordinance. It shall be the discretion of the Director to cause any existing hedge or shrubbery, which obstructs full view of any intersection, sidewalk or other public area to be cut to a one and one-half foot maximum height within twelve feet of a public right of way when such hedge or shrubbery is deemed a hazard to motorists or pedestrians.
(Ord. 76-56. Passed 10-4-76.)

547.03 PLANTING TREES AND SHRUBS.

No tree, ornamental plant or shrub shall be planted on any public street or ground within the City except by persons employed by the City for that purpose, or with and in conformance to the written permission of the Director of Public Service and Development, who shall grant such permission only if he finds that the proposed planting will not interfere with the appropriate public use of the street or ground and is consistent with any plan of planting already in effect thereon. Such permission shall specify the manner in which the planting shall be done, in order to insure such consistency and lack of interference, and to promote the proper growth of the trees, ornamental plants or shrubs proposed to be planted.
(Ord. 74-36. Passed 5-6-74.)

547.04 GRASS AND WEEDS.

The existence upon any lot or parcel of land within the City of grass or weeds likely to catch fire and spread the same to other property, or of weeds which are spreading or maturing seeds, or about to do so, such as ragweed, goldenrod, poison ivy or poison oak, is declared to be a nuisance. No person being the owner, occupant or person in control of any lot or parcel of land within the City shall permit a nuisance as herein defined to exist or continue thereupon.
(Ord. 74-36. Passed 5-6-74.)

547.05 USE OF DDT PROHIBITED.

The use of the chemical compound known as DDT as a spray or in any manner by which it is released within the City is hereby prohibited.
(Ord. 74-36. Passed 5-6-74.)

547.06 DISEASED OR DEAD ELM TREES TO BE REMOVED.

The owner of any property within the City upon which is located an elm tree infected with Dutch Elm Tree disease or any dying or dead elm tree shall cause such elm tree to be immediately cut down and all parts thereof to be destroyed or disposed of in such a manner as to preclude the transmission of elm tree disease or the harboring, feeding or breeding of the elm tree beetle.
(Ord. 74-36. Passed 5-6-74.)

547.07 DUTCH ELM DISEASE AND DUTCH ELM DISEASED TREES DECLARED TO BE NUISANCES.

It is hereby declared and determined that the following things and conditions are nuisances which may be abated by the Director of Public Service and Development:

(a) Dutch Elm disease.
(b) Elm bark beetles.

(c) Any living or standing elm tree, or part thereof, infested with the Dutch Elm disease fungus, or in a weakened condition which harbors any of the elm bark beetles.

(d) Any dead elm tree or part thereof, including logs, branches, stumps, firewood, or other elm tree material from which the bark has not been removed, burned or buried.

(Ord. 74-36. Passed 5-6-74.)

547.08 BARBED WIRE FENCES; HAZARDOUS SHRUBS AND HEDGES.

(a) No person shall erect or construct a barbed wire fence or attach the same to any existing fence, structure or appurtenance in any residential district.

(b) In the event that such residential property adjoins a general business, parking, civil-recreational or office district or if such district abuts a public sidewalk, roadway, playground and athletic field, barbed wire shall be permitted only where the maximum height of such barbed wire be no less than seven and one-half feet from ground level. The Director of Public Service and Development shall be empowered to modify the provisions of this subsection (b).

(c) No person shall plant and maintain an osage or blackthorn hedge along or adjacent to any public sidewalk, street or other such public or private property, where in the determination of the Director a hazard exists.

(d) No person shall construct, erect, maintain or use for any purpose any partition fence or fence adjoining public property which is charged with electrical current.

(e) It shall be the discretion of the Director to cause the immediate abatement of any such existing violation of this section when any hazard exists.

(Ord. 76-57. Passed 10-4-76.)

547.09 WEED OR TALL GRASS REMOVAL.

(a) The owner, occupant or person having the charge, management of any lot or parcel of land situated within the City of Fairview Park, Ohio, improved or unimproved, occupied or vacant, shall, within forty-eight (48) hours of being notified in writing to do so, cut or destroy, or cause to be cut or destroyed, any noxious or poisonous weeds, or tall grasses growing upon such lot or parcel, and shall prevent the same from blooming or going to seed, or exceeding a height of six (6) inches or spreading pollen which may be harmful to human health, including, but not limited to trees, bushes or other brush on the property. The written notice may be served upon the owner, occupant or person having the charge or management of any lot or parcel by hand delivery or regular U.S. Mail. (Ord. 13-31. Passed 10-7-13.)

(b) The Director of Public Service and Development or an individual designated by the Director is hereby authorized to cause to be cut or destroyed any such noxious weeds or grasses which are in violation of subsection (a) hereof if the notice delivered in subsection (a) hereof is not complied with. The Director may either contract with a contractor or may utilize City personnel to cut or destroy any such noxious weeds or grasses in violation of Section 547.09.

(c) In the event that a notice issued pursuant to subsection (a) hereof is not complied with and the City must cut or destroy any such noxious weeds or grasses, the City shall charge the owner, occupant or person in the charge or management of any lot or parcel within the City the cost of cutting or destroying such noxious weeds or grasses. The City shall notify by regular U.S. Mail the owner, occupant or person in the charge or management of any lot or parcel to pay the cost of cutting the noxious weeds or grasses, said payment to be due and payable to the City within seven (7) days of the mailing of the notice. If the same is not paid within thirty (30) days of the mailing of the notice, the amount due may be certified to the County Auditor for collection as other taxes and assessments are collected in accordance with Ohio R.C. 731.54, or the Director of Law is hereby authorized to seek the recovery of such costs by civil action in a court of competent jurisdiction against the property owner. (Ord. 08-40. Passed 6-2-08.)

(d) When the Director of Public Service and Development, or the individual designated by the Director, determines that it is necessary to cut or destroy noxious weeds or grasses on any lot or parcel in the City, the owner will be charged at a rate established by the Director. The minimum charge to cut or destroy noxious weeds shall be one hundred dollars ($100.00) for the first occurrence of a violation of Section 547.09, two hundred dollars ($200.00) for a second occurrence and three hundred dollars ($300.00) for a third and every subsequent violation of Section 547.09. (Ord. 13-31. Passed 10-7-13.)

547.99 PENALTY.

Whoever violates any provision of this chapter except Section 547.09 is guilty of a misdemeanor of the third degree. (See Section 501.99 for penalties applicable to any misdemeanor classification.)

CHAPTER 549
Weapons and Explosives

549.01 Definitions.
549.02 Carrying concealed weapons.
549.03 Using weapons while intoxicated.
549.04 Improperly handling firearms in a motor vehicle.
549.05 Failure to secure dangerous ordnance.
549.06 Unlawful transactions in weapons.
549.07 Underage purchase of firearm.
549.08 Discharging weapons.
549.09 Metal-tipped arrows.
549.10 Stench bomb and flammable, explosive or combustible material or device.
549.11 Improperly furnishing air guns or spring-operated guns to a minor.
549.12 Improperly furnishing electronic stun weapons to a minor.
549.13 Restricted purchase and possession of electronic stun weapons.
549.14 Replica firearms.
549.15 Possessing replica firearm in school.
549.16 Defacing identification marks of a firearm; possessing a defaced firearm.
549.17 Sale of firearms or ammunition to minors.
549.18 Stolen or lost firearms.
549.19 Firearms held in custody or confiscated.
549.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law
License or permit to possess dangerous ordnance - see Ohio R.C. 2923.18
Hunting prohibited - see GEN. OFF. 505.14
Reporting gunshot and stab wounds - see GEN. OFF. 525.05(b)
Property destruction by tear gas device, etc. - see GEN. OFF. 541.04

549.01 DEFINITIONS.

As used in this chapter:

(a) "Deadly weapon" means any instrument, device or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried or used as a weapon.

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

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

(c) "Handgun" means any of the following:

(1) Any firearm that has a short stock and is designed to be held and fired by the use of a single hand;

(2) Any combination of parts from which a firearm of a type described in subsection (c)(1) of this section can be assembled.

(d) "Semi-automatic firearm" means any firearm designed or specially adapted to fire a single cartridge and automatically chamber a succeeding cartridge ready to fire, with a single function of the trigger.

(e) "Automatic firearm" means any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger.

(f) "Sawed-off firearm" means a shotgun with a barrel less than eighteen inches long, or a rifle with a barrel less than sixteen inches long, or a shotgun or rifle less than twenty-six inches long overall.

(g) "Zip-gun" means any of the following:

(1) Any firearm of crude and extemporized manufacture;

(2) Any device, including without limitation a starter's pistol, that is not designed as a firearm, but that is specially adapted for use as a firearm;

(3) Any industrial tool, signalling device or safety device, that is not designed as a firearm, but that as designed is capable of use as such, when possessed, carried or used as a firearm.

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

(i) "Incendiary device" means any firebomb, and any device designed or specially adapted to cause physical harm to persons or property by means of fire, and consisting of an incendiary substance or agency and a means to ignite it.

(j) "Ballistic knife" means a knife with a detachable blade that is propelled by a spring-operated mechanism.

(k) "Dangerous ordnance" means any of the following, except as provided in subsection (l) hereof:

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

(2) Any explosive device or incendiary device;

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

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

(5) Any firearm muffler or suppressor;

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

(l) "Dangerous ordnance" does not include any of the following:

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

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

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

(4) Black powder, priming quills and percussion caps possessed and lawfully used to fire a cannon of a type defined in subsection (l)(3) hereof during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition;

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

(6) Any device that is expressly excepted from the definition of a destructive device pursuant to the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C.921(a)(4), as amended, and regulations issued under that Act.

(m) “Air gun” means a hand pistol or rifle that propels a projectile by means of releasing compressed air, carbon dioxide or other gas.

(n) “Spring-operated gun” means a hand pistol or rifle that propels a projectile of any size by means of a spring.

(Ord. 80-86. Passed 12-1-80.)

(o) “Electronic stun weapon” means a device, instrument, article or thing that is capable of producing an electrical charge of sufficient magnitude to temporarily immobilize or incapacitate, cause physical injury or illness to, or cause the death of a person and which has been manufactured as, including crude or extemporized manufacture or assembly, or which as designed is capable of use as, or specially adapted for use as, such a device, instrument, article or thing.

(1) “Class one electronic stun weapon” means an electronic stun weapon capable of causing the death of a person.

(2) “Class two electronic stun weapon” means an electronic stun weapon capable of causing injury or illness, including physiological impairment, to a person but is not capable of causing the death of a person.

(Ord. 85-29. Passed 5-6-85.)

(p) “Kama” means any device, instrument, article or thing consisting of a handle with a curried single edged blade affixed at the end of the handle.

(q) "Ninja star" or "shuriken" means any device, instrument, article or thing in the shape of a star, cross, triangle, swastika or other shape, with points radiating from the center, used in the martial harm to persons, and manufactured as, including crude or extemporized manufacture or assembly, or which as designed is capable of use as, or specially adapted for use as, such a device, instrument, article or thing, or possessed, carried or used as such a device, instrument, article or thing.

(r) "Nunchuck" means two pieces of hardwood held together by a piece of string, leather or chain.

(s) "Sai" means a piece of steel or heavy metal with a pointed or blunted end and two prongs that extend down from the blade to form a handle.

(t) "Staff" means a hardwood stick which is designed and intended to be used to strike, to block, to jab, to hold and to throw another person.

(u) "Tonfa" means a hardwood shaft with a handle affixed to the shaft.
(Ord. 86-69. Passed 12-7-87.)

(v) "Replica or facsimile of a firearm" means any device or object made of plastic, wood, metal or any other material which is a replica, facsimile or toy version of, or is otherwise recognizable as, a pistol, revolver, shotgun, sawed-off shotgun, rifle, machine gun, rocket launcher or any other firearm. As used in this chapter, "replica or facsimile of a firearm" includes, but is not limited to, toy guns, movie props, hobby models (either in kit form or fully assembled), starter pistols, air guns, inoperative firearms or any other device which might reasonably be perceived to be a real firearm.
(Ord. 89-20. Passed 3-6-89.)

(w) "Misdemeanor punishable by imprisonment for a term exceeding one year" does not include any of the following:

(1) Any federal or state offense pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulation of business practices;

(2) Any misdemeanor offense punishable by a term of imprisonment of two years or less.

(x) "Alien registration number" means the number issued by the United States Citizenship and Immigration Services Agency that is located on the alien's permanent resident card and may also be commonly referred to as the "USCIS number" or the "alien number".

(r) "Active duty" has the same meaning as defined in 10 U.S.C. 101.
(ORC 2923.11)

549.02 CARRYING CONCEALED WEAPONS.

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

(1) A deadly weapon other than a handgun;

(2) A handgun other than a dangerous ordnance;

(3) A dangerous ordnance.

(b) No person who has been issued a concealed handgun license, shall do any of the following:

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

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

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

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

A. An officer, agent or employee or 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 subsection (c)(1)B. hereof does not apply to the person.

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

(2) Subsection (a)(2) of this section does not apply to any person who, at the time of the alleged carrying or possession of a handgun, either is carrying a valid concealed handgun license or is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in division (G)(1) of Ohio R.C. 2923.125, unless the person knowingly is in a place described in division (B) of Ohio R.C. 2923.126.

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

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

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

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

(e) No person who is charged with a violation of this section shall be required to obtain a concealed handgun license as a condition for the dismissal of the charge.

(f) (1) Whoever violates this section is guilty of carrying concealed weapons. Except as otherwise provided in this subsection or subsections (f)(2), (5) and (6) of this section, carrying concealed weapons in violation of subsection (a) of this section is a misdemeanor of the first degree. Except as otherwise provided in this subsection or subsections (f)(2), (5) and (6) of this section, if the offender previously has been convicted of a violation of this section 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 subsection (a) of this section is a felony and shall be prosecuted under appropriate State law. Except as otherwise provided in subsections (f)(2), (5) and (6) of this section, if the weapon involved is a firearm and the violation of this section is committed at premises for which a D permit has been issued under Chapter 4303, of the Revised Code or 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 subsection (a) of this section is a felony and shall be prosecuted under appropriate State law.

(2) Except as provided in subsection (f)(5) of this section, if a person being arrested for a violation of subsection (a)(2) of this section promptly produces a valid concealed handgun license, and if at the time of the violation the person was not knowingly in a place described in division (B) of Ohio R.C. 2923.126, the officer shall not arrest the person for a violation of that subsection. If the person is not able to promptly produce any concealed handgun license and if the person is not in a place described in that section, the officer may arrest the person for a violation of that subsection, and the offender shall be punished as follows:

A. The offender shall be guilty of a minor misdemeanor if both of the following apply:

1. Within ten days after the arrest, the offender presents a concealed handgun license, which license was valid at the time of the arrest to the law enforcement agency that employs the arresting officer.

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

B. The offender shall be guilty of a misdemeanor and shall be fined five hundred dollars ($500.00) if all of the following apply:

1. The offender previously had been issued a concealed handgun license and that license expired within the two years immediately preceding the arrest.

2. Within forty-five days after the arrest, the offender presents any type of concealed handgun license to the law enforcement agency that employed the arresting officer, and the offender waives in writing the offender's right to a speedy trial on the charge of the violation that is provided in Ohio R.C. 2945.71.

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

C. If subsections (f)(2)A. and B. and (f)(5) of this section do not apply, the offender shall be punished under subsection (f)(1) or (6) of this section.

(3) Except as otherwise provided in this subsection, carrying concealed weapons in violation of subsection (b)(1) hereof is a misdemeanor of the first degree, and, in addition to any other penalty or sanction imposed for a violation of subsection (b)(1) hereof, the offender's concealed handgun license 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 concealed handgun license, carrying concealed weapons in violation of division (b)(1) of this section is a minor misdemeanor, and the offender's concealed handgun license shall not be suspended pursuant to division (A)(2) of Ohio R.C. 2923.128.

(4) Except as otherwise provided herein, carrying concealed weapons in violation of subsection (b)(2) or (b)(3) hereof is a misdemeanor of the first degree. If the offender has previously been convicted or pleaded guilty to a violation of Ohio R.C. 2923.12(B)(2) or (B)(4) or a substantially equivalent municipal ordinance, carrying concealed weapons is a felony and shall be prosecuted under appropriate state law. In addition to any other penalty or sanction imposed for a violation of subsection (b)(2) or (b)(3) hereof, the offender's concealed handgun license shall be suspended pursuant to Ohio R.C. 2923.128(A)(2).

(5) If a person being arrested for a violation of subsection (a)(2) of this section is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in division (G)(1) of Ohio R.C. 2923.125, and if at the time of the violation the person was not knowingly in a place described in division (B) of Ohio R.C. 2923.126, the officer shall not arrest the person for a violation of that division. If the person is not able to promptly produce a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in division (G)(1) of Ohio R.C. 2923.125 and if the person is not in a place described in division (B) of Ohio R.C. 2923.126, the officer shall issue a citation and the offender shall be assessed a civil penalty of not more than five hundred dollars ($500.00). The citation shall be automatically dismissed and the civil penalty shall not be assessed if both of the following apply:

A. Within ten days after the issuance of the citation, the offender presents a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in division (G)(1) of Ohio R.C. 2923.125, which were both valid at the time of the issuance of the citation to the law enforcement agency that employs the citing officer.

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

(6) If a person being arrested for a violation of subsection (a)(2) of this section is knowingly in a place described in division (B)(5) of Ohio R.C. 2923.126, and is not authorized to carry a handgun or have a handgun concealed on the person's person or concealed ready at hand under that division, the penalty shall be as follows:

A. Except as otherwise provided in this subsection, if the person produces a valid concealed handgun license within ten days after the arrest and has not previously been convicted or pleaded guilty to a violation of subsection (a)(2) of this section, the person is guilty of a minor misdemeanor;

B. Except as otherwise provided in this subsection, if the person has previously been convicted of or pleaded guilty to a violation of subsection (a)(2) of this section, the person is guilty of a misdemeanor of the fourth degree;

C. Except as otherwise provided in this subsection, if the person has previously been convicted of or pleaded guilty to two violations of subsection (a)(2) of this section, the person is guilty of a misdemeanor of the third degree;

D. Except as otherwise provided in this subsection, if the person has previously been convicted of or pleaded guilty to three or more violations of subsection (a)(2) of this section, or convicted of or pleaded guilty to any offense of violence, if the weapon involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is a dangerous ordnance, the person is guilty of a misdemeanor of the second degree.

(g) If a law enforcement officer stops a person to question the person regarding a possible violation of this section, for a traffic stop, or for any other law enforcement purpose, if the person surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with a violation of this section or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer shall return the firearm to the person at the termination of the stop. If a court orders a law enforcement officer to return a firearm to a person pursuant to the requirement set forth in this subsection, division (B) of Ohio R.C. 2923.163 applies. (ORC 2923.12)

549.03 USING WEAPONS WHILE INTOXICATED.

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

(b) Whoever violates this section is guilty of using weapons while intoxicated, a misdemeanor of the first degree. (ORC 2923.15)

549.04 IMPROPERLY HANDLING FIREARMS IN A MOTOR VEHICLE.

(a) 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 which can be reached only by leaving the vehicle;

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

(4) If the firearm is at least twenty-four inches in overall length as measured from the muzzle to the part of the stock furthest from the muzzle and if the barrel is at least eighteen 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.

(b) No person who has been issued a concealed handgun license, or who is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in division (G)(1) of Ohio R.C. 2923.125, who is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose or is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit for the purposes defined in Ohio R.C. 5503.34, and who is transporting or has a loaded handgun in the motor vehicle or commercial motor vehicle in any manner, shall do any of the following:

(1) Fail to promptly inform any law enforcement officer who approaches the vehicle while stopped that the person has been issued a concealed handgun license or is authorized to carry a concealed handgun as an active duty member of the armed forces of the United States and that the person then possesses or has a loaded handgun in the motor vehicle;

(2) Fail to promptly inform the employee of the unit who approaches the vehicle while stopped that the person has been issued a concealed handgun license or is authorized to carry a concealed handgun as an active duty member of the armed forces of the United States and that the person then possesses or has a loaded handgun in the commercial motor vehicle.

(3) Knowingly fail to remain in the motor vehicle while stopped, or knowingly fail to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer.

(4) Knowingly 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.

(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 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 subsection (c)(1)B. does not apply to the person.

(2) Subsection (a) of this section does not apply to a person who transports or possesses a handgun in a motor vehicle if, at the time of that transportation or possession, both of the following apply:

A. The person transporting or possessing the handgun is either carrying a valid concealed handgun license or is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in division (G)(1) of Ohio R.C. 2923.125.

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

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

A. The person possesses a valid all-purpose vehicle permit issued under Ohio R.C. 1533.103 by the Chief of the Division of Wildlife.

B. The person is on or in an all-purpose vehicle as defined in Ohio R.C. 1531.01 on private or publicly owned lands or on or in a motor vehicle during the open hunting season for a wild quadruped or game bird.

C. The person is on or in an all-purpose vehicle as defined in Ohio R.C. 1531.01 or a motor vehicle that is parked on a road that is owned or administered by the Division of Wildlife

(d) (1) The affirmative defenses authorized in Section 549.02(d)(1) and (2) are affirmative defenses to a charge under subsection (a) that involves a firearm other than a handgun.

(2) It is an affirmative defense to a charge under subsection (a) 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 the 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 subsection (a) while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic.

(e) (1) No person who is charged with a violation of subsection (a) shall be required to obtain a concealed handgun license as a condition for the dismissal of the charge.

(2) If a person is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of subsection (b) of this section as it existed prior to September 30, 2011, and if the conduct that was the basis of the violation no longer would be a violation of subsection (b) of this section on or after September 30, 2011, the person may file an application under Ohio R.C. 2953.37 requesting the expungement of the record of conviction.

If a person is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of subsection (a) of this section as the subsection existed prior to September 30, 2011, and if the conduct that was the basis of the violation no longer would be a violation of subsection (a) of this section on or after September 30, 2011, due to the application of subsection (b)(4) of this section as it exists on and after September 30, 2011, the person may file an application under Ohio R.C. 2953.37 requesting the expungement of the record of conviction.

(f) Whoever violates this section is guilty of improperly handling firearms in a motor vehicle. Violation of subsection (a) of this section is a misdemeanor of the fourth degree. Except as otherwise provided in this subsection, a violation of subsection (b)(1) or (b)(2) of this section is a misdemeanor of the first degree, and, in addition to any other penalty or sanction imposed for the violation, the offender's concealed handgun license shall be suspended pursuant to 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 Ohio 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 subsection (b)(1) or (b)(2) of this section is a minor misdemeanor, and the offender's concealed handgun license shall not be suspended pursuant to division (A)(2) of Ohio R.C. 2923.128. A violation of subsection (b)(3) or (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 subsection (b)(3) or (4) of this section, a felony and shall be prosecuted under appropriate State law. In addition to any other penalty or sanction imposed for a misdemeanor violation of subsection (b)(3) or (4) of this section, the offender's concealed handgun license shall be suspended pursuant to Ohio R.C. 2923.128(A)(2).

(g) 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 subsection, division (B) of Ohio R.C. 2923.163 applies.

(h) As used in this section:

(1) "Motor vehicle", "street" and "highway" have the same meanings as in Ohio R.C. 4511.01.

(2) A. "Unloaded" means:

1. With respect to a firearm other than a firearm described in subsection (h)(2)B. of this section, that no ammunition is in the firearm in question, no magazine or speed loader containing ammunition is inserted into the firearm in question and one of the following applies:

a. There is no ammunition in a magazine or speed loader that is in the vehicle in question and that may be used with the firearm in question.

b. Any magazine or speed loader that contains ammunition and that may be used with the firearm in question is stored in a compartment within the vehicle in question that cannot be accessed without leaving the vehicle or is stored in a container that provides complete and separate enclosure.

2. For the purposes of subsection (h)(2)A.1.b. of this section, a "container that provides complete and separate enclosure" includes, but is not limited to, any of the following:
   a. A package, box or case with multiple compartments, as long as the loaded magazine or speed loader and the firearm in question either are in separate compartments within the package, box, or case, or, if they are in the same compartment, the magazine or speed loader is contained within a separate enclosure in that compartment that does not contain the firearm and that closes using a snap, button, buckle, zipper, hook and loop closing mechanism, or other fastener that must be opened to access the contents or the firearm is contained within a separate enclosure of that nature in that compartment that does not contain the magazine or speed loader;
   b. A pocket or other enclosure on the person of the person in question that closes using a snap, button, buckle, zipper, hook and loop closing mechanism, or other fastener that must be opened to access the contents.
3. For the purposes of subsection (h)(2)A. of this section, ammunition held in stripper-clips or in en-bloc clips is not considered ammunition that is loaded into a magazine or speed loader.

B. "Unloaded" means, with respect to a firearm employing a percussion cap, flintlock, or other obsolete ignition system, when the weapon is uncapped or when the priming charge is removed from the pan.

(3) "Commercial motor vehicle" has the same meaning as in Ohio R.C. 4506.25(A).

(4) "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.

(i) Subsection (h)(2) of this section does not affect the authority of a person who is carrying a valid concealed handgun license to have one or more magazines or speed loaders containing ammunition anywhere in a vehicle, without being transported as described in that subsection, as long as no ammunition is in a firearm, other than a handgun, in the vehicle other than as permitted under any other provision of this chapter or Ohio R.C. Chapter 2923. A person who is carrying a valid concealed handgun license may have one or more magazines or speed loaders containing ammunition anywhere in a vehicle without further restriction, as long as no ammunition is in a firearm, other than a handgun, in the vehicle other than as permitted under any provision of this chapter or Ohio R.C. Chapter 2923. (ORC 2923.16)

549.05 FAILURE TO SECURE DANGEROUS ORDNANCE.

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

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

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

(b) Whoever violates this section is guilty of failure to secure dangerous ordnance, a misdemeanor of the second degree. (ORC 2923.19)

549.06 UNLAWFUL TRANSACTIONS IN WEAPONS.

(a) No person shall:

(1) 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 and/or spring loaded weapon capable of propelling a knife or knifelike projectile, including, but not limited to, a ballistic knife or other similar weapons and/or advanced martial arts weapons including but not limited to ninja star or shuriken, nunchuck, tonfa, kama, sai and/or swords, knives or staffs designed, manufactured or marketed as a martial arts weapon and/or other similar weapons.

This provision shall not apply to the possession and/or use of advanced martial arts weapons on the premises of a recognized martial arts school or facility. (Ord. 86-69. Passed 12-7-87.)

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

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

(b) Whoever violates this section is guilty of unlawful transactions in weapons. Violation of subsections (a)(1) or (2) hereof is a misdemeanor of the second degree. Violation of subsection (a)(3) hereof is a misdemeanor of the fourth degree. (ORC 2923.20)

549.07 UNDERAGE PURCHASE OF FIREARM.

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

(b) No person under twenty-one years of age shall purchase or attempt to purchase a handgun, provided that this subsection does not apply to the purchase or attempted purchase of a handgun by a person eighteen years of age or older and under twenty-one years of age if either of the following apply:

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

(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 subsection (a) hereof is guilty of underage purchase of a firearm, a delinquent act that would be a felony of the fourth degree if it could be committed by an adult. Whoever violates subsection (b) hereof is guilty of underage purchase of a handgun, a misdemeanor of the second degree. (ORC 2923.211)

549.08 DISCHARGING WEAPONS.

(a) No person shall fire any cannon, gun, air gun, spring gun, rifle, pistol or firearm of any kind within the City limits. Nothing herein shall be held to apply to any military company when drilling under command of an officer thereof or to regular shooting clubs, or shooting galleries having written permit from the Mayor or targets privately erected for practice when permitted in writing by the Mayor, or to the use of firearms in the lawful defense of the person, family or property of any person, or by any police officer in the lawful discharge of his duties.

(b) Whoever violates this section is guilty of a misdemeanor of the fourth degree. (Ord. 74-36. Passed 5-6-74.)

549.09 METAL-TIPPED ARROWS.

(a) No person shall use, own or possess any metal-tipped arrow in the City, except as provided herein. This section shall not prohibit or render it unlawful to use, own or possess metal-tipped arrows for the purpose of:

(1) Use in hunting or sport outside of the City limits.

(2) Use on a range deemed suitable by the Chief of Police and in conjunction with the standard twenty-four, thirty-six or forty-eight inch padded bulls-eye type archery targets.

(b) Whoever violates this section is guilty of a misdemeanor of the fourth degree. (Ord. 74-36. Passed 5-6-74.)

549.10 STENCH BOMBS AND FLAMMABLE, EXPLOSIVE OR COMBUSTIBLE MATERIAL OR DEVICE.

(a) No person shall throw, drop, pour, deposit or discharge, or attempt or aid or abet in the throwing, dropping, pouring, depositing or discharging, upon the property or person of another any liquid, gaseous or solid substance or matter of any kind which is injurious to person or property, or which is nauseous, sickening, irritating or offensive to any of the senses with intent to wrongfully injure, molest, discomfort, discommode or coerce any person.

(b) No person shall make, use, have on or about his person or under his control any device or container having a fuse, and holding a flammable, combustible or explosive material or substance which can be used as a firebomb, Molotov cocktail or bomb. "Fuse" as used in this section, means any type of material, substance or device which may be used in any manner as a means of igniting or exploding the device or container.

(c) No person shall manufacture or prepare, or shall have in his possession or under his control, any liquid, gaseous or solid substance or matter of any kind which is injurious to person or property, or which is nauseous, sickening, irritating or offensive to any of the senses, with intent to use the same in violation of subsections (a) or (b) hereof, or with intent that the same shall be used in such violations. The possession or control by any person of any such liquid, gaseous or solid substance or matter shall be deemed prima-facie evidence of intent to use the same, or cause the same to be used in violation of subsections (a) or (b) hereof.

(d) Nothing in this section shall apply to regularly appointed State, County, Township or Municipal police officers acting in line of duty, or to proprietors of business places, or any person employed by such proprietors for the protection of their property in their various business places when the substance above referred to is kept solely for the purpose of repelling robbers, thieves, murderers or other law violators.

(e) Whoever violates this section is guilty of a misdemeanor of the first degree.
(Ord. 74-36. Passed 5-6-74.)

549.11 IMPROPERLY FURNISHING AIR GUNS OR SPRING-OPERATED GUNS TO A MINOR.

(a) No person, firm or company shall:

(1) Sell any air gun or spring-operated guns to a person under age eighteen; or

(2) Furnish any air gun or spring-operated gun to a person under age eighteen except for purposes of instruction in safety, care, handling or marksmanship of such guns under the supervision and control of a responsible adult.

(b) Whoever violates this section is guilty of a misdemeanor of the second degree.
(Ord. 80-85. Passed 12-1-80.)

549.12 IMPROPERLY FURNISHING ELECTRONIC STUN WEAPONS TO A MINOR.

(a) No person, firm or corporation shall sell, lend, barter, give, rent, lease or furnish a class one electronic stun weapon to a person under age eighteen.

(b) No person, firm or corporation shall sell, lend, barter, give, rent, lease or furnish a class two electronic stun weapon to a person under age eighteen.

(c) Whoever violates subsection (a) hereof is guilty of a misdemeanor of the first degree. Whoever violates subsection (b) hereof is guilty of a misdemeanor of the second degree.
(Ord. 85-30. Passed 5-6-85.)

549.13 RESTRICTED PURCHASE AND POSSESSION OF ELECTRONIC STUN WEAPONS.

(a) No person under the age of eighteen years shall purchase, lease, borrow, rent, acquire or otherwise possess or attempt to purchase, lease, borrow, rent, acquire or otherwise possess an electronic stun weapon.

(b) Any person under the age of eighteen years who violates this section shall be prosecuted in Juvenile Court pursuant to the provisions of Ohio R.C. 2151.022.
(Ord. 85-30. Passed 5-6-85.)

549.14 REPLICA FIREARMS.

(a) No person shall display, market for sale or sell any replica or facsimile of a firearm in the City. The provisions of this subsection shall not apply to any replica or facsimile firearm which, because of its distinct color, exaggerated size or other design feature, cannot reasonably be perceived to be a real firearm.

(b) Except in self-defense, no person shall draw, exhibit or brandish a replica or facsimile of a firearm or simulate a firearm in a rude, angry or threatening manner, with the intent to frighten, vex, harass or annoy or with the intent to commit an act which is a crime under the laws of the City, State or Federal government against any other person.

(c) No person shall draw, exhibit or brandish a replica or facsimile of a firearm or simulate a firearm in the presence of a peace officer, fire fighter, emergency medical technician or paramedic engaged in the performance of his or her duties, and the person committing such brandishing knows or has reason to know that such police officer, fire fighter, emergency medical technician or paramedic is engaged in the performance of his or her duties.

(d) As used in this section, "firearm" shall have the same meaning as used in Section 549.01(b).

(e) (1) Whoever violates subsection (a) hereof is guilty of unlawful sale of a replica firearm, a misdemeanor of the third degree.

(2) Whoever violates subsection (b) hereof is guilty of brandishing a replica firearm, a misdemeanor of the first degree.

(3) Whoever violates subsection (c) hereof is guilty of brandishing a replica firearm in the presence of a public safety officer, a misdemeanor of the first degree.

(Ord. 89-20. Passed 3-6-89.)

549.15 POSSESSING REPLICA FIREARM IN SCHOOL.

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

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

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

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

(c) Whoever violates subsection (a) hereof is guilty of illegal possession of an object indistinguishable from a firearm in a school safety zone. Except as otherwise provided in this subsection, illegal possession of an object indistinguishable from a firearm in a school safety zone is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of Ohio R.C. 2923.122, illegal possession of an object indistinguishable from a firearm in a school safety zone is a felony and shall be prosecuted under appropriate State law.

(d) (1) In addition to any other penalty imposed upon a person who is convicted of or pleads guilty to a violation of this section and subject to subsection (d)(2) of this section, if the offender has not attained nineteen 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 division (A)(4) of Ohio R.C. 4510.02 and shall deny the offender the issuance of any permit or license of that type during the period of the suspension.

If the offender is not a resident of this State, the court shall impose a class four suspension of the nonresident operating privilege of the offender from the range specified in division (A)(4) of Ohio R.C. 4510.02.

(2) If the offender shows good cause why the court should not suspend one of the types of licenses, permits, or privileges specified in subsection (d)(1) of this section or deny the issuance of one of the temporary instruction permits specified in that subsection, the court in its discretion may choose not to impose the suspension, revocation, or denial required in that subsection, but the court, in its discretion, instead may require the offender to perform community service for a number of hours determined by the court.

(e) As used in this section, "object that is indistinguishable from a firearm" means an object made, constructed, or altered so that, to a reasonable person without specialized training in firearms, the object appears to be a firearm.
(ORC 2923.122)

549.16 DEFACING IDENTIFICATION MARKS OF A FIREARM; POSSESSING A DEFACED FIREARM.

(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 or 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 subsection (a)(1) of this section is guilty of defacing identification marks of a firearm. Except as otherwise provided in this subsection, 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 subsection (a)(1) of this section, defacing identification marks of a firearm is a felony and shall be prosecuted under appropriate State law.

(2) Whoever violates subsection (a)(2) of this section is guilty of possessing a defaced firearm. Except as otherwise provided in this subsection, 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 subsection (a)(2) of this section, possessing a defaced firearm is a felony and shall be prosecuted under appropriate State law.
(ORC 2923.201)

549.17 SALE OF FIREARMS OR AMMUNITION TO MINORS.

(a) No person, firm or corporation shall sell, barter, furnish or give to a minor under the age of eighteen years of age an air gun, musket, rifle, shotgun, revolver, pistol, handgun or other firearm, or ammunition therefore, or being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age.

(b) Nothing in this section shall be deemed to prohibit or render it unlawful to possess, use or furnish for use any such firearm, together with such ammunition as is necessary, for the purpose of receiving and being given instructions and training in marksmanship and the proper handling, use and care of such firearms on any suitable range, which, at the time of such instruction and use, is under the supervision and control of a competent adult instructor provided that the giving of such instructions and the training is supervised by an organization or association which has been and continues to be approved for this purpose by the Adjutant General or provided that such instructor is the parent of the person receiving such instruction.

(c) Whoever violates this section is guilty of a misdemeanor of the first degree.
(Ord. 14-23. Passed 5-5-14.)

549.18 STOLEN OR LOST FIREARMS.

Whenever any firearm is stolen or lost, the person losing possession thereof shall immediately, upon discovery of such theft or loss, make a report thereof to the Chief of Police, showing the following:

(a) Name and address of the person owning or having possession of such firearm;
(b) Kind of firearm;
(c) Serial number;
(d) Model;
(e) Caliber;
(f) Manufacturer of firearm;
(g) Date and place of theft or loss; and
(h) A complete statement of the facts and circumstances surrounding such theft or loss.
(i) Whoever violates this Section is guilty of a misdemeanor of the first degree.
(Ord. 14-23. Passed 5-5-14.)

549.19 FIREARMS HELD IN CUSTODY OR CONFISCATED.

(a) In any situation where a firearm is present and a person has been drinking or disturbing the peace, or threatening bodily harm, or causing or threatening a disturbance or violence, and there is reasonable cause for the investigating police officer to believe that such firearm may be used to cause bodily harm, such firearm may be seized by the police and kept in the custody of the Chief of Police for a period of seventy-two hours or until released by an order of a court of competent jurisdiction.

(b) Any firearm seized by a police officer upon the arrest of any person, firm or corporation charged with a violation of any of the provisions of this chapter, or any felony or misdemeanor involving the use of a firearm or the use of force or violence, or the threat of the use of force or violence against the person of another, may, upon conviction of such person, firm or corporation, be ordered confiscated by the Rocky River Municipal Court, and such firearm shall be turned over to the Police Department for disposal, except that any firearm seized which has been reported stolen shall be returned to the lawful owner thereof.

(c) When any firearm is seized by the police, all identification cards, permits or licenses issued pursuant to this chapter or by any other political subdivision to such person, shall also be seized and kept in the custody of the Chief of Police until released as in subsection (a) hereof.

(d) Whoever violates this section is guilty of a misdemeanor of the first degree.
(Ord. 14-23. Passed 5-5-14.)

549.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)

CHAPTER 555
Polychlorinated Biphenyls (PCBs)

555.01 Purposes; definitions.
555.02 Identification and information.
555.03 When notice required; to whom.
555.04 Minimum contents of notice.
555.05 Clean-up.
555.06 Removal.
555.99 Penalty.

CROSS REFERENCES
Hazardous wastes - see Ohio R.C. Ch. 3734; OAC Ch. 3745-50 et seq.

555.01 PURPOSES; DEFINITIONS.

(a) Purposes. The purposes of this chapter are threefold: to provide greater public awareness of PCB locations, in an effort to avert or lessen personal injury and property damage; to require immediate notice to the City and certain residents in the event of a spillage, leak, explosion or other accident; and to require the clean-up of any PCB spillage, leak, explosion or other mishap.

(b) Definitions.

(1) "PCBs" means polychlorinated biphenyls, regardless of the compound, substance, fluid or other material where found, and regardless of its usage or amount.

(2) "Owner" means any public utility, industry, person, firm or corporation having ownership or control of PCBs.

(Ord. 81-95. Passed 10-19-81.)

555.02 IDENTIFICATION AND INFORMATION.

Each owner shall take immediate steps to identify the location of each PCB usage or deposit, clearly marking the unit or place containing, supporting or covering PCBs in a manner approved by the Director of Public Service and Development and informing the Police and Fire Departments of each such location. This requirement shall apply to any existing or future location. Each owner shall provide instructions to the City as to the proper steps to take in the event of a spillage, leak, explosion or other accident. Such information shall be permanently and securely posted at each location at a place to be determined and approved by the Director.
(Ord. 81-95. Passed 10-19-81.)

555.03 WHEN NOTICE REQUIRED; TO WHOM.

(a) In the event of a spillage, leak, explosion or other mishap involving PCBs, and immediately after the owner is made aware, discovers or should have discovered the mishap, the same shall provide notice to the Director of Public Service and Development and/or the Chief of Police and Fire, and within two hours to all residents within 200 feet thereof.

(b) Such notice may be oral or written or both.
(Ord. 81-95. Passed 10-19-81.)

555.04 MINIMUM CONTENTS OF NOTICE.

Whenever notice is required under Section 555.03, it shall include, as a minimum, the following:

(a) Name and address of the owner(s);
(b) Location, nature and extent of the PCB mishap; and
(c) Nature and extent of personal injury or property damage, or threat of same, if any.
(Ord. 81-95. Passed 10-19-81.)

555.05 CLEAN-UP.

(a) Any owner whose PCBs are involved in a spillage, leak, explosion, or other mishap, and who has or should have knowledge thereof, shall commence clean-up operations within two hours after the mishap.

(b) Until the area involved in the spillage, leak, explosion or other mishap has been certified by an appropriate governmental agency as no longer constituting a possible hazard of personal injury or property damage, the area shall be cordoned off and appropriate warnings as required by the Director of Public Service and Development shall be posted.

555.06 REMOVAL.

Notwithstanding any other provision of this chapter, all PCBs shall be removed from the City which, in the opinion of the Director of Public Service and Development, constitute a public nuisance. (Ord. 81-95. Passed 10-19-81.)

555.99 PENALTY.

Whoever violates any provision of this chapter shall be guilty of a first degree misdemeanor. (Ord. 81-95. Passed 10-19-81.)

CHAPTER 557
Noise Control

557.01 Definitions.
557.02 Noise disturbances prohibited.
557.03 Specific prohibitions.
557.04 Maximum permissible sound levels by zoning designations.
557.05 Inspection; stationary motor vehicle test.
557.06 Special variances.
557.07 Abatement orders.
557.08 Notice of violation.
557.09 Posting of enforcement signs.
557.10 Other remedies.
557.11 Stopping and testing of motor vehicles by law enforcement officers.
557.12 Exceptions.
557.13 Applicability.
557.14 Severability.
557.99 Penalty.

CROSS REFERENCES
Animal nuisance - see GEN. OFF. 505.02
Disorderly conduct and peace disturbance - see GEN. OFF. Ch. 509
Outdoor public shows - see BUS. REG. 709.03

557.01 DEFINITIONS.
As used in this chapter certain terms are defined as follows:
(a) "A-Weighted sound level" means the sound pressure level in decibels as measured on a sound level meter using the A-Weighting network. The level so read is designated dB(a) or dBA.
(b) "Commercial area" means any office building and general business districts as set forth in the Planning and Zoning Code.
(c) "Construction" means any site preparation, assembly, erection, substantial repair, alteration or similar action, but excluding demolition, for or on public or private right-of-way, structures, utilities or similar property.
(d) "Cyclically varying noise" means any sound which varies in sound level such that the same level is obtained repetitively at reasonably uniform intervals of time.
(e) "Decibel" means a unit for measuring the volume of sound, equal to twenty times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is twenty micropascals (twenty micronewtons per square meter).

(f) "Demolition" means any dismantling or intentional destruction or removal of structures, utilities, public or private right-of-way surfaces or similar property.

(g) "Director" means the Chief of Police.

(h) "Gross vehicle weight rating" means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR) which is the value specified by the manufacturer as the maximum loaded weight of the combination vehicle, shall be used.

(i) "Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss which demands immediate action.

(j) "Emergency work" means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

(k) "Impulsive sound" means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.

(l) "Motor vehicle" means every vehicle defined as a motor vehicle in the Traffic Code.

(m) "Motorcycle" means every vehicle defined as a motorcycle in the Traffic Code.

(n) "Motorized bicycle" means every vehicle defined as a motorized bicycle in the Traffic Code.

(o) "Noise" means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

(p) "Noise disturbance" means any sound which: (1) endangers or injures the safety or health of humans or animals; (2) annoys or disturbs a reasonable person of normal sensitivities; or (3) endangers or injures personal or real property.

(q) "Person" means any individual, association, partnership or corporation and includes any officer, employee, department, agency or instrumentality of a state or any political subdivision of a state.

(r) "Place of public entertainment" means any commercial facility open to the general public for purposes of entertainment.

(s) "Powered model vehicle" means any self-propelled airborne, waterborne, or landborne plane, vessel or vehicle, which is not designated to carry persons, including, but not limited to, any model airplane, boat, car or rocket.

(t) "Public right of way" means any street, avenue, boulevard, highway, sidewalk, alley or similar place which is owned or controlled by a governmental entity.

(u) "Pure tone" shall mean any sound which can be distinctly heard as a single pitch or set of single pitches. For the purposes of measurement, a pure tone shall exist of the one-third octave band sound pressure level in the ban when the tone exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5dB for frequencies of $500H_Z$ and above, by 8dB for frequencies between 160 and $400H_Z$, and by 15 dB for frequencies less than or equal to $125H_Z$.

(v) "Real property boundary" means an imaginary line along the ground surface and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intrabuilding real property divisions.

(w) "Receiving property" means any property which is affected by sound originating of or from another location.

(x) "Repetitive impulsive noise" shall mean any noise which is composed of impulsive noises that are repeated at sufficiently slow rates such that a sound level meter set at "fast" meter characteristic shall show changes in sound.

(y) "Residential area" means the Districts set forth as R1F-75, R1F-60, R1F-50, R1F-40, R2F, RMF-G, RMF-HR, Low-Rise Planned Development and Senior Citizen Housing as set forth in Section 1109.01 of the Planning and Zoning Code.

(z) "Sound" means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal or interval forces that cause compression and rarefaction on that medium, and which propogates at finite speed to distant points. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

(aa) "Sound level" means the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in American National Standards Institute specifications for sound level meter Publication 51.4-1971 or the latest approved revision thereof.

(bb) "Sound level meter" means an instrument, including a microphone, amplifier, RMS detector and integrator, time averager, output meter and/or visual display and weighting networks, that is sensitive to pressure fluctuations. The instrument reads sound pressure level when properly calibrated and is of type two or better as specified in American National Standards Institute Publication 51.4-1971 or the latest approved revision thereof.

(cc) "Sound pressure" means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.

(dd) "Sound pressure level" means twenty times the logarithm of twenty micropascals (20×10^6 N/m^2). The sound pressure level is denoted Lp or SPL and is expressed in decibels.

(Ord. 82-17. Passed 6-28-82.)

557.02 NOISE DISTURBANCES PROHIBITED.

In addition to the specific prohibitions outlined in this chapter, no person shall unreasonably make, continue or cause to be made, continued or permitted, any noise disturbance as further provided in Section 509.10. This section shall not apply to non-commercial public speaking and public assembly activities conducted on any public space or public right of way with a permit from the Police Chief.

(Ord. 82-17. Passed 6-28-82.)

557.03 SPECIFIC PROHIBITIONS.

The following acts, and the causing or permitting thereof, are declared to be in violation of this chapter.

(a) Air Conditioners. Maintaining any refrigeration machinery or air conditioning, consisting of air compressors or rotating or reciprocating machinery, in such a manner as to create a noise disturbance across a real estate boundary. Maximum levels for residential properties shall not exceed sixty dBA at twenty feet from the source. Maximum levels for commercial properties shall not exceed sixty-five dBA at twenty feet from the source.
(Ord. 04-32. Passed 11-15-04.)

(b) Construction. Operating or permitting the operation of any tools or equipment in construction, drilling, building or demolition work between the hours of 9:00 p.m. and 8:00 a.m., or on Sundays or holidays, except for emergency work of public service utilities or by special variance. During the permitted period of operation, maximum sound levels in residential areas shall not exceed sixty dBA measured at a distance of fifty feet from the vehicle or other noise source.

(c) Domestic Power Tools. Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, lawnmower or other similar device used outdoors, other than powered snow removal equipment, outdoors between the hours of 9:00 p.m. and 8:00 a.m. or on Saturday or Sunday before the hour of 9:00 a.m. During the permitted period of operation, maximum sound levels in residential areas shall not exceed eighty-eight dBA measured at a distance of fifty feet from the noise source.

(d) Emergency Signaling Devices.

(1) The intentional sounding or permitting the sounding outdoors of any fire, burglar or civil defense alarm, siren, whistle or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided in this section. Testing of a stationary emergency signaling device shall occur at the same time of day each time such a test is performed, but not before 8:00 a.m. or after 9:00 p.m., or the closing time of a commercial establishment, whichever shall occur later. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed sixty seconds. Testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device, shall not occur before 8:00 a.m. or after 9:00 p.m. In no case shall such test exceed ten minutes.

(2) Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm unless such alarm is automatically terminated within two minutes of activation, or within a reasonable time after notification of activation.

(3) The repeated or continual sounding of any horn or other auditory signaling device on or in any motor vehicle on any public right of way or public space, except as a warning of danger.

(e) Explosives, Firearms and Similar Devices. The using or firing of explosives, firearms or similar devices which create impulsive sound so as to cause a noise disturbance across a real property boundary or on a public space or right of way, except as permitted by Section 549.08.

(f) Loading and Unloading. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans or similar objects between the hours of 10:00 p.m. and 7:00 a.m., or after 10:00 p.m. and before 10:00 a.m. on Sundays, in such a manner as to cause a noise disturbance across a residential real property boundary.

(g) Loudspeakers/Public Address Systems.

(1) Using, operating or permitting the operation of any loudspeaker, public address system, mobile sound vehicle or similar device amplifying sound therefrom on a public right of way or public space for any commercial purpose, except as otherwise provided in Section 509.12 and 713.03 of the Codified Ordinances.

(2) Using, operating or permitting for any noncommercial purpose any loudspeaker, public address system, mobile sound vehicle or similar device between the hours of 9:00 p.m. and 10:00 a.m. such that the sound therefrom creates a noise disturbance across a residential real property boundary.

(h) Places of Public Entertainment.

(1) Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound in any enclosed place of public entertainment at a sound level greater than ninety-five dBA as read with a slow response on a sound level meter at any point which is normally occupied by a customer unless a conspicuous and legible sign is located outside such place near each public entrance stating, "WARNING: SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT".

(2) Operating or permitting the operation of any business if such operation causes a noise disturbance across a residential real property boundary or in a public space.

(i) Powered Model Vehicle or Go-Carts. Operating or permitting the operation of powered model vehicles or go-carts so as to create a noise disturbance across a residential real property boundary or in a public space between the hours of 10:00 p.m. and 8:00 a.m.

(j) Radios, Television Sets, Musical Instruments and Similar Devices. Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument or similar device which produces, reproduces or amplifies sound:

(1) Between the hours of 10:00 p.m. and 8:00 a.m. on weekdays and before 10:00 a.m. and after 8:00 p.m. on Sundays, in such a manner as to create a noise disturbance across a residential real property boundary; or

(2) In such a manner as to create a continuing noise disturbance in excess of fifty dBA at fifty feet from such device, when operated in or on a motor vehicle on a public right of way or public space, except as permitted by Section 509.11.

(k) Vehicle or Motorboat Repairs and Testing. Repairing, rebuilding, modifying or testing any motor vehicle, motorcycle, motor bicycle or motorboat in such a manner as to cause a noise disturbance across a residential real property boundary.

(l) Animals and Birds. Owning, possessing or harboring any animal or bird which frequently or continuously for a period of ten minutes or more, howls, barks, meows, squawks or makes other sounds which create a noise disturbance across a residential real property boundary, as further provided in Section 505.02. Provided, however, that the provisions hereof shall not apply when a person is trespassing or threatening to trespass upon private property in or upon which the animal or bird is situated.

(m) Motor Vehicles.

(1) Operating or permitting the operation of any motor vehicle with a gross vehicle weight rating (GVWR) in excess of 7,000 pounds or any auxiliary equipment attached to such vehicle, for a period longer than five minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion, between the hours of 9:00 p.m. and 8:00 a.m. This section shall not apply to public utilities vehicles, Municipal service vehicles or buses operated as common carriers.

(2) No person shall operate a motor vehicle on a public right of way at any time in such manner that the sound pressure level emitted by such vehicle exceeds the levels set forth in Table 1 below, when measured at the location and distance established by subsection (m)(3) hereof, or otherwise operate a motor vehicle in a manner prescribed by Sections 311.03, 311.36, 337.20, 337.25 or 509.11 of the Codified Ordinances. This section shall apply to all licensed motor vehicles whether publicly or privately owned.

TABLE 1

VEHICLE CLASS	SOUND PRESSURE LEVEL IN dBA	STATIONARY RUN-UP		
	Speed Limit 45 Miles/ per/hour or less	Stationary Engine Speed	Dist. of Microphone from Vehicle	Noise Limit in dBA
Any motor carrier vehicle engaged in Interstate Commerce of GVWR or GCWR of 10,000 pounds or more.	Adopt Federal Interstate Motor Carrier procedures.	Max. governor speed (N/A to vehicle W/O governors).	50 feet from center line of vehicle	88
Any motor vehicle with a GVWR or GCWR of more than 10,000 pounds and any combination of vehicles towed by such motor vehicle.	86 (Min. of 15 feet from center lane of traffic).	Ungoverned vehicles of this class shall be tested @ 75% of motor speed @ maximum developed horsepower		88
Any Motorcycle	80* (Min. of 15 feet from center lane of traffic).	½ of Tachometer Red Line Value	20 inches from near side of motorcycle	95
Any other motor vehicle and any combination of vehicles towed by such motor vehicle	80* (Min. of 15 feet from center lane of traffic).	3,000 RPM	20 inches from end of tailpipe @ 45° angle	95

* Enforce @ 86 dBA

(3) Measurement distance. For the purpose of subsection (m)(2) hereof, the standard measurement height shall be four feet and the standard horizontal measurement between distance from the center line of the traffic lane monitored to the sound level meter shall be a minimum of fifteen feet and at least ten feet from any large reflecting surface. Measurement for the purpose of enforcing subsection (m)(2) hereof may be taken at a horizontal distance from the center line of the traffic lane being monitored from twenty-five feet to 100 feet, and the correction factor applied to the limits set forth in Table 2, below.

TABLE 2

Correction Factors

Measurement distance (feet)	Corrections to limits (dB)
25	+6
28	+5
32	+4
35	+3
40	+2
45	+1
50	0
56	-1
63	-2
70	-3
80	-4
90	-5
100	-6

(n) Airport and Aircraft Operations.

(1) The Director of Public Service and Development shall consult with the airport proprietor to recommend changes in airport operations to minimize any noise disturbance which the airport owner may have authority to control in its capacity as proprietor.

(2) Nothing in this section shall be construed to prohibit, restrict, penalize, enjoin or in any manner regulate the movement of aircraft which are in all respects conducted in accordance with, or pursuant to, applicable Federal laws or regulations.

(Ord. 82-17. Passed 6-28-82.)

557.04 MAXIMUM PERMISSIBLE SOUND LEVELS BY ZONING DESIGNATIONS.

(a) No person shall operate, or cause to be operated or permit on private property any source of sound in such a manner as to create a sound level which exceeds the limits set forth in the zoning area category in Table 3, except as may otherwise be provided in Section 557.03.

TABLE 3

SOUND LEVELS BY ZONING AREAS

Zoning designation of receiving land	Maximum number of decibels permitted from 8:00 a.m. until 9:00 p.m. on receiving land	Maximum number of decibels permitted from 9:00 p.m. until 8:00 a.m.
Residential	60	50
Commercial	65	65

(b) The sound level limits set forth in Table 3 shall be exceeded when any one or more of the following occur:

(1) The noise at any one point in time exceeds any of the established zone limits in Table 3 by a measured sound level of fifteen dBA; or

(2) The noise exceeds any of the established zone limits in Table 3 by a measured sound level of ten dBA for a cumulative total of one minute or more out of any ten minute period; or

(3) The noise exceeds any of the established zone limits in Table 3 by a measured sound level of three dBA continually for a period of five minutes, or a total of five minutes out of any ten minute period.

(c) For the purposes of this section, noise shall be measured at or beyond the property line of the property on which the noise source is located, and shall be made at least ten feet from any large reflecting surfaces.

(d) For any source of sound which emits a pure tone, cyclically varying sound or repetitive impulsive sound, the limits set forth in Table 3 shall be reduced by five dBA.

(e) Any noise which occurs on property which is being used in a legally nonconforming manner, and which noise relates to such use, shall be judged as if the property bore a zoning designation under which the use would be conforming.

(f) If the zoning designation of the property on which the source of the noise is located differs from the zoning designation of the property on which the noise is measured, the maximum permissible noise level of the more restrictive zoning designation shall apply.

(g) Noises such as those of an irregular and intermittent nature shall be restricted as provided herein.

(h) The provisions of this section shall not apply to the following:
(1) Activities covered by Section 557.03(b), (c) and (d);
(2) Refuse collection vehicles operated by the City.
(Ord. 82-17. Passed 6-28-82.)

557.05 INSPECTIONS; STATIONARY MOTOR VEHICLE TEST.

(a) Any City law enforcement officer and/or the Chief of Police, in addition to any other authority vested in him, has the power, upon presentation of proper credentials, to enter and inspect any dwelling, multi-family dwelling, building, structure or premises within the City as may be necessary to enforce the provisions of this chapter, provided permission is obtained from the occupant or, in the case of unoccupied property, from the owner or his agent. If such permission is refused, or is otherwise unobtainable, a search warrant shall be obtained upon the showing of probable cause to believe that a violation of this chapter may exist, before such entry or inspection is made.

(b) At the request of the operator of a passenger vehicle, the officer can administer a stationary motor vehicle noise test. If the officer cannot administer the test at the time of the request, he shall notify the operator when and where the operator may have his vehicle tested. The stationary motor vehicle noise test can provide information as to the extent of defectiveness of the exhaust system or as to whether excessive noise levels were caused by improper operation of the vehicle. (Ord. 82-17. Passed 6-28-82.)

557.06 SPECIAL VARIANCES.

(a) The Police Chief, or his designated representative, shall have the authority, consistent with this section, to grant special variances.

(b) Any person seeking a special variance pursuant to this section shall file an application with the Police Chief, or his designated representative. The application shall contain information which demonstrates that bringing the source of sound or activity for which the special variance is sought into compliance with this chapter would constitute an unreasonable hardship on the applicant, on the community or on other persons. Notice of an application for a special variance shall be given by the Police Chief or his representative to persons who frequent the area of the sound or activity and who may be adversely affected by the granting of the variance. Any individual who claims to be adversely affected by allowance of the special variance may file a statement with the Police Chief or his representative containing any information to support his claim.

(c) In determining whether to grant or deny the application, the Police Chief or his designated representative shall balance the hardship of the applicant, the community and other persons of not granting the special variance against the adverse impact of the health, safety and welfare of persons affected, the adverse impact on property affected and any other adverse impact of granting the special variance. Applicants for special variances and persons contesting special variances may be required to submit any information the Police Chief or his representative may reasonably require. In granting or denying an application, the Police Chief or his representative shall place on public file a copy of the decision and the reasons for denying or granting the special variance.

(d) Special variances shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The special variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any conditions of the special variances shall terminate it and subject the person holding it to those provisions of this chapter regulating the source of sound or activity for which the special variance was granted.

(e) Application for extension of time limits specified in special variances or for modification of other substantial conditions shall be treated like applications for special variances.

(f) The Police Chief or his designated representative may issue guidelines which shall be approved by Council defining the procedures to be followed in applying for a special variance and the criteria to be considered in deciding whether to grant a special variance.

(g) Enforcement of this chapter shall be stayed as to any person filing an application for a special variance pursuant to this section, until such time as the application is acted upon by the Police Chief or his designated representative.

(h) The decision of the Police Chief or his designated representative may be appealed within fourteen days by the person denied the special variance or by any person claiming to be adversely affected by allowance of the special variance. Such appeals shall be made to the Board of Zoning and Building Appeals, and review by the Board shall be de novo.
(Ord. 82-17. Passed 6-28-82.)

557.07 ABATEMENT ORDERS.

(a) Any noise from any source in excess of the limitations established in or pursuant to this chapter shall be deemed and is hereby declared to be a public nuisance, and may be subject to summary abatement procedures. Such abatement may be in addition to the fines and penalties herein provided. The Police Chief is empowered to secure the institution of legal proceedings for the summary abatement by a restraining order or injunction issued by a Court of competent jurisdiction of noise which causes injury, detriment, nuisance or annoyance to the public or endangers the health, comfort, safety or welfare of the public, or causes or has a natural tendency to cause injury or damage to the public or property.

(b) In lieu of issuing a notice of violation as provided for in Section 557.08, any City law enforcement officer may issue an order requiring the immediate abatement of any source of sound alleged to be violation of this chapter.
(Ord. 82-17. Passed 6-28-82.)

557.08 NOTICE OF VIOLATION.

Except where a person is acting in good faith to comply with an abatement order issued pursuant to this chapter, violation of any provision of this chapter shall be cause for a notice of violation to be issued by any City law enforcement officer or the Police Chief.
(Ord. 82-17. Passed 6-28-82.)

557.09 POSTING OF ENFORCEMENT SIGNS.

The Director of Public Service and Development shall cause signs to be erected at all entrances to the City, which shall give notice of the enforcement of this chapter.
(Ord. 82-17. Passed 6-28-82.)

557.10 OTHER REMEDIES.

No provision of this chapter shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person or the public for injury or damage arising from a violation of this chapter or from other law.
(Ord. 82-17. Passed 6-28-82.)

557.11 STOPPING AND TESTING OF MOTOR VEHICLES BY LAW ENFORCEMENT OFFICERS.

The law enforcement officers shall, in addition to any other authority vested in him, have the power to stop and test any motor vehicle or motorcycle operated on a public right of way or public space, reasonably suspected of violating any provision of this chapter, and issue a notice of violation. (Ord. 82-17. Passed 6-28-82.)

557.12 EXCEPTIONS.

The provisions of this chapter shall not apply to the following:

(a) The emission of sound for the purpose of alerting persons to the existence of an emergency or for the performance of emergency work; or

(b) Organized school related programs, activities or events, or parades or other public programs, activities or events authorized by the Mayor or his designated representative.

(Ord. 82-17. Passed 6-28-82.)

557.13 APPLICABILITY.

Nothing in this chapter shall be construed to permit conduct prohibited by any other statute, ordinance or regulation, or to prohibit the enforcement thereof.
(Ord. 82-17. Passed 6-28-82.)

557.14 SEVERABILITY.

If any provision of this chapter is held to be unconstitutional or otherwise invalid by any Court of competent jurisdiction, the remaining provisions of this chapter shall not be invalidated. (Ord. 82-17. Passed 6-28-82.)

557.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a minor misdemeanor; and on each subsequent offense is guilty of a misdemeanor of the fourth degree.
(Ord. 82-17. Passed 6-28-82.)

CHAPTER 561
Smoking in Municipal Buildings

561.01 Definitions.
561.02 Restrictions on smoking in public places.
561.03 Exceptions.
561.04 Prohibition as condition of employment; exceptions.
561.05 Prohibition of smoking at public meetings.
561.06 Signs.
561.07 Enforcement.
561.08 Relation to other laws.
561.09 Violations.
561.99 Penalty.

CROSS REFERENCES
Restrictions in places of assembly - see Ohio R.C. 3791.031

561.01 DEFINITIONS.
As used in this chapter certain terms are defined as follows:
(a) "Smoking materials" means any cigar, cigarette, pipe, weed, plant or other smoking equipment in any form.
(b) "Smoking" means the combustion of tobacco or tobacco products in any form, including cigarette tobacco, pipe tobacco, cigar tobacco and all other types and forms of tobacco products.
(c) "City property" means any enclosed area of any building, structure, vehicle or other enclosed space owned and operated by the City, wheresoever located within the City.
(d) "Sign" means legible, English lettering on a contrasting background to clearly indicate that smoking is not permitted and to provide related information. The international "NO SMOKING" symbol, consisting of a pictorial representation of a burning cigarette enclosed with a red circle with a red bar across it, may be used in, or substituted for, a sign indicating that smoking is prohibited. A sign shall be of sufficient size to be clearly legible to one of normal vision throughout the area it is intended to mark.
(Ord. 87-15. Passed 9-21-87.)

561.02 RESTRICTIONS ON SMOKING IN PUBLIC PLACES.

No person, including any member of the public or employee of the City, shall cause to occur the combustion of a tobacco product in any building, structure, vehicle, office, room or other enclosed area owned by the City.
(Ord. 87-15. Passed 9-21-87.)

561.03 EXCEPTIONS.

The following areas are specifically exempted from the restrictions on smoking in public places:

(a) That portion of any vehicle completely open to the atmosphere, but not including the cab or driver area of the same, and without regard to presence or absence of windows;

(b) The cab or driver area of any vehicle when occupied by not more than one person, where such person causes the combustion of a tobacco product; and

(c) Those areas specifically designated by the Director of Public Service and Development to be smoking areas, not to exceed one room per municipal building.
(Ord. 87-15. Passed 9-21-87.)

561.04 PROHIBITIONS AS CONDITION OF EMPLOYMENT; EXCEPTIONS.

(a) Any person employed by the City on and after the adoption of this chapter shall be required to refrain from smoking as prohibited herein, and such prohibition shall be a condition of further continuous employment with the City.

(b) An employee of the City who has continuously smoked in the workplace for a period of one year or longer prior to the adoption of this chapter shall be permitted to continue such smoking in the workplace, provided, however, that a smoke-abatement device shall be kept in continuous operation at a distance not greater than six feet from the point of smoke exhalation. The cost of such smoke-abatement device shall be borne by the employee required to utilize the same, and shall be of such size and efficiency as to clear, filter, remove and abate the presence of smoke in and about the workplace of such exempted employee, and shall be approved by the Director of Public Service and Development as meeting the requirements of this section.
(Ord. 87-15. Passed 9-21-87.)

561.05 PROHIBITION OF SMOKING AT PUBLIC MEETINGS.

No person, member of the public, invitee, employee or any other person shall cause to occur the combustion of a tobacco product during the continuance of any official meeting, in public or executive session, held pursuant to a directive of, or under the auspices or aegis of, the government of the City, and whether or not such official meeting is held upon property owned by the City or otherwise.
(Ord. 87-15. Passed 9-21-87.)

561.06 SIGNS.

(a) Signs indicating that smoking is not permitted shall be clearly, sufficiently and conspicuously posted in every establishment where smoking is regulated by this chapter in such manner as to give adequate notice to members of the general public.

(b) Signs indicating that smoking is prohibited in elevators and stairwells shall be posted in elevators and stairwell entrances on each floor.
(Ord. 87-15. Passed 9-21-87.)

561.07 ENFORCEMENT.

Enforcement shall be implemented by the Director of Public Service and Development who shall:

(a) Establish a telephone number through which all complaints by citizens relating to violations of this chapter may be directed or referred; and

(b) Require, while an establishment is undergoing otherwise mandated inspections a "self-certification" from the manager or other person having control of such establishments that all requirements of this chapter have been complied with.
(Ord. 87-15. Passed 9-21-87.)

561.08 RELATION TO OTHER LAW.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by law, nor to relieve any proprietor, employer or other responsible party from any liability resulting from exposure to tobacco smoke.
(Ord. 87-15. Passed 9-21-87.)

561.09 VIOLATIONS.

(a) No person who manages or otherwise controls the use of any establishment subject to the restrictions of this chapter shall fail to comply with its provisions.

(b) No person shall smoke in any area restricted by the provisions of this chapter.
(Ord. 87-15. Passed 9-21-87.)

561.99 PENALTY.

(a) Whoever violates any provision of this chapter is guilty of a minor misdemeanor.

(b) Each day on which a violation of any provision occurs is a separate and distinct offense and shall be punishable as such.
(Ord. 87-15. Passed 9-21-87.)

CHAPTER 563
Fair Housing Code

563.01 Purpose.
563.02 Definitions.
563.03 Discrimination in the sale or rental of housing.
563.04 Discrimination in the financing of housing.
563.05 Enforcement.

CROSS REFERENCES
Fair housing - see Ohio R.C. Ch. 4112
Interfering with civil rights - see GEN. OFF. 525.13
Ethnic intimidation- see GEN. OFF. 541.12

563.01 PURPOSE.

It is the intent of the City to assure that all persons regardless of race, gender, creed, national origin, ancestry, handicap or familial status be treated equally in all respects throughout the City. One of the major, though not only, intentions of the City is to provide for equal and fair housing opportunities for all current and prospective residents of the City, thereby increasing the cultural diversity of the City and providing a rich and varied community for its citizens. It is the further intention of the City to assure compliance and aid in the enforcement of all State, Federal and constitutional requirements for the full equality of all races, genders and creed as mandated by law.
(Ord. 02-57. Passed 11-18-02.)

563.02 DEFINITIONS.

The following terms shall have the meanings as set forth herein:

(a) “Dwelling” means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

(b) "Family" includes a single individual.

(c) "Financial institution" means any bank, credit union, insurance company, or savings and loan association or other entity or organization that makes or purchases loans or provides other financial assistance that operates or has a place of business in the City.

(d) “Person” includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts or unincorporated organizations.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminating housing practice" means an act that is unlawful under any State or Federal statute regulation, executive order or directive regarding equal access to housing financing, listing opportunities or any other practices impeding the equal accessibility of housing to all persons regardless of race, sex, national origin, ancestry, handicap or familial status.

(Ord. 02-57. Passed 11-18-02.)

563.03 DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING.

No person shall engage in the following practices regarding any property of whatever kind within the City:

(a) To refuse to sell or rent after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, gender, handicapping condition, age, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, gender, handicapping condition, age, familial status or national origin.

(c) To make, print or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, gender, handicapping condition, age, familial status or national origin, or an intention to make any such preference, limitation or discrimination.

(d) To represent to any person because of race, color, religion, gender, handicapping condition, age, familial status or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, gender, handicapping condition, age, familial status or national origin.

(Ord. 02-57. Passed 11-18-02.)

563.04 DISCRIMINATION IN THE FINANCING OF HOUSING.

No financial institution shall deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or discriminate against him in the fixing of the amount, interest rate, duration or other terms or conditions of such loan or other financial assistance, because of race, color, religion, gender, handicapping condition, age, familial status or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance or of the present or prospective owners, lessees, tenants or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(Ord. 02-57. Passed 11-18-02.)

563.05 ENFORCEMENT.

(a) The discrimination practices prohibited herein not only have a serious adverse impact upon the individual or group subjected to such practices, but also cause a severe and adverse impact on the public welfare of the citizens of the City through denying its citizens the benefits of a diverse community and by projecting an image that the City countenances such illegal practice. The City, through its Law Department, may at the direction of the Mayor or Council take such actions as are necessary to enforce the provisions of this chapter including, but not limited to, filing court actions against violators of this chapter enjoying such illegal practices.

(b) Anyone in violation of this chapter shall be subject to a fine of one hundred dollars ($100.00) per violation in addition to any other penalty provided by law.

(c) The City is empowered to aid, at the request of State, Federal or individual complainants, in the investigation and enforcement of the provisions of this chapter or of any related State or Federal law whether enacted at this time or subsequent to the enactment of this chapter.

(Ord. 02-57. Passed 11-18-02.)

CODIFIED ORDINANCES OF FAIRVIEW PARK

PART SEVEN - BUSINESS REGULATION CODE

Chap. 703. Dance Halls and Public Dances.

Chap. 705. Motels and Hotels.

Chap. 706. Hotel and Motel Tax.

Chap. 707. Apartment Buildings.

Chap. 708. Rental Dwelling License.

Chap. 709. Outdoor Public Shows.

Chap. 713. Solicitors.

Chap. 717. Street Sales.

Chap. 721. Taxicabs.

Chap. 723. Employment of Scavengers.

Chap. 729. Motion Pictures and Films.

Chap. 731. Amusement Devices and Game Rooms.

Chap. 733. Community Antenna Television.

Chap. 734. Cable Regulatory Staff.

Chap. 735. Newspaper Dispensing Devices and Vending Machines.

Chap. 737. Home Sales.

Chap. 741. Lawn Chemical Applicators.

Chap. 742. Registration of Users of Pesticides for Trees, Shrubs, Bushes, Plants. (Repealed)

Chap. 743. Environmental Preservation: Environmentally Acceptable Packaging.

Chap. 745. Paint Removal and Power Assisted Spraying.

Chap. 749. Disposal of Lead-Acid Batteries.

Chap. 751. Massage Establishments.

Chap. 753. Adult Entertainment Businesses.

Chap. 755. Tattoo Operations and Dermagraphic Art Studios.

CODIFIED ORDINANCES OF FAIRVIEW PARK

PART SEVEN - BUSINESS REGULATION CODE

CHAPTER 703
Dance Halls and Public Dances

703.01 Definitions.
703.02 License required.
703.03 Application for license; rejection; appeal.
703.04 Maintenance and operation.
703.05 Annual fee; refund; term.
703.06 Revocation of license.
703.07 Hours of closing.
703.08 Restrictions.
703.09 Temporary permit; fee.
703.10 Duties of Police Chief.
703.11 Exceptions.
703.99 Penalty.

CROSS REFERENCES
Power to regulate - see Ohio R.C. 715.61
Intoxicating liquor in dance hall - see Ohio R.C. 4399.14
Disorderly conduct - see GEN. OFF. 509.03
Unreasonable noise - see GEN. OFF. 509.10
Amplifying devices - see GEN. OFF. 509.11

703.01 DEFINITIONS.

The terms used in this chapter shall have the meanings herein defined unless another meaning is clearly apparent in the language or context.

(a) "Public dance" or "public ball" means any dance or ball to which admission can be had by payment of a fee or by the purchase, possession or presentation of a ticket or token obtained for money or other valuable consideration, or in which a charge is made for caring for clothing or other property, or any other dance to which the public generally may gain admission, with or without the payment of a fee, including restaurant dancing or any other dance or party where dancing is held before or after a program of some other nature, and dancing to which any of the public generally may gain admission with or without the payment of a fee.

(b) "Known" as used in Section 703.08 providing for restrictions, means known to the manager, owner or lessee of a public dance hall, or to the persons conducting a public dance, or to the Police Department.

(c) "Public dance hall" means any academy, room, place, restaurant or night club in which a public dance or public ball is held or any room, place, hall or academy in which classes in dancing are held or instruction in dancing is given for a fee.

(d) "Private dancing" means and includes any dance given at any home or by any permanently organized clubs, societies or corporations, where the dancing is restricted to members of the society, club or corporation admitted by invitation only.

(e) "Home" means and includes only such buildings used exclusively for private dwelling purposes.

(f) "Dancing" does not mean or include exhibitions or performances in which the persons paying for admission do not participate.

(Ord. 70-29. Passed 6-15-70.)

703.02 LICENSE REQUIRED.

No person shall hold any public dance or public ball or hold classes in dancing, or give instructions in dancing for hire in any public dance hall, academy, room, place or restaurant within the limits of the City until such public dance hall, academy, room, place or restaurant has first been duly licensed for such purpose in the manner herein provided. No person, firm or corporation shall permit any room or building owned or controlled by him, to be used for the purpose of a public dance hall unless the same has been licensed as herein provided.
(Ord. 70-29. Passed 6-15-70.)

703.03 APPLICATION FOR LICENSE; REJECTION; APPEAL.

(a) Every person, society, club, firm or corporation desiring a license to operate a public dance hall shall make application to the Mayor or a designee thereof. Each application shall be in the form prescribed by the Mayor, and shall contain the name, residence, occupation and age of the applicants if individuals, and if a firm or partnership, the name or names, residences and occupations of the manager and each member of the firm or partnership, and if a corporation, the names of its officers and manager. The application shall also contain the location of such public dance hall, academy, room, place or restaurant, the street and number of all entrances, and amount of floor space to be used for dancing. Such application shall be filed at least ten days prior to the time of granting such license. The Police Chief, Fire Chief and the Building Commissioner for such inspection and investigation as they may deem necessary, for the purpose of determining whether such premises may safely be used for the purposes of public assembly and dancing, consider the presence or absence of fire hazards, adequate sanitary facilities and traffic control and regulations, and shall approve or disapprove such application. If the application is approved, the Mayor or a designee thereof shall issue a license on the payment of the proper fee hereinafter provided; but no such application shall be approved if the dance hall, as defined in Section 703.01, does not comply with all Municipal, County and State regulations governing sanitary conditions, fire protection, parking requirements and health regulations.

(b) The application shall be rejected if the reports submitted or facts found show that any of the persons named in the application for a public dance hall for which a license is sought is not of good moral character; or that any of such persons has previously been connected in any substantial capacity with a public dance hall, the license of which has been revoked within the State of Ohio; or that any provision of law with reference to public dance halls has been violated; or that the public dance hall sought to be licensed does not comply with all Municipal, County and State regulations governing sanitation, fire protection, parking requirements and health regulations; or that it is not properly ventilated and supplied with separate and convenient toilet facilities for each sex in the same building; or that it is not a safe and proper place for the purpose for which it is contemplated to be used.

(c) If the application is rejected, the applicant or applicants for the license shall be forthwith notified in writing of such rejection and the reasons therefor and shall have the right of appeal to a board composed of the President of Council, the Law Director and the Finance Director, which board after full hearing, shall have power to affirm, modify or reverse the finding of the Mayor or a designee thereof and the decision of such board shall be final. In case of appeal to such board, the applicant shall, within ten days after notice of such rejection, perfect his appeal by leaving notice in writing of his intention to appeal at the office of the Mayor. Such appeal board shall thereafter set a time and place for such hearing, which shall not be more than ten days after the date of filing notice of such appeal and which shall be public. Appellants may be represented by counsel.

(d) No applicant to whom a license has been refused shall make further application until a period of at least six months has elapsed since the last previous rejection, unless he can show that the reason for such rejection no longer exists. No license shall be granted to any person under twenty-one years of age, or to any person who is not a citizen of the United States and the State of Ohio, or renewed without a thorough reinspection of the premises for which the same is applied for. (Ord. 70-29. Passed 6-15-70.)

703.04 MAINTENANCE AND OPERATION.

All public dance halls shall be kept at all times in a clean, healthful and sanitary condition and all stairways and other passages shall be kept clear and well lighted. After a public dance hall license has been granted, it shall be the duty of the Building Commissioner to see that sufficient toilet conveniences, sanitary drinking facilities and adequate ventilating facilities are maintained in such dance halls. It shall be the duty of the Fire Department to see that all fire hazards are immediately removed from such public dance halls. The Police Chief may require the owner or manager of any public dance hall to employ a matron who shall be in attendance at all dances to supervise the conduct and deportment of patrons. No person shall be employed as matron unless first approved by the Police Chief.
(Ord. 70-29. Passed 6-15-70.)

703.05 ANNUAL FEE; REFUND; TERM.

Any person, society, club, firm or corporation to which a license is granted, shall upon the granting of such license, pay an annual fee therefor as follows:

For floor space of less than 5,000 square feet, twenty-five dollars ($25.00); for floor space exceeding 5,000 square feet, fifty dollars ($50.00). However, upon the voluntary surrender of a dance hall license within 120 days after the issuance of the license, one-half of such fee shall be returned to the owner of the license, payable out of the fund into which such license fee has been paid. All moneys received by way of license fees and permits shall be paid into the general fund of the City. All licenses granted under the provisions of this chapter shall expire on October 1 of each year. A license issued in accordance with the provisions of this chapter shall be displayed at all times in a conspicuous place in the public dance hall for which it is issued. No transfer of any license shall be permitted.
(Ord. 70-29. Passed 6-15-70.)

703.06 REVOCATION OF LICENSE.

The Mayor or a designee thereof may, at any time, suspend and after giving written notice to the licensee and affording him an opportunity to be heard, may revoke, any license granted under the provisions of this chapter for disorderly or immoral conduct on the premises, or upon proof that the public dance hall or public dance given under the auspices of the licensee, was frequented by disorderly or immoral persons; or for the violation of any of the rules, regulations or ordinances governing and applying to public dance halls and dances, or any ordinance regulating, controlling or in any way relating to health, sanitation, fire protection or the public peace, or for the violation of any provision of this chapter. Whenever any license is so revoked, no refund of any portion of the fee paid shall be made, and at least six months shall elapse from the time of such revocation before another license shall be given to conduct a public dance hall or public dance in the same premises. A public record of all such revocations shall be made, containing the date and reasons for such revocation and the name of the owners and managers.
(Ord. 70-29. Passed 6-15-70.)

703.07 HOURS OF CLOSING.

All public dances and all public dance halls shall be closed on or before midnight. However, upon the application of a bona fide responsible person, club, organization, corporation or society and after investigation, the Mayor or a designee thereof may grant such person, club, organization, corporation or society a permit to continue the dance until such time as in his opinion, is reasonable.
(Ord. 70-29. Passed 6-15-70.)

703.08 RESTRICTIONS.

No person, firm, club, society or corporation shall:

(a) Permit any known prostitute, male or female procurer or vagrant to be present at any public dance or public dance hall;

(b) Permit on the public dance hall premises any person having in his possession or being under the influence of, selling or offering for sale, giving away or drinking any intoxicating liquors or drugs;

(c) Permit idlers, loiterers or other hangers-on to be on or about the dance hall premises;

(d) Permit smoking except in rooms reserved for smoking or in a restaurant or dining room when seated at a table;

(e) Permit gambling in any form on the premises;
(f) Permit men to enter the ladies' room or parlor;
(g) Permit persons to indulge in dancing that is vulgar, suggestive or immoral;
(h) Permit "moonlight" dances unless there is sufficient light in the dance hall so that the patrons can be easily seen;
(i) Permit or employ any instructor under the age of twenty-one years to give instructions in dancing to persons of the opposite sex;
(j) Discriminate between sexes by offering free admission to either sex as inducement to stimulate attendance;
(k) Permit endurance dancing contests commonly known as marathon dances;
(l) Permit dancing in restaurants with persons seated at different tables;
(m) Permit any cabaret or other similar entertainment in a restaurant wherein any entertainers perform their acts by mingling with the audience or traveling about among them. (Ord. 70-29. Passed 6-15-70.)

703.09 TEMPORARY PERMIT; FEE.

No person, firm, society, club or corporation shall hold a public dance or public ball in any licensed dance hall within the limits of the City without having first obtained a permit therefor from the Mayor or a designee thereof. Application for such permit must be made at least two days before the dance authorized thereunder is to be held. The fee for such permit is two dollars ($2.00).

No permit shall be required from the owner of a duly licensed hall, when he personally conducts such dances; but application for such permit shall be made. The person desiring such a permit shall use the form of application which may be obtained from the Mayor. A permit shall not be required where the applicant is a school, fraternal, civic, veteran or church organization. However, an application for such permit shall be made and the requirements set forth in the application shall be adhered to.

703.10 DUTIES OF POLICE CHIEF.

The Police Chief or any officer detailed by him, shall be permitted to have access to all public dance halls at all times. He shall investigate complaints and shall inspect at intervals the dance halls within the City and shall report all violations in writing. The Police Chief shall from time to time formulate rules and regulations not inconsistent with this chapter or any other ordinance governing the conduct of patrons of public dances, stating what dances are permitted and what dances are forbidden, together with correct positions to be assumed by dancers, a copy of which rules and regulations shall be printed in large type and posted at a conspicuous place in any dance hall used for public dances.

Members of the Police Department under the supervision of the Chief of Police shall have access at all times to the public dance halls and public dances. Officers and patrolmen of such Department may be detailed to investigate all complaints and supervise such public dances, and when so detailed shall visit such halls and dances and report any and all violations. Such reports shall be turned over to their superior officers who shall forthwith submit them to the Chief.

The Chief of Police shall have power and it shall be his duty to close or cause to be vacated any academy, room, dance hall, place or restaurant where any public dance is held or being given, whenever any rule or regulation or any provision of any ordinance regulating public dances or public dance halls is being violated.
(Ord. 70-29. Passed 6-15-70.)

703.11 EXCEPTIONS.

In addition to the exceptions set forth in Sections 703.01 and 703.09, a license shall not be required by any church, public or private school building, fraternal or veteran building or any building owned by the City, but the temporary permits required under Section 703.09 shall be mandatory under the provisions of Section 703.09.
(Ord. 70-29. Passed 6-15-70.)

703.99 PENALTY.

Whoever violates any provision of this chapter shall be fined not more than five hundred dollars ($500.00) or imprisoned for not more than sixty days, or both.
(Ord. 70-29. Passed 6-15-70.)

CHAPTER 705
Motels and Hotels

705.01 Definition.
705.02 Registration list; contents; penalty.
705.03 Access to premises.
705.99 Penalty.

CROSS REFERENCES
Guests to register - see Ohio R.C. 3503.31
Hotels - see Ohio R.C. Ch. 3731
Innkeepers - see Ohio R.C. Ch. 4721

705.01 DEFINITION.

For the purposes of this chapter, "motel" and "hotel" shall have the same definition as set forth in Section 1105.06(j) and (i) respectively of the Codified Ordinances.
(Ord. 93-76. Passed 10-18-93.)

705.02 REGISTRATION LIST; CONTENTS; PENALTY.

(a) The Chief of Police or his designee may require that the manager or person in charge of any motel or hotel shall furnish a list of the persons who have registered at such motel or hotel. The time of arrival of an occupant of each unit shall be noted upon the record to be kept pursuant hereto. In no event shall there be a letting to, or occupancy by, any other person of any such unit within the twenty-four hour period next following the time so noted. No person residing within the Municipality for a period of thirty days, or over, is to be deemed a transient guest under the provisions of this chapter and Chapter 1351 of the Codified Ordinances, nor shall the owner, operator or person in control of any motel or hotel permit any person(s) to occupy any unit therein for a period in excess of thirty days unless such motel or hotel is so licensed by the State of Ohio pursuant to Ohio R.C. Chapter 3731 or any other licensing agency; and is constructed as to be in full compliance with the City, or any other applicable Building Code, as such Code(s) apply to motel or hotel units. (Ord. 04-19. Passed 4-19-04.)

(b) No person shall register for accommodations at any hotel or motel under a false, fictitious, or assumed name, without first making his or her true name known to the person in charge thereof. (Ord. 97-2. Passed 4-21-97.)

(c) Any owner, operator or person in control of any motel or hotel who allows a violation of or fails to comply with any of the provisions of this section is guilty of a misdemeanor of the fourth degree and shall be fined not more than two hundred fifty dollars ($250.00) or imprisoned not more than thirty days, or both, for each such offense. A separate offense shall be deemed committed each day during or on which a violation or non-compliance occurs or continues. (Ord. 04-19. Passed 4-19-04.)

705.03 ACCESS TO PREMISES.

The Chief of Police, the Chief of Fire, the Fire Prevention Officer, the Director of Public Service and Development, the Building Commissioner and their respective designees shall, within the scope of their respective enforcement duty and authority, have access to each motel and hotel premises and to any unit thereof at all reasonable times to ascertain that the ordinances of the City and the laws of the State of Ohio are complied with.
(Ord. 93-76. Passed 10-18-93.)

705.99 PENALTY.

Whoever violates any provision of this chapter for which no other penalty is provided is guilty of a misdemeanor of the first degree. Each day's continued violation shall constitute a separate offense.
(Ord. 93-76. Passed 10-18-93.)

CHAPTER 706
Hotel and Motel Tax

706.01 Definitions.
706.02 Imposition of tax; exemption.
706.03 Transient guest to pay tax; proof of exemption.
706.04 Refund of illegal or erroneous payments.
706.05 Records; inspection; destruction.
706.06 Returns required; procedure; forfeit for failure to file.
706.07 Liability of vendor; assessment; petition for reassessment; penalties.
706.08 Four year limitation for assessment; exceptions.
706.09 Tax to be paid by transient guest; false evidence of tax exempt status prohibited.
706.10 Vendor to collect tax; rebate prohibited.
706.11 Return must be filed; procedure in a failure to file.
706.12 Personal liability of corporate officers or employees.
706.13 Intent.
706.14 Severability.

CROSS REFERENCES
Hotels and motels generally - see BUS. REG. Ch. 705

706.01 DEFINITIONS.
As used in this chapter:
(a) "Hotel and Motel and Motor Inn" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodations of such guests, whether such rooms are in one or several structures.
(b) "Transient Guest" means natural persons who physically occupy a room or rooms for sleeping accommodations for less than thirty days.
(c) "Vendor" means the person who is the owner or operator of the hotel and who furnishes the lodging. (Ord. 98-48. Passed 10-5-98.)

706.02 IMPOSITION OF TAX; EXEMPTION.
(a) For the purpose of providing revenue with which to meet the needs of the City for use exclusively by the Fairview Park Police Department only an excise tax is hereby levied when lodging in a hotel, motel, or motor inn is or is to be furnished to transient guests. Such excise tax to become effective July 1, 1999.

(b) The tax is three percent (3%) of the amount to be paid by, or on behalf of, the transient guest for the lodging. The tax applies and is collectable at the time of the lodging is furnished, regardless of the time when the amount paid for lodging is paid. The tax does not apply to lodging furnished to the State or any of its political subdivisions.

(c) For the proper administration of this chapter and to prevent evasion of the tax, it is presumed that all lodging furnished by the hotels, motels, and motor inns in this City is to be transient guests and is subject to the tax until the contrary is established.
(Ord. 98-76. Passed 12-7-98.)

706.03 TRANSIENT GUEST TO PAY TAX; PROOF OF EXEMPTION.

(a) The tax imposed by this chapter shall be paid by the transient guest to the vendor, and each vendor shall collect from the transient guest the full and exact amount of the tax payable on each taxable lodging.

(b) If the transaction is claimed to be exempt, the transient guest must furnish to the vendor, and the vendor must obtain from the transient guest, a certificate specifying the reason that the sale is not legally subject to the tax. If no certification is obtained, it shall be presumed that the tax applies. (Ord. 98-48. Passed 10-5-98.)

706.04 REFUND OF ILLEGAL OR ERRONEOUS PAYMENTS.

The Director of Finance of Fairview Park shall refund to vendors the amount of taxes paid illegally or erroneously or paid on any illegal or erroneous assessment where the vendor has not reimbursed himself from the transient guest. When such illegal or erroneous payment or assessment was not paid to a vendor but was paid by the transient guest directly to the Director of Finance of Fairview Park or his agent, he shall refund the tax to the transient guest. Applications shall be filed with the Director of Finance, on the form prescribed by him, within ninety days from the date it was ascertained that the assessment or payment was illegal or erroneous. However, in any event, an application for refund must be filed with the Director of Finance within four years from the date of the illegal or erroneous payment of the tax. On filing of the application, the Director of Finance shall determine the amount due and certify the amount. The Director of Finance shall draw a warrant for such certified amount to the person claiming such refund. The Director of Finance shall make such payments from a tax refund as established by ordinance. (Ord. 98-48. Passed 10-5-98.)

706.05 RECORDS; INSPECTION; DESTRUCTION.

Each vendor shall keep complete and accurate records of lodgings furnished, together with a record of the tax collected thereon, which shall be the amount due under this chapter and shall keep all invoices, and such other pertinent documents. If the vendor furnishes lodging not subject to the tax, the vendor's records shall show the identity of the transient guest, if the sale was exempted by reason of such identity, or the nature of the transaction if exempted for any other reason. Such records and other documents shall be opened during business hours to the inspection of the Director of Finance of Fairview Park and shall be preserved for a period of four years, unless the Director of Finance, in writing, consents to their destruction within that period of time, or by orders requires that they be kept longer. (Ord. 98-48. Passed 10-5-98.)

706.06 RETURNS REQUIRED; PROCEDURE; FORFEIT FOR FAILURE TO FILE.

(a) Each vendor shall, on or before the twentieth day of each month, make and file an excise tax return of the preceding month, on forms prescribed by the Director of Finance, showing the receipts from furnishing lodging, the amount of tax due from the vendor to the City for the period covered by the return and such other information as the Director of Finance believes necessary for the proper administration of this chapter. The Director of Finance may extend the time for making and filing returns. Returns shall be filed by mailing them to the Director of Finance, together with payment of the amount of tax shown to be due thereon.

(b) The Director of Finance may authorize vendors whose tax liability is not such as to merit monthly returns, as determined by the Director of Finance upon the basis of administrative costs to the City, to make and file returns at less frequent intervals. Such authorization shall be in writing and shall indicate the intervals at which returns are to be filed.

(c) The Director of Finance shall stamp or otherwise mark on each return the date it is received by him and shall also show thereon by stamp or otherwise the amount of payment received with the return. Any vendor who fails to file a return under this chapter shall, for each day he so fails, forfeit and pay into the City treasury the sum of one dollar ($1.00).

(d) The Director of Finance, if he deems it necessary in order to insure the payment of the tax imposed by this chapter, may require returns and payments be made for other than monthly periods. The returns shall be signed by the vendor or his authorized agent.
(Ord. 98-48. Passed 10-5-98.)

706.07 LIABILITY OF VENDOR; ASSESSMENT; PETITION FOR REASSESSMENT; PENALTIES.

(a) If any vendor collects the tax imposed by or pursuant to this chapter and fails to remit the tax to the City as prescribed, he shall be personally liable for any amount collected which he failed to remit. The Director of Finance may make an assessment against the vendor based upon any information in the Director of Finance's possession.

(b) If any vendor fails to collect the tax or any transient guest fails to pay the tax imposed by or pursuant to this chapter on any transaction subject to the tax, such vendor shall be personally liable for the amount of tax applicable to the transaction. The Director of Finance may make an assessment against the vendor, based upon any information in his possession.

(c) An assessment against a vendor in cases where the tax imposed by or pursuant to this chapter has not been collected or paid, shall not discharge the transient guest's liability to reimburse the vendor for the tax applicable to such transaction.

(d) In each case the Director of Finance shall give to the vendor an assessed written notice of the assessment. The notice may be served upon the vendor assessed personally or by registered or certified mail.

(e) The Director of Finance may make an assessment against any vendor who fails to file a return required by this chapter or fails to remit the proper amount of tax in accordance with this chapter. When information in the possession of the Director of Finance indicates that the amount required to be collected is, or should be, greater than the amount indicated remitted by the vendor, the Director of Finance may upon the basis of test checks of a vendor's business for a representative period which are hereby authorized, determine the ratio which the tax requires to be collected under this chapter bears to the hotel's lodgings which determination shall be the basis of an assessment as herein provided in this chapter. Notice of such assessment shall be made in the manner prescribed in this chapter.

(f) Unless the vendor, to whom the notice of assessment is directed, files within thirty days after service thereof, either personally or by registered or certified mail a petition in writing, verified under oath by the vendor, transient guest or his authorized agent having knowledge of the facts, setting forth with particularity the items of assessment objective to, together with the reasons for objections, the assessment shall become conclusive and the amount thereof shall be due and payable, from the vendor so assessed to the Director of Finance of the City of Fairview Park of Fairview Park, Ohio. When a petition for reassessment is filed, the Director of Finance shall assign a time and place for the hearing of the petition and shall notify the petitioner thereof by registered or certified mail, but the Director of Finance may continue the hearings from time to time if necessary.

(g) A penalty of five percent (5%) per month to a maximum of fifty percent (50%) shall be added to the amount of every assessment made under this chapter. The Director of Finance may adopt and promulgate rules and regulations providing for the remission of penalties added to assessments made under this chapter.

(h) When any vendor files a petition for reassessment as provided in this chapter, the assessment made by the Director of Finance together with penalties thereon, shall become due and payable within three days after notice of the finding made at the hearing has been served, either personally or by registered or certified mail upon the party assessed.
(Ord. 98-48. Passed 10-5-98.)

706.08 FOUR YEAR LIMITATION FOR ASSESSMENT; EXCEPTIONS.

No assessment shall be made or issued against a vendor for any tax imposed by or pursuant to this chapter more than four years after the return date for the period in which the lodging was furnished or more than four years after the return for such period is filed, whichever is later. This division does not bar an assessment:

(a) When the Director of Finance has substantial evidence of amounts of taxes collected by a vendor from transient guest's lodging which were not returned to the City.

(b) When an assessed vendor failed to file a return as required.
(Ord. 98-48. Passed 10-5-98.)

706.09 TAX TO BE PAID BY TRANSIENT GUEST; FALSE EVIDENCE OF TAX EXEMPT STATUS PROHIBITED.

No transient guest shall refuse to pay the full and exact tax as required by this chapter; no transient guest shall present false evidence to the vendor indicating that the lodging as furnished is not subject to the tax. (Ord. 98-48. Passed 10-5-98.)

706.10 VENDOR TO COLLECT TAX; REBATE PROHIBITED.

No vendor shall fail to collect the full and exact tax as required by this chapter. No vendor shall refund, remit or rebate to a transient guest, either directly or indirectly, any of the tax levied pursuant to this chapter, or make in any form of advertising, verbal or otherwise any statements which might imply that he is absorbing the tax, or paying the tax for the transient guest by an adjustment of prices, or furnishing lodging at a price including the tax, or rebating the tax in any other manner. (Ord. 98-48. Passed 10-5-98.)

706.11 RETURN MUST BE FILED; PROCEDURE IN A FAILURE TO FILE.

(a) No person, including any officer of a corporation or employee of a corporation having control or supervision of or charged with the responsibility of filing returns, shall fail to file any return or report required to be filed by this chapter, or file or cause to be filed any incomplete, false or fraudulent return, report or statement, or aid or abet another in the filing of any false or fraudulent return, report or statement.

(b) If any vendor required to file monthly returns under this chapter fails, in two consecutive months or in three or more months within a twelve-month period, to file such returns when due or to pay the tax thereon, or if any vendor authorized by the Director of Finance to file returns at less frequent intervals, fails on two occasions within a twenty-four month period, to file such returns when due or to pay the tax due thereon, the Director of Finance may require such vendor to furnish security in the amount equal to average tax liability of the vendor for a period of one year, as determined by the Director of Finance from a review of return or other information pertaining to such vendor which amount shall in no event be less than one hundred dollars ($100.00). The security may be in a form of an advance tax payment to be applied to pay the tax due on subsequent returns, or a corporate surety bond satisfactory to the Director of Finance, conditioned upon payment of the tax due with the returns from the vendor. The surety must be filed within ten days following the vendor's receipt of the notice from the Director of Finance of its requirements.

(c) A corporate surety bond filed under this section shall be returned to the vendor if, for a period of twelve consecutive months following the date the bond was filed, the vendor has filed all returns and remitted payment therewith within the time prescribed in this chapter.
(Ord. 98-48. Passed 10-5-98.)

706.12 PERSONAL LIABILITY OF CORPORATE OFFICERS OR EMPLOYEES.

If any vendor corporation required to file returns and to remit tax due to the City under the provisions of this chapter fails for any reason to make such filing or payment, any of its officers of its employees having control or supervision of or charged with the responsibility of filing returns and making payments shall be personally liable for such failure. The dissolution of a corporation shall not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or remit tax due. The sum due for such liability may be collected by assessment in the manner provided in this chapter.
(Ord. 98-48. Passed 10-5-98.)

706.13 INTENT.

It is the intent of this chapter to levy the excise tax of three percent (3%) on transactions by which lodging by a hotel, motel or motor inn is or is to be furnished to transient guests as referred to and authorized by Ohio R.C. 5739.02(c). Accordingly, this chapter shall be construed to effectuate that purpose and so as to be consistent with any requirement of law compliance with which is a prerequisite to the validity of the tax intended to be levied hereby.
(Ord. 98-48. Passed 10-5-98.)

706.14 SEVERABILITY.

If any sentence, clause, section or part of this chapter or any tax imposed as specified herein is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof have not been included herein. (Ord. 98-48. Passed 10-5-98.)

CHAPTER 707
Apartment Buildings

707.01 Definitions.
707.02 License required; fee.
707.03 Application for license.
707.04 Inspections.
707.05 Right of entry.
707.06 Cancellation of license.
707.07 Responsibility for compliance.
707.99 Penalty.

CROSS REFERENCES
Zoning requirements - see P. & Z. Ch. 1121, 1133
Elevator fire regulations - see FIRE PREV. 1501.02 (28.17)

707.01 DEFINITIONS.

(a) For the purpose of this chapter, "apartment building" means any structure containing more than three dwelling units, used wholly for the purpose of leasing or renting rooms or suites to more or less permanent tenants, and being under the common ownership or management of an individual(s), corporation, Limited Liability Companies, Limited Partnerships or Partnerships.

(b) Further "apartment buildings" as herein defined shall include dwelling units individually rented or leased in structures without common entrances, exits, hallways, lobbies or facilities, where located within a complex or cluster arrangement and under the common ownership or management of an individual(s), corporation, Limited Liability Companies, Limited Partnerships or Partnerships.
(Ord. 03-36. Passed 10-6-03.)

707.02 LICENSE REQUIRED; FEE.

(a) No person shall let, rent or lease for occupancy, either as owner, lessor, agent or attorney, any apartment building units or suites within the City without first having obtained a license from the office of the Building Commissioner. The license shall be renewable January 1 of each year during the period of occupancy.

(b) The fee for such license shall be one hundred fifty dollars ($150.00) per apartment complex plus an additional eight dollars ($8.00) per dwelling unit per building.
(Ord. 10-39. Passed 11-15-10.)

707.03 APPLICATION FOR LICENSE.

Applications for license to let, rent or lease apartments shall be obtained from the Building Commissioner. Such application shall be filed during the month of January of each year commencing with 1990. The fees shall be payable at the time of such application. Such license shall expire December 31 of each year. During this application for license, the owner shall be notified in writing of his duty to post a summarized explanation of the duties and rights of tenants under Ohio R.C. Chapter 5321 approved by the Building Commissioner in an enclosed covering in a conspicuous location above the mailboxes, or other location approved by the Building Commissioner, in each structure of the apartment, every day of the year, so that each tenant shall be notified of his rights and duties under the law.
(Ord. 03-36. Passed 10-6-03.)

707.04 INSPECTIONS.

(a) The Building Commissioner or his representative, prior to the issuance of a license to rent apartment building units or any renewal thereof, shall make an inspection of the premises to ascertain if there are any violations of these Codified Ordinances or State law, permission to enter shall be provided by the occupant or, in the case of unoccupied property, from the owner or his agent. A license shall not be issued or renewed until any violations found on the premises have been corrected. At the time the license is issued, the owner shall sign an agreement stating that he hereby certifies that he shall continue to post and maintain a summarized explanation of the duties and rights of tenants under Ohio Revised Code Chapter 5321 approved by the Building Commissioner in an enclosed covering in a conspicuous location above the mailboxes, or other location approved by the Building Commissioner, in each structure of the apartment, every day of the year, so that each tenant shall be notified of his duties and rights under the law.
(Ord. 10-39. Passed 11-15-10.)

(b) The Building Commissioner or his representative is hereby authorized to make or cause to be made inspections to determine the condition of all common areas, inside and out, including garages, and exteriors of building and of the multi-family dwelling, multi-family dwelling units, occupiable structures and premises located within the City in order that he may perform his duty of safeguarding the health and safety of the occupants of the dwelling units and occupiable structures and of the general public and to determine whether they conform to the provisions of this Code. Such inspections may also be made whenever the Building Commissioner has reasonable cause to believe that a violation of this Building Code exists therein or thereon.
(Ord. 03-36. Passed 10-6-03.)

707.05 RIGHT OF ENTRY.

(a) For the purpose of making such inspections, the Building Commissioner, upon presentation of proper credentials, is authorized to enter, examine and survey at all reasonable times all multi-family dwellings, multi-family dwelling units, rooming units, occupiable structures, structures and premises provided for in this Code. The owner and occupant of every such multi-family dwelling, multi-family dwelling unit, rooming unit, occupiable structures, structures and premises and the person in charge thereof shall give such official free access to such multi-family dwelling, multi-family dwelling unit, rooming unit, occupiable structure, structures and premises at all reasonable times for the purpose of such inspection, examination and survey.
(Ord. 10-39. Passed 11-15-10.)

(b) Every occupant of a multi-family dwelling, multi-family dwelling unit, or occupiable structure shall give the owner thereof or his agents and employees access to any part of such multi-family dwelling, multi-family dwelling unit, occupiable structure or their premises at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this Code.

(c) Except in emergency situations, no penalty under the penalty provisions of this Code shall apply against any owner who refuses the right of entry hereunder until a search warrant is obtained.
(Ord. 03-36. Passed 10-6-03.)

707.06 CANCELLATION OF LICENSE.

(a) The Building Commissioner is authorized to revoke the license of any property to which they are denied access to make an inspection.

(b) The Building Commissioner may cancel any license issued hereunder for any apartment when a violation of a State law or a City ordinance has been found to exist on the premises in excess of sixty (60) days after notice has been sent to the owner of the apartment. Notification, for the purpose of this section, shall be by certified or registered mail to the owner at the address shown on the County tax duplicate records.
(Ord. 10-39. Passed 11-15-10.)

707.07 RESPONSIBILITY FOR COMPLIANCE.

The owner as defined in this Code shall be responsible for compliance with all of the provisions of this Code except where the responsibility therefor is specifically placed elsewhere.
(Ord. 03-36. Passed 10-6-03.)

707.99 PENALTY.

Whoever violates any provision of this chapter shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six (6) months, or both. Each day's continued violation shall constitute a separate offense.
(Ord. 03-36. Passed 10-6-03.)

CHAPTER 708
Rental Dwelling License

708.01 Definitions.
708.02 License required; fee.
708.03 Application for license.
708.04 Change in ownership.
708.05 Inspections.
708.06 Right of entry.
708.07 Cancellation or revocation of license.
708.99 Penalties.

708.01 DEFINITIONS.

For the purpose of this chapter:

(a) "Rental Dwelling Unit" means any single-family home or one (1) independent living quarter, that is non-owner occupied, which provides for living, sleeping, cooking, eating and sanitation within any condominium, townhouse, duplex or three family housing located in the City of Fairview Park.

(b) "Building Commissioner" means the duly appointed Building Official of the City of Fairview Park or any licensed or authorized building inspector.

(c) "Rental Dwelling Unit License" means the certificate issued by the Building Commissioner which authorizes the operation of a rental dwelling.

(d) "License Fee" means a nonrefundable yearly rental license fee paid to the City for a license to operate a Rental Dwelling Unit.

(Ord. 08-57. Passed 11-3-08.)

708.02 LICENSE REQUIRED; FEE.

(a) No person shall let, rent or lease for occupancy, either as owner, lessor, agent or attorney, any rental dwelling unit within the City of Fairview Park without first having obtained a license from the Office of the Building Commissioner. The License shall be renewable by July 1st of each year for the following year and for each year during the period of occupancy. Any license issued shall be non-transferable.

(b) The fee for a rental dwelling license shall be one hundred dollars ($100.00) per year per rental dwelling unit. Beginning immediately upon adoption of this ordinance, rental dwelling units will be required to apply for a Rental Dwelling Unit License at a fee of fifty dollars ($50.00) to cover the period between implementation of this ordinance and July 1, 2009.

(c) Should payment not be made within thirty (30) days of its due date, a late fee of fifty dollars ($50.00) shall be imposed upon the licensee.

(d) Should the rental dwelling unit require a reinspection to demonstrate compliance with all laws and ordinances or correction of any citation(s) issued by the Building Commissioner, the reinspection fee shall be twenty-five dollars ($25.00) for each reinspection, said fees to be paid prior to the issuance of a license under this chapter.
(Ord. 08-57. Passed 11-3-08.)

708.03 APPLICATION FOR LICENSE.
Applications for license for rental dwelling units shall be obtained from the Office of the Building Commissioner. The application shall be filed by June 15 of each year for the following year. The fee due shall be submitted with the Application for License. Any Rental Dwelling Units added in a building must be licensed within thirty (30) days of the rental of the added rental dwelling unit. (Ord. 08-57. Passed 11-3-08.)

708.04 CHANGE IN OWNERSHIP.
In the event there is a change in the ownership of the property as shown on the license, the Rental Dwelling License shall become null and void thirty days after the recorded date of such change of ownership. A new Rental Dwelling Unit License must be obtained by the new owner within thirty days after the change in ownership has been recorded.
(Ord. 08-57. Passed 11-3-08.)

708.05 INSPECTIONS.
(a) Each rental dwelling unit shall be subject to inspection by the Office of the Building Commissioner prior to the issuance of the license. Such inspection shall be made of the rental dwelling unit to ascertain whether there are any violations of the Codified Ordinances of the City of Fairview Park, or any other applicable law. No license shall be issued or renewed until any violations found on the rental dwelling unit property are corrected.

(b) The Building Commissioner is hereby authorized to make or cause to be made inspection to determine the condition of the rental dwelling unit so that the health and safety of the occupants and the general public may be safeguarded. Inspections may be conducted one time per license year or whenever the Building Commissioner has reasonable cause to believe a violation of the laws or ordinances of the City exist.
(Ord. 08-57. Passed 11-3-08.)

708.06 RIGHT OF ENTRY.
For the purpose of making inspections, the Building Commissioner, upon presentation of proper identification, may enter and inspect at all reasonable times the rental dwelling unit. The owner or his agent and/or the occupant of the rental dwelling unit shall give free access to the rental dwelling unit for purposes of inspection.
(Ord. 08-57. Passed 11-3-08.)

708.07 CANCELLATION OR REVOCATION OF LICENSE.

A license issued pursuant to this chapter may be revoked by the Building Commissioner for any of the following reasons:

(a) Failure to timely renew the license as required by the Building Commissioner.

(b) Any false statements or representations made by the licensee orally or in writing in connection to the application and issuance of the license.

(c) The building for which the Rental Dwelling Unit License(s) was issued has added rental dwelling units that were not listed on any application or otherwise licensed according to this chapter.

(d) Whenever, in the opinion of the Building Commissioner, the condition of a Rental Dwelling Unit, or part thereof, constitutes an immediate hazard to human life or health. The Building Commissioner shall declare an emergency and is hereby authorized to order and require the occupants of the Rental Dwelling Unit to vacate the unit and/or order the immediate repair of the unit, or part thereof, in addition to revoking the license.

(Ord. 08-57. Passed 11-3-08.)

708.99 PENALTIES.

(a) Whoever violates this chapter shall be fined not more than one thousand dollars ($1,000.00) or imprisoned not more than six (6) months. Each day's continued violation shall constitute a separate offense.

(b) The imposition of any penalty as provided for in this chapter shall not preclude the Director of Law from instituting an appropriate action of proceeding in a court of proper jurisdiction to prevent any unlawful repair or maintenance, to restrain, correct or abate a violation, to prevent occupancy of a rental dwelling unit or to require compliance with the provisions of this chapter or other applicable laws, ordinances, rules, regulations or orders or determinations of the Building Commissioner. (Ord. 08-57. Passed 11-3-08.)

CHAPTER 709
Outdoor Public Shows

709.01 License required; fee.
709.02 License application; deposit for cleaning premises.
709.03 Noise; daily clean-up.
709.99 Penalty.

CROSS REFERENCES
Power to regulate - see Ohio R.C. 715.48, 715.63, 3765.02
Admissions tax - see ADM. Ch. 171

709.01 LICENSE REQUIRED; FEE.

No person, either as owner, lessee, manager, officer or agent, or in any capacity, shall give, conduct, produce, present or offer for gain or profit any outdoor circus, carnival, menagerie, wild west show, dog and pony show or other shows and exhibitions, with the exception of athletic events, public band concerts, civic parades and school activities other than those hereinbefore set forth, without securing from the Mayor or a designee thereof a license for that purpose and paying a license fee of twenty-five dollars ($25.00).
(Ord. 87-22. Passed 2-15-88.)

709.02 LICENSE APPLICATION; DEPOSIT FOR CLEANING PREMISES.

(a) Application for the license required by Section 709.01 shall be made in writing to the Mayor or a designee thereof for a specified period of time, not to exceed six days, and shall be made upon such forms as he shall prescribe. In no event shall the Mayor issue a permit for Sunday operation of any of the shows described in Section 709.01, unless for good cause shown to Council, Council authorizes the issuance of a Sunday license by the Mayor.

The Police Chief shall investigate the character and experience of the applicant, the safety of the devices and the proposed location of such entertainment, so that a nuisance is not created, and based thereon, the Mayor or a designee thereof shall approve or disapprove the application. (Ord. 72-37. Passed 6-19-72.)

(b) The applicant shall deposit with the Mayor or a designee thereof, before the license is issued, one hundred dollars ($100.00) for cleaning the premises in case the applicant fails to do so within forty-eight hours after the termination of the show. If the premises are properly cleaned on time by the licensee, the deposit shall be refunded; otherwise the Mayor or a designee thereof shall cause the work to be done and the licensee shall be responsible for any deficiency in the costs of cleaning. (Ord. 87-22. Passed 2-15-88.)

709.03 NOISE; DAILY CLEAN-UP.

No person, either as owner, lessee, manager, officer or agent, or in any capacity, shall permit or allow music to be played in any manner after 11:00 p.m. on each day of the operation or presentation of the shows as described in Section 709.01. The premises upon which such shows are conducted shall be cleaned of all trash, waste and rubbish by midnight of each day of operation of such shows.

(Ord. 58-118. Passed 12-1-58.)

709.99 PENALTY.

Whoever violates any provision of this chapter shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both. Each day's continued violation shall constitute a separate offense.

CHAPTER 713
Solicitors

713.01 Definitions.
713.02 License required.
713.03 Application.
713.04 Issuance of license; duration.
713.05 Restrictions.
713.06 Limitations upon solicitation.
713.07 Exceptions.
713.08 License revocation.
713.09 Appeal procedure.
713.10 Display of license.
713.11 Receipt for down payment.
713.99 Penalty.

CROSS REFERENCES
Power to regulate - see Ohio R.C. 715.61 et seq.
Charitable solicitations - see Ohio R.C. Ch. 1716
Home solicitation sales - see Ohio R.C. 1345.21 et seq.
Trespassing- see GEN. OFF. 541.05

713.01 DEFINITIONS.
As used in this chapter, certain terms are defined as follows:
(a) "Canvassing" or "soliciting", unless expressly provided for otherwise, means traveling from residence to residence within the City, without having a previous appointment, to visit the residence or residences for the purpose of exposing or offering for inspection or sale, goods, wares, merchandise, food stuffs or any other property, tangible or intangible, of any nature whatsoever, or services, or for the purpose of taking or attempting to take orders for the purchase of goods, wares, merchandise, food stuffs or other property, tangible or intangible, of any nature whatsoever, for future delivery, or of services to be furnished or performed in the future whether directly for the resident or on an indirect basis.
(b) "Canvasser" or "solicitor" means any person who engages in canvassing or soliciting.
(c) "Sale" or "purchase" have the full meaning of "sale" or "purchase" as applied by or accepted in courts of law or equity, and shall also include an option of sale or purchase, a lease or a rental.
(Ord. 85-83. Passed 12-16-85.)

713.02 LICENSE REQUIRED.

(a) No person shall canvass or solicit within the City without first being issued a license by the Mayor or a designee thereof. A separate license shall be obtained for every solicitor, canvasser, agent or employee canvassing or soliciting within the City.

(b) No person shall solicit, procure, direct, authorize, or cause any other person to solicit or canvass in violation of any provision of this chapter.

(c) All organizations must register to canvass or solicit with the City of Fairview Park in accordance with the provisions set forth in this chapter regardless of their state of origin. (Ord. 04-28. Passed 6-28-04.)

713.03 APPLICATION.

(a) Every applicant for a license shall furnish the Mayor or a designee thereof a written application on a form to be provided, correctly containing the following information:

(1) Full name of the applicant.
(2) Date of birth of applicant.
(3) Local address, if any.
(4) Permanent home address.
(5) A physical description of the applicant, setting forth age, height, weight, color of hair and eyes, sex, and a recent photograph.
(6) Motor vehicle registration number, if any.
(7) Social security number, if any.
(8) Name and address of the person, firm, corporation or association for whom the solicitation or canvassing is presently being made and any other person, firm, corporation or association for whom the applicant has solicited or canvassed during the past three years.
(9) A description of the nature of the business and the goods, services, merchandise, wares, foodstuffs or other property to be sold or otherwise offered sufficient to identify the subject matter of the soliciting or canvassing in which the applicant will engage.
(10) The proposed dates and times of the solicitations or canvassing and the routes to be followed in conducting same.
(11) Telephone number of the applicant.
(12) Whether the applicant has ever been denied a license or permit to solicit or canvass or had such license or permit revoked, including the time and place of such denial or revocation.
(13) A specimen of the applicant's signature.
(14) Whether the applicant has ever been convicted of any crime and, if so, where and the nature of the offense and the punishment or penalty imposed therefor.
(15) Such other information as the Police Chief may require.
(Ord. 85-83. Passed 12-16-85.)

(b) A nonrefundable registration fee in the amount of twenty-five dollars ($25.00) shall be submitted with each application, as well as a five dollar ($5.00) per day licensing fee for each organization. The license is good for a maximum of thirty (30) days at which time a new registration must be applied for.

(c) The applicant shall register with the Finance Department providing their name, address, person or persons to whom correspondence may be directed, and such other information as the Director may require.
(Ord. 04-28. Passed 6-28-04.)

713.04 ISSUANCE OF LICENSE; DURATION.

(a) The Mayor or a designee thereof shall issue a license to the applicant unless he has determined that:

(1) The applicant has made a false, misleading or deceptive statement in providing the information required under Section 713.03; or

(2) The applicant has been convicted of a felony or of a misdemeanor involving moral turpitude during the five years preceding the date of application; or (Ord. 85-83. Passed 12-16-85.)

(3) The applicant has not registered with the Finance Department as provided in Section 713.03. (Ord. 04-28. Passed 6-28-04.)

(b) Such license shall be valid for a period not to exceed thirty days. No license issued hereunder shall be assigned or transferred to any other person.
(Ord. 85-83. Passed 12-16-85.)

713.05 RESTRICTIONS.

Every person to whom a license to solicit and/or canvass is issued under the terms of this chapter shall be governed by the following rules and regulations:

(a) No person subject to the provisions of this chapter shall canvas or solicit, except between the hours of 9:00 a.m. and the earlier of sunset or 8:00 p.m., Monday through Saturday. In addition, no person shall canvas or solicit on any legal holiday. (Ord. 99-32. Passed 4-19-99.)

(b) No canvasser or solicitor shall enter or attempt to enter the house or apartment of any resident in the City without an express invitation from the occupant of the house or apartment.

(c) No canvasser or solicitor shall engage in or transact any type of business or solicitation or canvassing other than that specified on the license application.

(d) No person shall canvass or solicit at any residence in the City upon which there is posted a sign which reads, "No Peddlers or Solicitors Allowed", or words of similar import, which clearly prohibit peddlers or solicitors on the premises, unless such peddler or solicitor is, or has been invited upon the premises by the owner, lessee, or occupant thereof.

(e) No canvasser or solicitor shall vex, annoy or harass any person.
(Ord. 87-23. Passed 12-7-87.)

713.06 LIMITATIONS UPON SOLICITATION.

(a) No person shall sell or offer for sale, barter, exchange or solicit the purchase or gift of any goods, wares, merchandise, food stuffs or other articles of value, or offer services for hire within the City in any area in which an authorized outdoor public show is being held as defined in Section 709.01, except as authorized by the outdoor public show permit holder.

(b) No person licensed pursuant to this chapter shall have any exclusive right to any location in the public streets, nor shall he be permitted a stationary location, nor shall he be permitted to operate in any congested area where his operations impede and inconvenience the public. (Ord. 85-83. Passed 12-16-85.)

713.07 EXCEPTIONS.

(a) The provisions of Sections 713.02, 713.03 and 713.04 shall not apply to a duly authorized person soliciting the purchase of goods, wares, merchandise, food stuffs, gifts, property or services on behalf of any recognized nonprofit, educational, civic, philanthropic, religious, political or charitable organization, nor shall the prohibition against Sunday solicitation or canvassing apply to such organizations, provided that such solicitation or canvassing is limited to between the hours of 11:00 a. m. and the earlier of sunset or 7:00 p. m. The aforementioned organization or a person on its behalf shall register with the Mayor or a designee thereof, stating the name of the organization, the nature of the activity being conducted, the duration of such activity and shall furnish any other information deemed necessary by the Mayor or a designee thereof. The Mayor or a designee thereof shall issue a license for a period not to exceed thirty days which may be renewed to the organization or duly authorized person on its behalf provided that the Mayor or a designee thereof is satisfied that the organization is a recognized nonprofit, educational, civic, philanthropic, religious, political or charitable organization and that the person requesting the license has, in fact, been duly authorized to act on its behalf. Nonprofit organizations must show proof of last tax filing period to receive license as a nonprofit solicitor. (Ord. 04-28. Passed 6-28-04.)

(b) The solicitation by a newspaper carrier of customers for a newspaper for which he regularly delivers or will regularly deliver shall not be subject to the provisions of this chapter.

(c) A candidate for political office or his or her committee or representative or person conducting a political survey or obtaining or influencing public opinion shall not be subject to the provisions of this chapter.

(d) No license fee shall be required of persons selling by sample only or of persons offering or exposing for sale agricultural articles or products other than pursuant to subsection (a) hereof but such persons shall, in all other respects, comply with the provisions of this chapter. As used herein, agricultural articles or products means commodities used as food or nonalcoholic drink for human consumption.
(Ord. 85-83. Passed 12-16-85; Ord. 99-33. Passed 4-19-99.)

713.08 LICENSE REVOCATION.

(a) A license issued under this chapter shall be revoked by the Mayor or a designee thereof for any of the following causes:

(1) It is subsequently determined that the licensee provided false, misleading or deceptive information in completing the application form set forth in Section 713.03 or in providing the information required pursuant to Section 713.07.
(2) The licensee violates any of the provisions of Section 713.05.
(3) The licensee is convicted of a felony or of a misdemeanor involving moral turpitude.
(4) The licensee is convicted of a violation of any provision of this chapter.
(5) The licensee canvasses or solicits in an unlawful manner or in such manner so as to constitute a menace to the health, safety or general welfare to the public.

(b) Written notice of such revocation shall be given to the licensee by personal service or by certified mail immediately upon such revocation.
(Ord. 85-83. Passed 12-16-85.)

713.09 APPEAL PROCEDURE.

In the event an application for a license is not approved or in the event any license issued pursuant to the provisions of this chapter is revoked, written notice shall be given to the applicant `or licensee by personal service or by certified mail. The applicant or licensee shall have the right to appeal such disapproval or revocation to a Board of Appeals consisting of the President of Council, the Law Director and the Finance Director. The Board of Appeals after full hearing shall have the power to affirm, modify or reverse the decision of the Mayor or a designee thereof. Any decision made by the Board shall be final.
(Ord. 85-83. Passed 12-16-85.)

713.10 DISPLAY OF LICENSE.

Any person soliciting or canvassing within this City who has obtained a license in accordance with the provisions of this chapter shall, upon demand, exhibit such license to any police officer, other City official or private residential owner or occupant upon whose premises he is soliciting or canvassing.
(Ord. 85-83. Passed 12-16-85.)

713.11 RECEIPT FOR DOWN PAYMENT.

When any person soliciting or canvassing within the City takes a down payment, he shall give a written receipt for the order, which receipt shall be signed by the solicitor or canvasser and shall set forth a brief description of the goods, wares, merchandise food stuffs or other property or services ordered, the total purchase price thereof and the amount of the down payment received by the solicitor or canvasser from the purchaser.
(Ord. 85-83. Passed 12-16-85.)

713.99 PENALTY.

(a) Whoever violates any provision of this chapter where another penalty is not otherwise provided shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both. Each day's continued violation shall constitute a separate offense.

(b) Whoever violates Section 713.02(a) is guilty of a minor misdemeanor for a first offense, and for a second or subsequent offense, shall be guilty of a misdemeanor of the fourth degree. Whoever violates Section 713.02(b) is guilty of a minor misdemeanor for a first offense and for each subsequent offense shall be guilty of a misdemeanor of the third degree.
(Ord. 85-83. Passed 12-16-85.)

CHAPTER 717
Street Sales

717.01 License required.
717.02 License fee.
717.03 Attendant required for vehicle sales.
717.99 Penalty.

CROSS REFERENCES
Power to inspect food products - see Ohio R.C. 715.46
Frozen desserts - see Ohio R.C. 3717.51 et seq.
Merchandise on sidewalks - see GEN. OFF. 543.01

717.01 LICENSE REQUIRED.

No person shall sell or offer for sale any merchandise, food, beverage, refreshment or any other property upon any public street, public ground or public park within the City unless he has procured a license from the Mayor or a designee thereof.
(1954 Code §14-2)

717.02 LICENSE FEE.

The license fee shall be thirty dollars ($30.00) per year.
(Ord. 87-22. Passed 2-15-88.)

717.03 ATTENDANT REQUIRED FOR VEHICLE SALES.

When any person vends or peddles from a vehicle in the public streets and public places in the City and, in the pursuit of such business or activity, children collect, congregate, assemble or gather about such vehicle for the purpose of making purchases therefrom, such person so vending and peddling and, in the pursuit of such occupation, shall be required to be accompanied by an adult attendant whose sole duty and occupation shall be to protect and safeguard the children from injury or hazards from vehicular traffic using such public streets and public places. Such attendant shall maintain a constant lookout for approaching vehicles and shall warn and guard the children from injury therefrom.
(Ord. 59-50. Passed 6-1-59.)

717.99 PENALTY.

Whoever violates any provision of this chapter shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both. Each day's continued violation shall constitute a separate offense.

CHAPTER 721
Taxicabs

721.01 Definitions.
721.02 License required.
721.03 License application; insurance.
721.04 License issuance; fee.
721.05 Renewal license.
721.06 Change of facts.
721.07 Public display of rates; operator's license.
721.08 Prohibited conditions.
721.99 Penalty.

CROSS REFERENCES
Power to regulate - see Ohio R.C. 715.22, 715.66
Operation and equipment - see Part Three - Traffic Code
Driving or physical control while under influence - see TRAF. 333.01
Operator license - see TRAF. 335.01 et seq.

721.01 DEFINITIONS.

For the purposes of this chapter, unless the contrary is stated herein, the following terms shall be construed as follows:

(a) "Municipality" means the City of Fairview Park, Ohio.

(b) "Street" means any public street, alley or way within the corporate limits of the Municipality.

(c) "Taxicab company" means and includes every corporation, company, association, person, copartnership, their lessees, trustees and receivers, who own, control, operate or manage any taxicab.

(d) "Taxicab" means all motor vehicles engaged in the business of carrying passengers for hire on the streets of the Municipality, except buses operated by a bus company licensed by the Public Utilities Commission of Ohio, or by the Municipality, buses operated by any religious organization or by any public school system, or motor vehicles used exclusively as hearses or ambulances or used exclusively for services at weddings and funerals, or motor vehicles leased or rented for private use without the services of a chauffeur or driver.

(e) "License" means a certificate issued by the Mayor or a designee thereof.

(Ord. 62-46. Passed 6-18-62.)

721.02 LICENSE REQUIRED.

No taxicab company shall pick up or accept a passenger for hire on any street within the corporate limits of the Municipality without first obtaining a license issued by the Mayor or a designee thereof in accordance with the terms of this chapter.
(Ord. 62-46. Passed 6-18-62.)

721.03 LICENSE APPLICATION; INSURANCE.

Any taxicab company desiring to operate a taxicab within the corporate limits of the Municipality shall, prior to such operation, file with the Mayor or a designee thereof an application for a license on a form prescribed by the Mayor, which application shall, among other things, require the applicant to state:

(a) The name and address of the applicant.

(b) The number of taxicabs the applicant proposes to operate within the Municipality.

(c) A schedule of typical rates to be charged to any passengers of such taxicab if such passengers board such taxicab within the corporate limits of the Municipality.

(d) A statement of the amount of casualty insurance providing indemnity in an approved casualty insurance company for such taxicab company for injuries to the public, whether passengers or otherwise, which casualty insurance, as to each of the taxicabs to be operated within the Municipality, shall be in the sum of not less than one hundred thousand dollars ($100,000) for injury or death to one person, and three hundred thousand dollars ($300,000) for injury or death to more than one person in the same accident, and twenty thousand dollars ($20,000) for property damage in any one accident.

(e) No license shall be issued until a copy of such casualty insurance policy in an approved casualty insurance company, or a certificate of same, shall be presented to the Director of Law for approval, and such policy shall contain a clause obligating the casualty company issuing the same to give ten days' notice to the Municipality before cancellation of such policy or policies.

(f) In lieu of the provisions of subsections (d) and (e) hereof, where the applicant is an established taxicab company doing business in the County for five years or more prior to application, and has been operating under the regulations of some other municipality in the County where financial responsibilities are provided, then, on sufficient evidence presented to the Director of Law that residents of Fairview Park are adequately protected under such existing regulations, the Law Director may approve same.

(g) A statement that failure to comply with the provisions of this chapter by the taxicab company, or any servant, agent or employee of such taxicab company, shall be just and sufficient cause for the immediate revocation of any license issued hereunder.
(Ord. 62-46. Passed 6-18-62.)

721.04 LICENSE ISSUANCE; FEE.

Upon the filing of such application in form satisfactory to the Mayor or a designee thereof, and the payment of a fee of fifty dollars ($50.00), the Mayor or a designee thereof shall thereupon issue a license granting the right to such taxicab company to operate taxicabs within the Municipality to the end of the calendar year in which such application is made.

721.05 RENEWAL LICENSE.

Within sixty days from the end of each calendar year, each taxicab company licensed under the provisions of Section 721.04 and desiring to do business within the Municipality during the next calendar year, shall file an application for renewal of such license, which application shall be in such form as prescribed by the Mayor or a designee thereof.

Upon the approval of such renewal license, the Mayor or a designee thereof shall issue a license for the next calendar year upon the payment by the applicant of the fees as set forth in Section 721.04. (Ord. 62-46. Passed 6-18-62.)

721.06 CHANGE OF FACTS.

In the event that the facts which were revealed upon the application for license or a renewal thereof change during the license period, notice of such change shall forthwith be given to the Mayor or a designee thereof in such form as he may prescribe.
(Ord. 62-46. Passed 6-18-62.)

721.07 PUBLIC DISPLAY OF RATES; OPERATOR'S LICENSE.

During the period of such license, each taxicab operated under a license from the Municipality shall:

(a) Display in large letters the fact that it is a taxicab for hire.

(b) Display within the taxicab, and in plain view of any passenger thereof, a summary or diagram of the schedule of rates and charges made by the taxicab company, which summary or diagram shall be in accordance with the rates and charges as disclosed in the schedule filed with the application for a license, as amended.
(Ord. 62-46. Passed 6-18-62.)

(c) The operator of such taxicab shall carry at all times while operating such taxicab within the corporate limits of the Municipality evidence that such operator is duly licensed as an operator in the State.

721.08 PROHIBITED CONDITIONS.

No person shall:

(a) Operate a taxicab within the Municipality while in a state of intoxication or under the influence of alcohol, narcotics or opiates.

(b) Allow any taxicab to be used for immoral purposes.

(c) Operate a taxicab without first having received a license from the Municipality.

(d) Charge other than in accordance with the rates as displayed within such taxicab and as on file with the Municipality.

(e) Travel up and down the streets of the Municipality seeking customers in a manner commonly described as "cruising".
(Ord. 62-46. Passed 6-18-62.)

721.99 PENALTY.

Whoever violates any provision of this chapter shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both. Each days continued violation shall constitute a separate offense.

CHAPTER 723
Employment of Scavengers

723.01 License fee and conditions.
723.02 Scavenger defined.
723.03 Scavenging of recyclable materials prohibited.
723.99 Penalty.

CROSS REFERENCES
Employment of scavengers - see Ohio R.C. 3707.39
Vehicle loads dropping, sifting, leaking - see TRAF. 339.08

723.01 LICENSE FEE AND CONDITIONS.

No person, firm or corporation shall engage in the business of collecting, hauling and/or disposing of any rubbish, refuse, paper, rags, appliances, furniture or scrap metal unless he first obtains a license from the Mayor or a designee thereof. The fee for any such license shall be twenty-five dollars ($25.00) per year. All licenses shall expire on December 31 of the year of issuance. This section shall not apply to any private individual hauling any of the above mentioned refuse from his own premises, nor shall it apply to the City or any person, firm or corporation who has contracted with the City to provide such services. This section shall also not apply to any private or public schools.

A condition of any license issued shall be that the licensee agrees to collect, transport and dispose of any rubbish, refuse, paper, rags, appliances, furniture or scrap metal, in a sanitary manner so as not to create a nuisance and to comply with all regulations set forth by the Director of Public Service and Development which include times and days for collections and designation of areas, any other further rules which the Director may make from time to time, and the rules and regulations set forth in the application for a hauling and scavenger permit.

Any vehicle conveying or carrying such matter shall be so constructed and operated that its contents shall not spill or scatter upon any public or private property. Any person, firm or corporation hauling or in the business of scavenging any of the above items in any open vehicle such as a truck or trailer shall provide that the load shall be covered with an adequate tarpaulin or canvas so as to prevent any spilling or scattering of its contents.

723.02 SCAVENGER DEFINED.

"Scavenger" means a person, firm or corporation who removes from private or public property any discarded refuse, paper, rags, appliances, furniture, scrap metal or other similar discarded material for the purpose of either reusing, reselling or disposing of such items.
(Ord. 71-11. Passed 3-1-71.)

723.03 SCAVENGING OF RECYCLABLE MATERIALS PROHIBITED.

(a) "Recyclable materials" means materials that have served their intended end use and are collected, separated or processed by the City for subsequent re-use as raw materials or finished products. "Recyclable materials" includes aluminum, glass, steel, other metals, plastic beverage containers, other plastics, paper, paperboard, newsprint, corrugated paper and other materials that are collected, separated or processed by the City for subsequent re-use as raw materials or finished products.

(b) No person, firm or corporation shall remove or cause the removal of recyclable materials from any lot, premises or public place that have been placed or deposited for collection by the City. (Ord. 91-68. Passed 8-19-91.)

723.99 PENALTY.

Whoever violates any provision of this chapter, or any lawful rule or regulation issued pursuant thereto, is guilty of a minor misdemeanor. Any such violation shall constitute a separate offense on each successive day continued.
(Ord. 79-44. Passed 7-9-79.)

(Note: The next printed page is page 33.)

CHAPTER 729
Motion Pictures and Films

729.01 Definition.
729.02 Scope.
729.03 Compliance; other laws applicable.
729.04 Use of picture machines.
729.05 Films within the booth.
729.06 Hot carbons.
729.07 Picture machine operator to be licensed.
729.08 License application.
729.09 License fee; renewal.
729.10 Revocation of license.
729.11 Certificate required.
729.99 Penalty.

CROSS REFERENCES
Admissions Tax - see ADM. Ch. 171
Fire Prevention- see Part Fifteen - FIRE PREVENTION CODE

729.01 DEFINITION.
"Picture machine", as used in this chapter, means any machine or device, either permanently located or portable in nature, operated by or with the aid of electricity, or any other illuminant, and which is designed, intended or used to project upon a screen, or other surface, pictorial representations through the use of any type of film, tape or other material or equipment. (Ord. 70-15. Passed 3-2-70.)

729.02 SCOPE.
The provisions of this chapter apply to theaters, auditoriums, schools, churches, halls and such other exhibition or meeting rooms to which the public, or any segment thereof, is admitted to view the showing of any pictorial representations projected from a picture machine.
(Ord. 70-15. Passed 3-2-70.)

729.03 COMPLIANCE; OTHER LAWS APPLICABLE.
No picture machine shall be installed, maintained or operated within the City except in conformity with the provisions of this chapter and such other provisions of the Codified Ordinances relating to the installation and construction of a booth for the enclosing of a picture machine as well as the requirements relating to the contents, ventilation, doors, electrical installations and signs thereof together with such requirements relating to the location, construction and other safety regulations for theaters, exhibition or meeting halls, auditoriums or other places of amusement. (Ord. 70-15. Passed 3-2-70.)

729.04 USE OF PICTURE MACHINES.

All picture machines within which combustible film is used shall be equipped with incombustible magazines for receiving and delivering the films during the operation of the machine. A shutter must be provided and placed in front of the condenser of the machine, so arranged that it can be instantly closed by the operator.
(Ord. 70-15. Passed 3-2-70.)

729.05 FILMS WITHIN THE BOOTH.

Films not in the picture machine, within the booth enclosing the machine, shall be kept in metal boxes with tight fitting covers.
(Ord. 70-15. Passed 3-2-70.)

729.06 HOT CARBONS.

Hot carbons taken from the lamps used in the picture machines shall be deposited in a metal receptacle provided in the booth for such purpose.
(Ord. 70-15. Passed 3-2-70.)

729.07 PICTURE MACHINE OPERATOR TO BE LICENSED.

Licensed picture machine operators only shall be employed or permitted to operate any picture machine unless exhibited by and incidental to the purposes of any charitable, religious, benevolent or educational institution, public or private.
(Ord. 70-15. Passed 3-2-70.)

729.08 LICENSE APPLICATION.

Application for a license shall be upon the form issued by the Mayor or a designee thereof. Such application shall be granted if the Mayor or a designee thereof finds that the applicant is qualified to perform the work for which the application is sought.

Evidence that the applicant is currently licensed by the City of Cleveland, or another city or county with a qualified examination, shall be sufficient evidence of qualification so as to authorize the issuance of a license.

Evidence of repeated violations of this chapter or other ordinances shall be sufficient evidence to disqualify the applicant from receiving the license.

729.09 LICENSE FEE; RENEWAL.

Upon application, any picture machine operator's license shall be issued to the applicant by the Mayor or a designee thereof, upon payment by the applicant of a license fee of fifty dollars ($50.00), and the furnishing of a bond as may be required. Such license shall be issued for a period of one year from January 1 of the year that it is issued, and shall expire on December 31 next following the date of issuance. Such license shall be renewed each year thereafter, upon the payment of a license fee of twenty-five dollars ($25.00).
(Ord. 87-22. Passed 2-15-88.)

729.10 REVOCATION OF LICENSE.

The Mayor or a designee thereof shall have authority and it shall be his duty, to revoke the license issued to any person, firm or corporation for conducting or maintaining picture machine exhibitions when he is satisfied that such licensee has violated any provision of this chapter or such other sections of the Codified Ordinances relating thereto. However, before revoking the license, opportunity shall be given to the licensee to correct the violations.

729.11 CERTIFICATE REQUIRED.

No individual, partnership or corporation shall be permitted to conduct the business of moving picture exhibitions, as herein described, until he has applied for and procured from the Building Commissioner a certificate that the premises wherein the exhibitions are to be given and the apparatus used in connection therewith are in compliance with the provisions of this chapter and such other sections of the Codified Ordinances as are applicable.
(Ord. 70-15. Passed 3-2-70.)

729.99 PENALTY.

Whoever violates any provision of this chapter shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both. Each day's continued violation shall constitute a separate offense.

CHAPTER 731
Amusement Devices and Game Rooms

731.01 Definitions.
731.02 License required.
731.03 License application.
731.04 Electrical inspection.
731.05 License application rejection.
731.06 License fee and term; renewal.
731.07 License display.
731.08 Periodic inspection.
731.09 Giving of prizes, awards. (Repealed)
731.10 General provisions.
731.11 Gambling prohibited.
731.12 Hours of operation.
731.13 License suspension or revocation; appeals.
731.14 Operation by minors.
731.15 Parking.
731.16 Temporary gamerooms or amusement arcades; exemption.
731.99 Penalty.

CROSS REFERENCES

Gambling- see GEN. OFF. Ch. 517
Making or using slugs - see GEN. OFF. 545.11
Tampering with coin machines - see GEN. OFF. 545.12

731.01 DEFINITIONS.

As used in this chapter certain terms are defined as follows:

(a) "Gameroom or amusement arcade" means a place of business which derives twenty percent (20%) or more of its annual gross revenue from mechanical or electrically operated amusement devices and/or which devotes twenty percent (20%) or more of the occupied space to mechanical or electrically operated amusement devices.

(b) "Mechanical or electrically operated amusement device" means any machine, device or instrument which by the payment of a fee or other things of value, or by the insertion of a coin, plate, disc, slug, key or token operates or may be operated as game, contest or amusement of any description, or which may be used for any such game, contest or amusement, and which contains no automatic pay-off device for the return of money, coins, tokens or merchandise or checks redeemable in money or anything of value. Mechanical or electrically operated amusement devices includes but is not limited to devices such as mechanical baseball, mechanical football, pinball machines, any table game or device commonly known as electronic games and other similar types of devices, provided, however, that this definition is not intended to nor shall it be construed to include merchandise vending machines or coin operated mechanical or electrical musical instruments or devices.

(c) "Person" means any person, firm, corporation or association which owns or has title to any such mechanical or electrically operated amusement device; any person, firm, corporation or association in whose place of business any such device is placed for use by the public; and any person, firm, corporation or association having control over any such device; provided that the payment of such fee as hereinafter set forth by any person, firm, corporation or association enumerated herein shall be deemed a compliance with this chapter.
(Ord. 81-65. Passed 6-29-81.)

731.02 LICENSE REQUIRED.

No person shall display for public patronage or keep for operation by the public any mechanical or electrically operated amusement device without first obtaining a license issued by the Mayor or a designee thereof in accordance with the provisions of this chapter. A separate license shall be required for each device displayed or kept at any one time.
(Ord. 81-65. Passed 6-29-81.)

731.03 LICENSE APPLICATION.

(a) Any person desiring to display for public patronage or keep for operation by the public any mechanical or electrically operated amusement device within the corporate limits of the City shall, prior to such operation, file with the Mayor or a designee thereof an application for a license on a form prescribed by the Mayor or a designee thereof, which application shall among other things, state:

(1) The name and residence address, age and birth date of the applicant;
(2) The location where the mechanical or electrically operated amusement device is to be displayed or operated and the business conducted therein;
(3) A description of the device to be covered by the license, its mechanical features, the name of the manufacturer and the serial number of the device;
(4) The name of the owner or owners of the premises where the device is to be displayed or operated and their residence address;
(5) The name of the owner or owners of the business conducted therein and their residence address;
(6) The name and residence address of the owner of the device if the owner is different from the applicant; and
(7) Whether or not the applicant or any person as defined in Section 731.01 has been convicted of a gambling offense, a drug abuse offense or crime of moral turpitude in the seven years preceding the date of application.

(b) Each person desiring to operate a gameroom or amusement arcade shall apply for a gameroom or amusement arcade license upon a form prescribed by the Mayor or a designee thereof which shall, in addition to the information required by subsection (a) hereof, provide such other information as required by the Mayor or a designee thereof. A gameroom or amusement arcade license shall be required in addition to and independent of, the license application for a mechanical or electrically operated amusement device.

(c) The Mayor or a designee thereof is authorized and empowered to establish, adopt and enforce or cause to be enforced, such rules and regulations governing the issuance and display of the license required under this chapter as he may deem reasonable and necessary and are not inconsistent with the provisions of this chapter.
(Ord. 81-65. Passed 6-29-81.)

731.04 ELECTRICAL INSPECTION.

The Building Commissioner or his representative, prior to the issuance of a mechanical or electrically operated amusement device license, shall inspect all wiring and connections to the mechanical or electrically operated amusement device to determine if the same complies with the City Electrical Code. A license shall not be issued until any violation found has been corrected.
(Ord. 81-65. Passed 6-29-81.)

731.05 LICENSE APPLICATION REJECTION.

The application for any license required by this chapter shall be rejected by the Mayor or a designee thereof if the information submitted or facts found show that any of the persons named in the application for a mechanical or electrically operated amusement device license and/or a gameroom or amusement arcade license is not of good moral character or that the application is not in conformance with any of the provisions of this chapter or if any of the information submitted is false.
(Ord. 81-65. Passed 6-29-81.)

731.06 LICENSE FEE AND TERM; RENEWAL.

(a) Amusement Device License. Upon the filing of an application on the form prescribed with all required information properly given to the Mayor or a designee thereof, approval by the Mayor or a designee thereof and the payment of a fee of twenty dollars ($20.00) per device covering the period of one year or any portion thereof, the Mayor shall issue a mechanical or electrically operated amusement device license which shall expire at 11:59 p. m. on December 31 of each calendar year during the period of operation unless earlier revoked by the Mayor. Such a license shall entitle the person therein named to display at or upon the premises therein described one mechanical or electrically operated amusement device. If any licensed device is replaced or substituted for with another mechanical or electrically operated amusement device during any calendar year, a new application for such device shall be submitted with a fee of ten dollars ($10.00) and evidence satisfactory to the Mayor or a designee thereof of the removal from the premises of the previously licensed device. Upon approval by the Mayor or a designee thereof, a new license shall then be issued for such replacement or substitute device for the remainder of the calendar year.

(b) Gameroom or Amusement Arcade License. Upon the filing of an application on the form prescribed by the Mayor or a designee thereof, approval by the Mayor or a designee thereof and the payment of a fee of one hundred dollars ($100.00) per gameroom or amusement arcade covering the period of the first year or any portion thereof of operation, the Mayor or a designee thereof shall issue a gameroom or amusement abrade license which shall expire at 11:59 p.m. on December 31 of the first year of operation. Such license shall be renewed each year thereafter upon the payment of a license fee of fifty dollars ($50.00) and which shall expire at 11:59 p.m. on December 31 of each year of operation unless earlier revoked by the Mayor or a designee thereof. A gameroom or amusement arcade license shall entitle the person therein named to operate a gameroom or amusement arcade at the premises therein described. The gameroom or amusement arcade license fee shall be required in addition to the license fee required by subsection (a) hereof. (Ord. 83-4. Passed 3-21-83.)

(c) Nontransferable. A mechanical or electrically operated amusement device license and/or gameroom or amusement arcade license shall not be transferable from person to person or location to location. A new license shall be required whenever a mechanical or electrical amusement device is moved to a different location within the City or is purchased or otherwise acquired by a different person. (Ord. 81-65. Passed 6-29-81.)

731.07 LICENSE DISPLAY.

(a) It shall be the duty of the person to whom a mechanical or electrically operated amusement device license was issued to display such license on the device for which it was issued for the period covered by the license.

(b) It shall be the duty of the person to whom a gameroom or amusement arcade license was issued to display such a license in a prominent place in the establishment for the period covered by such license. (Ord. 81-65. Passed 6-29-81.)

731.08 PERIODIC INSPECTION.

The Police Chief or his designees shall periodically inspect any gameroom or amusement arcade or any other place where a mechanical or electrically operated amusement device is displayed or kept for operation to insure compliance with all provisions of this chapter. Each person to whom a mechanical or electrically operated amusement device license and/or gameroom or amusement arcade license was issued shall at all times permit access to the Chief or his designees for the purpose of insuring compliance with the provisions of this chapter.
(Ord. 81-65. Passed 6-29-81.)

731.09 GIVING OF PRIZES, AWARDS.

(EDITOR'S NOTE: Former Section 731.09 was repealed by Ordinance 96-56, passed June 26, 1996.)

731.10 GENERAL PROVISIONS.

(a) Alcohol or Drugs. No person shall permit the consumption of intoxicants or alcoholic beverages by any person on the premises where any mechanical or electrically operated amusement device is displayed or kept for operation unless such person holds a proper permit from the Ohio State Liquor Control Board; or permit a drug offense.

(b) Adult Management. All gamerooms or amusement arcades shall, during hours of operation, provide adult (over the age of twenty-one years) management.

(c) Security Personnel. All gamerooms or amusement arcades shall provide necessary security personnel as required by the Police Chief to police the interior and exterior of the premises.

(d) Exterior Lighting. All persons operating a gameroom or amusement arcade shall submit to the Building Commissioner an exterior lighting plan if such facility is in a free standing building which plan shall be approved by the Commissioner.

(e) Loud-speakers. Outdoor loud-speakers shall not be permitted at any premises where any mechanical or electrically operated amusement device is displayed or kept for operation.

(f) Disturbing the Peace. It shall be the obligation of any person to whom a gameroom or amusement arcade license and/or mechanical or electrically operated amusement device license was issued to maintain peace and quiet in and about the premises and failure to do so shall constitute a nuisance and shall be grounds for revocation or suspension of any license issued hereunder. (Ord. 81-65. Passed 6-29-81.)

731.11 GAMBLING PROHIBITED.

(a) Any person to whom a gameroom or amusement arcade license and/or a mechanical or electrically operated amusement device license was issued shall prominently display a sign indicating that gambling is prohibited. Such sign shall also indicate that it shall be considered to be a gambling offense if a player or any operator agrees to pay for the game of another upon a loss of a game.

(b) No mechanical or electrically operated amusement device shall be permitted that has as its object the skill of winning at the playing of cards, dice, craps or roulette, or which contains an automatic device by the operation of which the player or operator may win at uncertain intervals a free game, a free play or any other additional amusement or in any way intends to encourage gambling.

(c) Any machine, device, instrument, apparatus or contrivance which is determined to be a gambling device may be seized, destroyed or demolished in the manner provided by law. (Ord. 81-65. Passed 6-29-81.)

731.12 HOURS OF OPERATION.

A gameroom or amusement arcade shall be closed between the hours of 10:00 p. m, and 9:00 a.m. of the following day, each and every day, except on Sunday when the gameroom or amusement arcade shall be closed until 12:00 noon.
(Ord. 81-65. Passed 6-29-81.)

731.13 LICENSE SUSPENSION OR REVOCATION; APPEALS.

(a) The license of any person violating directly or indirectly, any of the terms of this chapter or of any rules and regulations established and adopted by the Mayor or a designee thereof as provided in Section 731.03, except those relating to the display or operation of such mechanical or electrically operated amusement device for gambling, shall for the first violation thereof, be suspended by the Mayor for not less than ten nor more than thirty days; for the second violation thereof, be suspended by the Mayor for not less than thirty nor more than sixty days; and for the third violation thereof, shall be revoked by the Mayor. For violation of the terms of this chapter or the rules and regulations established and adopted by the Mayor or a designee thereof relating to the display or operation of such mechanical or electrically operated amusement device for gambling, such license shall be revoked by the Mayor.

(b) Any person whose application for a license is denied or whose license is suspended or revoked may demand a hearing. A demand for a hearing shall be made in writing to the Mayor or a designee thereof within seven days of the date of denial, revocation or suspension and shall be heard by a Board of Appeals consisting of the President of Council, the Law Director and the Finance Director. The decision of the Board of Appeals shall be final.

(c) The Mayor or a designee thereof shall notify such applicant or licensee of such hearing by registered mail directed to the last address of such applicant or licensee on file. In the event that such license is denied, suspended or revoked, the Mayor or a designee thereof shall notify such applicant or licensee in the same manner as provided for notification of hearings. (Ord. 81-65. Passed 6-29-81.)

731.14 OPERATION BY MINORS.

(a) No person shall permit any mechanical or electrically operated amusement device to be operated or played before 2:00 p.m. on school days by any minor under the age of eighteen years unless such minor is accompanied by and in direct personal charge of a parent or legal guardian. It shall be the duty of the person in whose place of business any such device is placed, or who has title to or owns any such device, or who has control over any such device to determine if in fact school is in session for the individual operating, or wishing to operate, the device.

(b) No minor under the age of eighteen years shall be permitted to operate a mechanical or electrically operated amusement device or to be within the premises of a gameroom or amusement arcade at any time that the serving or consumption of alcoholic beverages is permitted at the place of business where the mechanical or electrically operated amusement device is displayed or at the gameroom or amusement arcade unless:

(1) Such device is located in a room in which the service and consumption of alcoholic beverages is prohibited and such room is separated, by floor-to-ceiling walls and doors which are kept closed except when used by an individual for ingress or egress, from all rooms in which the serving or consumption of alcoholic beverages is permitted; and

(2) Such minor under the age of eighteen years is accompanied by and in direct personal charge of a parent or legal guardian.

(c) No person shall permit the operation of a mechanical or electrically operated amusement device by a minor during the hours of curfew applicable to the minor. It shall be the duty of the person in whose place of business any such device is placed, or who has title to or owns any such device, or who has control over any such device, to prominently display the curfew laws of the City, and it shall further be the duty of such person to ascertain if his patrons are violating such curfew laws and if so, to eject them from the place of business.

(d) No parent or guardian of a minor under the age of eighteen years shall allow such minor to operate a mechanical or electrically operated amusement device in violation of this section.

(e) No person under the age of eighteen years shall knowingly show or give false information concerning his name, age or other identification for the purpose of playing or operating a mechanical or electrically operated amusement device or entering or remaining upon the premises of a gameroom or amusement arcade, in violation of any provision of this chapter.

(f) No person shall knowingly furnish any false information as to the name, age or other identification of another person under the age of eighteen years for the purpose of such other person operating or playing a mechanical or electrically operated amusement device or entering or remaining upon the premises of a gameroom or amusement arcade, in violation of any provision of this chapter. (Ord. 92-69. Passed 10-19-92.)

731.15 PARKING.

Each person operating a gameroom or amusement arcade shall provide, in addition to the requirements of the Planning and Zoning Code, off-street parking facilities for its patrons in an amount equal to one space of each two machines, in addition to providing one space for each employee. (Ord. 81-65. Passed 6-29-81.)

731.16 TEMPORARY GAMEROOMS OR AMUSEMENT ARCADES; EXEMPTION.

(a) Any charitable, benevolent, religious or eleemosynary institution shall be permitted to operate a temporary gameroom or amusement arcade and display for public patronage or keep for operation by the public mechanical or electrically operated amusement devices for five days or less on the premises of the institution or on the premises of a like institution provided that such institution complies with Sections 731.02, 731.03, 731.04, 731.07, 731.10, except subsection (d) thereof, 731.11, 731.12, 731.14 and pays a license fee of five dollars ($5.00) per mechanical or electrically operated amusement device.

(b) The provisions of this chapter shall not apply to mechanical or electrically operated amusement devices maintained in a one- or two-family residence provided that such devices are maintained for the personal use of the residents and their guests and such devices are not maintained or operated in a way which intends to encourage gambling.
(Ord. 81-65. Passed 6-29-81.)

731.99 PENALTY.

Whoever violates any provision of this chapter shall be fined not more than five hundred dollars ($500.00) for each offense. Each day during which the violation continues shall constitute a separate offense. (Ord. 81-65. Passed 6-29-81.)

CHAPTER 733
Community Antenna Television

733.01 Grant of franchise renewal.
733.02 Definitions.
733.03 System extension.
733.04 Utilities and system construction.
733.05 Indemnification and insurance.
733.06 Performance bond.
733.07 Noninterference.
733.08 Franchise fee.
733.09 Services and programming.
733.10 Applicability of existing terms.
733.11 Technical standards.
733.12 Compliance with applicable laws.
733.13 Receivership and foreclosure: transfer.
733.14 Subscriber service.
733.15 System features.
733.16 Termination of subscriber service.
733.17 Institutional service.
733.18 Consumer information.
733.19 Subscriber complaints.
733.20 Review of performance.
733.21 City inquiry.
733.22 Rates and charges.
733.23 Breach of franchise.
733.24 Severability.
733.25 Miscellaneous provisions.
733.26 Acceptance of franchise renewal.
733.27 Captions.
733.28 Termination of franchise.
733.29 Waiver.
733.30 Actions of Council.

CROSS REFERENCES

Cable television contracts - see Ohio R.C. 505.90 et seq.
Unauthorized connection - see Ohio R.C. 4933.42
Barricades and warning lights - see GEN. OFF. 521.03
Local Advisory Board - see BUS. REG. Ch. 734
Street openings - see S. & P.S. Ch. 901
Sidewalk protection during building operations - see S. & P. S. Ch. 903

733.01 GRANT OF FRANCHISE RENEWAL.

In consideration of the faithful performance and observance of the provisions, conditions and reservations hereinafter specified, a nonexclusive right and franchise is hereby granted to Cox Cable Cleveland Area, Inc., a corporation authorized to conduct business in the State of Ohio under the laws of the State of Ohio, its successors or assigns (hereinafter referred to as the "Company") to erect, maintain, operate and utilize television transmission and distribution facilities and additions thereto in, under, above, along, across, and upon the streets, lanes, avenues, sidewalks, alleys, easements and other public places in the City and subsequent additions thereto, for the purpose of transmission and distribution of audio and visual impulses and television energy in accordance with the laws and regulations of the United States of America and the State of Ohio, and the ordinances and regulations of the City for an additional period of fifteen years throughout the City, said additional period to commence at termination of original franchise. (Ord. 91-102. Passed 10-21-91.)

733.02 DEFINITIONS.

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense shall include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning, unless defined in the FCC's rules and regulations or by federal law, in which case they shall be given such meaning as appears in such rules and regulations or law.

(a) Wherever used in this chapter, the word "cable television system" means a system for transmission of audio signals and/or visual or any other type of closed circuit transmission and/or signal transmission by means of electrical impulses, as further defined in the Cable Communications Policy Act of 1984, 47 U.S.C.A. Sections 521-559 (the "Cable Act").

(b) "Company" or "grantee" means Cox Cable Cleveland Area, Inc., its permitted assigns and successors.

(Ord. 91-102. Passed 10-21-91.)

733.03 SYSTEM EXTENSION.

The City acknowledges that the Company has by the date of this chapter made cable service available upon request to all present residential dwellings within the City, subject to applicable laws.

The Company agrees to make cable service available upon, request to all present and future residential dwellings within the City subject to applicable laws.
(Ord. 91-102. Passed 10-21-91.)

733.04 UTILITIES AND SYSTEM CONSTRUCTION.

(a) The Company shall make arrangements with the Ohio Bell Telephone Company, the Cleveland Electric Illuminating Company and any other holder of licenses or franchises from the City for the purposes of using the towers, poles, and attachments thereto of said companies for the attachment of television transmission and distribution facilities, subject to all existing and future ordinances of the City.

(b) The Company will not erect a separate system of poles in the City or on any street therein, but may erect poles where shown to be necessary when the necessity, the location, and the style of poles have been approved by the Mayor of the City or his designee, which approval will not be unreasonably withheld. The erection of the poles shall be subject to all existing and future ordinances and regulations of the City applicable thereto and under the supervision of the Service Director or his designee.

(c) In areas where all other public utilities are placed underground, the Company shall also place its cable underground and such underground installations shall not result in any additional charges to subscribers.

(d) The Company's transmission and distribution system, poles, wires, and appurtenances shall be located, erected, maintained and/or removed so an not to endanger or interfere with the lives or reasonable safety of persons, or to interfere with improvements the City may deem proper to make, or to hinder unnecessarily or obstruct the free use of the streets, alleys, bridges or other public property. Removal of poles or equipment when necessary to avoid such interference will be at the Company's expense.

(e) Construction and maintenance of the transmission and distribution system shall be in accordance with the provisions of the National Electrical Safety Code of the National Board of Fire Underwriters and such applicable ordinances and regulations of the City affecting electrical installations which may be presently in effect, or changed by future ordinance, such applicable City ordinances and regulations to be applied to the Company in a reasonable manner.

(f) All installations of equipment shall be of permanent nature, durable and installed in accordance with good engineering practice, and of sufficient height to comply with all existing City regulations, ordinances, and state laws so as not to interfere in any manner with the right of the public or individual property owners, and shall not interfere unduly with the travel and use of public places by the public during construction, repair, or removal thereof and shall not unduly obstruct or impede traffic.

(g) In the event that at any time during the period of this franchise the City shall elect to alter or change the grade of any street or other public way or to make any other improvement which the City may deem proper to make, the Company upon reasonable notice by the City shall remove, relay and relocate its poles, wires, cables, conduits and other fixtures at its own expense. The Company shall, on the request of any person holding a building moving permit issued by the City and at that person's expense, temporarily raise or lower its wires to permit the moving of buildings. In such event, prepayment or a payment bond shall be prerequisite to such work being performed by the Company. The Company shall be given not less than seven (7) days advance notice to arrange for such temporary wire changes.

(h) In the maintenance and operation of its television transmission and distribution system in the City of Fairview Park and in the course of any new construction or addition to its facilities, the Company shall proceed so as to cause the least possible inconvenience to the general public; the Company at its expense, shall restore all damage to property, both public and private, caused by the construction, maintenance or repair of the cable system; any opening or obstruction in the streets or other public places made by the Company in the course of its operations shall be in accordance with the ordinances and regulations governing the making of openings in the streets, sidewalks, public ways or places of the City as established by Council and the Service Department or its designee of said City and which are in effect at that time.
(Ord. 91-102. Passed 10-21-91.)

733.05 INDEMNIFICATION AND INSURANCE.

(a) Indemnification. The Company hereby agrees to indemnify, defend and hold harmless the City and its officers, boards, commissions, agents and employees against and from any and all claims, demands, actions, suits, liabilities and judgments of every kind and nature and regardless of the merits of the same, arising out of, occasioned by or related to the exercise or enjoyment of the renewed franchise granted pursuant to this Agreement, including costs of investigations, attorneys' fees and court costs in the defense of any actions.

(b) Insurance. At all times during the term of the franchise, the company shall obtain, pay all premiums for and file with the City Certificates of Insurance and receipts evidencing the payment of premiums for the following:

(1) A general comprehensive public liability insurance policy indemnifying, defending and saving harmless the City, its officers, boards, commissions, agents and employees from any and all claims by any person or persons whatsoever on account of injury to or death of a person or persons occasioned by the operations of the Company under the franchise herein granted or alleged to have been so caused or occurred with a minimum liability of five hundred thousand dollars ($500,000) for personal injury or death of any one person and one million dollars ($1,000,000) for personal injury or death of any two or more persons in any one occurrence.

(2) Property damage insurance indemnifying, defending and saving harmless the City, its officers, boards, commissions, agents and employees from and against all claims by any person whatsoever for property damage occasioned by the operation of the Company under the franchise herein granted or alleged to have been so caused or occurred with a minimum liability of two hundred fifty thousand dollars ($250,000) for property damage to any one person and five hundred thousand dollars ($500,000) for property damage to two or more persons in any one occurrence.

(3) One million dollars ($1,000,000) for all other types of liability. Such insurance shall be kept in full force and effect by the Company during the existence of and until after the removal of all poles, the removal wires, cables, underground conduits, manholes, and other conductors and fixtures incident to the maintenance and operation of the Company as defined in the franchise.

(4) The Company shall also carry such insurance as it deems necessary to protect it from all claims under the Worker's Compensation Laws in effect that may be applicable to the Company.

All of the foregoing insurance contracts shall be in the form satisfactory to the City and shall be issued and maintained by companies authorized to do business in the State of Ohio and reasonably acceptable to the City and they shall require thirty days written notice of any cancellation to both the City and the Company, and copies of said policies or certificates of insurance fully evidencing the policies, their provisions and limits of liability shall be filed with the City. In the event of such cancellation, Company agrees to have an alternate policy of insurance in effect at or prior to the termination of such cancelled policy in order that there shall be no lapse in the coverage required by this Section. Notice of such alternate policy shall be given to the City by the new insurance company at the earliest date possible pursuant to the rules of such insurance company.
(Ord. 91-102. Passed 10-21-91.)

733.06 PERFORMANCE BOND.

At the time this franchise renewal becomes effective, the Company shall furnish a bond to the City in the amount of twenty-five thousand dollars ($25,000.00) in such form and with such sureties as shall be acceptable to the Mayor of the City, guaranteeing the faithful performance of all the obligations of the Company under the terms of this franchise.

The Company's performance of its obligations under this franchise shall be conditioned upon the Company's receiving such license and/or grants as may be necessary to the performance of this ordinance, from duly constituted agencies of the Federal government or the State of Ohio, which licenses and/or grants the Company either presently holds or agrees to apply for immediately upon its acceptance of this chapter.
(Ord. 91-102. Passed 10-21-91.)

733.07 NONINTERFERENCE.

Installation, operation and maintenance shall be such that no interference is caused to existing communications systems and so as not to distort or interfere with direct off-the-air television signals. In the event Company is notified that its system is causing such interference, it shall take all reasonable steps to eliminate such interference.
(Ord. 91-102. Passed 10-21-91.)

733.08 FRANCHISE FEE.

(a) The Company shall pay to the City for the right, privilege and franchise in connection with the grant, an amount equal to three percent (3%) of the Company's gross monthly subscriber service revenues, less unpaid monthly subscriber service charges, but including any annual or periodic prepayment of monthly service charges, for the Company's previous fiscal year.

(b) It shall be the obligation of the Grantee to make provisional quarterly payments to the City based on the quarterly earnings for the next prior quarter and such quarterly payments will be adjusted in accordance with the financial statement required to be made within ninety days of the expiration of each calendar year.

(c) The Company shall file within ninety days following the conclusion of each fiscal year of the Company a certified annual report prepared by an independent Certified Public Accountant acceptable to the City showing the annual total of monthly gross subscriber revenues and payments to the City and further relevant financial information in regard to the Company as may be required by the City.

(d) The Company hereby guarantees that at all times the total monthly charges to City subscribers, specifically the total of rates plus franchise fees, shall be at least two percent (2%) lower than total rates plus franchise fees paid in any Cox Cable Cleveland Area, Inc. franchise municipality that has a five percent (5%) franchise fee.
(Ord. 91-102. Passed 10-21-91.)

733.09 SERVICES AND PROGRAMMING.

(a) Program Services. All cable television franchisees in the City shall have a minimum of thirty nontext operating channels. The Company shall not reduce the number of video program services offered on the system without thirty days prior written notification to the City. If the Company does determine to reduce the number of such services, or rearranges the tiers in which such services are offered, the City may during said thirty-day period hold an informational public hearing to apprise the public of such reduction or rearrangement and the reasons therefor, and the Company shall participate in such a hearing by having a Company representative in attendance.

(b) Leased Channel Service. The Company shall offer leased channel service for commercial use by persons unaffiliated with the Company on reasonable terms and conditions in accordance with applicable federal and state law, including Section 612 of the Cable Communications Policy Act of 1984 (47 U.S.C. Sec. 532).

(c) Community Support. Continuation of the cable "Community Bulletin Board" service for the benefit and education of City residents.

(d) Availability of Public Educational and Governmental Access. Upon the following terms and conditions, public, educational and governmental access shall be made available in addition to such access presently available.

(1) At any such time as the City provides one new hour of programming five out of every seven days for a period of six months, with no more than single duplication of any one program during such one hour, than additional access of one hour per day shall be made available to the City.

(2) Additional access shall be made available to the City, under the same terms and conditions stated in subsection (d)(l) hereof, for each one hour increment of new programming provided by the City for five out of seven days for a six month period.

(3) In the event fewer than five hours per week are provided by the City, standard access procedures shall apply.

(e) A reasonable number of free video training workshops will be provided annually by the Company in order to provide training to students residing in the City and to community access users in cable casting techniques and operation of access equipment. These workshops will take place at a site designated by the Company.
(Ord. 91-102. Passed 10-21-91.)

733.10 APPLICABILITY OF EXISTING TERMS.

(a) All of the terms, conditions, and provisions of the City Charter as it now exists, relating to franchises and applicable hereto shall be considered a part of this chapter the same as if such terms, conditions and provisions were fully written herein.

(b) Furthermore, the Company shall at all times comply with all laws and regulations of the State and Federal governments or any administrative agency thereof, including, but not by way of limitation, the Cable Act; and if any State or Federal law or regulation shall require the Company to perform any service or shall prohibit the Company from performing any service in conflict with the terms of this franchise or of any law or regulation of the City, the Company shall promptly notify Council of the point of conflict believed to exist between the regulation or law and the laws or regulations of the City or the franchise. Pending issuance of any final order by a court of competent jurisdiction, the Company shall be governed by the advice of Council, so long as such shall not be in conflict with the Cable Act, or other applicable law.
(Ord. 91-102. Passed 10-21-91.)

733.11 TECHNICAL STANDARDS.

The Company shall operate and maintain the cable system so as to meet, at a minimum, the technical standards and requirements set forth at subpart K of the FCC's rules and regulations as they existed on June 1, 1986 (47 C.F.R. Section 76.601 - 76.619), including, as a mandatory requirement of this Agreement, the standards and guidelines set forth at Section 76.605 of those rules. (Ord. 91-102. Passed 10-21-91.)

733.12 COMPLIANCE WITH APPLICABLE LAWS.

The Company shall establish, construct, operate and maintain the cable system and system facilities in strict compliance with all applicable laws, ordinances, rules and regulations. The Company shall obtain all necessary federal and state government permits, licenses and other required authorizations in connection with such establishment, construction, operation, and maintenance of the cable system and system facilities.
(Ord. 91-102. Passed 10-21-91.)

733.13 RECEIVERSHIP AND FORECLOSURE: TRANSFER.

The rights and privileges herein granted shall not be assignable or transferable without the consent of the City in any bankruptcy proceedings, trusteeship, receivership, or by operation of any law, in any of which events this franchise shall, at the option of the City, terminate forthwith; nor shall said Company sell, lease, assign or otherwise alienate this franchise or any privilege hereunder to an entity not under common control with the Company without the prior approval of Council. Such approval shall not be unreasonably withheld.
(Ord. 91-102. Passed 10-21-91.)

733.14 SUBSCRIBER SERVICE.

(a) The Company shall maintain a repair department comprised of qualified technicians, service vehicles and equipment to provide prompt and efficient repair of service. The Company shall have a local listed telephone number with a "call waiting" capability, so operated that requests for repairs can be efficiently transmitted and received without undue delay. An answering service may be used during nonbusiness hours. The Company shall respond to any such request on the same day to the extent reasonably possible, but in any event shall offer to respond not later than twenty-four hours after receipt of such request unless such response is made impossible by extraordinary and unforeseeable circumstances. The Company shall respond within twelve hours to any area outage.

(b) The Company shall at least annually put a notice message on each subscriber's bill requesting subscriber comments on the manner in which Company is satisfying subscriber needs. Such notice shall include a phone number and address to which such comments may be directed.
(Ord. 91-102. Passed 10-21-91.)

733.15 SYSTEM FEATURES.

(a) Channel Capacity. The Company shall maintain a system channel capacity of thirty-five channels.

(b) Standby Power. The Company shall provide standby power generating capacity at the cable system headend sufficient to operate the cable system headend for at least twelve consecutive hours.

(c) Emergency Alert Capability. The Company shall provide an emergency audio override capability for use in the event of any emergency or vital public information situation, which can be operated through the County Disaster Services Agency and which shall be accessible by telephone. Activation of this emergency override capability shall give the authorized Agency control of all channels simultaneously for a limited period of time sufficient for the purpose of transmitting audio instructions to viewers to turn to the designated channel for detailed information as to the emergency.

(d) Parental Control Equipment. The Company shall provide subscribers, upon request and at nominal cost, with a parental control locking device that permits a subscriber to inhibit the video and, if feasible, the audio portions of a particular program service or services.

(e) New System Technology. At such time as at least fifty percent (50%) of Cox owned or controlled cable systems elsewhere in the United States offers addressable technology, the Company shall begin to offer this technology no later than eighteen months after such event. The Company shall provide to the City an annual report, due no later than thirty days after each anniversary date of this agreement listing all Cox Cable systems and indicating which systems offer addressable technology.
(Ord. 91-102. Passed 10-21-91.)

733.16 TERMINATION OF SUBSCRIBER SERVICE.

Upon termination of service to any subscriber, the Company shall promptly remove all of its facilities and equipment from the premises of such subscriber upon his written request. Underground drops and/or cable and fished cables will not be removed.
(Ord. 91-102. Passed 10-21-91.)

733.17 INSTITUTIONAL SERVICE.

(a) Buildings Served. The Company shall provide free of any installation or monthly service charge, basic cable service to each of the municipal, educational and public safety facilities designated in writing by the Mayor, at a cable drop location mutually agreeable to the Mayor and the Company. The Company shall agree to relocate any such drop to another location in the same building provided that the building allows a reasonably accessible path if requested by the Mayor. If requested in writing by the Mayor, the Company shall provide additional drops or internal building cabling on a time and materials cost basis, with the Company to submit invoices for proof of cost, but in no event will there be a monthly service charge for such service except for such service provided to a housing facility or, in the case of a hospital, to hospital rooms in which a rental fee is charged to a patient for television service.
(Ord. 91-102. Passed 10-21-91.)

733.18 CONSUMER INFORMATION.

(a) The Company shall furnish each subscriber, at the time service is installed, with information regarding the address and phone number for making inquiries, requests for repairs or other service or assistance or complaints, as described in Section 733.19. In addition, the Company shall provide a privacy notice to each subscriber at the time of installation and at least once per year thereafter, as required by Section 551 of the Cable Act.

(b) The Company shall also provide to each prospective subscriber who requests installation, information, including terms and conditions of eligibility, regarding the Guaranteed Installation Program, or any other similar program Cox may have in effect at that time.
(Ord. 91-102. Passed 10-21-91.)

733.19 SUBSCRIBER COMPLAINTS.

Upon receipt of a written complaint the Mayor or his designee shall promptly forward it to the Company. Within five days of receipt of the complaint by the Company, the Company shall satisfy the complaint of the subscriber and so notify the Mayor or his designee of the action taken, or of its refusal or inability to do so. If the complaint is not satisfied, or if the Mayor or his designee is not satisfied with the action taken by the Company, he shall so notify the Company and proceed to negotiate a resolution of the complaint. If the Mayor or his designee and the Company are unable to resolve the complaint to the satisfaction of the subscriber within thirty days he shall notify the subscriber of their right to and the procedures for appeal to Council.

An appeal by the subscriber to Council shall be filed in writing with the Clerk of Council within thirty days from the date of receipt by the subscriber of the Mayor's notice of right of appeal. Upon such procedures and hearings as shall be determined by Council, Council shall issue its determination of the complaint within sixty days.
(Ord. 91-102. Passed 10-21-91.)

733.20 REVIEW OF PERFORMANCE.

Within ninety days after the first anniversary of the effective date of this Agreement and each year thereafter throughout the term of this Agreement, the Mayor or his delegate may meet with the Company to review the performance and quality of service provided by the Company under this Agreement. Should the Mayor or his delegate wish to meet with the Company to review the performance and quality of service being provided by the Company, the Mayor or his delegate shall provide the Company thirty days notice and an agenda of the topics to be discussed at such meeting. Within thirty days after the conclusion of any such performance review, the City may issue a report with respect to the adequacy of the system performance and the quality of service. If any inadequacy is found, the City may direct the Company to correct the inadequacy within a reasonable period of time, giving consideration to relevant legal, technical and economic factors.
(Ord. 91-102. Passed 10-21-91.)

733.21 CITY INQUIRY.

Any inquiry, proceeding, investigation or other action to be taken or proposed to be taken by Council in regard to the operations of the grantee's cable television system other than one described in Section 733.20 or 733.23, shall be taken only after thirty days public notice of such action or proposed action is served directly on the Grantee and the Grantee has been given an opportunity to respond in writing and/or at hearing as may be specified by Council, and general members of the public have been given an opportunity to respond or comment in writing on the action or proposed action.

The public notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response and the person or persons in authority to whom such responses should be addressed, and such other procedures as may be specified by Council. If a hearing is to be held, the public notice shall give the date and time of such hearing, whether public participation will be allowed and the procedures by which such participation may be obtained. The Company is a necessary party to any hearing conducted in regard to its operations.
(Ord. 91-102. Passed 10-21-91.)

733.22 RATES AND CHARGES.

(a) Senior Citizen Discount. From and after the first complete month following passage of renewal Ordinance 91-102, the Company shall allow a Senior Citizen Discount of fifteen percent (15%) off the prevailing customer subscription rates for those senior citizens in the City who qualify for the homestead exemption or live at City designated senior citizens' housing complexes, except that the Company shall not be required to offer such a discount for any off-the-air signal retransmission services or for premium services.

(b) Public Hearing For Rate Increase. In the event that the Company determines to increase subscriber rates, the Company shall give Council sixty days notice thereof. Such notice will be in writing to the Clerk of Council. The Company shall, if the City so requests, participate in an informational public hearing for the purpose of describing such rate increase and the reasons therefor. This subsection shall not be construed to impose any form of rate regulation on the Company.

(c) Discrimination. The Company shall not discriminate among customers of its service for Basic cable service. The Company may offer senior citizen and bulk rate discounts.

(d) Regulatory Authority. In the event that United States law permits local regulation of basic service rates, then notwithstanding anything to the contrary in this chapter, the City may exercise such regulatory authority.
(Ord. 91-102. Passed 10-21-91.)

733.23 BREACH OF FRANCHISE.

(a) The City reserves the right to cancel, in the manner hereinafter set forth, the franchise granted hereunder upon the breach of any of the material terms and conditions within the Agreement. Upon any breach thereof, the City shall give the Company written notice of its intention to cancel said franchise setting forth the specific acts which are allegedly in violation of the terms of this Agreement. Said notice shall be given by certified mail addressed to the Company's local business office.

(b) In the event the Company fails to correct said breach or comply with the terms and conditions of this Agreement within seventy-five days after receipt of said notice, unless a delay is caused by circumstances beyond the reasonable control of the Company, the City after a public hearing affording the Company due process shall have the right to cancel this franchise.
(Ord. 91-102. Passed 10-21-91.)

733.24 SEVERABILITY.

All terms and conditions of this Agreement are subject to the rules and regulations of the FCC and all applicable State and federal laws. If any provision of this Agreement is held by any court or federal or State agency of competent jurisdiction to be invalid as conflicting with any federal or State law, rule or regulation now or hereafter in effect, or if held by any such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, said provision shall be considered a separate, distinct and independent part of this Agreement, and such holding shall not affect the validity and enforceability of any other provisions hereof. Notwithstanding the foregoing, if any part of this Agreement is declared or found to be invalid by the FCC or any court or agency of competent jurisdiction, such part may, at the option of either party, be renegotiated.
(Ord. 91-102. Passed 10-21-91.)

733.25 MISCELLANEOUS PROVISIONS.

(a) Amendment or Modification. This Agreement shall not be amended or modified except by written agreement executed in the same manner as this Agreement.

(b) Notices. Notices required to be sent to the City under this Agreement shall be in writing and shall be delivered by hand, or shall be sent by certified mail, return receipt requested, to the City of Fairview Park, Attn: Clerk of Council, or such other address as may be designated by the City in writing. Notices required to be sent to the Company shall be in writing and shall be delivered or sent by certified mail, return receipt requested to the Company at 12221 Plaza Drive, Parma, Ohio, 44130, Attn: General Manager, or such other address as may be designated by the Company in writing.

(c) Governing Law. The terms of this Agreement shall be construed in accordance with the laws of the State of Ohio.

(d) Binding Effect. Subject to other provisions contained herein, this Agreement shall be binding upon and shall inure to the benefit of the successors in interest and assigns of the respective parties hereto.

(e) Inspection and Records.

(1) The City shall have the right, upon reasonable notice to the Company and at reasonable times for the purpose of verifying compliance with this Agreement, to inspect all or any part of the Company's records as well as all books, records, maps, plans, financial statements, service complaint logs, performance test results and documents of every kind in connection with the Grant, the cable system, the system facilities, and the Company's undertakings with respect to this Agreement which relate to the operation of the cable system in the City. If any such books, records, maps, financial statements, service complaint logs, performance test results, or other like material of the Company are not kept in the Company's local office, said records shall upon reasonable request be made available to the City. The City shall take such reasonable steps as necessary to limit disruption of the Company's business.

(2) The Company shall at all times maintain:

A. A record of all complaints received and interruptions or degradation of service experienced for the preceding one year.

B. A full and complete set of plans, records and "as-built" maps showing the exact location of all cable system equipment installed or in use in the Company's service area, exclusive of subscriber service drops.

(3) The Company need not take any action under this section that would render it in violation of Section 551 (Protection of Subscriber Privacy) of the Cable Act. (Ord. 91-102. Passed 10-21-91.)

733.26 ACCEPTANCE OF FRANCHISE RENEWAL.

Within fifteen days from the date of passage of this chapter without amendment, the Company shall file with the Clerk of Council its written acceptance thereof; thereupon this chapter shall be a binding contract between the City and the Company.
(Ord. 91-102. Passed 10-21-91.)

733.27 CAPTIONS.

The captions to sections throughout this chapter are intended solely to facilitate reading and reference. Such captions shall not affect the meaning or interpretations of this chapter.
(Ord. 91-102. Passed 10-21-91.)

733.28 TERMINATION OF FRANCHISE.

(a) Upon the normal termination date (including renewals) of this franchise, or if the franchise is forfeited or abandoned for any other reason prior to the normal termination thereof, the Company may not sell or transfer its facilities, equipment and installations as then existing to any entity except upon approval of Council. Such approval may not be unreasonably withheld.

(b) No purchaser or transferee from the Company of Company's facilities, equipment and installations, or any assignee of company's franchise, shall acquire any rights or authorization to operate a cable television system in the City except as it may be separately granted to it by the City. Such a grant by the City shall not be unreasonably withheld. It shall be prima facie evidence of entitlement to such a grant to such a purchaser or transferee or assignee if such entity agrees to abide by all of the terms and conditions of the franchise agreement then existing and it in determined by Council that such purchaser or transferee or assignee has the financial, technical, and legal abilities to conform to the terms and conditions of the franchise agreement then existing.

(c) Upon the normal termination date (including renewals) of this franchise, or if this franchise is nonrenewed at its termination date, or if this franchise is terminated for cause prior to its normal termination date, then the sale of said cable system to another person shall be:

(1) In the case of nonrenewal, at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself; and

(2) In the case of termination for cause, at an equitable price.

(Ord. 91-102. Passed 10-21-91.)

733.29 WAIVER.

Nothing in this chapter shall be construed or be deemed a waiver of or an amendment to the rights of the City or the Company under the Cable Act of 1984 as such act exists on the date this chapter is adopted.

(Ord. 91-102. Passed 10-21-91.)

733.30 ACTIONS OF COUNCIL.

It is found and determined that all formal actions of Council concerning and relating to the passage of this chapter were adopted in an open meeting of Council, and that all such deliberations of Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio R.C. 121.22.

The franchise covered by this chapter shall take effect and be in force from and after December 18, 1994.

(Ord. 91-102. Passed 10-21-91.)

CHAPTER 734
Cable Regulatory Staff

734.01 Establishment and composition.
734.02 Terms and qualifications.
734.03 Compensation.
734.04 Meetings.
734.05 Duties and responsibilities.
734.06 Council approval.
734.07 Parliamentary procedure.
734.08 Cable Regulatory Staff Trust Fund.

CROSS REFERENCES
Community antenna television - see BUS. REG. Ch. 733

734.01 ESTABLISHMENT AND COMPOSITION.

There shall be established a Cable Regulatory Staff to consist of six members to be appointed as follows:

(a) Council to elect one member of their body by a majority vote who shall serve as their representative to the Cable Regulatory Staff;

(b) The Mayor or a representative designated by him to represent him at the meetings; and

(c) Three residents of the City who shall be appointed by the Mayor with the approval of the majority of Council. These persons may be selected, but not limited to, the education, church, civic and/or business community sectors of the City to represent the viewpoint and necessary rate review expertise for the benefit of our citizenry.

(d) All of the above five members including the Mayor's designated representative shall be entitled to one vote on the board.

(e) The franchisee (C.A.T.V. Inc.) may be permitted to attend the meeting of the staff upon invitation but shall not be entitled to a vote.

(Ord. 94-15. Passed 4-18-94.)

734.02 TERMS AND QUALIFICATIONS.

(a) The member designated by Council shall serve from 1994 through December 31, 1995. Thereafter, such Councilperson's term shall be for a period of two years.

(b) The Mayor shall serve on the staff for the length of his term of office.

(c) The term of office of the three members appointed by the Mayor and approved by Council shall be as follows:

(1) One member for a term expiring December 31, 1994;
(2) One member for a term expiring December 31, 1995; and
(3) One member for a term expiring December 31, 1996.

Subsequent appointments to such staff shall be for terms of two years each. Vacancies shall be filled for the remainder of unexpired terms in the same manner as the original appointments and confirmations. In the case of temporary absence or disability of any member, a member may be appointed and confirmed in the manner provided above to serve during such temporary absence or disability. Such temporary member shall possess all of the qualifications of a regular member, shall have the same powers and perform the same duties as a regular member during the term of his appointment.

(d) The Mayor shall have the right to remove any member he appoints for good cause. (Ord. 94-15. Passed 4-18-94.)

734.03 COMPENSATION.

There shall be no compensation of any kind for any of the members. (Ord. 94-15. Passed 4-18-94.)

734.04 MEETINGS.

The Cable Regulatory Staff shall determine their own schedule of meetings. In any event, the staff shall meet at least once every three months.

(a) A quorum shall consist of four members in attendance and the concurrence of three voting members shall be required for all decisions.
(b) All meetings will be open to the public in accordance with Chapter 110 of the Codified Ordinances entitled "Open Meeting Law".
(Ord. 94-15. Passed 4-18-94.)

734.05 DUTIES AND RESPONSIBILITIES.

The duties and responsibilities of the Cable Regulatory Staff shall be:

(a) To develop and oversee matters pertaining to local origination and local access programming.
(b) To solicit program material, ideas, assistance and funds from individuals, organizations, both civic and business.
(c) To communicate information pertaining to cable television to the community.
(d) To keep minutes of all meetings and submit reports of the meetings to the Clerk of Council.
(e) To remain within the guidelines and intent of Chapter 733 (Ordinance No. 79-72).
(f) To act as staff as described in Ordinance 93-96 and make recommendations to Council in accordance with such ordinance.
(Ord. 94-15. Passed 4-18-94.)

734.06 COUNCIL APPROVAL.

Council shall have the right to approve and disapprove decisions of the Cable Regulatory Staff, but failure to indicate such approval or disapproval shall be deemed to be approval.
(Ord. 94-15. Passed 4-18-94.)

734.07 PARLIAMENTARY PROCEDURE.

Robert's Rules of Order as most recently revised shall be the parliamentary authority used by the staff and any legal decisions shall be made by the Director of Law or Assistant Director of Law. (Ord. 94-15. Passed 4-18-94.)

734.08 CABLE REGULATORY STAFF TRUST FUND.

The Director of Finance is authorized to set up a "Cable Regulatory Staff Trust Fund" and accept donations from residents and businesses.
(Ord. 94-15. Passed 4-18-94.)

CHAPTER 735
Newspaper Dispensing Devices and Vending Machines

735.01 Application; purpose.
735.02 Exemptions.
735.03 Definitions.
735.04 Advertising matter.
735.05 Specific regulations.
735.06 Review and approval procedure.
735.07 Enforcement.
735.08 Equitable remedies.
735.99 Penalty.

CROSS REFERENCES
Littering - see GEN. OFF. 521.05
Newspaper drop off deliveries - see GEN. OFF. 521.10
Permit required; placement - see S.U. & P.S. Ch. 907

735.01 APPLICATION; PURPOSE.

This chapter shall apply to both newspaper dispensing devices and vending machines installed, erected, placed or displayed other than within a building. The purpose of this chapter is to regulate the size, number and outdoor placement of newspaper dispensing devices and vending machines and not to prevent all outdoor display.
(Ord. 85-35. Passed 7-1-85.)

735.02 EXEMPTIONS.

This chapter shall not apply to United States mail postage dispensing devices or to United States mail collection or postal boxes whether intended and available for use by the general public or for use only by employees of the United States Postal Service nor shall it apply to coin-operated telephones. (Ord. 85-35. Passed 7-1-85.)

735.03 DEFINITIONS.

As used in this chapter, certain terms are defined as follows:

(a) "Newspaper dispensing device" means any mechanical self-service coin-operated box, container, storage unit or dispenser as well as boxes, containers, storage units or dispensers which may be operated without the payment of a consideration and which, in either case, makes available to persons publications, magazines, newspapers, pamphlets, posters and periodicals of any kind, nature or description contained therein other than obscene material, material harmful to juveniles, or sexually oriented matter involving a minor, as those terms are defined in Chapter 533 of the Codified Ordinances, and which are specifically excluded and prohibited.

(b) "Vending machine" means any box, container, storage unit or dispenser which displays, offers for sale or makes available for purchase, any merchandise or service contained therein, whether perishable or nonperishable or whether prepackaged, premeasured, bottled or canned including, but not limited to, nonalcoholic beverages, confections, services, grooming items, ice and cigarettes, cigars or other tobacco product, and which upon the insertion of a coin, coins or by other means, including the payment of a fee directly to the owner, operator, proprietor or other person, dispenses or otherwise makes available for purchase the merchandise or service contained therein.
(Ord. 87-37. Passed 12-7-87.)

735.04 ADVERTISING MATTER.

Newspaper dispensing devices and vending machines shall not be used for display of signs, advertising matter or for publicity purposes other than to identify the company name or trade name; the display, sale or purchase of the merchandise available therein or therefrom; instructions of operation; the notice required by Section 735.05; and costs, if any, of the merchandise.
(Ord. 87-37. Passed 12-7-87.)

735.05 SPECIFIC REGULATIONS.

(a) Newspaper dispensing devices shall be constructed of metal or other material of substantially equivalent strength and durability not more than fifty inches in height, thirty inches in width or twenty-four inches in depth; shall weigh at least 160 pounds when empty; shall have a functioning coin return mechanism if a fee is charged; and shall have affixed in a readily visible place a notice setting forth the name, address and telephone number of a responsible officer or agent of the owner to contact to report a malfunction of the coin return mechanism.

(b) Vending machines, other than ice dispensing or storage chests or devices, shall be constructed of metal or other material of substantially equivalent strength and durability not more than eighty inches in height, forty-eight inches in width and thirty inches in length, shall weigh at least 160 pounds when empty; shall have a functioning coin return mechanism if a fee is charged; and shall have affixed in a readily visible place a notice setting forth the name, address and telephone number of a responsible officer or agent of the owner to contact to report a malfunction of the coin return mechanism.

(c) Ice dispensing or storage chests or devices shall be constructed of metal or other material of substantially equivalent strength and durability not more than seventy-two inches in height, thirty-six inches in width, and forty-eight inches in length; shall weigh at least 160 pounds when empty; shall have a functioning coin return mechanism if a fee is charged; and shall have affixed in a readily visible place a notice setting forth the title, address and telephone number of a responsible officer or agent of the owner to contact to report a malfunction of the coin return mechanism.

(d) Other than within enclosed buildings, newspaper dispensing devices shall not exceed three in number, and vending machines, including ice dispensing or storage chests or devices, shall not exceed two in number and no combination of newspaper dispensing devices and vending machines, including ice dispensing or storage chests or devices, shall exceed three in number at any one time on any lot or premises. All vending machines and newspaper dispensing devices shall be placed, installed, used or maintained adjacent to and parallel with the building walls and shall not be placed, installed or maintained:

(1) So as to reduce the clear, continuous area designed and intended as a pedestrian walkway to less than five feet;
(2) Within five feet of any fire hydrant, fire call box, police call box or other emergency facility;
(3) Within five feet of any access drive;
(4) Within six inches of any public utility pole, provided that placement adjacent to a public utility pole shall be limited to one side of the pole;
(5) Within that portion of the lot or premises parallel to an area designated for handicapped parking or a commercial loading or unloading space or which serves as a handicap curb or ramp;
(6) More than twelve inches from the front building wall or more than three feet from any other building wall or less than three feet from any doorway;
(7) In a manner that blocks, obstructs or restricts access to the building by fire or police personnel;
(8) Contrary to any specific provision of the Zoning Code which regulates the location of outdoor display or sale of merchandise;
(9) So as to display signs or other publicity matter except as permitted by Section 735.04;
(10) So as to be stacked one on top of another; or
(11) In other than a secure and stationary manner.

(e) Outdoor installation, placement, use or maintenance of any vending machine and newspaper dispensing device shall not be permitted in any residential zoning district as set forth on the Zone Map of the City, except as provided in Chapter 907 of the Codified Ordinances.

(f) Newspaper dispensing devices and vending machines, including ice dispensing or storage chests or devices, shall be maintained in good working order, in a safe, clean and attractive condition, free of rust and the area surrounding such devices and machines shall be kept free from litter and debris. Vending machines, including ice dispensing or storage chests or devices, shall be installed and maintained in accordance with the provisions of Chapter 1315 of the Codified Ordinances. (Ord. 87-37. Passed 12-7-87.)

735.06 REVIEW AND APPROVAL PROCEDURE.

(a) Prior to the installation, placement or use of a newspaper dispensing device or a vending machine, the owner of such device or machine, or the owner of the premises, shall submit to the Building Commissioner the following information:
(1) The name, address and telephone number of the owner of the device or machine and of the premises where the device or machine is to be installed, placed or used;
(2) The name, address and telephone number of the individual or other person to whom the City shall serve in person or by mail to correct any violation of the chapter;
(3) The location and dimensions for each newspaper device or vending machine with sufficient detail to enable the Building Commissioner that the installation and placement of the device or vending machine shall meet the criteria regulations of Section 735.05; and

(4) Permission of the owner of the premises, when the applicant is not the owner.

(b) The owner of the device or machine or the owner of the premises shall promptly notify the Building Commissioner in writing of any change in the information required by this section. If the owner of the device or machine, or the owner of the premises proposes to change the location of a newspaper dispensing device or vending machine, the information required by this section shall be submitted to the Building Commissioner prior to the change in location.

(c) The provisions of this section shall not apply to vending machines and newspaper dispensing devices located within enclosed buildings.
(Ord. 87-37. Passed 12-7-87.)

735.07 ENFORCEMENT.
The provisions of this chapter shall be enforced by the Building Commissioner or his designee. (Ord. 85-35. Passed 7-1-85.)

735.08 EQUITABLE REMEDIES.
In addition to the penalty provided in Section 735.99, no provision of this chapter shall be construed or interpreted so as to preclude the institution of appropriate proceedings in a court of competent jurisdiction by the Department of Law for the purpose of abating violations of this chapter. (Ord. 85-35. Passed 7-1-85.)

735.99 PENALTY.
Whoever violates any provision of this chapter shall be guilty of a minor misdemeanor. Each day of violation shall constitute a separate offense.
(Ord. 85-35. Passed 7-1-85.)

CHAPTER 737
Home Sales

737.01 Home sale defined.
737.02 Intent.
737.03 Maximum number of sales.
737.04 Hours and merchandise permitted.
737.05 Advertising signs.
737.06 Notification to City.
737.99 Penalty.

CROSS REFERENCES
Home sale signs - see P. & Z. 1145.13(g)

737.01 HOME SALE DEFINED.

As used in this chapter, "home sale" means a transfer of ownership of tangible personal property to the general public conducted on or within any portion of a residential premises, including, but not limited to, garage sales, patio sales, yard sales, basement sales, rummage sales, porch sales, driveway sales and the like.
(Ord. 82-41. Passed 12-6-82.)

737.02 INTENT.

(a) It is the intent of this chapter to regulate and control home sales conducted on or within residential premises but shall not be construed in a manner to curtail the average homeowner's or resident's attempt to conduct a sale but rather is directed at the chronic vendor who runs home sales as a part-time business on or within residential premises.

(b) This chapter shall not apply to:

(1) Home sales conducted solely for or on behalf of nonprofit corporations, religious institutions, clubs or lodges or to home sales conducted on real estate owned and/or occupied by such organizations.

(2) Sales conducted by nonconforming businesses located in residential zoning districts.

(3) Sales conducted pursuant to an order or process of a court of competent jurisdiction. (Ord. 82-41. Passed 12-6-82.)

737.03 MAXIMUM NUMBER OF SALES.

No home sale shall be conducted by the same resident or a member of the family of such resident on the premises of such resident more than three times each calendar year. A "home sale" as used herein means a period of three days or less in any one calendar week.
(Ord. 82-41. Passed 12-6-82,)

737.04 HOURS AND MERCHANDISE PERMITTED.

(a) No person shall conduct a home sale except between the hours of 9:00 a.m. and 6:00 p.m. No home sale shall last more than three consecutive days.

(b) No person shall offer any merchandise for sale that has been purchased by or for, made a gift to, or for a consideration placed with, the resident for purposes of resale at such home sale.

(c) After the expiration of each day of the sale, all merchandise offered for sale shall be placed inside the premises and not within the view of the general public.
(Ord. 82-41. Passed 12-6-82.)

737.05 ADVERTISING SIGNS.

Signs advertising home sales shall be permitted as regulated by Chapter 1145 of the Codified Ordinances. (Ord. 82-41. Passed 12-6-82.)

737.06 NOTIFICATION TO CITY.

(a) Any person intending to conduct a home sale shall notify the Building Department in writing, in person or by telephone prior to the sale of:

(1) The name of the person conducting the sale.
(2) The street address of the location at which such home sale is to be conducted.
(3) The date or dates of the home sale.
(4) The number, if any, of previous such sales during the same calendar year.
(5) Such other information as may be required by the Building Commissioner.

(b) The Building Commissioner shall maintain such records as are deemed necessary or appropriate for the administration of this chapter.
(Ord. 82-41. Passed 12-6-82.)

737.99 PENALTY.

Whoever violates or fails to comply with any of the provisions of this chapter shall be fined not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00) for a first offense; for a second offense, such person shall be fined not more than one hundred dollars ($100.00).
(Ord. 82-41. Passed 12-6-82.)

(EDITOR'S NOTE: The next printed page is page 79.)

CHAPTER 741
Lawn Chemical Applicators

741.01 Notice to occupant of property.
741.02 Removal from abutting property.
741.03 Posting of signs required.
741.04 Exemptions.
741.99 Penalty.

CROSS REFERENCES
Pesticide applicators and operators - see Ohio R.C. 921.06 to 921.12
Economic poisons - see OAC Ch. 901:5-11
Trees, hedges, shrubs and bushes chemical applicators - see BUS. REG. Ch. 742

741.01 NOTICE TO OCCUPANT OF PROPERTY.

(a) No person licensed under Ohio R.C. 921.06, 921.07, 921.08 or 921.12 shall apply any lawn chemical to residential or commercial lawns in the City unless, at or before the time of application, the information described in subsection (b) hereof has been provided to the owner, tenant and occupant on whose property the lawn chemical is to be applied.

(b) The information to be provided shall be in writing and shall include not less than the following:

(1) The brand or common name of each lawn chemical to be applied;
(2) The chemical type (fertilizer, pesticide or defoliant) of each lawn chemical to be applied;
(3) The range of concentration of end use product to be applied to the lawn and the rate of application;
(4) Any special instruction appearing on the label of the lawn chemical product applicable to the occupant's use of the lawn following application;
(5) The name and telephone number of the employer of the applicator;
(6) The date and approximate time of lawn chemical application.

(Ord. 88-30. Passed 7-18-88.)

741.02 REMOVAL FROM ABUTTING PROPERTY.

No person who is licensed under Ohio R.C. 921.06, 921.07, 921.08 or 921.12 or any employee of any person so licensed shall fail to remove from any public sidewalk or the driveway of an abutting property any lawn care chemical which may have been placed thereon during the application of the lawn chemical. (Ord. 97-46. Passed 5-19-97.)

741.03 POSTING OF SIGNS REQUIRED.

No person who is licensed under Ohio R.C. 921.06, 921.07, 921.08 or 921.12 shall apply any lawn chemical to residential or commercial lawns in the City unless within one hour of the application of the lawn chemical, the applicator shall place at common access points on the property to which the lawn chemical was applied one or more signs with dimensions of at least four inches by five inches attached to a supporting device of not less than fourteen inches in length marked on one side with letters of one-half inch or larger that substantially provides the following information:

LAWN CARE APPLICATION. KEEP OFF GRASS UNTIL DRY. REMOVE AFTER 24 HOURS.

The use of an International Warning Symbol, company logo or other similar advertising graphic is permissible provided that the requirements of this section are met. In placing the signs required by this subsection, persons licensed under Ohio R.C. 921.06, 921.07, 921.08 and 921.12 shall not be responsible for or have any liability as the result of the removal of such signs by unauthorized persons except that no applicator or employee of the applicator shall remove such signs prior to the expiration of twenty-four hours following the application of the lawn chemical. The signs required under this section may be removed and discarded by the property owner or resident of the property or such other persons as may be authorized by the property owner or resident of the property the day following the lawn chemical application.
(Ord. 88-30. Passed 7-18-88.)

741.04 EXEMPTIONS.

The provisions of this section do not apply to any person while he is making the following applications:

(a) Any subterranean application;

(b) Any application for the purpose of the maintenance, operation or construction of a public utility;

(c) Any treatment for the eradication or control of pests previously declared to be a nuisance by the Director of the Ohio Department of Agriculture, Director of the Ohio Department of Health or Cuyahoga County Board of Health and for which immediate application is necessary to prevent a substantial risk of human or economic harm provided, however, that the requirements of Section 741.03 shall be complied with.

(Ord. 88-30. Passed 7-18-88.)

741.99 PENALTY.

Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the fourth degree and each day during which such violation continues shall be a separate offense. (Ord. 88-30. Passed 7-18-88.)

CHAPTER 742
Registration of Users of Pesticides for Trees, Shrubs, Bushes, Plants (Repealed)

EDITOR'S NOTE: Former Chapter 742 was repealed by Ordinance 93-81, passed September 7, 1993.

CROSS REFERENCES

Pesticide applicators and operators - see Ohio R.C. 921.06 to 921.12

Lawn chemical applicators - see BUS. REG. Ch. 741

CHAPTER 743
Environmental Preservation: Environmentally Acceptable Packaging

743.01 Definitions.
743.02 Prohibitions.
743.03 Enforcement.
743.04 Rules and regulations.
743.05 Exemptions.
743.06 City: purchases prohibited.
743.99 Penalty.

743.01 DEFINITIONS.

For the purposes of this chapter, the words and phrases defined in this section shall have the meaning set forth in this section.

(a) "Chlorofluorocarbon" means the family of substances containing carbon, fluorine and chlorine, and having no hydrogen atoms and no double bonds and including, but not limited to, CFC-11, CFC-12, CFC-113, CFC-114, CFC-115, Halon 1211, Halon 1301 and Halon 2402.

(b) "Chlorofluorocarbon (CFC) - processed food packaging" means any food packaging which uses chlorofluorocarbons as blowing agents in its manufacture.

(c) "Customer" means anyone purchasing or receiving food or beverages from a restaurant or a retail food vendor.

(d) "Environmentally acceptable packaging" means and includes the following:

(1) "Biodegradable packaging" means packaging capable of being broken down or converted by fungi, bacteria or other microorganisms or other natural elements from a complex molecular structure to simple gases and organic compounds or basic elements.

(2) "Degradable packaging" means packaging made of cellulose-based or other substances that are capable of being attacked, decomposed, assimilated and otherwise completely oxidized or broken down by bacteria or other natural biological or biochemical processes into carbonaceous soil material or water and carbon dioxide.

(3) "Recyclable packaging" means packaging made of materials that are separable from solid waste by the generator or during collection and that is currently collected for recycling and are capable of being recycled. Packaging shall be considered to be recyclable if and when it is collected for recycling. Recyclable describes material that is utilized as a raw material in the manufacture of a new product or new economic use.

(4) "Returnable packaging" means food or beverage containers or packages, such as, but not limited to, soft drink bottles and containers and milk bottles and containers that are capable of being returned to the distributor, such as, but not limited to, dairy and soft drink bottlers, for reuse as the same or similar food or beverage containers at least once.

(5) Any and all chlorofluorocarbon (CFC) processed food packaging is hereby deemed and declared to be not environmentally acceptable packaging.

(6) "Prepared food" means food or beverages which are prepared on the premises of the vendor by cooking, chopping, slicing, mixing, freezing or squeezing, and which requires no further preparation for consumption. "Prepared food" does not include any raw or uncooked meat product or fruits or vegetables which are not chopped, squeezed or mixed.

(f) "Packaging" means and includes all food-related wrappings, adhesives, cards, bindings, strings, tapes, ribbons, bags, sacks, boxes, coverings and containers; and further includes lids, cups, glasses, cartons and similar containers for drinking out of or for holding liquids, and plates and serving trays, but the word "packaging" specifically excludes plastic knives, forks and spoons sold or intended for use as utensils and any plastic covers, covering material, food container lids and straws.

(g) "Restaurant" means any establishment located within the City, selling prepared food to be eaten on or about its premises and for the purposes of this chapter includes the owner of such restaurant and all other persons, firms or corporations operating and/or managing such establishment.

(h) "Retail food vendor" means any store, shop, sales outlet or other establishment, including a grocery store or a delicatessen, other than a restaurant, located within the City, which sells takeout food and for the purposes of this chapter includes the owner and all other persons, firms or corporations operating and/or managing such establishment.

(i) "Takeout food" means prepared foods or beverages requiring no further preparation to be consumed and which generally are purchased in order to be consumed off the retail food vendor's premises.

(Ord. 90-3. Passed 2-4-91.)

743.02 PROHIBITIONS.

No person, firm or corporation owning, operating or managing a restaurant and no retail food vendor located within the City shall do or allow to be done any of the following:

(a) Within the City, sell, offer to sell or convey at retail, or possess with the intent to sell or convey at retail, to any customer any prepared food or beverage or takeout food or beverage which is placed, wrapped or packaged at any time at or before the time or point of sale in or on packaging which is not environmentally acceptable packaging; nor

(b) Within the City, provide to retail customers or possess with the intent to provide to retail customers, packaging which is not environmentally acceptable packaging; nor

(c) Within the City, provide prepared food or takeout food to its customers in or on packaging which is not environmentally acceptable packaging.

(d) The presence on the premises of the restaurant or retail food vendor of packaging which is not environmentally acceptable packaging shall constitute a rebuttable presumption of intent to sell or convey at retail, or to provide to retail customers packaging which is not environmentally acceptable packaging provided, however, that this subsection shall not apply to manufacturers, brokers or warehouse operators who conduct or transact no retail food or beverage business.

(Ord. 90-3. Passed 2-4-91.)

743.03 ENFORCEMENT.

The Director of Public Service and Development or the designee of the Director, the Commissioner of the Division of Building and all employees of the Division of Building authorized by the Director, and the Chief of Police and all other law enforcement officers are hereby authorized and empowered and shall have the duty and the authority to enforce the provisions of this chapter.

(Ord. 90-3. Passed 2-4-91.)

743.04 RULES AND REGULATIONS.

The Director of Public Service and Development is hereby authorized to promulgate such rules and regulations as are reasonable and necessary to carry out the aims and goals of this chapter, including the development of exemptions under Section 743.05 for which there is no commercially available alternative and for flexible packaging. Prior to the adoption of such rules and regulations, the Director shall give public notice in a newspaper of general circulation of not less than sixty days of his intent to adopt such rules and regulations, provide copies of the proposed rules and regulations to all interested parties and shall conduct a public hearing thereon. Public notice shall be given in a newspaper of general circulation when the rules and regulations have been finally adopted. No rule or regulation shall be considered as adopted if disapproved by Council by resolution within forty-five days of its adoption.

(Ord. 90-3. Passed 2-4-91.)

743.05 EXEMPTIONS.

Notwithstanding any other provision to the contrary, this chapter shall not apply to:

(a) Any flexible packaging or other flexible transparent covering of ten mils or less in thickness unless disapproved by the Director of Public Service and Development pursuant to rules promulgated pursuant to Section 743.04;

(b) Any paper, cellophane or other cellulose-based packaging that is coated with plastic on only one side;

(c) Any packaging which is not otherwise environmentally acceptable packaging for which there is not commercially available alternative as determined by rule and regulation promulgated and adopted pursuant to Section 743.04.

In determining whether there is a commercially available alternative the Director shall consider:

(1) The availability of environmentally acceptable packaging for the affected product. Among the factors to be considered in determining whether environmentally acceptable packaging is available are whether acceptable packaging has been previously used for the same or like product or whether acceptable packaging is currently being used for the same or like product or whether acceptable packaging is reasonably available for purchase and use for the packaging of the same or like product.

(2) The competitive effects on retail food vendors involved in the sale of product brands or labels available only in packaging which is not environmentally acceptable packaging.

Every rule and regulation creating an exemption pursuant to this section shall be reviewed annually by the Director to determine whether then current conditions continue to warrant the specific exemption.

(Ord. 90-3. Passed 2-4-91.)

743.06 CITY: PURCHASES PROHIBITED.

The City shall not purchase any packaging which is not environmentally acceptable packaging, nor shall any City-sponsored or City-supported event use such packaging. Only environmentally acceptable packaging shall be sold or used by any person who leases space from the City or sold or used at activities on any City owned, leased or controlled premises.

(Ord. 90-3. Passed 2-4-91.)

743.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the fourth degree. Each day on which a violation occurs shall constitute a separate offense.

(Ord. 90-3. Passed 2-4-91.)

CHAPTER 745
Paint Removal and Power Assisted Spraying

745.01 License required.
745.02 License application.
745.03 Permit required; revocation.
745.04 Restrictions.
745.05 Limitation of liability.
745.06 Compliance with other laws.
745.99 Penalty.

745.01 LICENSE REQUIRED.

No person, firm or corporation shall perform or do any paint removal or power assisted paint, stain or sealant spraying of any structure located in the City, by sand blasting, power assisted propelling of solids or liquids, or any similar methods without first having been licensed by the Building Commissioner. A separate permit shall be required for each separate job or location at which such activity is to be done.
(Ord. 90-10. Passed 6-4-90.)

745.02 LICENSE APPLICATION.

An applicant for license shall first file an application therefor in writing in the Office of the Building Commissioner. The Building Commissioner shall prepare and furnish forms for that purpose.

(a) Application for a license shall be upon a form issued by the Building Commissioner, and a license shall be granted if the Commissioner finds that the applicant is qualified to perform the work for which the application is sought. Evidence of repeat violations of this Building Code or other City ordinances shall be sufficient evidence to disqualify the applicant from receiving a license.

(b) Upon application, a license for any work described in Section 745.01 shall be issued to the applicant by the Building Commissioner, upon payment by the applicant as required in Chapter 1305. Such license shall be issued for a period of one year from January 1 of the year that it is issued and shall expire on December 31 next following the date of issuance. Such license shall be renewed each year thereafter for a like period upon the payment as required in Chapter 1305.

(c) The license shall state the name of the license, firm name in case of a partnership or corporation, place of business, date of issuance, expiration date, and shall be signed by the Building Commissioner.

(d) No one licensed under the provisions of this chapter shall allow or permit his or its name to be used in acquiring any permit or doing any work unless the licensee, or his, her or its regular employed foreman, is personally at the site of the work to superintended and direct the same.

(e) Every applicant shall furnish and file with the Building Commissioner proof of liability and property damage business insurance in a minimum sum of three hundred thousand dollar to five hundred thousand dollars ($300,000/$500,000) for liability insurance and one hundred thousand dollars ($100,000) property damage. Such insurance shall be approved as to form by the Director of Law, and as to company, by the Mayor as to sufficiency.

(f) If the applicant is currently registered as a contractor in accordance with Chapter 1305, then the applicant shall be deemed appropriately licensed under this section.

(g) This section shall in no way be interpreted so as to require the owner of a single or two-family dwelling to be licensed hereunder, to personally perform work upon the premises occupied or to be occupied by the owner as the owner's established residence. (Ord. 99-35. Passed 4-19-99.)

745.03 PERMIT REQUIRED; REVOCATION.

(a) An applicant for a permit shall first file an application thereof in writing in the office of the Building Commissioner. The Commissioner shall prepare and furnish forms for that purpose. Each application shall be accompanied with the payment of twenty-five dollars ($25.00). A separate permit and fee shall be required for each separate location at which the work is to be done.

(b) Each application shall state:

(1) The location of the job;

(2) The structure or portion thereof upon which the process is to be performed;

(3) The length of time it is estimated the process will take;
(4) The date when such work is to commence;
(5) The type of process to be used.

(c) Noncompliance with any of the provisions of this chapter shall be cause for immediate revocation of any permit issued for any work hereunder. The Building Commissioner shall have the power to revoke such permit and order the stopping of such work without previous notice. It shall be unlawful for any person to do any work subject to the provisions of this chapter after a permit therefore has been revoked.

(d) No provision of this chapter shall be interpreted or applied to require that the owner of a one or two-family dwelling shall obtain a permit prior to paint removal or exterior painting, staining or sealing of a structure surfaces of property which that person owns and occupies to be done by such owner with the assistance only of a member of his family or household.
(Ord. 99-35. Passed 4-19-99.)

745.04 RESTRICTIONS.

(a) The permittee shall provide written notification to each abutting and adjoining property no less than twenty-four (24) hours prior to when the work is to commence. The written notice shall state the nature of the work being performed, the address where the work is being performed, and the date when the work will commence.

(b) All such operations subject to the provisions of this chapter shall be shielded by tarpaulins or other suitable screening so as to prevent vapor, dust, and debris from causing a nuisance by falling on pedestrians, vehicles, public thoroughfares and adjoining property.

(c) No sand blasting or similar power paint stripping will be conducted during rain or snowfall.

(d) No power spraying of paints, stains or sealants will be conducted when wind speed exceeds fifteen miles per hour.

(e) Ground tarping shall be used in sufficient quantity and placed a sufficient distance from the work surface being stripped or finished/refinished so as to collect as much of the residue as possible to prevent it from falling to the ground.

(f) All vents, windows and other areas through which air might enter the premises upon which the work is being conducted, shall be covered to prevent infiltration.

(g) No such activity shall be permitted under any permit issued in accordance with this section which violates Chapter 557.

(h) After the completion of the work to be performed under the permit, the person, firm or corporation shall be required to thoroughly clean up all residue from the permit premises and adjacent property, public rights of way or thoroughfares. In addition, the person, firm or corporation shall ensure that no such work is performed in such a manner so as to cause or create a public nuisance and shall further ensure that the cleanup of the work area is in such a manner as not to cause or create a public nuisance.
(Ord. 90-10. Passed 6-4-90.)

745.05 LIMITATION OF LIABILITY.

This chapter shall not be construed to in any way limit, reduce, mitigate or otherwise diminish the liability of the contractor/permittee to any other person, firm or corporation for any damage arising from or related to the contractor's/permittee's actions or work performed notwithstanding the issuance of a permit or that the person, firm or corporation has complied with all provisions of this chapter.
(Ord. 90-10. Passed 6-4-90.)

745.06 COMPLIANCE WITH OTHER LAWS.

Nothing contained in this chapter shall be deemed to exempt any applicant or permittee from the provisions of any other ordinance or resolution, nor from the payment of any other fees or the necessity of obtaining any other permits required by any other ordinance or resolution.
(Ord. 90-10. Passed 6-4-90.)

745.99 PENALTY.

Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the fourth degree and each day during which such violation continues shall be a separate offense.

CHAPTER 749
Disposal of Lead-Acid Batteries

749.01 Definitions.
749.02 Commingling prohibited.
749.03 Discarding of used lead-acid batteries by other than retailer and wholesaler.
749.04 Duties of retailer; discarding, acceptance, storage of used lead-acid batteries.
749.05 Duties of wholesaler; discarding, acceptance, storage of used lead-acid batteries.
749.99 Penalty.

749.01 DEFINITIONS.

As used in this chapter:

(a) "Lead-acid battery" means a battery containing lead or a lead alloy and sulfuric acid and that has a nominal voltage of at least six volts.

(b) "Retailer" means any person, firm or corporation who sells, transfers or offers for sale or transfer lead-acid batteries at retail.

(c) "Secondary lead smelter" means a secondary lead smelter operating in compliance with Ohio R.C. Chapters 3704 and 6111 and with the Air and Water Pollution Control and Solid and Hazardous Waste Disposal laws of the United States, of the State of Ohio and of any other state with jurisdictional authority.

(d) "Wholesaler" means any person, firm or corporation who sells, transfers or offers for sale or transfer lead-acid batteries at wholesale.

(Ord. 91-89. Passed 10-7-91.)

749.02 COMMINGLING PROHIBITED.

No person shall commingle a used lead-acid battery with any other type or kind of solid waste.

(Ord. 91-89. Passed 10-7-91.)

749.03 DISCARDING OF USED LEAD-ACID BATTERIES BY OTHER THAN RETAILER AND WHOLESALER.

No person, firm or corporation, other than a retailer or wholesaler, shall discard or dispose of a used lead-acid battery except by delivery to:

(a) A retailer or a wholesaler or an agent of either;

(b) A secondary lead smelter;

(c) A recycling or other similar collection facility.

(Ord. 91-89. Passed 10-7-91.)

749.04 DUTIES OF RETAILER; DISCARDING, ACCEPTANCE, STORAGE OF USED LEAD-ACID BATTERIES.

(a) Any retailers of lead-acid batteries shall accept from each lead-acid battery purchaser at the point of sale or transfer used lead-acid batteries in a quantity not less than the number of batteries purchased if offered by the purchaser.

(b) No retailer shall discard or dispose of a used lead-acid battery except by delivery to:

(1) A wholesaler or an agent thereof;

(2) A manufacturer of lead-acid batteries or an agent thereof;

(3) A secondary lead smelter;

(4) A recycling or other similar collection facility.

(c) All retailers of lead-acid batteries shall post a sign within their place of business at least eight and one-half inches by eleven inches which shall contain the following statements:

"It is illegal to discard a used motor vehicle battery or other used lead-acid battery."

"Recycle your used batteries."

"The ordinances of Fairview Park require us to accept used motor vehicle batteries and other used lead-acid batteries for recycling in exchange for new batteries purchased."

(d) No retailer shall store a used lead-acid battery on any premises for more than ninety days.

(Ord. 91-89. Passed 10-7-91.)

749.05 DUTIES OF WHOLESALER; DISCARDING, ACCEPTANCE, STORAGE OF USED LEAD-ACID BATTERIES.

(a) Any wholesaler of lead-acid batteries shall accept from each lead-acid battery purchaser at the point of sale or transfer used lead-acid batteries in a quantity not less than the number of batteries purchased if offered by the purchaser.

(b) No wholesaler shall discard or dispose of a used lead-acid battery except by delivery to:

(1) A manufacturer of lead-acid batteries or an agent thereof;

(2) A secondary lead smelter;

(3) A recycling or other similar collection facility.

(c) No wholesaler shall store a used lead-acid battery on any premises for more than ninety days.
(Ord. 91-89. Passed 10-7-91.)

749.99 PENALTY.

Whoever violates any provision of this chapter for a first offense is guilty of a misdemeanor of the fourth degree and for each subsequent offense is guilty of a misdemeanor of the third degree.
(Ord. 91-89. Passed 10-7-91.)

CHAPTER 751
Massage Establishments

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CROSS REFERENCES
Obscenity and sex offenses - see GEN. OFF. Ch. 533
Adult entertainment businesses - see BUS. REG. Ch. 753

751.01 DEFINITIONS.
As used in this chapter certain terms are defined as follows:
(a) "Employee" means any person eighteen years of age or older other than a massagist, who renders any service in connection with the operation of a massage establishment and receives compensation from the operator of the business or patrons.
(b) "Licensee" means the person to whom a license has been issued who owns or operates a massage establishment as defined in subsection (d) hereof.

(c) "Massage" means any method of pressure or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, appliance or instrument with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, air, vapor or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third person on his or her behalf will pay money or give any other consideration, including any gratuity therefor.

(d) "Massage establishment" means any establishment having a source of income or compensation derived from the practice of massage as defined in subsection (c) hereof, and which has a fixed place of business where any person, firm, association or corporation engages in, carries on, conducts or permits to be engaged in, carried on or conducted any of the activities as defined in subsection (c) hereof.

(e) "Massagist", "masseur", or "masseuse" means any person who, for any consideration whatsoever engages in, carries on or conducts the practice of massage as defined in subsection (c) hereof.

(f) "Outcall massage service" means any business, the function of which is to engage in, carry on or conduct massage at a location designated by the patron or client rather than at a massage establishment as defined in subsection (d) hereof.

(g) "Patron" means any person eighteen years of age or older who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration, including any gratuity therefor.

(h) "Person" means any individual, partnership, firm, association, joint stock company, corporation or combination of individuals in whatever form or character.

(i) "Sexual or genital area" means genitals, pubic hair, buttocks, anus or perineum of any person, or the vulva or breasts of a female.

(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.02 LICENSES REQUIRED.

(a) Business License Required. No person shall engage in, carry out, conduct or permit to be engaged in, carried on or conducted the business of massage unless he has a valid massage establishment license issued by the City pursuant to the provisions of this chapter for each and every separate office or place of business conducted by such person.

(b) Massagist's License Required. No person shall practice massage as a massagist, employee or otherwise, unless he has a valid and subsisting massagist's license issued to him by the State pursuant to the provisions of the Ohio Revised Code, governing the limited practice of medicine. (Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.03 EXEMPTIONS.

(a) Establishments. The provisions of this chapter shall not apply to the following:

(1) Hospitals, clinics and public health centers provided that such are not used for the purpose of a massage establishment;

(2) The offices of a physician, surgeon, podiatrist, osteopath or chiropractor who is licensed or registered by the State of Ohio Medical Board which are used while performing the licensed or registered profession;

(3) A licensed or registered barber shop, beauty salon, school of cosmetology or barber school while used to perform the licensed or registered vocation; or

(4) The offices of a licensed physical therapist while used to perform the licensed profession.

(b) Persons. The provisions of this chapter shall not apply to the following:

(1) A physician, surgeon, podiatrist, osteopath, or chiropractor licensed or registered by the State of Ohio Medical Board while performing and within the scope of the licensed or registered profession;

(2) A licensed cosmetologist or beautician, registered barber, licensed practical nurse, registered nurse or licensed physical therapist duly licensed or registered under the laws of the State of Ohio while performing and within the scope of the licensed or registered profession or vocation; or

(3) A person working under the immediate direction or supervision of the individuals mentioned in subsection (b)(l) and (2) hereof while performing and within the scope of the licensed or registered profession or vocation. (Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.04 MASSAGE ESTABLISHMENT LICENSE APPLICATION.

(a) Every applicant for a license to maintain, operate or conduct a massage establishment, including a renewal thereof, shall file a written application under oath with the City upon a form provided by the Mayor or a designee thereof and pay a nonrefundable annual license fee, which shall be one hundred dollars ($100.00) per year or any part thereof. The application once accepted shall be referred to the Police Department for investigation. Copies of the application shall within five days also be referred to the Division of Building and the Fire Department. The Division of Building and Fire Department shall within thirty days inspect the premises proposed to be operated as a massage establishment and shall make written verification to the Police Department concerning compliance with the codes of the City and State that they administer.

(b) The applicant for a massage establishment license, including any partner or limited partner of a partnership, and any officer or director of a corporate applicant and any stockholder holding ten percent (10%) or more of the stock, shall furnish on the application form provided, duly dated and signed, the following information:

(1) The full name, residence address, residence telephone number, social security number, age and birthdate of the applicant together with evidence satisfactory to the Director that the applicant is at least eighteen years of age;

(2) The physical description of the applicant, including height, weight, color of hair and eyes, and sex;

(3) The business, occupation or employment of the applicant for the three years immediately preceding the date of application;
(4) All residence addresses of the applicant for the three years immediately preceding the date of application;
(5) A complete set of fingerprints obtained by the Police Department and a recent two inch by two inch photograph of the applicant;
(6) All criminal convictions, other than misdemeanor traffic violations, of the applicant including date, nature of the crime and place convicted;
(7) The location and all telephone numbers of the premises proposed to be operated as a massage establishment;
(8) The name, residence address and telephone number of the owner or owners and lessor or lessors of the premises upon or in which the massage establishment is proposed to be conducted and a copy of the lease or rental agreement;
(9) A description of any other business operated or to be operated by the applicant on the same or adjoining premises owned or controlled by the applicant;
(10) The name and address of any massage establishment owned, operated or controlled by the applicant;
(11) Whether the applicant or any person owning or controlling the premises has ever had a massage or massage establishment, or similar license ever denied, revoked or suspended and, if so, when, where and the reasons therefor;
(12) The number of employees, massagists and other persons to be employed or working on the premises;
(13) If the applicant is a corporation or a partnership, the name and address of the corporation or partnership shall be set forth exactly as shown on the articles of incorporation, the certificate of partnership, the certificate of limited partnership or the statement of limited partnership association; and
(14) Such other information as the Director may require.
(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.05 MASSAGE ESTABLISHMENT LICENSE ISSUANCE.

The City shall issue a license for a massage establishment, after ratification by the Mayor or a designee thereof, if all requirements for a massage establishment described in this chapter are met. (Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.06 LICENSE APPLICATION APPROVAL OR DENIAL.

(a) The Mayor or a designee thereof shall act to approve or deny an application for an initial license under this chapter within a reasonable period of time and in no event shall the Mayor or a designee thereof act to approve or deny such license later than ninety days from the date the application was accepted by the Mayor or a designee thereof. An application for a renewal of a massage establishment license shall be submitted as provided in Section 751.04 not more than sixty days prior to the expiration of the current license. The Mayor or a designee thereof shall approve or disapprove such application for license renewal within forty-five days from the date the application was accepted. Every license issued pursuant to this chapter shall expire at 11:59 p.m. on December 31 of each year unless earlier suspended or revoked by the Mayor or a designee thereof.

(b) The application for a license required by this chapter shall be rejected by the Mayor or a designee thereof if any of the following apply:

(1) That the operation, as proposed by the applicant, if permitted, would not be in compliance with applicable laws, including, but not limited to, the Building, Health, Planning and Zoning, Housing and Fire Prevention Codes, as well as the provisions of this chapter;

(2) That the applicant or any other person who will be engaged, directly or indirectly, in the management or operation of the massage establishment is not of good moral character;

(3) That the application does not contain the required information, the application is not in conformance with this chapter, or if any of the information submitted is false;

(4) That the correct permit fee has not been tendered to the City, and in the case of a check, bank draft or other negotiable instrument, honored with payment upon presentation; or

(5) That the applicant, if an individual; or any of the officers and directors, if the applicant is a corporation; or any of the partners or limited partners, if the applicant is a partnership; and the person principally in charge of the operation is not eighteen years of age or older.

(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.07 MULTIPLE MASSAGE ESTABLISHMENTS.

Should any massage establishment have more than one location where the business of massage is pursued, then a permit stating the address of the principal place of business, and of the other location(s) shall be issued by the Mayor or a designee thereof upon the tender of a license fee of one hundred dollars ($100.00) for each location. Licenses issued for other locations shall terminate on the same date as that of the principal place of business.

(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.08 POSTING OF LICENSE.

(a) Every massagist shall post the license issued by the State in his/her work area along with a front faced portrait photograph at least two inches by two inches.

(b) Every person licensed under this chapter for a massage establishment license shall display such license in a prominent place, visible to the public.

(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.09 REGISTER OF EMPLOYEES.

Every massage establishment shall maintain a register of all persons who engage in the practice of massage on the premises or who are employed at any time as masseurs or masseuses and their license numbers and the licensee shall provide same to the Director of Finance within three days of the date the individual is employed or commences work. Such register shall be available at the massage establishment to representatives of the City during regular business hours.

(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.10 LICENSE REVOCATION OR SUSPENSION.

Any license issued for a massage establishment may be revoked or suspended by the City after notice by registered mail directed to the last address of the licensee on file and a hearing, for a good cause, or in any case where any of the provisions of this chapter are violated, or where any employee of the licensee, including a masseur or masseuse, or other person working on the premises, is engaged in any conduct which violates any of the State or local laws or ordinances at the licensee's place of business and the licensee has actual or constructive knowledge thereof, or where the licensee has made a false statement on the application for a permit. Such license may also be revoked or suspended by the City after notice by registered mail directed to the last address of the licensee on file and hearing, upon the recommendation of the Building Commissioner that such business is being managed, conducted or maintained without regard to proper sanitation and hygiene. Such revocation or suspension proceedings shall be before the Mayor or a designee thereof. (Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.11 FACILITIES NECESSARY.

No massage establishment shall conduct business in the City unless an inspection by the City reveals that the establishment complies with each of the following minimum requirements:

(a) Construction of rooms used for toilets, tubs, steam baths and showers, shall be made waterproof with waterproofed materials and shall be installed in accordance with the City Building Code. Plumbing fixtures shall be installed in accordance with the City Plumbing Code. All walls, ceilings, floors, steam and vapor rooms, and all other physical facilities of the massage establishment shall be kept in good repair and maintained in a clean and sanitary condition.

(1) Steam rooms and shower compartments shall have waterproof floors, walls and ceilings approved by the City.

(2) Floors of wet and dry heat rooms shall be adequately pitched to one or more floor drains properly connected with the sewer. Exception: dry heat rooms with wood floors need not be provided with pitched floors and floor drains.

(3) A source of hot water shall be available within the immediate vicinity of dry and wet heat rooms to facilitate cleaning.

(b) The premises shall have adequate equipment for disinfecting and sterilizing nondisposable instruments and materials used in administering massages. Such nondisposable instruments and materials shall be disinfected after use on each patron.

(c) Closed cabinets shall be provided and used for the storage of clean linen, towels and other materials used in connection with administering massages. All soiled linens, towels and other materials shall be kept in properly covered containers or cabinets, which containers or cabinets shall be kept separate from the clean storage areas. No common use of towels or linen shall be permitted.

(d) Toilet facilities shall be provided in convenient locations. Separate toilet facilities shall be provided for each sex. A water closet shall be provided for each sex. Urinals may be substituted for water closets after one water closet has been provided. Toilet facilities shall be designated as to the sex accommodated therein.

(e) Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or washbasins shall be provided with soap and a dispenser and with sanitary towels.

(f) All electrical equipment shall be installed in accordance with the requirements of the National Electrical Code.

(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.12 OPERATING REQUIREMENTS.

(a) Every portion of the massage establishment, including appliances, apparatus and instruments, shall be kept clean and operated in a sanitary condition.

(b) Price rates for all services shall be prominently posted in the reception area in a location available to all prospective patrons.

(c) All employees, including masseurs and masseuses, and other persons working on the premises, shall be clean and wear clean, nontransparent outer garments, covering the sexual and genital areas, whose use is restricted to the massage establishment. A separate dressing room for each sex shall be available on the premises with individual lockers for each employee and for each other person working on the premises. Doors to such dressing rooms shall open inward and shall be self-closing.

(d) All massage establishments shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in a sanitary manner.

(e) No massage establishment granted a license under the provisions of this chapter shall place, publish or distribute or cause to be placed, published or distributed any advertisement, picture or statement which is known, or through the exercise of reasonable care should be known, to be false, deceptive or misleading in order to induce any person to purchase or utilize any professional massage service.

(f) A massage establishment licensee and a massagist shall maintain for a period of one year correct and accurate records of the names and addresses of all persons to whom massages are administered, date and time such are administered and the name of the person administering the massage. (Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.13 MINORS PROHIBITED ON PREMISES.

No person shall permit any person under the age of eighteen years to come or remain on the premises of any massage business establishment as massagist, employee or patron.
(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.14 ALCOHOLIC BEVERAGES PROHIBITED; DRUG ABUSE OFFENSES.

No person shall sell, give, dispense, provide or keep or cause to be sold, given, dispensed, provided or kept, any alcoholic beverages on the premises of any massage establishment. Nor shall any person permit a drug abuse offense on the premises.
(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.15 HOURS.

No massage establishment shall be kept open for any purpose between the hours of 10:00 p.m. and 8:00 a.m. (Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.16 EMPLOYMENT OF MASSAGIST.

No person shall employ as a massagist any person unless such person has obtained and has in effect a permit issued pursuant to the requirements of the Ohio Revised Code governing the limited practice of medicine. No licensee shall permit any person to administer a massage who does not possess a valid permit issued pursuant to the requirements of the Ohio Revised Code governing the limited practice of medicine.
(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.17 INSPECTION REQUIRED.

The Police Chief or his authorized representatives shall from time to time make inspection of each massage establishment for the purpose of determining that the provisions of this chapter are fully complied with. Each person to whom a massage establishments license is issued shall, at all times, permit access to the Chief or his designees for the purpose of insuring compliance with the provisions of this chapter.
(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.18 UNLAWFUL ACTS.

(a) No person in a massage establishment shall place his or her hand or hands upon, touch with any part of his or her body, fondle in any manner, or massage a sexual or genital area of any other person.

(b) No person in a massage establishment shall expose his or her sexual or genital area or any portion thereof, to any other person. No person in a massage parlor shall expose the sexual or genital area of another or any portion thereof, to any other person.

(c) No person, while in the presence of any other person in a massage establishment, shall fail to conceal with a fully opaque covering, the sexual or genital area of his or her body.

(d) No person, owning, operating, or managing a massage establishment, knowingly shall cause, allow or permit in or about such massage establishment any agent, employee or any other person working on the premises to perform such acts prohibited in subsections (a), (b) or (c) hereof.

(e) Except as provided herein, no licensee under this chapter shall administer massage on an outcall basis as defined in Section 751.01(f). Such licensee shall administer massage solely within an establishment licensed to carry on such business under this chapter. Any violation of these provisions shall be deemed grounds for revocation of the permit granted hereunder. The restriction on outcall massage shall not apply to a licensee who performs outcall massage as defined herein upon a patron or client who, because of reasons of physical defects or incapacities or due to illness, is physically unable to travel to the massage establishment. If any outcall massage is performed under this exception, a record of the date and hour of each treatment, and the name and address of the patron or client, and the name of the employee or other person administering such treatment and the type of treatment administered, as well as the nature of the physical defect, incapacity or illness of the patron or client shall be kept by the licensee of the massage establishment. Such records shall be open for inspection by officials charged with the enforcement of this chapter. The information furnished or secured as a result of any such inspection shall be confidential. Any unauthorized disclosure or use of such information by any person is a violation of this chapter.

(f) No massage service shall be carried on within any cubicle, room, booth or any area within a massage establishment which is fitted with a door capable of being locked. All doors or doorway coverings within a massage establishment shall have an unobstructed opening six inches by six inches in size, capable of clear two-way viewing into and out of all cubicles, rooms, booths or areas. The opening shall be not less than four and one-half feet from the floor of the establishment nor more than five and one-half feet from the floor. Toilets and cubicles, rooms, booths or areas used solely for the application of liquid and vapor baths shall have no such opening in the covering door or curtain, but shall be clearly marked as to purpose on the exterior door or curtain of the cubicle, room, booth or area. Nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof, whenever such inspection is deemed necessary by the City or Health Department of the County.
(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.19 NAME AND PLACE OF BUSINESS.

No person granted a license pursuant to this chapter shall operate the massage establishment under a name not specified in his license, nor shall he engage in, carry on or conduct business under any designation or location not specified in his license.
(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.20 TRANSFER OF LICENSE.

No license shall be transferable from person to person or location to location. A new license shall be required whenever a massage establishment is moved to a different location in the City or is purchased or otherwise acquired by a different person.
(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.21 PARKING.

Each person operating a massage establishment shall provide off-street parking facilities in an amount equal to that required by the Planning and Zoning Code for medical offices; clinics. (Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.22 REMEDY FOR VIOLATIONS.

The imposition of any penalty shall not preclude the Director of Law or his designee from instituting an appropriate action or proceeding in a court of proper jurisdiction to prevent, restrain, correct or abate a violation, or prevent the use of building, temporarily or permanently, for massage purposes, or to require compliance with the provisions of this chapter, or other applicable laws, ordinances, rules, regulations, orders or determinations.
(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.23 APPEAL PROCEDURE.

Any person adversely affected by a decision of any City official made in the enforcement of this chapter shall have the right to appeal to a Board of Appeals consisting of the President of Council, the Law Director and the Finance Director. The Board shall have the power to affirm, modify or reverse any decision of such City official. Any decision made by the Board shall be final. (Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.24 AUTHORITY TO ADOPT RULES.

The Mayor or a designee thereof is authorized and empowered to establish, adopt and enforce or cause to be enforced such rules and regulations governing the issuance and display of the license required under this chapter as he may deem reasonable and necessary and which are not inconsistent with the provisions of this chapter.
(Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

751.99 PENALTY.

Every person, except those persons who are specifically exempted by this chapter, whether acting as an individual, owner, employee of the owner, operator or employee of the operator, or whether acting as a mere agent or independent contractor for the owner, employee or operator, or acting as a participant or worker in any way directly or indirectly who gives massages or operates a massage establishment or any of the services defined in this chapter without first obtaining a license or permit from the City as respects massage establishments and the State as respects massage licenses, who violates any provision of this chapter is guilty of a misdemeanor of the first degree. (Ord. 86-45. Passed 10-6-86; Ord. 02-34. Passed 7-22-02.)

CHAPTER 753
Adult Entertainment Businesses

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CROSS REFERENCES
Obscenity and sex offenses - see GEN. OFF. Ch. 533
Massage establishments - see BUS. REG. Ch. 751

753.01 PURPOSE AND FINDINGS.

(a) Purpose. The purpose of this chapter is to establish reasonable and uniform regulations to minimize and control the negative secondary effects of adult entertainment businesses within the City in order to promote the health, safety and welfare of the citizens of the City. The provisions of this chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials or communication, including sexually oriented entertainment. Similarly, it is not the purpose or effect of this chapter to restrict or deny access by adults to sexually oriented entertainment protected by the First Amendment or to deny access by distributors and exhibitors of sexually oriented entertainment to their intended market. Furthermore, it is not the intent or effect of this chapter to condone or legitimize the distribution or exhibition of entertainment that is obscene.

(b) Findings. Based on evidence concerning the adverse secondary effects of adult entertainment businesses on the community presented in findings incorporated in the cases of City of Renton v. Playtime Theaters. Inc., 475 U.S. 41 (1986), Young v. American Mini Theaters, 426 U.S. 50 (1976), Barnes v. Glen Theater. Inc. 501 U.S. 560 (1991), Ellwest Stereo Theater. Inc. v. Boner, 718 F. Supp. 1553 (M.D. Tenn. 1989), and Broadway Books. Inc. v. Roberts 642 F. Supp. 486 (E.D. Tenn. 1986); and on studies in other cities, including New York, New York; Islip, New York; Los Angeles, California; Indianapolis, Indiana; Whittier, California; Austin Texas; and Phoenix, Arizona; along with Manatee County Florida; New Hanover County, North Carolina; and the State of Minnesota; this Council finds:

(1) Adult entertainment businesses lend themselves to ancillary unlawful and unhealthy activities that are presently inadequately controlled by the operators of such establishments. Further, there is presently no adequate mechanism to make owners of such establishments within Fairview Park responsible for the activities that occur on their premises.

(2) Sexual acts, including masturbation and oral and anal sex, occur at adult entertainment businesses, especially those which provide private or semi-private booths or rooms for viewing films, videos or live sexually-oriented entertainment. Such activities may result in spreading communicable diseases such as syphilis, gonorrhea and human immondeficiency virus (HIV).

(3) Offering sexually oriented entertainment under conditions that encourage such activities creates unhealthy conditions.

(4) Sanitary conditions in some adult entertainment businesses are unhealthy, in part because of the failure of owners and operators to regulate those activities and maintain their facilities.

(5) Numerous studies and reports have determined that semen is found in the areas of adult entertainment businesses where persons view sexually oriented films.

(6) The findings noted in paragraph (b)(1) through (5) hereof, raise substantial governmental concerns.

(7) Adult entertainment businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(8) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of adult entertainment businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on operators to see that adult entertainment businesses are run in a manner consistent with the health, safety and welfare of patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the adult entertainment business and fully in possession and control of the premises and activities occurring therein.

(9) The regulations of nudity in adult entertainment businesses will further the substantial government interests in preventing prostitution and other sex related crimes, including illegal public sex acts, and protecting the public health, safety and welfare.

(10) Removal of doors on viewing booths in adult entertainment businesses and requiring sufficient lighting on premises with viewing booths will advance the substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult arcades and theaters and will facilitate enforcement of the provisions of this chapter and other Federal, State and local laws, thereby furthering the substantial governmental interest in protecting the public health, safety and welfare.

(11) Requiring sufficient lighting in all adult entertainment businesses will advance the substantial governmental interest in curbing illegal sexual activity on the premises of adult entertainment businesses and will facilitate enforcement of the provisions of this chapter and other Federal, State and local laws, thereby furthering the substantial governmental interest in protecting the public health, safety and welfare.

(12) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of adult entertainment businesses, and by employees of such businesses, will facilitate the enforcement of the provisions of this chapter and other Federal, State and local laws, thereby furthering the substantial governmental interest in protecting the public health, safety and welfare.

(13) A person who recently has been convicted of a sexually related crime is not an appropriate individual to operate or be employed in an adult entertainment business or adult motel. Barring such individuals from the management of and employment in adult entertainment businesses for a period of years serves as a deterrent to and prevents the commission of sexually related criminal acts, including conduct which leads to the transmission of sexually transmitted diseases.

(Ord. 02-25. Passed 5-20-02.)

753.02 DEFINITIONS.

As used in this chapter:

(a) "Adult Arcade" means any place to which the public is permitted or invited where either or both:

(1) Motion picture machines, projectors, video or laser disc players, or other video or image-producing devices, are available, run via coin, token or any other form of consideration, to show images to five or fewer persons per machine at any one time; or

(2) Live entertainment is available in a format designed for viewing by five or fewer persons at one time; and where the images shown and/or live entertainment presented are and characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(b) "Adult Bookstore, Adult Novelty Store and Adult Video Store" means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations, that are characterized by the depiction or description of specified sexual activities or specified anatomical areas, or

(2) Instruments, devices or paraphernalia, other than prophylactics, that are designed for use in connection with specified sexual activities. A commercial establishment may have other principal business purposes that do not involve offering for sale or rental materials depicting or describing specified sexual activities or specified anatomical areas, or materials designed for use in connection with specified sexual activities, and still be categorized as an adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such a commercial establishment from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of specified sexual activities or specified anatomical areas or are designed for use in connection with specified sexual activities.

(3) Art, including both performance art or graphic art; including offering the opportunity for patrons to draw or paint pictures of nude or partially nude models, including to do so in "private" or "semi-private" rooms.

(c) "Adult Cabaret" means a nightclub, bar, restaurant or similar commercial establishment that regularly features:

(1) Persons who appear in a state of semi-nudity;

(2) Live entertainment characterized by the depiction or description of specified anatomical areas;

(3) Live entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainment; or

(4) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(d) "Adult Entertainment Business" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude model studio or sexual encounter center. "Adult entertainment business" does not include an adult motel.

(e) "Adult Motel" means a hotel, motel or similar commercial establishment which:

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions, which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right of way which advertises the availability of this sex-oriented type of a photographic reproductions; or

(2) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.

(f) "Adult Motion Picture Theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(g) "Adult Theater" means a theater, concert hall, auditorium or similar commercial establishment that regularly features persons who appear in a state of semi-nudity, live performances which are characterized by the depiction or description of specified anatomical areas, or live entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators or similar entertainment.

(h) "Covering" means any clothing or wearing apparel, including pasties, but not including any substance that can be washed off the skin, such as paint or make-up, or any substance designed to simulate the appearance of the anatomical area beneath it.

(i) "Employee" means a person who performs any service or work on the premises of an adult entertainment business, including, but not limited to, providing entertainment, performing work of a management or supervisory nature, or performing support functions, on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise, and whether or not said person is paid a salary, wage or other compensation by the operator of said business. "Employee" does not include a person on the premises exclusively for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

(j) “Health Commissioner” means the Cuyahoga County Commissioner of Health or his or her authorized representative.

(k) "Licensee" means with respect to an adult business license issued under this chapter, a person in whose name a license to operate an adult entertainment business or adult motel has been issued, as well as the individual(s) designated on the license application as principally responsible for the operation of the adult entertainment business or adult motel. With respect to an adult entertainment employee license issued under this chapter, "licensee" means a person in whose name a license has been issued authorizing employment in an adult entertainment business or adult motel.

(l) "Live Viewing Booths" means any private or semi-private booth, or any viewing room with less than 150 square feet of floor space, to which the public may gain admittance, wherein a live performance is presented to five or fewer persons at anyone time.

(m) “Nude Model Studio” means any place where a person who appears semi-nude or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons who pay money or any form of consideration.

“Nude Model Studio” shall not include:

(1) A proprietary school licensed by the State of Ohio, or a college, junior college or university supported entirely or in part by public taxation;

(2) A private college or university that offers educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or

(3) An establishment holding classes in a structure that has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; where, in order to participate in a class, a student must enroll at least three days in advance of the class; and where no more than one semi-nude model is on the premises at any one time.

(n) “Nudity” and “Nude” means exposing to view the genitals, pubic area, vulva, perineum, anus, anal cleft or cleavage, or pubic hair, with less than a fully opaque covering; exposing to view any portion of the areola of the female breast with less than a fully opaque covering; exposing to view male genitals in a discernibly turgid state, even if entirely covered by an opaque covering; or exposing to view any device, costume or covering that gives the appearance of or simulates any of these anatomical areas.

(o) "Operate" means to control or hold primary responsibility for the operation of an adult entertainment business or adult motel, either as a business entity, as an individual, or as part of a group of individuals with shared responsibility.

(p) “Person” means an individual, proprietorship, partnership, firm, association, joint stock company, corporation, limited liability company, limited liability partnership or combination of individuals of whatever form or character.

(q) "Semi-nudity" and "Semi-nude" means exposing to view, with less than a fully opaque covering, any portion of the female breast below the top of the areola or any portion of the buttocks. This definition shall include the entire lower portion of the female breast, but not include any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other clothing, provided that the areola is not exposed in whole or in part.

(r) "Sexual Encounter Center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is semi-nude.

(s) "Specified Anatomical Areas" means:

(1) The human male genitals in a discernibly turgid state, even if completely and opaquely covered, or

(2) Less than completely and opaquely covered human genitals, pubic region, buttocks or female breast below a point immediately above the top of the areola.

(t) "Specified Criminal Activity" means any of the following offenses:

(1) Prostitution or promoting prostitution; soliciting; loitering to engage in solicitation; sexual performance by a child; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or similar offenses to those described above under the criminal or penal code of any local jurisdiction, state or foreign country;

(2) For which:

A. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or

B. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense.

(3) The fact that a conviction is being appealed shall not prevent such conviction from constituting a specified criminal activity as defined in this section.

(u) "Specified Sexual Activity" means any of the following:

(1) The fondling or other erotic touching of human genitals, a pubic region, buttocks, an anus or female breasts;

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation. masturbation and sodomy, or

(3) Excretory functions as a part of or in conjunction with any of the activities set forth in paragraphs (u)(1) and (2) hereof.

(v) “Video Booth” means any private or semi-private booth, or any viewing room with less than 150 square feet of floor space, to which the public may gain admittance, wherein a still or motion picture machine, projector, video monitor, or similar equipment is available for the purpose of showing still or motion pictures, videos or similar images or photographic reproductions to five or fewer persons at any time.

(w) “Viewing Booth” mean live viewing booth or video booth, and "Viewing Booths" means live viewing booths, video booths or combination thereof.

(Ord. 02-25. Passed 5-20-02.)

753.03 CLASSIFICATION.

Businesses subject to adult business licensing are classified as follows:

(a) Adult arcades;

(b) Adult bookstores, adult novelty stores or adult video stores;

(c) Adult cabarets;

(d) Adult motels;

(e) Adult motion picture theaters;

(f) Adult theaters;

(g) Nude model studios; and

(h) Sexual encounter centers.

(Ord. 02-25. Passed 5-20-02.)

753.04 ADULT BUSINESS LICENSE REQUIRED.

(a) No person shall operate an adult entertainment business or an adult motel without a valid business license issued by the City pursuant to this chapter.

(b) Any person who violates subsection (a) of this section shall be guilty of a misdemeanor of the first degree.

(Ord. 02-25. Passed 5-20-02.)

753.05 ADULT BUSINESS LICENSE APPLICATION.

(a) An application for an adult business license shall be submitted to the Fairview Park Building Commissioner on a form provided by the Building Department. The application may request and the applicant shall provide such information as reasonably necessary to enable the City to determine whether the applicant meets the qualifications established in this chapter.

(b) An application for the adult business license shall identify and be signed by the following persons:

(1) If the business entity is owned by an individual, that individual.
(2) If the business entity is owned by a corporation, by a corporate officer.
(3) If the business entity is owned by a partnership, a partner.
(4) If the business entity is owned by a limited liability company, a member.

(c) An application for an adult business license shall be completed according to the instructions on the application form, which shall require the following:

(1) If the applicant is:
  A. An individual, the legal name and any aliases of such individual;
  B. A partnership, the complete name of the partnership;
  C. A corporation, the complete name of the corporation and the date of its incorporation, provide evidence that the corporation is in good standing under the laws of its state of incorporation, and the name of the registered corporate agent, and the address of the registered office of service of process, name of statutory agent of limited liability company and address of said agent.
  D. A limited liability company, the complete name of the company and the date of its certification by the Secretary of State, provide copy of certification.
(2) If the applicant intends to operate the adult entertainment business or adult motel under a name other than that of the applicant, the fictitious name to be used and the proof of registration of said fictitious name.
(3) A statement as to whether any applicant has been convicted of a specified criminal activity as defined in Section 753.02 of this chapter, and if so, the specified criminal activity involved and the date, place, and jurisdiction of each such conviction.
(4) A statement as to whether any applicants holds any other licenses under this chapter or other similar regulation from this or another jurisdiction and, if so, the names and locations of such other licensed businesses.
(5) The classification of license for which the applicant is filing.
(6) The location of the proposed adult entertainment business or adult motel.
(7) The mailing address of the adult entertainment business.
(8) Proof that each applicant who is a natural person is at least eighteen (18) years old.

If an applicant wishes to operate an adult entertainment business, other than an adult motel, which shall exhibit on the premises, in a booth, as defined in Section 753.02 of this chapter, films, video cassettes, or other video or image reproduction, or live entertainment which depicts specified sexual activities or specified anatomical areas, then the applicant requirements set forth in Section 753.14 of this chapter shall apply.

(Ord. 02-25. Passed 5-20-02.)

753.06 ISSUANCE OF ADULT BUSINESS LICENSE.

(a) Within five days of receipt of an application for an adult business license, the Director of Public Service and Development shall notify the Fairview Park Police Chief, the Fairview Park Fire Chief, and the Cuyahoga County Board of Health of such application. In making such notification, the Director of Public Service and Development shall instruct that the Police Chief promptly investigate the information provided in the application concerning the criminal background of the applicant or applicants, and shall instruct that the Fire Chief and the representative from the Cuyahoga County Board of Health promptly inspect the premises for which the adult business license is sought to assess compliance with the regulations under their respective jurisdictions.

(1) The Police Chief and the Fire Chief shall begin their respective investigations and inspection processes promptly upon receipt of notice of an application from the Director of Public Service and Development. The Police Chief shall provide the results of his investigation to the Director of Public Service and Development, in writing, within 10 days of receipt of notice of the application. The Fire Chief shall provide to the Director of Public Service and Development a written certification of whether the premises are in compliance with the Fire Code within 10 days of receipt of notice of the application.

(2) The Director of Public Service and Development shall instruct the Building Commissioner to commence the inspection of the premises for which an adult business license is sought promptly upon receipt of the application, and shall have the Building Commissioner complete a written certification of whether the premises are in compliance with the Building Code, the Planning and Zoning Code, and the provisions of this chapter related to physical characteristics of the premises within 15 days after the receipt of the application.

(b) Within twenty-one days after receipt of a completed adult business license application, the Director of Public Service and Development shall approve or deny the issuance of the license. The Director of Public Service and Development shall approve the issuance of a license to an applicant unless he determines that one or more of the following findings are true:

(1) An applicant who is a natural person is under eighteen (18) years of age.

(2) An applicant has failed to provide information reasonably necessary for issuance of the license, as requested on the application form, or has falsely answered a question or request for information on the application form.

(3) An applicant has been convicted of a specified criminal activity as defined in Section 753.02 of this chapter.

(4) The proposed adult entertainment business or adult motel would violate or fail to be in compliance with any provision of the Zoning Ordinance (Chapter 1109 of the Planning and Zoning Code), including Chapter 1109 and Section 1137.03.

(5) The application and investigation fee required by this chapter has not been paid.

(6) An applicant is in violation of or is not in compliance with any provision of this chapter, except as provided in paragraph (c)(1) hereof.

(c) If the Director of Public Service and Development determines that one or both of the following findings is true, the license issued pursuant to subsection (b) hereof shall contain a requirement that the licensee correct all deficiencies specified within 120 days of the date the license is issued:

(1) The results of inspections of the premises by the Fire Chief, the County Board of Health inspector, and/or the Building Commissioner indicate that the premises are not in compliance with applicable laws and regulations under their respective jurisdictions, including the provisions of this chapter related to characteristics of the physical premises. This paragraph shall not apply to premises that are in violation of any law or regulation that is identified or referenced in subsection (b) hereof.

(2) An applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him or her in relation to any business, which are not the subject of a pending appeal or other legal challenge.

(d) If the Director of Public Service and Development determines that no other grounds for denial of a license exist under subsection (b) hereof, the Director of Public Service and Development shall not delay approval of the application past the end of the twenty-one day period provided in this section solely because the Fire Chief or County Health Department Inspector has not provided the Director of Public Service and Development with the results of his or her inspection of the premises. The results of the Building Commissioner's inspection of the premises are not available, and/or the Police Chief has not provided the results of his or her investigation of the criminal background of the applicant or applicants. If, after approving the issuance of a license, the Director of Public Service and Development receives information from the Police Chief concerning his or her investigation, which the Director of Public Service and Development determines constitutes grounds for denial of a license under subsection (b) hereof, then the adult business license issued pursuant to this subsection shall be immediately revoked. If, after approving the issuance of a license, the Director of Public Service and Development receives information concerning the results of inspections of the premises by the Fire Chief and of the County Health Department Inspector, which the Director of Public Service and Development determines constitutes grounds for the issuance of a license subject to a requirement to correct deficiencies under subsection (c) hereof, then a requirement shall be added to the terms of the adult business license issued pursuant to this subsection to correct all deficiencies noted within 120 days of the date such requirement is added.

(e) An adult business license, if granted, shall state on its face the name of the person, persons or entity to whom it is granted, the expiration date, the address of the licensed adult entertainment business or adult motel, and the classification for which the license is issued pursuant to Section 753.03 of this chapter. All adult business licenses shall be posted in a conspicuous place at or near the entrance to the business so that they may be easily read at any time.

(f) The Director of Public Service and Development shall advise the applicant in writing of the reasons for any license denial.
(Ord. 02-25. Passed 5-20-02.)

753.07 FEES.

(a) Every application for a new adult business license shall be accompanied by a seven hundred fifty dollar ($750.00) non-refundable application and investigation fee.

(b) Every application for renewal of an adult business license shall be accompanied by a five hundred dollar ($500.00) non-refundable application and investigation fee.

(c) In addition to the application and investigation fee required in subsection (a) or (b) hereof, every applicant that is granted an adult business license (new or renewal) shall pay to the City an annual, non-refundable license fee of two hundred fifty dollars ($250.00) within thirty (30) days of license issuance or renewal.
(Ord. 02-25. Passed 5-20-02.)

753.08 EXPIRATION AND RENEWAL OF LICENSE.

(a) Each license issued pursuant to this chapter shall expire one year from the date of issuance and may be renewed by making application as provided in this section. Application for renewal shall be made no more than ninety days and no less than thirty days before the expiration date. If the application is made less than thirty days before the expiration date, the license will not be extended pending a decision on the application, but will expire on its normal expiration date.

(b) An application for renewal of an adult business license shall be submitted to the Director of Public Service and Development on a form provided by the Building Department. The renewal application may request and the applicant shall provide such information as reasonably necessary to enable the City to determine whether the application meets the qualifications established in this chapter. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to Section 753.05 of this chapter. The completed renewal application shall be accompanied by copies of any document or material submitted in connection with the initial license application that has been revised or requires revision to reflect any change in circumstances or conditions.

(c) The Director of Public Service and Development shall make determinations concerning the approval of license renewals based on the same criteria and according to the same time frame used to evaluate applications for new licenses under Section 753.06 of this chapter.

(d) The Director of Public Service and Development shall advise the applicant in writing of the reason(s) for any denial of a license renewal.
(Ord. 02-25. Passed 5-20-02.)

753.09 SUSPENSION.

(a) The City shall suspend an adult license for a period of not to exceed thirty days (30) if it determines that a licensee:

(1) Has violated or is not in compliance with any section of this chapter; or

(2) Has knowingly allowed an employee to violate or fail to comply with any section of this chapter.

(b) The Director of Public Service and Development shall advise the licensee in writing of the reason or reasons for any suspension.
(Ord. 02-25. Passed 5-20-02.)

753.10 REVOCATION.

(a) The City shall revoke an adult business license if a cause of suspension under Section 753.09 of this chapter occurs and the license has been suspended two times within the preceding twelve months.

(b) The City shall revoke an adult business license if it determines that:

(1) A licensee gave false or misleading information in the material submitted during the application process;

(2) The licensee or licensees failed to comply with any requirement stated in the license, pursuant to Section 753.06(c) of this chapter, to correct specified deficiencies within 120 days;

(3) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(4) A licensee has knowingly allowed prostitution or solicitation on the premises;

(5) A licensee knowingly operated the adult entertainment business or adult motel during a period of time when the licensee's license was suspended;

(6) Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; and

(7) A licensee has been convicted of a specified criminal activity, as defined in Section 753.02 of this chapter, during the term of the license.

(c) The Director of Public Service and Development shall advise the licensee in writing of the reason or reasons for any revocation.

(Ord. 02-25. Passed 5-20-02.)

753.11 APPEALS.

(a) Any denial, suspension or revocation of a new or renewal license under this chapter may be appealed to the Board of Zoning and Building Appeals by written notice within ten days of such denial, suspension or revocation. Unless the applicant requests a longer period, the Board must hold a hearing on the appeal within fourteen days (14) and must issue a decision affirming or reversing the denial, suspension or revocation within five days after the hearing.

(b) Any decision by the Board of Zoning and Building Appeals shall be a final appealable order, and the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

(c) In the event that an applicant or licensee seeks judicial review of a decision issued pursuant to this chapter, the applicant or licensee shall provide written notice of such appeal to the Board of Zoning and Building Appeals within three days of the filing of the appeal. Within ten days of receiving such written notice of appeal, or within such shorter time as may be ordered by the court, the Board shall transmit to the court in which appeal was sought a copy of the full administrative record for the matter, including a complete transcript of all the original papers, testimony and evidence offered, heard and taken into consideration in issuing the final order. The Board and all other departments or agencies of the City shall provide any further information, assistance or cooperation requested by the reviewing court without delay.

(d) Any licensee lawfully operating an adult entertainment business or adult motel prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to operate said business during the pendency of an appeal to the Board of Zoning and Building Appeals or to a court.

(e) Any licensee lawfully acting as an employee in an adult entertainment business or adult motel prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to serve in such capacity during the pendency of an appeal to the Board of Zoning and Building Appeals or to a court.

(f) In the event that an applicant for the new adult business license or a new adult entertainment employee license seeks judicial review of the denial of a new license, and such review does not result in a final judicial decision within sixty (60) days of the date the appeal was filed, the City will issue such applicant a provisional adult business license or adult entertainment employee license upon request of the applicant. The provisional license will:

(1) Allow an applicant for an adult business license to operate the adult entertainment business or adult motel named in the license application under the same terms as a normal adult business license issued pursuant to section 753.07 of this chapter for the period of time specified in subsection (g) hereof;

(2) Allow an applicant for an adult entertainment employee license to act as an employee on the premises of an adult entertainment business or adult motel under the same terms as a normal adult entertainment employee license issued pursuant to Section 753.09 of this chapter for the period of time specified in subsection (g) hereof; and

(3) Be subject to the same requirements as a normal adult business license or adult entertainment employee license issued under Section 753.07 or Section 753.09 of this chapter.

(g) A provisional license will expire on whichever of the following three dates is earliest:

(1) The date that a judicial decision is issued upholding the license denial;

(2) The date on which a non-provisional adult business license or adult entertainment employee license is issued to the applicant pursuant to a judicial decision overturning the license denial; or

(3) The date one year from the issuance of the provisional license.

(h) In the event that judicial review of the denial of a new license application is still pending thirty days before the expiration date of a provisional license, the provisional licensee may file a renewal license application with the Building Commissioner pursuant to Section 753.08(b) of this chapter. The Building Commissioner shall grant an application for renewal of a provisional license unless he or she determines that new grounds exist for denial of a license application pursuant to Sections 753.07 or Section 753.09 of this chapter, which did not exist at the time of the original license application. In the event that an application for renewal of a provisional license is denied and the applicant seeks judicial review of that denial, the City has the right to consolidate such review with the pending judicial appeal of the previous license denial.
(Ord. 02-25. Passed 5-20-02.)

753.12 TRANSFER OF LICENSES.

(a) An adult business license is not transferable from one licensee to another or from one location to another. Any purported transfer of an adult business license shall automatically and immediately revoke that license.

(b) An adult entertainment employee license is not transferable from one licensee to another, but the use of the license by the individual to whom it was issued may be transferred from one licensed adult entertainment business or adult motel to another such licensed establishment during the term of the license, provided that the licensee gives written notice of such transfer to the Building Commissioner within fifteen (15) days of such transfer.
(Ord. 02-25. Passed 5-20-02.)

753.13 ADDITIONAL REGULATIONS FOR ADULT MOTELS.

(a) Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two or more times in less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in Section 753.02 of this chapter.

(b) Evidence that a person in control of a sleeping room in a hotel, motel or similar commercial establishment has rented or subrented a sleeping room to a person and, within ten (10) hours from the time the room was rented, has rented or subrented the same sleeping room again creates a rebuttable presumption that the establishment is an adult motel as that term is defined in Section 753.02 of this chapter.

(c) For the purpose of subsection (b) hereof, the terms "rent" and "subrent" means the act of permitting a room to be occupied for any form of consideration.

(d) No person shall operate a hotel, motel or similar commercial establishment that is found to be an adult motel, as defined in Section 753.02 of this chapter, without a valid adult business license for such establishment.

(e) Whoever violates subsection (d) hereof is guilty of a misdemeanor in the first degree.
(Ord. 02-25. Passed 5-20-02.)

753.14 REGULATIONS PERTAINING TO THE EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING BOOTHS.

(a) No person may operate or cause to be operated an adult entertainment business, other than an adult motel, which exhibits on the premises in a viewing booth, as defined in Section 753.02 of this chapter, films, video cassettes, other video or image reproduction, or live entertainment which depict or depicts specified sexual activities or specified anatomical areas, without complying with the following requirements:

(1) The adult business application required under this chapter shall be accompanied by a diagram of the premises showing a plan thereof which specifies the location of all areas and/or viewing booths to which any patron is permitted access for any purpose, overhead lighting fixtures designates any portion of the premises in which patrons will not be permitted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required, however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a scale or marked with dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches.

(2) Each area of the premises to which any patron is permitted access for any purpose and/or each viewing booth, excluding restrooms, shall contain a window made of clear Plexiglas or glass. Said window shall have at least a height of thirty (30) inches and a width of thirty (30) inches. Said window shall be located on the wall directly across from the place in said areas and/or viewing booths where films, videocassettes, other video or image reproduction or live entertainment are displayed. Nothing shall be permitted to cover either side of the window. Said window shall not be permitted to be tinted or colored in any manner. Said window shall be installed and/or constructed in such a manner so that the bottom is no higher than forty-eight (48) inches from the floor. Restrooms may not contain video reproduction equipment, and no entertainment of any kind shall be offered in restrooms.

(3) At least one employee shall be on duty at all times that any patron is present inside the premises. For the purposes of this section any employee who is regularly working behind a counter and/or cash register shall not count toward this requirement.

(4) No patron shall at any time be permitted access to any area of the premises which has been designated in the license application filed pursuant to this chapter as an area in which patrons will not be permitted.

(5) No viewing booths may be occupied by more than one person at any time.

(6) The premises shall be equipped with operable lighting fixtures in all areas of the premises to which patrons are permitted access.

(7) In the event of a power failure, the business shall stop operating immediately and all patrons shall be cleared from the premises.

(8) No openings of any kind shall be permitted to exist between viewing booths or in any wall of a viewing booth.

(9) No person shall make or attempt to make an opening of any kind between viewing booths or in any wall of a viewing booth.

(10) The walls of each viewing booth shall be inspected regularly during each business day to determine if any openings or holes exist.

(11) All floor coverings in viewing booths shall be nonporous, easily cleanable surfaces, and no rugs or carpeting.

(12) All wall surfaces and ceiling surfaces in viewing booths shall be constructed of, or permanently covered by, nonporous, easily cleanable material.

(b) No person shall knowingly operate an adult entertainment business in violation of subsection (a) hereof.

(c) Whoever violates subsection (b) hereof is guilty of a misdemeanor of the third degree.
(Ord. 02-25. Passed 5-20-02.)

753.15 ADDITIONAL REGULATIONS CONCERNING THE OPERATION OF ADULT ENTERTAINMENT BUSINESSES.

(a) Nudity, Sexual Activity and Live Entertainment.

(1) No employee on the premises of an adult entertainment business may appear in a state of nudity, as defined in Section 753.02 of this chapter, or engage in specified sexual activities, as defined in Section 753.02 of this chapter.

(2) No employee, as defined in Section 753.02 of this chapter, appearing on the premises of an adult entertainment business in a state of semi-nudity, may knowingly touch a customer or a customer's clothing or knowingly permit himself or herself to be touched by a customer or a customer's clothing.

(3) Any live entertainment that is provided on the premises of an adult entertainment business, in a private or semi-private room, to five or fewer persons at any one time, must take place in the direct, unobstructed line of sight of an employee who is on duty at all times during which such entertainment takes place, with all doors to such room completely open and ajar, if such room is not considered a "viewing booth" under Section 753.02 of this chapter.

The provisions of this subsection (a) shall not apply to an employee's bona fide use of a restroom or of a single-sex dressing room that is accessible only to entertainers.

(b) Dressing Rooms. All adult entertainment businesses that offer live entertainment must provide separate dressing room facilities for female and male entertainers, which shall not be occupied or used in any way by any one other than entertainers.

(c) Minors Prohibited. No person under the age of eighteen (18) years shall be permitted on the premises of an adult entertainment business.

(d) Hours of Operation. No adult entertainment business shall remain open at any time between the hours of 2:30 a.m. and 5:30 a.m., nor shall any entertainment, service, or product be provided to a customer on the premises of an adult entertainment business during those hours.

(e) Exterior Display. No adult entertainment business or adult motel shall be operated in any manner that permits the observation from outside the premises of any material or entertainment depicting or describing specified sexual activities or specified anatomical areas, as defined in Section 753.02 of this chapter, or any person in a state of nudity or semi-nudity, whether by means of display, decoration, sign, window or any other means.

(f) Penalties.

(1) Except as otherwise provided in this paragraph, any person who violates subsection (a) hereof or any person who operates an adult entertainment business and knowingly permits a violation of subsection (a) hereof on the premises, shall be guilty of a misdemeanor of the fourth degree. If the offender previously has been convicted of or plead guilty to one violation of subsection (a) hereof, a second violation will be considered a misdemeanor of the third degree. If the offender previously has been convicted of or plead guilty to two violations of subsection (a) hereof, a third violation will be considered a misdemeanor of the second degree. If the offender previously has been convicted of or plead guilty to three or more violations of subsection (a) hereof, any subsequent violation will be considered a misdemeanor of the first degree.

(2) Any person who operates an adult entertainment business and knowingly permits a violation of subsection (e) of this section on the premises shall be guilty of a misdemeanor of the first degree.

(3) Any person who operates an adult entertainment business in violation of subsection (b), or (d) hereof shall be guilty of a misdemeanor of the fourth degree.

(4) Any operator of an adult entertainment business or his agent or employee who recklessly violates, or operates an adult entertainment business in violation of, subsection (c) hereof commits a misdemeanor of the second degree. Mistake of age is not a defense to a charge under this section, unless the person under the age of eighteen (18) who was permitted on the premises exhibited to the operator or his agent or employee a draft card, driver's license, birth record, or other official or apparently official document purporting to show that the person was eighteen (18) years of age or over, and the person to whom that document was exhibited did not otherwise have reasonable cause to believe that the person seeking admittance was under eighteen (18) years of age.

(Ord. 02-25. Passed 5-20-02.)

753.16 APPLICATION OF CHAPTER TO EXISTING ADULT BUSINESSES.

(a) Any establishment in operation on the effective date of this chapter that is considered an adult entertainment business or adult motel under the terms of this chapter will be subject to the terms of this chapter as of the effective date of this chapter. Any such establishment must submit an application for an adult business license pursuant to this chapter within sixty (60) days of its effective date. Any establishment for which an adult business license application is submitted within the required sixty (60) day period will be permitted to operate. Subject to compliance with the nonlicensing provisions of this chapter, pending review of the license application and appeal of a license denial.

(b) Any person acting, on the effective date of this chapter, as an employee in an establishment that is considered an adult entertainment business or adult motel under the terms of this chapter, will be subject to the terms of this chapter as of the effective date of this chapter. Any such person must submit an application for an adult entertainment employee license within the required sixty (60) days of its effective date. Any person who has submitted an application for an adult entertainment employee license pursuant to this chapter within the required sixty (60) day period will be permitted to continue acting as an employee in an establishment that is considered an adult entertainment business or adult motel, subject to compliance with the non-licensing provisions of this chapter, pending review of the license application and any appeal of a license denial.
(Ord. 02-25. Passed 5-20-02.)

753.17 EXTENSION OF TIME LIMITS FOR INVESTIGATION AND REVIEW OF LICENSE APPLICATIONS.

If the Building Commissioner determines that the volume of license applications received during the first sixty (60) days following the effective date of this chapter is too great to allow proper investigation and review within the time limit specified in this chapter, the Building Commissioner may delay a decision on any or all adult business license applications or adult entertainment employee license applications submitted during the sixty (60) day period for up to an additional ninety-nine (99) days beyond the twenty-one (21) day time period specified under this chapter. If the Building Commissioner makes such a determination, he or she shall promptly so notify the Police Chief, the Fire Chief and the representative from the Cuyahoga County Board of Health, and shall extend the time limits specified for the requested investigation and inspections accordingly.
(Ord. 02-25. Passed 5-20-02.)

753.18 INJUNCTION.

Whoever operates or causes to be operated an adult entertainment business or adult motel in violation of this chapter is subject to a suit for injunction as well as prosecution for criminal violations under Chapter 501 of these Codified Ordinances.
(Ord. 02-25. Passed 5-20-02.)

753.99 PENALTY.

(a) Violations of this chapter that are specified in this chapter to be misdemeanors are punishable by a fine and/or imprisonment as provided in Chapter 501 of these Codified Ordinances.

(b) A separate offense shall be deemed committed each day that an adult entertainment business or adult motel operates in violation of this chapter.
(Ord. 02-25. Passed 5-20-02.)

CHAPTER 755
Tattoo Operations and Dermagraphic Art Studios

755.01 Definitions.
755.02 Permit required; annual fee.
755.03 Permit application and issuance.
755.04 Permit denial, revocation or suspension.
755.05 Plan requirements.
755.06 Minimum sanitation standards.
755.07 Inspections.
755.08 Variances.
755.99 Penalty.

CROSS REFERENCES
Hazardous and solid waste - see Ohio R.C. Ch. 3734
Physical harm to persons defined - see GEN. OFF. 501.01 (c), (e)
Assault - see GEN. OFF. 537.03
Endangering children - see GEN. OFF. 537.07

755.01 DEFINITIONS.
For purposes of this chapter, certain terms are defined as follows:
(a) "Tattoo" shall mean any permanent design of the skin by puncturing the skin and inserting indelible colors.
(b) "Board of Health" shall mean the Board of Health of Cuyahoga County.
(c) "Health Commissioner" shall mean the Health Commissioner of the Cuyahoga County Board of Health, or his or her authorized representative.
(d) "Operator" or "tattoo artist" shall mean any person who places a tattoo on another person either for free or for a consideration.
(e) “Person” shall mean any person, firm, corporation, partnership, association or agent thereof.
(f) "Tattoo operation" or " dermagraphic art studio" shall mean any place, whether temporary or permanent, stationary or mobile, in a private home or a public business, where the art of tattooing is practiced in the City of Fairview Park, Ohio. (Ord. 02-24. Passed 7-22-02.)

755.02 PERMIT REQUIRED; ANNUAL FEE.
(a) No tattoo operation or dermagraphic art studio shall be operated in the City of Fairview Park without a permit from the City of Fairview Park in conjunction with the Cuyahoga County Board of Health. Such permit shall be displayed within the operation in a place conspicuous to the public.

(b) All permits issued by the City of Fairview Park in conjunction with the Cuyahoga County Board of Health to operate a tattoo operation or dermagraphic art studio shall expire on December 31 following the date of issuance.

(c) The annual fee for tattoo operation or dermagraphic art studio permits shall be four hundred dollars ($400.00).
(Ord. 02-24. Passed 7-22-02.)

755.03 PERMIT APPLICATION AND ISSUANCE.

(a) During the month of December of each year, every operator or tattoo artist of a tattoo operation or dermagraphic art studio proposing to operate a tattoo operation during any part of the next year shall apply for a permit from the City of Fairview Park.

(b) Any person who, subsequent to January 1 of any year, proposes to operate a tattoo operation during any remaining part of the year, after the effective date of this chapter, shall apply for a permit from the City of Fairview Park no less than ten days before the tattoo operation is to be opened for business.
(Ord. 02-24. Passed 7-22-02.)

755.04 PERMIT DENIAL, REVOCATION OR SUSPENSION.

A permit to operate a tattoo operation or dermagraphic art studio may be denied, suspended or revoked by the City of Fairview Park and/or the Cuyahoga County Board of Health upon failure of the applicant to meet or maintain the requirements of this chapter or by violation by the permit holder of any of the terms of this chapter. The applicant or permittee, as the case may be, may appeal any denial, suspension or revocation of the permit by submitting notice of such request for appeal to the Secretary of the Board of Zoning and Building Appeals within fourteen days of receipt of notice of such denial, suspension or revocation. The Board of Zoning and Building Appeals shall hear such appeal in accordance with the procedures afforded by these Codified Ordinances in matters of appeal to said Board.
(Ord. 02-24. Passed 7-22-02.)

755.05 PLAN REQUIREMENTS.

(a) No person shall construct, install, operate, equip or extensively alter a tattoo operation until the plans therefor have been submitted to and approved in writing by the City of Fairview Park. When such plans are submitted to the City of Fairview Park, they shall be acted upon by the City within forty-five days after the date of receipt.

(b) The plans and specifications submitted for the approval of the City of Fairview Park shall clearly show and describe what applicable provisions of this chapter shall be adequately met, and shall include:

(1) The total area (square feet) to be used for the tattoo operation.
(2) Entrances and exits.
(3) Location, number and types of plumbing fixtures, including all water supply facilities.
(4) Plan of lighting, both natural and artificial.

(c) All equipment, both new and used, to be utilized in the tattoo operation must be approved by the Health Commissioner.

(d) No tattoo operation shall be conducted in any zoned residential area, nor shall any such operation be conducted within 500 feet of any zoned residential property or any school, public library, church or day care center.
(Ord. 02-24. Passed 7-22-02.)

755.06 MINIMUM SANITATION STANDARDS.

(a) Prior to Tattooing.

(1) Medical history. The operator shall inquire of a patron on a written questionnaire for the following medical conditions:

A. History of jaundice or hepatitis;

B. History of lymphadenopathy or lymphadenitis (swelling of lymph nodes);

C. History of AIDS, positive HIV test;

D. History of blood donation exclusion (for other than hypertension and immediate illness);

E. History of skin disease or skin cancer; and

F. History of allergies that have caused an anaphylactic reaction. Persons indicating a history of any of the above shall not be tattooed.

(2) Intoxicated persons. Any individual who is inebriated or obviously under the effects of alcohol and/or drugs shall not be tattooed.

(3) Underage persons. The operator shall verify the age of the patron, confirmed by a driver's license or State identification card. No person under nineteen years of age shall be tattooed without the prior express, verified, written consent of such person's parents and/or guardians.

(b) Operator or Tattoo Artist.

(1) Clothing. All operators, while tattooing, shall wear light-colored, clean, washable covering garments.

(2) Hand washing. Immediately prior to beginning any tattooing operation, each operator shall wash his or her hands in running water for at least three minutes with liquid or granulated soap, or equivalent, as approved by the Health Commissioner. An individual handwashing brush shall be used by each operator. After washing hands, as herein required, the operator shall rinse his or her hands in seventy percent alcohol (rubbing alcohol) or in an antiseptic solution approved by the Health Commissioner. The operator's fingernails shall be kept clean and short with no rings.

(3) Examination gloves. The operator shall wear and then discard a separate set of disposable examination gloves for each client. Should the gloves develop a break or tear, they shall be immediately replaced.

(4) Lap Cloths. All operators who utilize lap clothes shall launder the lap cloth at least daily.

(5) No Smoking. There shall be no smoking by patrons, guests or the operator during the tattooing operation.

(c) The Tattooing Operation.

(1) Tattooing surface. Tattooing shall be done on a normal healthy skin surface. No tattooing shall be done on scar tissue. No tattooing operator shall remove tattoo marks.

(2) Razors/needles. Separate disposable razors with single service blades, and separate disposable needles, shall be used for each patron and then discarded in accordance with all applicable rules and regulations.

(3) Shaving. Before shaving, the area to be tattooed shall be thoroughly cleansed with tincture of green soap (U.S.P.) or its equivalent, as approved by the Health Commissioner, and washed with alcohol. After shaving the area to be tattooed, seventy percent alcohol (rubbing alcohol) shall be applied to the skin.

(4) Skin lubricant. Only sterile petroleum jelly in collapsible metal or plastic tubes, single use (unit dose), or its equivalent, as approved by the Health Commissioner, shall be used on the area to be tattooed, and such jelly shall be applied by the use of sterile gauze, and not directly with the fingers.

(5) Treatment of blood flow. No operator shall use styptic pencils, alum blocks or other solid styptic to check the flow of blood.

(6) Dyes or inks. All dyes used in tattooing shall be manufactured by a reputable manufacturer and used without adulteration of the original formula. Single service or individual containers of dye or ink shall be used for each patron and the container and the remaining dye or ink discarded. The single use containers shall be disinfected prior to use. If non-disposable containers are used, they must be sterilized before reuse. Excess dye or ink shall be removed from the skin with an individually wrapped sterile gauze, individually wrapped sterile cotton squares, clean disposable wrapped cotton squares, or clean disposable tissue. The completed tattoo shall be washed with pieces of sterile gauze or individual sterile cotton saturated with germicidal solution approved by the Health Commissioner or seventy percent alcohol (rubbing alcohol). The tattooed area shall be allowed to dry and petroleum jelly from a collapsible or plastic tube, single use (unit dose), or its equivalent, as approved by the Health Commissioner, shall be applied. An approved surgical dressing and tape shall be applied to the site.

(7) Infections. All infections resulting from the practice of tattooing which become known to the operator shall be reported to the Health Commissioner by the person owning or operating the tattoo operation, and the patient shall be referred to a private physician. Printed instructions, approved by the Board of Health, shall be given to each patron on the care of the skin after tattooing.

(8) Prohibited tattoos. Tattooing, including the changing or repairing of previous tattoos, shall not be performed on any fingertip, on the genitalia, on a scrotum or in the anal area, nor shall tattooing be undertaken over the site of an obviously recent hypodermic injection. No tattoo shall consist of any obscene word or gesture, nor shall it depict any obscene act or the genitalia.

(9) Dressing and materials. The use of paper napkins and other material and tape for dressing is prohibited. Only recognized and approved surgical dressing and tapes shall be used on patrons.

(10) Disposal of waste. All used items must be autoclaved at fifteen pounds per square inch at 250 degrees Fahrenheit for twenty minutes, then discarded in accordance with the Ohio Environmental Protection Agency Rules for Disposal of Infectious Waste.

(11) Prohibited hours of operation. No tattooing operation shall be performed after 8:00 p.m. or before 8:00 a.m.

(12) Aftercare pamphlet. The operator shall provide the patron with an aftercare pamphlet covering the care of the tattoo site immediately following the tattoo operation on such patron. Such pamphlet is to be provided by the Board of Health to the operators.

(d) Care of Instruments.

(1) Preparation of instruments for sterilization. After each tattoo job, the tattoo machine shall be placed in an ultrasonic-type machine to remove the excess dye from the tubes and needle bars. When this process is completed, the tubes and needle bars shall be removed from the tattoo machine. They shall then be placed into a covered container for sterilization by autoclaving. If an enzymatic cleaner is used in ultrasonic-hollow needles, it must be thoroughly flushed with cleaning solution.

(2) Sterilization of instruments. Steam sterilizers, approved by the Health Corrunissioner, shall be provided for each tattoo operation. All needle bars, grips, and tubes shall be sterilized, before use on each customer, by autoclaving under fifteen pounds per square inch pressure for twenty minutes. Temperatures in autoclaving shall not be less than 250 degrees Fahrenheit or 121 degrees Celsius. The time of the sterilization cycle shall not begin until temperature and pressure have been met. A spore test shall be conducted on the autoclave weekly, and after any autoclave repair or maintenance, for the following:

A. Bacillus stearothermophilus (steam sterilizers).

B. Bacillus subtilis var. niger (dry heat sterilizers).

(3) Solder. Solder used for the attachment of needles to the needle bars shall be lead-free.

(4) Storing of instruments. All tubes, grips and needle bars shall be left in the wrappers or sterilizer bags used during the autoclaving process. These wrapped articles shall be stored in a closed glass case or storage cabinet. This closed glass case or storage cabinet shall be maintained in a sanitary manner at all times. The wrappers shall not be removed from the tubes, grips or needle bars until the tattoo job is to begin.

(e) Tattoo Operation Environment.

(1) Minimum floor space. Tattoo operations shall have not less than 150 square feet of usable floor space. If more than one operator is engaged in the tattooing profession in the same operation, there shall be a minimum of 100 square feet of floor space for each operator. The building shall be enclosed on four sides and maintained free from dust, dirt or contamination.

(2) Illumination. The tattoo operation shall be provided with artificial light sources equivalent to at least twenty foot-candles at a distance of thirty inches above the floor throughout the operation. A minimum of forty foot-candles of light shall be provided at the level where the tattooing is being performed. Spot-lighting may be utilized to achieve this required degree of illumination.

(3) Walls, ceilings and floors. The floors, walls and ceiling shall be of an impervious, smooth, washable surface and shall be maintained in a sanitary manner at all times.

(4) Toilet facilities. A toilet and lavatory shall be conveniently located and accessible to the operator.

(5) Hand washing sink. A lavatory or handwashing sink, with hot and cold running water, liquid or granular soap, and single use towels, shall be located in close proximity for each tattoo operator.

(6) Plumbing; waste lines. There shall be no overhead or otherwise exposed sewage lines so as to create a potential hazard to the sanitary environment of the operation.

(7) Solid waste disposal. Sufficient receptacles shall be provided for the disposal of trash, etc. Each trash receptacle shall have a lid and be kept closed at all times. All infectious waste must be discarded in accordance with Ohio EPA rules for disposal of infectious waste.

(8) Operating tables or chairs. All operating tables and chairs shall be constructed of easily cleanable materials and shall be located at least six feet from any observer or waiting customers and separated by a panel at least four feet high.

(9) Records. The operator shall keep records on all patrons receiving tattoos indicating the name, address, and age of each individual tattooed and the name and the tattoo artist completing the job. These records shall be recorded and kept on file for a minimum of one year.

(10) Posting of regulations. The owner, proprietor or manager of the tattoo operation shall keep a copy of regulations posted in a place conspicuous to the patrons in the tattoo operation. Such copy shall be provided by the Board of Health.

(Ord. 02-24. Passed 7-22-02.)

755.07 INSPECTIONS.

(a) The Health Commissioner and/or the City Safety Director, or their respective representatives may at any reasonable time make inspections of the tattoo operation to insure compliance with this chapter.

(b) All tattoo operations within the City of Fairview Park will be inspected a minimum of four times per year by the Health Commissioner and/or the City Safety Director or their respective authorized representatives.

(Ord. 02-24. Passed 7-22-02.)

755.08 VARIANCES.

The Board of Health may grant a hearing to a tattoo operator and authorize, in specific cases, such variance from the requirements of this chapter as will not be contrary to the public interest and when the operator shows that, because of practical difficulties or other special conditions, their strict application will cause unusual and unnecessary hardship. However, no variance shall be granted that will defeat the spirit and general intent of these regulations or otherwise not be in the public interest.

(Ord. 02-24. Passed 7-22-02.)

755.99 PENALTY.

(a) Whoever violates or fails to comply with any of the provisions of this chapter or any order issued pursuant thereto is guilty of a minor misdemeanor. For a second offense, the person is guilty of a misdemeanor of the fourth degree. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. The penalty shall be as provided in Chapter 501 of these Codified Ordinances.

(b) In addition to the penalty provided herein, whoever violates or fails to comply with any of the provisions of this chapter or any order issued pursuant thereto shall be subject to any other administrative and/or legal action which may be deemed appropriate by the Board of Health. (Ord. 02-24. Passed 7-22-02.)

CODIFIED ORDINANCES OF FAIRVIEW PARK

PART NINE - STREETS, UTILITIES AND PUBLIC SERVICES CODE

TITLE ONE - Streets and Sidewalk Areas
Chap. 901. Street Openings.
Chap. 903. Sidewalks and Curbs.
Chap. 905. Trees.
Chap. 906. Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures.
Chap. 907. Newspaper Dispensing Devices.
Chap. 909. Grading and Excavating Contractors.

TITLE THREE - Sewers
Chap. 911. Sewer Use and Rate.
Chap. 915. Pretreatment.

TITLE FIVE - Other Public Services
Chap. 921. Parks.
Chap. 923. Bain Park Cabin and the Dunson Community Room.
Chap. 925. Cemeteries.
Chap. 927. Recreation and Community Center Complex.
Chap. 929. Solid Waste Collection.

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CHAPTER 901
Street Openings

901.01 Permit required.
901.02 Application; insurance; deposit; fee.
901.03 Barricades, lights and signs.
901.04 Exception.
901.99 Penalty.

CROSS REFERENCES

Excavation liability - see Ohio R.C. 723.49 et seq.
Digging, excavating and piling earth on streets - see Ohio R.C. 5589.10
Dangerous, abandoned excavations - see GEN. OFF. 521.03
Barricades and warning lights - see GEN. OFF. 521.03
Grading and excavating contractors - see S. U. & P. S. Ch. 909
Street openings for sewers - see S. U. & P. S. 911.07

901.01 PERMIT REQUIRED.

(a) No person shall dig, trench, excavate, grade, tunnel or do any work in, over or under any street, sidewalk or other public ground within the City without first obtaining a permit therefor from the Building Commissioner. All such work shall be under the supervision of the Director of Public Service and Development and shall be done to his satisfaction.
(Ord. 67-61. Passed 7-17-67.)

(b) No person shall break the pavement of a newly paved street within five years of the date of installation of the paving for any purpose, except emergency repairs.

901.02 APPLICATION; INSURANCE; DEPOSIT; FEE.

No permit shall be issued unless the applicant therefor shall have complied with the following requirements:

(a) Application. File an application with the Building Commissioner which, in addition to any information which may be requested, shall contain:
  (1) The location where the work is to be performed,
  (2) The name and address of the owner, and
  (3) The name of the person doing the work.

(b) Insurance Policy. Deposit or show evidence of a public liability insurance policy insuring the City against any loss or damage to persons or property resulting from the work being done, such policy to have minimum limits of two hundred fifty thousand dollars ($250,000) for injury or death to any one person, five hundred thousand dollars ($500,000) for any one accident, and fifty thousand dollars ($50,000) for property damage, in form acceptable to the Director of Law and in maximum limits acceptable to the Building Commissioner on the basis of work to be done and the risk involved.

(c) Deposit. Deposit with the Building Commissioner such sum as may be deemed necessary on the basis of the work to be done and the risk involved.

(d) Inspection Fee. Pay to the Building Commissioner an inspection fee of fifty dollars ($50.00).

The deposit may be held and used by the City to cover costs of maintaining, reconditioning and repaving. A portion of the deposit which is not used shall be returned to the permittee when the work is completed to the satisfaction of the Director of Public Service and Development.
(Ord. 87-22. Passed 2-15-88.)

901.03 BARRICADES, LIGHTS AND SIGNS.

The permitted shall maintain sufficient barricades, warning signs and lights as determined by the Director of Public Service and Development during the entire period that the world is being done. Steel plates shall be anchored to adjacent pavement and are required when street excavations of any size or depth are made.
(Ord. 83-1. Passed 3-21-83.)

901.04 EXCEPTION.

Nothing herein contained shall be deemed applicable to any contract with the City for doing any construction or repair work within the public right of way.

901.99 PENALTY.

Whoever violates any provision of this chapter shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both. Each day's continued violation shall constitute a separate offense.

CHAPTER 903
Sidewalks and Curbs

903.001 Definitions.
903.01 Construction of sidewalks required.
903.02 Sidewalk permit.
903.03 Bond or deposit to insure sidewalk construction.
903.04 Engineer's approval.
903.05 Repairing sidewalk; permit.
903.06 Establishment of line and grade.
903.07 Curb cuts; permit and fee.
903.08 Sidewalks to be kept in repair.
903.09 Repairs by City; collection of costs.
903.10 Construction by City; bids.
903.11 Corner lots; credit.
903.99 Penalty.

CROSS REFERENCES

Changing established grade - see Ohio R.C. 727.07
Construction or repair at owner's expense - see Ohio R.C. 729.01 et seq.
Notice to construct or repair sidewalks - see Ohio R.C. 729.03 et seq.
Sidewalk regulations - see GEN. OFF. Ch. 543
Surface water drainage - see BLDG. Ch. 1317

903.001 DEFINITIONS.

The terms used in this chapter shall have the meanings herein defined unless another meaning is clearly apparent in the language or context.

(a) "Owner" means:
  (1) In the case of land, any person who is recorded on the tax records as the owner of the land, or
  (2) In the case of property other than land, any person who is in lawful possession thereof.

(b) "Occupant" means:
  (1) A person who is in physical possession of a property, or
  (2) A person who has responsibility for, and control over, the condition of a property, the activities conducted on that property, and the persons allowed to enter that property.

(c) "Person" includes any individual, corporation, society, association, partnership or firm and the successor or the heir, executor, administrators or other legal representatives of a person.

(d) "Sidewalk" means a part of a highway especially adapted to the use of or ordinarily used by pedestrians and includes that part of the highway between the curb line (or edge of the roadway where there in no curb line) and the adjacent property line, whether or not paved or improved.
(Ord. 03-52. Passed 12-15-03.)

903.01 CONSTRUCTION OF SIDEWALKS REQUIRED.

Any property owner, his agent or contractor shall construct and install sidewalks in accordance with City standard specifications along the public right of way on which their property abuts before the issuance of an occupancy permit, unless otherwise exempted by Council.

903.02 SIDEWALK PERMIT.

Before commencing or proceeding with the construction and installation of a sidewalk, a permit therefor shall be obtained by the owner, developer, contractor or agent of the owner, from the Building Commissioner. No person shall commence or proceed with any such work unless such a permit shall have been obtained.
(Ord. 66-18. Passed 4-18-66.)

903.03 BOND OR DEPOSIT TO INSURE SIDEWALK CONSTRUCTION.

(a) In order to insure the construction and installation of sidewalks and driveway aprons, the Building Commissioner shall cause cash, or a bond, to be deposited with the City in a sum equal to three dollars ($3.00) per square foot of sidewalk and driveway apron, to be constructed and installed by the owner, developer, contractor or agent of the owner, developer or contractor. If such sidewalk and driveway apron is not constructed and installed prior to the premises being occupied or by the time allowed by the Building Commissioner, then such sum of money or bond shall be forfeited to the City and shall be used by the City to install and construct such sidewalks and driveway aprons in any manner that the City deems advisable and appropriate.

(b) Where there is an existing sidewalk or driveway apron and such sidewalk or any part thereof or driveway apron or any part thereof may be damaged or destroyed as a result of construction on the premises, then in order to insure the repair or replacement of such existing sidewalk or any part thereof, or such driveway apron or any part thereof, the Building Commissioner shall cause cash, or a bond, to be deposited with the City in a sum equal to three dollars ($3.00) per square foot of sidewalk and driveway apron to be repaired or replaced. If such sidewalk or any part thereof or driveway apron or any part thereof is not repaired or replaced prior to the premises being occupied or by the time allowed by the Building Commissioner, then such sum of money or bond shall be forfeited to the City and shall be used by the City to repair or replace such sidewalk or any part thereof or driveway apron or any part thereof in any manner that the City deems advisable and appropriate.

(c) No deposit or bond shall be required where there is an existing occupied building, and no existing sidewalk and/or driveway apron, even though a sidewalk and/or driveway apron is required.
(Ord. 91-121. Passed 5-4-92.)

903.04 ENGINEER'S APPROVAL.

No sidewalk or driveway apron heretofore laid shall be raised or lowered without the approval of the City Engineer, and all sidewalks and driveway aprons hereafter laid shall be in accordance with the provisions of this chapter and under the supervision of the City Engineer.
(Ord. 91-121. Passed 5-4-92.)

903.05 REPAIRING SIDEWALK; PERMIT.

No sidewalk or driveway apron shall be improved as herein provided, nor shall any sidewalk or driveway apron be replaced or relaid, unless a permit for so doing shall have been first obtained from the Building Commissioner.
(Ord. 91-121. Passed 5-4-92.)

903.06 ESTABLISHMENT OF LINE AND GRADE.

The owner of land in front of which a permit to improve or repair the sidewalk or driveway apron has been given shall obtain the line and grade from the City Engineer.
(Ord. 91-121. Passed 5-4-92.)

903.07 CURB CUTS; PERMIT AND FEE.

No property owner or his agent shall cut, lower or remove any street curb or curbing without first obtaining a permit therefor from the Building Commissioner and paying the following fees therefor:

New work, up to 10 feet	$ 25.00
Each additional foot	2.00
Widening existing cuts, up to 5 feet	15.00
Each additional foot	2.00

All such work shall be under the supervision of the Director of Public Service and Development and shall be done to his satisfaction.
(Ord. 87-22. Passed 2-15-88.)

903.08 SIDEWALKS TO BE KEPT IN REPAIR.

(a) In addition to the requirements of other applicable ordinances, every property owner and/or occupant of real estate in the City abutting a roadway shall be required to maintain a sidewalk and driveway apron in good repair.

The Director of Public Service and Development, in accordance with subsection (c) hereof, shall determine what sidewalks and driveway aprons are not in good repair and shall compile a list of such sidewalks and driveway aprons based upon the inspection of the Property Maintenance Officer or his designee.

(b) The Director shall establish a program for carrying out the provisions of this section.

The Director is hereby further authorized and directed to promulgate rules and regulations consistent with the requirements and provisions of this chapter to carry out the intent and purpose of this chapter.

(c) The Property Maintenance Officer of the City or his designee shall inspect the sidewalks and driveway aprons of the City at reasonable intervals and, within the limitations of available funds, require repair or installation of sidewalks and/or driveway aprons in those areas of the City where the most need for the improvement thereof then exists.

(1) A sidewalk or driveway apron block shall be replaced when any of the following conditions are present:

A. A difference of elevation between two slabs at a formed or random joint or crack exceeds one inch;

B. Where a portion of the sidewalk or driveway apron is missing;

C. Where a horizontal gap exceeds one inch;

D. Where a block has buckled, within the limits of the block, to a height which exceeds one inch;
E. Where a block has settled, within the limits of the block, to a depth which exceeds one inch;
F. Where a slab has pitted, spalled, scalled or deteriorated twenty-five percent (25%) or more of its surface;
G. Where a slab has disintegrated or shattered;
H. Where a slab rocks or moves under the weight of a pedestrian; or
I. Where diagonal, transverse and longitudinal cracks interconnect forming a series of polygons resembling an alligator skin.

(2) Upon such determination, the owner of the property shall be notified by personal service or by certified mail, return receipt requested, to make the necessary improvements. If notice is returned undelivered, a copy thereof shall be posted in a conspicuous place on the property to which it relates and a copy of such notice shall be published in a newspaper of general circulation within the City once. No person shall remove or deface a posted copy of such notice without prior written authorization of the Building Commissioner. Such repairs or replacements shall be made within thirty days from the giving of notice when such notice is not returned undelivered or within thirty days following the period of publication or from the date of posting of notice on the property, unless extension(s) are granted by the Building Commissioner due to inclement weather or other unforeseen circumstance.

(3) All workmanship and materials shall conform to the engineering requirements of the City.

(Ord. 91-121. Passed 5-4-92.)

(d) On any claim presented for bodily injury or property damage on the sidewalk, the adjoining or abutting property owner shall be held liable in tort for such damages to another. Alternatively, should the City of Fairview Park be called upon to make such payment to a third party, the City will look to the adjoining/abutting landowner for contribution and indemnity.
(Ord. 03-45. Passed 11-17-03.)

903.09 REPAIRS BY CITY; COLLECTION OF COSTS.

(a) If, after the expiration of thirty days following the giving of the notice required in Section 903.08(c), the repair or installation of sidewalks and/or driveway aprons is not made by the owner, the Director of Public Service and Development or the City Engineer shall establish the grade and the Director shall order the installation of the sidewalk and/or driveway apron under the overall sidewalk-driveway apron contract of the City as hereinafter provided. The installation and/or repair of such sidewalk and/or driveway apron shall be supervised by the Department of Public Service and Development.
(Ord. 91-121. Passed 5-4-92.)

(b) Upon completion of such work by the City, a statement by the Finance Director shall be forwarded to the owner at his tax mailing address as shown in the records of Cuyahoga County by registered mail, return receipt requested. If any notice herein required to be given by registered mail, return receipt requested, is not delivered to such owner or his agent as evidenced by the postal return thereon, it shall then be advertised in a newspaper of general circulation in the City for a period of not less than once a week for three consecutive weeks.

(c) The statement shall include the cost of repair and/or installation, the cost of the notices, twenty-five dollars ($25.00) for establishing the grade and supervision for each lot as shown by the subdivision plat records and all other necessary expenses. The owners shall thereafter have thirty days during which to pay such expense, and if it is not paid at the expiration of the thirty day period, the cost shall thereupon constitute a lien upon the lots and lands so benefitted and a tax is levied therefor. The Finance Director shall certify such tax lien to the County Auditor in the following manner:

(1) If the amount of construction or repair is equal to or less than 500 square feet, the amount due shall be divided into two semi-annual payments and collected within the immediate tax year. The Director of Finance shall add to the amount due interest at the rate of ten percent (10%) but in no event an amount less than fifty dollars ($50.00).

(2) If the amount of construction or repair is greater than five hundred square feet, the amount due shall be divided into four semi-annual payments, and collected one-half within the immediate tax year, and one-half in the next following tax year. The Director of Finance shall add to the amount due interest at the rate of ten percent (10%) per annum, but in no event an amount less than fifty dollars ($50.00).

(Ord. 88-31. Passed 7-18-88.)

903.10 CONSTRUCTION BY CITY; BIDS.

The Director of Public Service and Development shall, based upon the inspection of the Property Maintenance Officer or his designee, estimate the number of square feet of sidewalk and driveway apron that will be laid in the City during each year, available funds, circumstances and conditions permitting. The inspection of the Property Maintenance Officer shall be completed not later than December 31 of the then current year for the ensuing year. The City Engineer shall prepare bid specifications not later than March 1. The Director shall, without further authorization, immediately, but not later than April 15, advertise for bids for the repair or installation of sidewalks and driveway aprons, in accordance with City specifications and the estimate, reserving to the City the option to order more or less as circumstances and conditions warrant. The Board of Control shall award a contract to the lowest and most responsible bidder who shall, at the direction of the Division of Building, repair or install sidewalks and driveway aprons as required by the bid specifications of the City during the balance of such calendar year. The Division of Building, within thirty days of an award of a contract to a contractor, shall issue written notification to owners of property with sidewalks and/or driveway aprons to be repaired and/or replaced. The bid required hereunder shall provide that the price is to be based on normal grade conditions. In the performance of individual jobs involving grades that require filling with or removal of earth or other materials, not including cinders or slag, the Director shall agree with the contractor for the reasonable cost of the earth removal or fill to accomplish normal grade. The Division of Building and the Department of Finance shall provide a written quarterly status report to the Mayor and Council of each project year.
(Ord. 91-121. Passed 5-4-92.)

903.11 CORNER LOTS; CREDIT.

Whenever the City determines that an original installation of sidewalks is necessary along the side line of a corner lot, and the construction of such sidewalk is performed by the City or its subcontractor, and the corner lot owner has previously paid or is in the process of paying for a new sidewalk installation along the frontage of his corner lot, then the Finance Director shall allow the corner lot owner a credit for such frontage sidewalk installation based on the percentage of frontage sidewalk measured against the side line sidewalk installation. This section shall not apply to new construction in the City wherein an owner, builder or contractor is required by the ordinances of the City to install front and side line sidewalks.
(Ord. 68-97. Passed 1-20-69.)

903.99 PENALTY.

Whoever violates any provision of this chapter shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both. Each day's continued violation shall constitute a separate offense.

CHAPTER 905
Trees

905.01 Definitions.
905.02 Appointment and jurisdiction of City Arborist.
905.03 Master Street Tree Plan adopted.
905.04 Permit required; conditions.
905.05 General tree and shrub regulations.
905.06 Certain trees prohibited.
905.07 Preservation and removal of trees on public property.
905.08 Procedure upon order to preserve or remove.
905.09 Prohibiting stone or concrete on ground adjacent to tree trunk.
905.10 Moving of trees; permit; deposit or bond.
905.11 Duties of private owners.
905.12 Authority of City Arborist to enter private premises.
905.13 Interference with City Arborist prohibited.
905.99 Penalty.

CROSS REFERENCES
Ohio plant pest law - see Ohio R.C. 927.15
Destruction of shrubs, trees or crops - see GEN. OFF. 541.06

905.01 DEFINITIONS.

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(a) "City" means the City of Fairview Park.

(b) Whenever the words "City Arborist" appear in this chapter, they mean the Director of Public Service and Development of the City of Fairview Park or a specially assigned member of his staff.

(c) "Persons" means any person, firm, partnership, association, corporation, company or organization of any kind.

(d) "Street tree" or "tree" means a tree in a public place, except where otherwise indicated.

(e) Whenever the words "public place" appear in this chapter, they mean any public street, public highway, public park or any property owned or held by the City.

(f) Whenever the words "arboriculture" or "tree preservation" appear in this chapter, they mean and include the treating, spraying, pruning, maintaining and any other care or work intended for the strengthening of trees, and the removal and prevention of tree pests, blights and diseases of any and all kinds.

905.02 APPOINTMENT AND JURISDICTION OF CITY ARBORIST.

(a) Director of Public Service and Development to be City Arborist. The Director of Public Service and Development shall, by virtue of his office, be the City Arborist.

(b) Scope of Authority. The City Arborist is hereby given full jurisdiction, authority, control, supervision and direction of all trees which now or which may hereafter exist upon any public place in the City and over all trees which exist upon any private property in the City when such trees constitute a menace to the City.

(1) Permit issuance. The City Arborist is also given full jurisdiction, authority and control in connection with the issuing of permits hereinafter provided for.

(2) Delegation of duties and authority. In the exercise of any or all of the powers herein granted, the City Arborist shall have the authority to delegate all or such part of his power and duties with respect to supervision and control of trees to his subordinates and assistants in the employ of the City as he may from time to time determine.

(c) Order to Preserve or Remove. The City Arborist shall have the authority and it shall be his duty to order the trimming, preservation or removal of trees or plants upon private property when he shall find such action necessary to public safety or to prevent the spread of disease or insects to public trees and places.

905.03 MASTER STREET TREE PLAN ADOPTED.

There is hereby adopted for the City of Fairview Park a Master Street Tree Plan Public Document showing varieties of species of all trees to be planted in the public right of way of all streets within the City. Such Plan, as amended January, 1995 is incorporated in this chapter by reference as if fully set forth herein.

No person shall hereafter plant, transplant or move any public tree on or to any street of the City, except to a location where it will be in conformance to the Master Street Tree Plan, as amended, and the species or variety therein designated.

(Ord. 95-1. Passed 2-21-95.)

905.04 PERMIT REQUIRED; CONDITIONS.

(a) Permit Required. No person shall plant, remove, destroy, cut, prune, treat, break, climb, injure or spray any tree existing on any public place in the City, or authorize or procure any person to do so, or remove or tamper with any device placed for the protection of any such tree, or attach any rope, wire, chain, sign or other device placed for the protection of such tree, or authorize or cause the same to be done, without having first obtained a permit from the City Arborist.

(b) Species, Spacing, Size, Supports. Such permit, when granted for the planting of any tree to be located on any public place in the City, shall designate the species of tree to be planted, the required spacing and required minimum planting size, as specified in the Master Street Tree Plan as such Plan now exists or as it may be amended from time to time. All newly planted trees, whether installed by the abutting property owner or contractor, shall be supported by a ninety-six inch iron fence post placed on the street side of the tree. No person shall guy any tree less than four inches in caliper with wires or rope. For trees over four inches in caliper, special permission must be obtained, and the permitted must assume liability for accidents occurring therefrom.

(c) Application Data. The application for the permit herein required shall state the number and kind of trees to be trimmed, sprayed, preserved, removed or planted, and kind of treatment to be administered and such other information as the City Arborist shall find reasonably necessary to a fair determination of whether a permit should issue hereunder.

(d) Standards for Issuance. The City Arborist shall issue the permit provided for herein when he finds that the desired action or treatment is necessary and that the proposed method and workmanship are satisfactory.

(e) Supervision. The City Arborist shall have the authority and it shall be his duty to supervise all work done under a permit issued in accordance with the terms of this chapter.

(f) Conditional Permit. The City Arborist shall have the authority to affix reasonable conditions to the grant of a permit hereunder.

(g) Exemptions. No permit shall be required to cultivate, fertilize or water public trees or shrubs. The City Arborist may authorize any person to do any work or act described in subsection (a) herein without written permit whenever he determines that such work or act will not be detrimental to the public interest and will be in accord with the spirit and other requirements of this chapter.

905.05 GENERAL TREE AND SHRUB REGULATIONS.

(a) Injury to Trees and Shrubs Prohibited. No person shall, without the consent of the owner in the case of a private tree or shrub, or without a written permit from the City Arborist in the case of a public tree or shrub, do, or cause to be done by others, any of the following acts:

(1) Secure, fasten or run any rope, wire, sign or other device or material to, around or through a tree or shrub.

(2) Break, injure, mutilate, deface, kill or destroy or permit any fire to burn where it will injure any tree or shrub.

(3) Permit any toxic chemical, gas, smoke, salt, brine, oil or other injurious substance to seep, drain or be emptied upon or about any tree or shrub.

(4) Excavate any ditch, tunnel or trench or lay any drive within a radius of ten feet from any tree or shrub.

(5) Erect, alter, repair or raze any building or structure without placing suitable guards around all nearby public trees or shrubs which may be injured or defaced by, or where such injury or defacement may arise out of, or in connection with, or by reason of, such an operation. The quality of such guard shall be determined by the City Arborist.

(6) Knowingly permit any unprotected electric service wires to come in prolonged contact with any public tree or shrub.

(7) Remove any guard, stake or other device or material intended for the protection of a public tree or shrub, or close or obstruct any open space about the base of a public tree or shrub designed to permit access of air, water and fertilizer.

(b) Trimming of Trees on Public Places. The City Arborist shall, and he is hereby directed to keep all trees standing upon any public place in the City trimmed so that the branches of such trees projecting over any public sidewalk, private driveway, or into any public street beyond the curb line, shall not conflict with the public welfare.

(c) Trimming of Trees on Private Property. All trees standing upon private property in the City having branches projecting into public highways or public places shall, under the supervision of the City Arborist, be kept trimmed by the owner or occupant of such private property to such an extent that the lowest branches of such trees shall not come within nine feet of the ground where they overhang any public sidewalk or public place, or thirteen feet over a public highway.

(d) Obstruction of View at Intersections Prohibited. Notwithstanding any other provision of this chapter, no person shall maintain, plant or permit to remain on any private or public premises situated at the intersection of two or more streets or alleys in the City any hedge, tree, shrub or other growth which may obstruct the view of the operator of any motor vehicle approaching such intersection to the extent that such operator is unable to observe other vehicles or pedestrians approaching or crossing such intersection. Any such hedge, tree, shrub or growth is hereby declared to be a public nuisance.

905.06 CERTAIN TREES PROHIBITED.

(a) Types of Trees Prohibited. The following types of trees shall not be planted as street trees or upon public lands in the City: Acer saccharinum (Silver Maple); Acer negundo (Box elder); Ailanthus altissima (Tree of Heaven); Catalpa speciosa (Catalpa); Gleditsia Triacanthos (Common Honey locus, except that thornless varieties are acceptable); Gymnocladus dioica (Kentucky Coffee Tree); Maclura promifera (Osageorange); Morus (various species) (Mulberry); Populus (various species) (White Poplar, Cottonwood and others); Rhus (various species) (Sumac); Robinia pseudoacacia (Black Locust); Salix (various species) (Willow); Ulmus pumila (Siberian or Chinese Elm); Tilia americana (Basswood); Acer platanoides (Norway Maple); Ailanthus altissima (Chinese Tree of Heaven); Alnus glutinosa (European Black Alder); Alnus icana (European White Alder); Broussonetia papyrifera (Paper mulberry); Decondon verticillatus (Swamp Loosestrife); Lythraceae (Loosestrife); Malus floribunda (Japanese Crab Apple); Malus sieboldii (Toringo Crab Apple); Morus alba (White Mulberry); Morus rubra (Red Mulberry); Picea abies (Norway Spruce); Rhamnus cathartica (European Buckthorn); Rhamnus frangula (Alder Buckthorn). (Ord. 96-90. Passed 1-6-97.)

(b) Trees with Thorns Prohibited. Trees of any type with thorns shall not be planted as street trees or in any public area which would present a danger to pedestrian or wheeled traffic.

(c) Trees on Private Property. Any tree on the list specified in subsection (a) hereof, or a tree with thorns, upon private property in the City in such close proximity to any public place in the City as shall permit the roots of such tree to penetrate through or under the surface of any public place, or the branches to overhang any public place, or the leaves, branches or fruits to unduly present, through their inherent characteristics, undue maintenance on the part of the City or danger to pedestrian or wheeled traffic, is hereby declared to be a public nuisance and may be abated by the City Arborist as provided in Sections 905.02(c) and 905.08.

905.07 PRESERVATION AND REMOVAL OF TREES ON PUBLIC PROPERTY.

The City Arborist shall have the right and duty to trim any tree existing on any public place in the City so as to insure the public safety or to preserve the function or beauty of such public place. He shall further have the right to remove any such tree or any part thereof which is in an unsafe condition or which, by reason of its location or nature, is injurious or detrimental to other public improvements, or is infected with any injury, fungus, insect or other pest or disease which cannot otherwise be controlled. Such infested or infected tree is a public nuisance.

905.08 PROCEDURE UPON ORDER TO PRESERVE OR REMOVE.

When the City Arborist shall find it necessary to order the trimming, preservation or removal of trees or plants upon private property as authorized in Sections 905.02(c) and 905.05(c), he shall serve a written order to correct the dangerous condition upon the owner, operator, occupant or other person responsible for its existence.

(a) Method of Service. The order required herein shall be served in one of the following ways:
  (1) By making personal delivery of the order to the person responsible.
  (2) By leaving the order with some person of suitable age and discretion upon the premises.
  (3) By affixing a copy of the order to the door at the entrance of the premises in violation.
  (4) By mailing a copy of the order to the last known address of the owner of the premises, by registered mail.
  (5) By publishing a copy of the order in a local paper once a week for three successive weeks.

(b) Time for Compliance. The order required herein shall set forth a time limit for compliance, dependent upon the hazard and danger created by the violation. In cases of extreme danger to persons or public property, the City Arborist shall have the authority to require compliance immediately upon service of the order.

(c) Appeal from Order. A person to whom an order hereunder is directed shall have the right, within twenty-four hours of the service of such order, to appeal to the Mayor, who shall review such order within five days and file his decision thereon. Unless the order is revoked or modified, it shall remain in full force and be obeyed by the person to whom directed. No person to whom an order is directed shall fail to comply with such order within thirty days after an appeal has been determined.

(d) Failure to Comply. When a person to whom an order is directed shall fail to comply within the specified time, the City Arborist shall remedy the condition or contract with others for such purpose and charge the cost thereof to the person to whom the order is directed. The person remedying a condition under a contract made hereunder shall be authorized to enter premises for that purpose.

(e) Special Assessment; Penalty for Delinquent Payment. If the cost of remedying a condition is not paid within sixty days after receipt of a statement therefor from the City Arborist, such cost shall be levied against the property upon which such hazard exists, as a special assessment. The levying of such assessment shall not affect the liability of the person to whom the order is directed to fine and imprisonment as herein provided. Such special assessment shall be collected in the manner provided in Ohio Revised Code Sections 727.30 through 727.38, with a forfeiture of five percent and interest for failure to pay at the time fixed by the assessing ordinance.

905.09 PROHIBITING STONE OR CONCRETE ON GROUND ADJACENT TO TREE TRUNK.

No person shall place or maintain upon the ground in any public place any stone, concrete, brick or other impervious material or substance in such a manner as may obstruct the free access of air and water to the roots of any tree upon any public place in the City without first having obtained a permit therefor. Unless otherwise provided for, there shall be maintained about the base of the trunk of each such tree at least nine square feet of open ground for every three inches in diameter, and for every two inches of increase of such diameter, there shall be an increase of at least one square foot of open ground.

905.10 MOVING OF TREES; PERMIT; DEPOSIT OR BOND.

All moving of trees upon any public place in the City made necessary by the moving of a building or structure, or any other private enterprise, shall be done under the supervision of, and with a permit from the City Arborist, and at the expense of the applicant or person seeking the removal of such tree. Such applicant, as one of the conditions of obtaining a permit, shall deposit with the City such sum in cash as the City Arborist may determine and specify to cover all of the cost of moving and replacing such tree, if the conditions of such permission require the replacement thereof. However, in lieu of such cash deposit, the City Arborist may, in his discretion, accept a good and sufficient bond in like amount conditioned upon the payment of all the cost of such moving and replacing.

905.11 DUTIES OF PRIVATE OWNERS.

It shall be the duty of any person growing a tree within a public highway or responsible for trees growing on property abutting on public places supporting trees or plants to:

(a) Trim his trees so as not to cause a hazard to public places or interfere with the proper lighting of public highways by the street lights, and so that the minimum clearance of any overhanging portion thereof shall be nine feet over footways and thirteen feet over vehicular ways.

(b) Treat or remove any tree or plant so diseased or insect-ridden as to constitute a hazard to trees or plants in public places.

(c) Remove and refrain from planting any of the species mentioned in Section 905.06.

905.12 AUTHORITY OF CITY ARBORIST TO ENTER PRIVATE PREMISES.

The City Arborist shall have the authority to enter upon private premises at all reasonable times for the purpose of examining any tree or shrub located upon or over such premises and carrying out any of the provisions of this chapter.

905.13 INTERFERENCE WITH CITY ARBORIST PROHIBITED.

No person shall prevent, delay or interfere with the City Arborist or his agents, employees or servants while they are engaged in carrying out any work or activities authorized by this chapter.

905.99 PENALTY.

Whoever violates any provision of this chapter shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both. Each day's continued violation shall constitute a separate offense.

CHAPTER 906
Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures

906.01 Overview and purpose; definitions.
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906.04 Consolidated consent applications.
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906.19 Construction permit.
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906.21 Telecommunications wireless facilities and support structures fund.
906.99 Penalties; equitable remedies.

906.01 OVERVIEW AND PURPOSE; DEFINITIONS.

(a) The purpose of this chapter is to:

(1) Provide standards for the construction, installation, modification, operation, and removal of Facilities and Wireless Support Structures in the City's Right-of-way to protect the health, safety, and welfare of the citizens of the City;

(2) Preserve the character of the City, including the City's neighborhoods, and commercial corridors;

(3) Give guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of Facilities and Wireless Support Structures; and

(4) Comply with, and not conflict with or preempt, all applicable state and federal laws.

(b) For the purpose of this chapter, and the interpretation and enforcement hereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

(1) "Applicant" means any person or entity who submits an Application pursuant to this chapter.

(2) "Application" means all necessary documentation submitted by an Applicant to obtain a Small Cell Use Permit from the City to Collocate a Small Cell Facility and/or to construct, maintain, modify, operate, or replace a Wireless Support Structure.

(3) "Accessory Equipment" means equipment used in conjunction with a Small Cell Facility and generally at the same location of the Small Cell Facility, including, but not limited to, electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs.

(4) "City" means the City of Fairview Park.

(5) "Collocation" or "Collocate" means to install, mount, maintain, modify, operate, or replace wireless Facilities on a Wireless Support Structure.

(6) "Design Guidelines" means standards applicable to Small Cell Equipment and Wireless Support Structures in the Right-of-way, established and promulgated by the Director.

(7) "Director" means the Director of Public Service & Development or his or her designee.

(8) Facilities" means Small Cell Facilities, Accessory Equipment, and Wireless Support Structures.

(9) "Facilities Operator" means the person or entity responsible for the installation, operation, maintenance, replacement, and modification of Facilities. Facilities Operator includes:

(i) Operators;

(ii) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to O.R.C. Section 4939.031(E) and who have obtained a Small Cell Use Permit; and

(iii) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to O.R.C. Section 4939.033 and who have obtained a Small Cell Use Permit.

(10) "Eligible Facilities or Eligible Support Structure Request" means any request for modification of an existing support structure or base station that does not substantially change the physical dimension of such support structure involving Collocation of new Facilities; removal of Facilities; or replacement of Facilities. A substantial change means:

(i) A modification that changes the physical dimension of a Wireless Support Structure by increasing the height of the Wireless Support Structure by more than 10 percent or more than 10 feet, whichever is greater; and/or by adding an appurtenance to the body of the Wireless Support Structure that would protrude from the edge of the Wireless Support Structure by more than 6 feet;

(ii) The installation of more than the standard number of equipment cabinets for the technology involved or the installation of more than four cabinets, whichever is less;

(iii) The installation for any new ground-mounted equipment cabinets if there are not existing ground-mounted equipment cabinets;

(iv) Any excavation or deployment outside of the current site of the Facility;

(v) Removal of any concealment elements of the Facilities or the Wireless Support Structure; and

(vi) Any change that does not comply with this chapter, the Design Guidelines established and promulgated by the Director, or state or federal law and regulations. The threshold for measuring increases that may constitute a substantial change are cumulative, measured from the Facilities as originally permitted (including any modifications that were reviewed and approved by the City prior to the enactment of the Spectrum Act on February 22, 2012.)

(11) "Operator" means a wireless service provider, cable Operator, or a video service provider that operates a Small Cell Facility and provides wireless service, including a wireless service provider, cable operator, or a video service provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.

(12) "Public Way" or "Right-of-Way" means the surface of, and the space within, through, on, across, above or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a comparable public use, which is owned or controlled by the City or other public entity or political subdivision.

(13) "Small Cell Facility" means a wireless facility that meets both of the following requirements:

(i) Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than 6 cubic feet in volume; and

(ii) All other wireless equipment associated with the facility is cumulatively not more than 28 cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(14) "Small Cell Equipment" means a Small Cell Facility and all Accessory Equipment.

(15) "Small Cell Use Permit" means the permit granted by the City authorizing the Applicant to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-way.

(16) "Wireless Support Structure" means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting Small Cell Facilities. As used in this chapter, "Wireless Support Structure" excludes all of the following:

(i) A utility pole or other facility owned or operated by a municipal electric utility; and

(ii) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses. (Ord. 18-31. Passed 7-30-18.)

906.02 CONSENT REQUIRED.

(a) Any person or entity seeking to Collocate a Small Cell Facility in the Right-of-way, or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-way, shall first file a written Application for a Small Cell Use Permit with the Director in accordance with the requirements in this chapter, Design Guidelines established and promulgated by the Director, O.R.C. Chapter 4939, and all applicable state and federal laws and regulations.

(b) Applicants are strongly encouraged to contact the Director and request a pre-Application conference. This meeting will provide an opportunity for early coordination regarding proposed Facilities, locations, design, Application submittal, and the approval process in order to avoid any potential delays in the processing of an Application and deployment of Facilities in the City.

(c) A Small Cell Use Permit granted under this chapter shall not convey any right, title or interest in the Right-of-way, but shall be deemed a permit only to use and occupy the Public Ways for the limited purposes and term stated in the permit, this chapter, and the Design Guidelines established and promulgated by the Director. Further, no Small Cell Use Permit shall be construed as any warranty of title. (Ord. 18-31. Passed 7-30-18.)

906.03 PERMIT APPLICATION TYPES.

Applicants shall classify their Application as one of the following types:

(a) Type 1: Eligible Facilities Requests.

(b) Type 2: Application for Collocation of Small Cell Equipment on a Wireless Support Structure that does not constitute an Eligible Facilities Request.

(c) Type 3: New Wireless Support Structure. Such applications will address construction, modification, replacement, or removal of a Wireless Support Structure within the Right-of-way. At the time of Application, Applicants shall certify that Small Cell Equipment will be placed on the Wireless Support Structure within 180 days from the date the Small Cell Use Permit is issued.

(Ord. 18-31. Passed 7-30-18.)

906.04 CONSOLIDATED CONSENT APPLICATIONS.

(a) Pursuant to O.R.C. Section 4939.0312, an Applicant may file one consolidated application for up to 30 individual small cell Facilities or 30 individual Wireless Support Structures as long as the facilities or structures for which consent is requested are substantially similar.

(1) Small Cell Facilities shall be considered substantially similar when the Small Cell Equipment is identical in type, size, appearance and function.

(2) Wireless Support Structures shall be considered substantially similar when the Wireless Support Structures are identical in type, size, appearance and function and are to be located in a similar location.

(3) Applications for Facilities and Wireless Support Structures cannot be commingled.

(b) The City may, at its discretion, require separate Applications for any Small Cell Facilities or Wireless Support Structures that are not substantially similar.

(Ord. 18-31. Passed 7-30-18.)

906.05 APPLICATION FEE.

(a) The fee for each application is $250.00. The City shall adjust the fee by 10 percent every five years, rounded to the nearest five dollars, beginning in the year 2023.

(b) An Application shall not be deemed complete until the fee is paid.

(c) If Applications are consolidated, then the fee shall be the sum resulting from the fee set forth in subsection (a) multiplied by the total number of Facilities or Wireless Support Structures included in the consolidated Application.
(Ord. 18-31. Passed 7-30-18.)

906.06 ATTACHMENT FEE.

(a) In addition to the Application Fee, an annual fee shall be paid to the City for each Small cell Facility attached to a municipally-owned Wireless Support Structure is $200.00. The City shall adjust the attachment fee by 10 percent every five years, rounded to the nearest five dollars, beginning in the year 2023.

(b) The first-year attachment fee shall be paid when the collocation is complete, and no later than January 1 each year thereafter. The first-year attachment fee shall not be prorated, regardless of the date that the collocation is complete.
(Ord. 18-31. Passed 7-30-18.)

906.07 REQUIRED APPLICATION MATERIALS.

The Applicant must submit the following documentation with each Application.

(a) Completed Application form including the identity, legal status and federal tax identification number of the Applicant, as well as all affiliates and agents of the Applicant that will use or be, in any way, responsible for the Facilities.

(b) The name, address, and telephone number of the local officer, agent, or employee responsible for the accuracy of the application to be notified in case of emergency.

(c) Fully dimensional scaled site plan (scale no smaller than one inch equals 40 feet). The site plan must include:

(1) The exact proposed location of the Facilities within the Right-of-way;

(2) All existing Facilities with all existing transmission equipment;

(3) The location of all overhead and underground public utilities, telecommunications, cable, water, sanitary sewer, and storm water drainage utilities in the Public Way within 100 feet surrounding the proposed Facilities.

(4) The legal property boundaries within 100 feet surrounding the proposed Facilities;

(5) Indication of distance between the Facilities and existing curbs, driveways, sidewalks, trees, utilities, other poles, and existing buildings within 100 feet surrounding the proposed Facilities; and

(6) Access and utility easements within 100 feet surrounding the proposed Facilities.

(d) Elevation drawings (scale no smaller than one inch equals 10 feet) of the proposed Facilities.

(e) Evidence that the Applicant provided notice by mail to all property owners within 300 feet of the proposed Facilities prior to submitting the Application. The notice shall include:

(1) Name of the Applicant;
(2) Estimated date Applicant intends to submit the Application;
(3) Detailed description of the proposed Facilities and the proposed location; and
(4) Accurate, to-scale photo simulation of the proposed Facilities. Scale shall be no smaller than one inch equals 40 feet.

(f) A preliminary installation/construction schedule and completion date.

(g) Structural calculations prepared, stamped and signed by an engineer licensed and registered by the State of Ohio showing that the Wireless Support Structure can accommodate the weight of the proposed small cell equipment.

(h) Analysis demonstrating that the proposed Facilities do not interfere with the City's public safety radio system, traffic and emergency signal light system, or other City safety communications components. It shall be the responsibility of the Applicant to evaluate, prior to making the Application for a Small Cell Use Permit, the compatibility between the existing City infrastructure and Applicant's proposed Facilities.

(i) A landscape plan that demonstrates screening of proposed small cell equipment.

(j) Drawings of the proposed Facilities. For all equipment depicted, the Applicant must also include, if applicable:
(1) The manufacturer's name and model number;
(2) Physical dimensions, including, without limitation, height, width, depth and weight with mounts and other necessary hardware; and
(3) The noise level generated by the equipment, if any.

(k) If the Applicant is not an Operator, then the Applicant must provide proof that the Applicant has been engaged by a wireless service provider who will be the end-user of the Facilities. (Ord. 18-31. Passed 7-30-18.)

906.08 APPLICATION REVIEW.

(a) Applications shall be evaluated in the timeframes as follows:
(1) Type 1 Applications: 60 days.
(2) Type 2 Applications: 90 days.
(3) Type 3 Applications: 120 days.

(b) Applications shall be reviewed for completeness. If the Application is incomplete, then the Applicant will be notified of the insufficiency, and the timeframes set forth in subsection (a) shall be tolled until the Application is made complete.

(c) The timeframes set out in subsection (a) may also be tolled as follows;
(1) If the City receives more than 30 applications in a 30-day period, then the City may toll for an additional 21 days.
(2) If the City receives more than 30 applications in a 30-day period, then the City may toll for an additional 15 days for every 15 applications received.
(3) By mutual agreement between the Applicant and the City.
(4) When an Applicant submits an underground area waiver pursuant to Section 906.1 3(d) of the Codified Ordinances, in which case the City may toll for an additional 14 days.

(d) If two Applicants request to Collocate on the same Wireless Support Structure or two Wireless Support Structures are proposed within a distance that would violate the spacing requirements set forth in Section 906.16, then the Director may resolve the conflict in any reasonable and nondiscriminatory manner.

(e) If a request for consent is denied, the City shall provide, in writing, its reasons for denying the request, supported by substantial, competent evidence. The denial of consent shall not unreasonably discriminate against the Applicant. Grounds for denying an Application may include, but are not limited to:

(1) Failure to provide information required under Section 906.07;
(2) Failure to comply with Design Guidelines established and promulgated by the Director;
(3) Failure to provide financial surety pursuant to Section 906.15;
(4) Failure to remove abandoned Facilities as required under Section 906.12;
(5) Conflict with the historic nature or character of the surrounding area;
(6) Conflict with planned future improvements in the Right-of-way; and
(7) Failure to comply with generally applicable health, safety, and welfare requirements. (Ord. 18-31. Passed 7-30-18.)

906.09 PERMITTING PROCESS, DURATION, AND TERMINATION.

(a) Upon approval of its Application an Applicant shall receive a Small Cell Use Permit indicating that the City has granted the Applicant consent to occupy the Right-of-way.

(b) A Small Cell Use Permit issued to an Operator shall have duration of no longer than 10 years. Permits may be renewed for five-year terms.

(c) A Small Cell Use Permit issued to a Facilities Operator who is not an Operator shall have a term of 10 years or the duration of the Facilities Operator's agreement with a wireless service provider provided pursuant to Section 906.06(k), whichever is shorter.

(d) A Small Cell Use Permit shall not be renewed if the Facilities Operator or the Facilities are not in compliance with all applicable laws and regulations.

(e) Pursuant to O.R.C. Section 4939.0314(E), a Small Cell Use Permit shall be deemed terminated if the Facilities Operator has not completed construction of the Facilities or has failed to attach Small Cell Equipment to a Wireless Support Structure within 180 days of issuance of the permit, unless the delay is caused by:

(1) Make-ready work for a municipally-owned Wireless Support Structure; or
(2) Due to the lack of commercial power or backhaul availability at the site, provided that tile Operator has made a request for commercial power or backhaul services within 60 days after the Small Cell Use Permit was granted. If the additional time to complete the installation exceeds 360 days after the issuance of the permit, then the permit shall he deemed terminated regardless of the cause of the delay.

(f) A Small Cell Use Permit for a new Wireless Support Structure shall be deemed terminated if the Facilities Operator fails to attach Small Cell Equipment to the new Wireless Support Structure within 180 days of issuance of the Small Cell Use Permit.

(g) If the Facilities Operator fails to remit the annual attachment fee required pursuant to Section 906.06, then the Small Cell Use Permit will expire on the 90th day from the date the annual attachment fee was due.

(h) A Small Cell Use Permit may be terminated by the Facilities Operator at any time upon service of 60 days' written notice to the City.

(i) Upon termination of a Small Cell Use Permit, the Facilities Operator shall restore and rehabilitate all City-owned Wireless Support Structures and the Right-of-way to their former condition and utility.

(j) The City shall not issue any refunds for any amounts paid by the Facilities Operator upon termination of the permit. (Ord. 18-31. Passed 7-30-18.)

906.10 [RESERVED FOR FUTURE USE].

906.11 NONCONFORMNG FACILITIES.

(a) Facilities in the Right-of-way that are legally in existence on the date of the adoption of this chapter but that do not comply with the requirements of this chapter may remain in the Right-of-way but shall be considered a nonconforming facility.

(b) Any person or entity who owns or operates a Nonconforming Facility shall register such facility pursuant the Director within 90 days of the date this ordinance takes effect.

(c) If a nonconforming facility is damaged or destroyed beyond repair, any replacement facility must be designed in accordance with all provisions of this chapter, the Design Guidelines established and promulgated by the Director, and state and federal law and regulations.
(Ord. 18-31. Passed 7-30-18.)

906.12 ABANDONED AND DAMAGED FACILITIES.

(a) A Facilities Operator shall provide written notice to the City of its intent to discontinue use of any Facilities. The notice shall include the date the use will be discontinued. If Facilities are not removed within 365 days from the date the use was discontinued, the Facilities shall be considered a nuisance and the City may remove the Facilities at the expense of the Facilities Operator.

(b) In the event that Facilities we damaged, the Facilities Operator shall promptly repair the damaged Facilities. Damaged Facilities shall be repaired no later than 30 days after obtaining written notice that the Facilities were damaged. If the damaged Facilities are not repaired within 30 days, then the damaged Facilities shall be considered a nuisance and the City may repair or remove the Facilities at the expense of the Facilities Operator.
(Ord. 18-31. Passed 7-30-18.)

906.13 INSURANCE REQUIREMENTS.

Service Provider Insurance. As a condition of the consent to Occupy or Use the Public Right-of-Way, a Service Provider must secure and maintain, at a minimum, the following liability insurance policies insuring both the Service Provider and the City, and its elected and appointed officers, officials, agents, employees, contractors, and representatives as additional insureds:

(a) Comprehensive general liability insurance with limits not less than
  (1) Five million dollars ($5,000,000) for bodily injury or death to each Person;
  (2) Five million dollars ($5,000,000) for property damage resulting from any one accident; and
  (3) Five million dollars ($5,000,000) for all other types of liability.

(b) Automobile liability for owned, non-owned and hired vehicles with a limit of three million dollars ($3,000,000) for each Person and three million dollars ($3,000,000) for each accident.

(c) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars ($1,000,000).

(d) Comprehensive form premises operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars ($3,000,000).

(e) The liability insurance policies required by this section shall be maintained by the Service Provider throughout the period of time during which the Service Provider is Occupying or Using the Public Right-of-Way, or is engaged in the removal of its Facilities. Each such insurance policy shall contain the following endorsement, or a substantially similar endorsement approved by the City:
"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice addressed to the Mayor of such intent to cancel or not to renew."

(f) Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the Service Provider shall obtain and furnish to the City replacement insurance policies meeting the requirements of this section.

(g) Upon written application to, and written approval by, the Director, a Service Provider may be self-insured to provide all of the same coverages as listed in this section; except that all coverages for Workers' Compensation shall be in compliance with State law. As part of the review process, the City may require, and the self-insurance applicant shall provide, sufficient financial information or documents necessary to make a determination that the applicant has the ability to meet the needs and requirements of this chapter.
(Ord. 18-31. Passed 7-30-18.)

906.14 INDEMNIFICATION.

A Facilities Operator shall indemnify, protect, defend, and hold the City and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the Operator who owns or operates Small Cell Facilities and wireless service in the Right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining Facilities in the Right-of-way. (Ord. 18-31. Passed 7-30-18.)

906.15 FINANCIAL SURETY.

(a) Each Facilities Operator must procure and provide to the City a bond, escrow, deposit, letter of credit, or other financial surety to ensure compliance with this chapter and O.R.C. Section 4939. The financial surety must be in an amount sufficient to cover the cost of removal of all Facilities owned or operated by the Facilities Operator.

(b) The City may, in its sole discretion, draw on the financial surety to remove abandoned Facilities, remove or repair damaged Facilities, or to repair damage to any City property caused by the Facilities Operator or its agent. In such event, the Facilities Operator shall cause the financial surety be replenished to its prior amount within 10 business days after City notifies the Facilities Operator that it has drawn on the financial surety.
(Ord.18-31. Passed 7-30-18.)

906.16 RESERVED SPACE.

The City reserves the right to install, and permit others to install, Facilities in the Right-of-Way. The City may reserve space in the Right-of-way and on Wireless Support Structures for future utility, safety, or transportation uses. Such space may be reserved in an ordinance or plan approved by the Mayor; City Manager, City Council, Building Commissioner, or Planning Commission. (Ord. 18-31. Passed 7-30-18.)

906.17 REMOVAL OR RELOCATION OF FACILITIES.

(a) The City may require a Facilities Operator to remove or relocate Facilities to accomplish construction and maintenance activities. The Facilities Operator shall remove or relocate the Facilities at no cost to the City. If the Facilities Operator fails to remove or relocate the Facilities within 90 days of receiving a request to do so from the City, then the City may remove the Facilities at Facilities Operator's sole cost and expense, without further notice to the Facilities Operator.

(b) If the Facilities are placed in a location other than the location approved by the City, the Facilities Operator shall relocate the Facilities within 30 days of receiving notice that the Facilities are located improperly. (Ord. 18-31. Passed 7-30-18.)

906.18 NOTICE OF WORK.

(a) A Facilities Operator shall notify the Director of all nonemergency work within 10 calendar days prior to performing any upgrades or maintenance on any Facilities, regardless of whether the work requires any permit or consent from the City.
(Ord. 18-31. Passed 7-30-18.)

906.19 CONSTRUCTION PERMIT.

(a) Facilities Operators are required to obtain a construction permit pursuant to Section 901.01 prior to commencing any of the following activities:

(1) Collocation of small cell equipment on a Wireless Support Structure;
(2) Replacement, modification, repair, or maintenance of small cell equipment;
(3) Construction, replacement, modification, repair, or maintenance of a Wireless Support Structure associated with a small cell facility; and
(4) Any excavation of the Right-of-way in connection with the activities described in this subsection (a).

(b) The construction permit fee shall be the fee set forth in Section 901.02.
(Ord. 18-31. Passed 7-30-18.)

906.20 EXCAVATION PERMIT.

If a Facilities Operator must construct, reconstruct, alter, repair, remove or replace any culvert, sidewalk or driveway in any public street or road Right-of-Way, then the Facilities Operator shall obtain the required permit pursuant to Section 901.01.
(Ord. 18-31. Passed 7-30-18.)

906.21 TELECOMMUNICATIONS WIRELESS FACILITIES AND SUPPORT STRUCTURES FUND.

(a) The fees of this section provided to be paid into the City, pursuant to this Chapter or pursuant to any other grant of a Telecommunications Small Cell Wireless Facility or Wireless Support Structure by way of a telecommunication franchise authorized by Article XI of the City Charter, shall be placed into a special fund entitled, Telecommunications Wireless Facilities and Support Structures Trust Fund and shall be subject to disbursement, only by Ordinance or Resolution, by further action of Council.

(b) Any interest earned on the funds will remain in the Telecommunications Wireless Facilities and Support Structures Trust Fund, subject to disbursement by City Council.
(Ord. 18-31. Passed 7-30-18.)

906.99 PENALTIES; EQUITABLE REMEDIES.

(a) Any person or entity found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter, or with any of the provisions of the Design Guidelines established and promulgated by the Director, shall he guilty of a misdemeanor of the fourth degree and fined not less than $100.00 nor more than $500.00 for each offense. A separate and distinct offense shall be deemed committed each day during or on which a violation occurs or continues.

(b) Nothing in this chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this chapter.
(Ord. 18-31. Passed 7-30-18.)

CHAPTER 907
Newspaper Dispensing Devices

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907.02 Definitions.
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CROSS REFERENCES
Maintenance of streets and sidewalks free from nuisance - see Ohio R.C. 723.01
Littering - see GEN. OFF. 521.05
Newspaper drop off deliveries - see GEN. OFF. 521.10
Newspaper dispensing devices and vending machines - see BUS. REG. Ch. 735

907.01 PERMIT APPLICATION; DENIAL OR APPROVAL.

(a) Prior to the installation, placement or use of a newspaper dispensing device, within the public right of way, the owner of such device shall file, on forms provided by the Director of Public Service and Development, a permit application with the Director containing the following information:

(1) The name, address and telephone number of the owner;

(2) The name, address and telephone number of the individual or other person to whom the City shall serve in person or by mail any notice or order required by this chapter;

(3) The location and dimensions of each newspaper dispensing device for which the permit application is being made, with sufficient detail to enable the Director to verify that the installation and placement of the newspaper dispensing device in accordance with the permit application shall meet the criteria regulations contained in Section 907.03.

(b) One application may be submitted to include any number of newspaper dispensing devices.

(c) The permit fee required by Section 907.04 shall be paid.

(d) Upon receipt of the information required by this section, payment of the required fees to the Director, and verification by the Director that the installation and placement of a newspaper dispensing device in accordance with the permit application shall meet the criteria regulations contained in Section 907.03, a permit shall be issued or renewed for each newspaper dispensing device. All permits shall be issued, renewed or denied within ten working days of the filing of the permit application. The permit shall indicate the location of the newspaper dispensing device for which the permit has been issued. Notice of a denial shall be served in person or by certified mail to the individual or other person identified in the permit application as required by subsection (a)(2) hereof.

(e) The owner shall promptly notify the Director in writing of any change in the information required by subsection (a) hereof. If the owner proposes to change the location of a newspaper dispensing device, a new permit application as required by subsection (a) hereof, together with a fee required by Section 907.04, shall be filed prior to the change in location.

(f) Every owner desiring to renew a newspaper dispensing device permit shall file a permit renewal application with the Director containing the information required by subsection (a) hereof. A permit application shall be filed no sooner than thirty days prior to the date of expiration of the existing permit. The fee required by Section 907.04 for each newspaper dispensing device shall accompany each permit renewal application.

(g) If the number of permit applications exceed the number of newspaper dispensing devices which may be placed adjacent to each other and which are otherwise permissible under Section 907.03, the Director shall determine which of the newspaper devices comply with such requirements based upon the order in which the permit applications were filed in accordance with this section. (Ord. 87-37. Passed 12-7-87.)

907.02 DEFINITIONS.

As used in this chapter, certain terms are defined as follows:

(a) "Crosswalk" means that part of a street at intersections which is ordinarily included within the projected prolongation of property and curb lines, or, in the absence of curbs, the edges of the traversable roadway; or any portion of a street at an intersection or elsewhere, distinctly indicated for pedestrian crossing by lines or other markings on the street surface.

(b) "Group of newspaper dispensing devices" means any two or three adjacent newspaper dispensing devices.

(c) "Newspaper dispensing device" means any mechanical self-service coin operated box, container, storage unit or dispenser as well as boxes, containers, storage units or dispensers which may be operated without the payment of a consideration, and which in either case makes available to persons publications, magazines, newspapers, pamphlets, posters and periodicals of any kind, nature or description contained therein other than obscene material, materials harmful to juveniles, or sexually oriented matter involving a minor, as those terms are defined in Chapter 533 of the Codified Ordinances and which are specifically excluded and prohibited.

(d) "Owner" means a person or an agent or officer of a person in whom is vested ownership, dominion, control or title of a newspaper dispensing device. The term "owner" shall include the term "permittee".

(e) "Public right of way" means any way which has been deeded to the public or dedicated to the public for use for pedestrian or vehicular travel.

(f) "Roadway" means that portion of a street intended for the use of vehicular travel.

(g) "Sidewalk" means that portion of a street between the curb line or the lateral line of the roadway, and the adjacent property lines, intended for the use of pedestrians.

(h) "Street" means that portion of a street between the curb line or the lateral line of the roadway, and the adjacent property lines, intended for the use of pedestrians and vehicular traffic.

(i) "Traffic sign" means any sign placed or erected by a public body or official for the purpose of regulating, warning or guiding vehicular travel, excluding "no parking" and "no stopping" signs.

(Ord. 87-37. Passed 12-7-87.)

907.03 CRITERIA FOR INSTALLATION, PLACEMENT AND SIZE REGULATIONS.

(a) Location. No newspaper dispensing device shall be placed, installed, used or maintained:

(1) In such manner as to rest, in whole or in part, on or over any portion of the roadway;

(2) In any residential district or civic and recreational district of the City except in those locations adjacent to public bus shelters in accordance with subsection (a)(8) hereof;

(3) At any location where the width of the paved clear space in any direction for the passageway of pedestrians is reduced to less than five feet;

(4) So as to reduce the clear, continuous combined sidewalk and paved tree lawn width to less than five feet;

(5) Within five feet of any fire hydrant, fire call box, police call box or other emergency facility;

(6) Within five feet of any intersecting driveway, alley, access drive or street;

(7) Within three feet of any crosswalk;

(8) Within eight feet of a sign identifying a particular bus company or bus route number and marking a designated bus stop except that a group of newspaper dispensing devices may be located adjacent to a bus shelter in a manner that does not restrict ingress or egress, of bus passengers, or which is installed, placed, used or maintained contrary to any other provision of this section;

(9) Within three feet of any traffic sign;

(10) Within six inches of any public utility pole, provided that placement adjacent to a public utility pole shall be limited to one side of the pole;

(11) Within that portion of the sidewalk parallel to an area designated for handicapped parking, a commercial loading or unloading space, or which serves as a handicap curb or ramp;
(12) Within one foot of any public area improved with lawn, flowers, shrubs or trees;
(13) Within three feet of any display window of a building abutting a sidewalk or in such a manner as to impede or interfere with the reasonable use of such window for display purposes;
(14) Within 250 feet of any other newspaper dispensing device on the same side of the street which contains the same publication, magazine, newspaper, pamphlet, poster or periodical except that the Director of Public Service and Development may permit two such dispensing devices at the same location where such placement would not impede traffic or otherwise create a hazardous condition;
(15) In a manner that blocks, obstructs or restricts the free passage of pedestrians in the lawful use of the sidewalk;
(16) So as to be stacked one on top of another; or
(17) In other than a secure and stationary manner.

Newspaper dispensing devices may be placed or installed adjacent to each other provided that no more than three newspaper dispensing devices are adjacent to each other. No group of newspaper dispensing devices shall be placed within twenty-five feet of any other group of newspaper dispensing devices.

Newspaper dispensing devices shall be placed or installed parallel to a curb or to a wall of a building abutting the sidewalk at such specific locations applied for and determined by the Director as shall not cause an undue health or safety hazard, or cause a nuisance, and which complies with the provisions of this section. Newspaper dispensing devices placed parallel to a curb shall face away from the roadway. Newspaper dispensing devices placed parallel to a wall of a building abutting the sidewalk shall be no more than twelve inches from the wall and no less than three feet from any doorway.

(b) Installation; Removal. Newspaper dispensing devices shall be not cabled, chained or otherwise attached to the sidewalk or to any other object or building except to another newspaper dispensing device. Upon removal of a newspaper dispensing device, the owner of such device shall be responsible for repairing any damage to the sidewalk caused by the installation or placement of such device. The extent of the repairs shall be determined by the Director.

(c) Size. All newspaper dispensing devices shall:
(1) Not exceed fifty inches in height, thirty inches in width or twenty-four inches in depth;
(2) Weigh at least 160 pounds when empty;
(3) Have a functioning coin return mechanism if a fee is charged;
(4) Have affixed in a readily visible place a notice setting forth the title, address and phone number of a responsible officer or agent of the owner to contact to report a malfunction of the coin return mechanism.

(d) Color. All newspaper dispensing devices shall be of the same color or colors as required of other streetscape facilities.
(Ord. 87-37. Passed 12-7-87.)

907.04 PERMIT FEE AND CONDITIONS.

The rental permit shall be granted upon the following conditions:

(a) The owner shall pay a permit fee which shall be fifteen dollars ($15.00) per calendar year, or any part thereof, for each location where a newspaper dispensing device is installed;

(b) The owner, upon the removal of a newspaper dispensing device, shall restore the property of the City to the same condition as when the device was initially installed, ordinary wear and tear excepted;

(c) The owner shall maintain the device in good working order, in a safe, clean and attractive condition, free of rust, and the area surrounding such device free from litter and debris;

(d) The owner shall not use or permit to be used a newspaper dispensing device for the display of signs, advertising matter or for publicity purposes other than to identify the company name or trade name; the display, sale or purchase of the merchandise available therein or therefrom; instructions of operation; the notice required by Section 907.03(c)(4); and cost, if any, of the merchandise;

(e) Permits shall be for a term of one calendar year, or part thereof, unless earlier revoked by the Director of Public Service and Development, and which shall all expire at 11:59 p.m. on December 31, of each year;

(f) Permits shall not be assignable, delegable or transferrable from owner to owner or location to location; and

(g) The owner complies with each and every provision of this chapter.

No permanent rights of any kind, nature or description shall be secured by the owner upon the granting by the City of a permit or any renewal thereof.
(Ord. 87-37. Passed 12-7-87.)

907.05 PERMIT REVOCATION.

(a) Rental permits issued pursuant to the provisions of this section shall be revoked by the Director of Public Service and Development after notice and hearing for any of the following causes:

(1) Fraud, misrepresentation or any false statement contained in the application for such a permit;

(2) Violation of any provision of this section regulating such rental permit; or

(3) Violation of the terms of the rental permit granted.

(b) Notice of hearing for such a revocation shall be given in writing stating the grounds of the complaint together with the time, date and place of hearing and which shall be mailed postage prepaid to the permittee at the address given in the rental permit application of at least seven days prior to the date set for hearing.
(Ord. 85-36. Passed 7-1-85.)

907.06 APPEAL PROCEDURE.

Any person aggrieved by any order, requirements, decision or determination of the Director of Public Service and Development, including a denial or revocation of a permit shall have a right of appeal to the Board of Zoning and Building Appeals. Such appeal shall be taken by filing a written notice of appeal including a statement of the grounds for the appeal with the Board within fifteen days after notice of the order, requirements, decision or determination of the Director has been given. The Board shall set the date, time and place for hearing such appeal and notice of such date, time and place shall be given in the same manner as specified in Section 907.05(b). The Board shall have the power to reverse, affirm or modify the order, requirement, decision or determination of the Director. Any such decision made by the Board shall be final. If the Board affirms an order of the Director issued pursuant to Section 907.09(a), the owner shall have three working days to correct the violation or remove the newspaper dispensing device in question; if the owner fails to correct the violation or remove the newspaper dispensing device within that time, the newspaper dispensing device may be impounded by the Director. If the Board reverses an impoundment caused pursuant to Section 907.07(c), the Board shall order an immediate return of the newspaper dispensing device and its contents to the owner without assessment of an impoundment fee.
(Ord. 87-37. Passed 12-7-87.)

907.07 PROHIBITIONS.

No person shall install, erect, locate, place or display or cause to be installed, erected, located, placed or displayed a newspaper dispensing device upon any public street, public sidewalk, public place or other public property without having first obtained a permit to do so in accordance with the provisions of this chapter. No person shall permit or cause to remain a newspaper dispensing device upon any public street, public sidewalk, public place or other public property if the permit issued to do so has been revoked.
(Ord. 85-36. Passed 7-1-85.)

907.08 EQUITABLE REMEDIES.

In addition to the penalty provided in Section 907.99, no provision of this chapter shall be construed or interpreted so as to preclude the institution of appropriate proceedings in a court of competent jurisdiction by the Department of Law for the purpose of abating violations of this chapter. (Ord. 85-36. Passed 7-1-85.)

907.09 VIOLATION NOTICE; REMOVAL; DISPOSITION.

(a) Upon a determination by the Director of Public Service and Development that a newspaper device has been installed, erected, located, placed, displayed, maintained or used in violation of any of the provisions of this chapter, the Director shall issue an order to remedy the violation. The order shall be served in person or by certified mail to the individual or other person identified in the permit application as required by Section 907.01(a)(2). If no permit application for the newspaper dispensing device, including where there has been a failure to file a timely renewal application, has been filed with the City, as required by Section 907.01, or which has been revoked, the order shall be served on the owner in person or by certified mail. The order shall state the nature of the violation and provide that the owner shall have fifteen days within which to remedy the violation.

(b) If a violation is neither remedied within the time period set forth in the order issued pursuant to subsection (a) hereof, or appealed to the Board of Zoning and Building Appeals in accordance with the provisions of Section 907.06, the newspaper dispensing device which has been determined to be in violation by the Director may be impounded by the Director. The fee for impoundment shall be the actual costs incurred by the City in impounding the device.

(c) Notwithstanding any other provision of this section, the Director shall remove and impound any newspaper dispensing device upon the determination by the Director that the device has been installed, erected, located, placed, displayed or maintained in a manner which presents a clear and present danger to the public health or safety. Within three days of the date of impoundment made pursuant to this subsection, notice of the impoundment including the reasons therefor shall be served in person or by certified mail to the individual or other person identified in the permit application as required by Section 907.01(a)(2). If no permit application has been filed or a permit application denied or permit revoked, for the newspaper dispensing device, the order shall be served on the owner in person or by certified mail.

(d) Unless the newspaper dispensing device and its contents are being held as evidence in a criminal prosecution, the owner of the contents of an impounded newspaper dispensing device may recover those contents at any time.
(Ord. 87-37. Passed 12-7-87.)

907.99 PENALTY.

Whoever violates any provision of this chapter shall, in addition to the revocation or denial of a rental permit, be guilty of a misdemeanor of the first degree. Each day of violation shall constitute a separate offense.
(Ord. 85-36. Passed 7-1-85.)

CHAPTER 909
Grading and Excavating Contractors

909.01 Deposit required for street cleaning.
909.02 Permit required; deposit refund; fee.
903.03 Retention of deposit.

CROSS REFERENCES
Power to establish and care for streets - see Ohio R.C. 715.19, 717.01, 723.01
Surface treatment - see Ohio R.C. 723.23, 723.31
Street openings - see S. U. & P. S. Ch. 901
Established elevations to be grade - see BLDG. 1317.02

909.01 DEPOSIT REQUIRED FOR STREET CLEANING.

A deposit of one hundred fifty dollars ($150.00) shall be required of all grading and building excavators and contractors as a guarantee for necessary street cleaning. This deposit shall be made with the Building Commissioner at the time the permit is issued to such contractor for construction work.
(Ord. 87-22. Passed 2-15-88.)

909.02 PERMIT REQUIRED; DEPOSIT REFUND; FEE.

Grading and building excavators and contractors shall first obtain a street cleaning permit from the Building Commissioner and pay the permit fee of fifty dollars ($50.00) before commencing any work within the City, which permit fee shall be in addition to the deposit required by Section 909.01.

The deposit required by Section 909.01 shall be refunded after approval of the work by the Building Commissioner.
(Ord. 87-22. Passed 2-15-88.)

909.03 RETENTION OF DEPOSIT.

In the event of noncompliance with these street cleaning requirements, the deposit or any portion thereof shall be forfeited to the City.

TITLE THREE - Sewers

Chap. 911. Sewer Use and Rate.
Chap. 915. Pretreatment.

CHAPTER 911
Sewer Use and Rate

911.00 Definitions.
911.01 Care and control of sewers.
911.02 Clear water connections.
911.03 Limitations of connections.
911.04 Sewer design and permits.
911.05 Readiness-to-serve charge.
911.06 Sanitary sewer discharge standards.
911.07 NPDES permit limits.
911.08 Surcharge for industrial wastes.
911.09 Inspection and enforcement.
911.10 Test procedures for analysis of pollutants.
911.11 Discharger permits reporting.
911.12 Appeal procedures.
911.13 Intent and purpose of sanitary sewer charges.
911.14 Sewer revenue funds. (Repealed)
911.15 Charges and rates.
911.16 Collection and billing procedure.
911.17 Effective date.
911.18 Charges a lien.
911.19 Liability for payment; lessor and lessee.
911.20 Payment through banks.
911.21 Annexation not a prerequisite for service.
911.22 No free services.
911.99 Penalties.

CROSS REFERENCES

Power to license sewer tappers and vault cleaners - see Ohio R.C. 715.27
Power to construct sewerage system - see Ohio R.C. 715.40, 717.01
Compulsory sewer connections - see Ohio R.C. 729.06
Management and control of sewerage system - see Ohio R.C. 729.50
Dangerous, abandoned excavations - see GEN. OFF. 521.03
Street openings - see S. U. & P. S. Ch. 901
Surface water drainage - see BLDG. Ch. 1317

911.00 DEFINITIONS.

(a) As used in this chapter, certain terms are defined as follows:

(1) "Authorized person" means a person duly authorized by the Director of Public Service and Development to act on his/her behalf in fulfilling the provisions of this chapter.

(1A) "Best Management Practices or BMP's" means schedules of activities, prohibitions of practices, maintenance procedures, and other management Practices to implement the prohibitions listed in this chapter and the local Pretreatment Ordinance [40 CFR 403.5(a)(1) and (b) and OAC 3745-3-04]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMPs also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical Pretreatment Standards and effluent.

(2) "BOD" means biochemical oxygen demand, the quantity of oxygen, expressed as milligrams per liter, utilized in the biochemical oxidation of organic matter for a five-day time period at 20EC., further explained in the current edition of Standard Methods for Water and Wastewater Analysis, published by the American Public Health Association.

(2A) "City" means the City of Fairview Park, Ohio.

(3) "COD" means chemical oxygen demand, the quantity of oxygen, expressed as milligrams per liter, used in the chemical oxidation of organic matter to carbon dioxide and water, further explained in Standard Methods for Water and Wastewater Analysis.

(4) "Combined sewer" means a sewer which is designed to carry sanitary sewage, industrial wastes and stormwater.

(4A) "Control Authority" means the City of Rocky River through a Multi-Jurisdictional Agreement among the Cities of Bay Village, Fairview Park, Rocky River, and Westlake, as duly adopted by their Councils and Mayors, with amendment thereof subject to the terms of said Agreement.

(5) "Debt service" means the bond retirement which is incurred in the payment of capital costs for the construction and/or capital improvement of wastewater collection and treatment facilities.

(5A) "Discharger/ Industrial Discharger" means any industrial, commercial, nondomestic, manufacturing, or processing facility that discharges industrial wastes to the POTW.

(6) "Domestic sewage" means sanitary sewage created in the preparation of foods, bathing, laundry facilities and sanitary facilities, as resulting from normal individual and group living functions which does not exceed normal wastewater concentrations as defined below.

(7) "Industrial wastes" means the solid, liquid or gaseous waste resulting from any industrial, manufacturing, trade or business process or from the development, recovery or processing of natural resources liquid wastes from industrial manufacturing processes, trade or business, as distinct from domestic sewage.

(8) "mg/l" means milligrams per liter.

(9) "Nondomestic sewage" means any wastes exceeding normal wastewater concentrations as defined below .

(10) "Normal wastewater concentrations" for the purposes of the extra strength surcharge system, means a five day biochemical oxygen demand (BOD) of 250 milligrams per liter, suspended solids (SS) of 250 milligrams per liter, phosphorus (P) of twenty milligrams per liter and oil and grease (O/G) of fifty milligrams per liter.

(11) "NPDES Permit" means the National Pollutant Discharge Elimination System Permit, the permit issued by the U.S. EPA or the State of Ohio EPA under the Clean Water Act regulating the discharge of water to navigable waters of the United States.

(12) "OM&R" means operation, maintenance and replacement.

(13) "Operation and maintenance cost" means the costs which are incurred in providing for the operation and maintenance of wastewater collection treatment and sewer billing services. Debt service costs are not included in operation and maintenance costs.

(14) "pH" means the logarithm of the reciprocal of the weight of hydrogen ions in gram moles per liter of solution.

(15) "Phosphorus" means compounds of orthophosphates, polyphosphates and organic phosphorus.

(16) "ppm" means parts per million.

(16A) "Publicly owned treatment works (POTW)" means a treatment works, as defined by Section 212 of the Clean Water Act (33 U.S.C. Section 1292), which is owned by the Cities. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances that transport wastewater to a treatment plant.

(17) "Replacement charge" means expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain capacity and performance for which such works were designed and constructed.

(18) "Sanitary sewage" means a combination of the liquid and water carried wastes from the sanitary convenience of residences, business buildings, institutions and commercial and industrial establishments.

(19) "Sanitary sewer" means a sewer which carries sanitary sewage and industrial wastes and to which storm, surface and ground waters are not intentionally admitted.

(20) "Sewer service charge" means the fee levied on the sewer user to fund the operation, maintenance, replacement and bond retirement costs for providing wastewater collection and treatment services.

(21) "Storm sewer" means a sewer which carries storm, surface waters and drainage, but which excludes sanitary sewage and industrial wastes, other than polluted cooling water.

(22) "Storm water" includes rain, surface and other water which is ordinarily discharged into public storm sewers in contrast to such other liquids and solids which are ordinarily discharged into public sanitary sewers.

(23) "Subsurface drainage" means any water collected by footer drains or other devices below the ground.

(24) "Suspended solids (SS)" means solids that either float on the surface of, or are in suspension in, water, sewage or other liquids, and which are removable by laboratory filtering.

(25) "User charge" means a charge levied on users of the wastewater collection and treatment facilities for the user's proportionate share of the cost of operation and maintenance (including replacement) of such facilities.

(26) "User class" means a group of sewer users which have similar magnitudes of wastewater flows and wastewater characteristics.

(27) "Residential user" means a user who occupies premises for human inhabitation including apartments, etc., but excluding hotels and motels.

(28) "Industrial user" means a user who discharges a waste resulting from manufacturing activities involving the chemical or mechanical transformation of materials or substances into other products.

(29) "Commercial user" means a user who discharges anything not meeting the definitions of residential or industrial.

(Ord. 12-40. Passed 11-19-12.)

911.01 CARE AND CONTROL OF SEWERS.

All sewers and drains of every kind within the line of any street, alley or other public grounds shall be under the care and control of the Director of Public Service and Development. (Ord. 12-40. Passed 11-19-12.)

911.02 CLEAR WATER CONNECTIONS.

(a) (1) No person, firm or corporation shall discharge or cause to be discharged, either directly or indirectly, any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial process waters to any sanitary sewer.

(2) Any connections made either before or after the effective date of this section shall be considered illegal and shall be subject to immediate removal by the owner of the premise so connected and at such owner's expense.

(3) The Director of Public Service and Development or a designee thereof may enter upon any lot or parcel of land within the City and test any downspout on any building thereon to determine whether or not it discharges water into any sanitary sewer.

(4) Should the owner of an illegally connected premise fail to remove the connection within fifteen days, the City shall cause the connection to be removed, charging the owner the full costs of such removal.

(b) Stormwater and all other unpolluted drainage shall be discharged into sewers which are specifically designed and designated as storm sewers or to a combined sewer or a natural outlet approved by the City.

(c) No person, firm, corporation or municipality constructing a sanitary sewer, building or house connection, shall leave same open, unsealed or incomplete in such a fashion as to permit storm, surface or subsurface water to enter the sewers.

(d) No person shall open, enter or allow to remain open, any manhole in any public sewer without a permit from the Director.

(e) All parcels of land located on the south side of Lorain Road in the City and being further described as the various parcels of land lying immediately easterly of 20777 Lorain Road (Permanent Parcel No. 322-3-3) and the westerly line of 20123 Lorain Road (Permanent Parcel No. 322-5-10) and including all parcels lying between such easterly and westerly lines are required to direct all storm waters into the ravine lying along the southerly line of such parcels.
(Ord. 12-40. Passed 11-19-12.)

911.03 LIMITATIONS OF CONNECTIONS.

(a) No unauthorized person shall uncover, make any connection with or opening into, use, alter or disturb public or private sanitary or combined sewer or appurtenance thereof without first obtaining a permit from the City.

(b) No sewer, or system of sewers, shall be constructed, which connects either directly or indirectly to sanitary sewerage facilities controlled by the City until the owner of the sewer, or system of sewers, can demonstrate to the City that quality of the wastewater to be conveyed by this sewer can meet the requirements of this sewer use chapter.

(c) No permit shall be issued to connect a house sewer to a public sewer if the connection of any portion thereof is in, under or on a lot not owned by the person whose house is to be connected and if no recorded easement exists authorizing the connection on such lot.

(d) No permit to connect to or tap a public sewer shall be issued if the sewage to be discharged would, in the opinion of the Director of Public Service and Development, overload any public sewer or downstream facilities including pump stations and/or treatment plants.

(e) When, in the opinion of the Director of Public Service and Development, it is necessary to connect a house connection sewer to a public sewer at a point where no connection facility has been provided, application for the public sewer tap shall be submitted and a separate fee for each tap shall be paid by the applicant before the permit is issued for the construction of the house connection sewer.

(f) No person other than an authorized employee of the City shall in any way tamper with, remove or otherwise move or disturb any street manhole cover of a City sewer or sewer opening without first obtaining permission from the Director of Public Service and Development.

(g) No person, firm or corporation shall discharge or cause to be discharged to any natural outlet or storm sewer any sanitary sewage or other polluted waters. Effluent from privately owned individual household disposal devices shall not be discharged to storm sewers.

(h) The Director of Public Service and Development or any employee of the City designated by him may enter on any lot or parcel of land and open any test tee thereon to determine whether or not any sewer or sewer connection is blocked on the lot, parcel of land or in the public street in front of the same and to determine whether the sewer connections are connected to the proper sewer.
(Ord. 12-40. Passed 11-19-12.)

911.04 SEWER DESIGN AND PERMITS.

(a) No person shall construct, continue, extend or connect any house sewer or drain, or open any trench or remove any pavement for such purpose, within the City without first procuring a permit from the Building Commissioner in writing, to do so. No such work shall be commenced or prosecuted unless such permit is upon the grounds and in the possession of the person in charge of the work.

The permit shall be granted on the express condition that the owner or tenant for whose benefit such connection shall be made, and each succeeding owner or tenant, shall, in consideration of the privilege thereby granted, hold the City harmless for any loss or damage that may in any way result from or be occasioned by such connections.

(b) Permits shall be taken out in each case in the name of the plumber before the work is commenced. Each permit shall designate the name of the owner, agent or person in whose interest the work is to be done, the street and number of the house and sublot and shall include such definite description of the premises as to clearly define the location of the same.

(c) The sewer connection inspection permit herein provided for, a copy of which shall be furnished the Director of Public Service and Development at the time of issuance, shall be issued on application to the Building Commissioner and, upon payment by the applicant of a fee of twenty-five dollars ($25.00), such permit shall authorize either one connection to a sanitary sewer, one connection to a stormwater sewer or one connection to each, if both connections are to be located in the same trench, but such permit shall not authorize the making of any opening in any street to extend beyond the curb line of the street, unless a street opening permit has first been obtained to do so.

(d) Connections made to the main sewer or made to the service connection of the main sewer at the curb line, for premises named in a permit, shall be made only by licensed plumbers or sewer builders.

Such information as the City possesses relative to the depth and location of the sewer, or connection at the curb line, shall be furnished on application and all reasonable care shall be taken to insure the correctness of such information, but the City shall not be liable for any error arising therefrom.

(e) All openings made within the street lines for the purpose of laying any sewer connection or house drain shall be done in open trench. All paving material, flagging, curb and ballasting shall be carefully removed and preserved. After the connection is properly laid, the trench shall be refilled in accordance with the City regulations relating to street openings.

(f) The Building Commissioner before granting any permit, in accordance with the provisions of this chapter, which will necessitate any excavation in, upon or under any state highway in the City, or the making of a connection to a sewer or house connection sewer for which a permit is also required from a county sanitation district or a political subdivision other than the City, shall require such permit to be presented for inspection.

(g) Nothing in this section shall be deemed or construed to require the application for or the issuance of a permit for the purpose of removing stoppages in any house connection sewer, except when it is necessary to replace any part or all of the sewer connection or to excavate in any street or sidewalk or sewer easement in connection therewith.

(h) A permit under which an excavation, tunnel or the laying of sewer or storm drain pipe in any public street is contemplated shall be issued only to other departments of the City, other governmental agencies or qualified contractors.

(i) The provisions of subsections (a) through (e) hereof, shall not be construed to apply to contractors constructing house connection sewers under contracts entered into under proceedings had or taken pursuant to any of the procedure ordinances of the City, the County or the State statutes, or other contracts authorized by Council, providing for the construction of house connection sewers.

(j) (1) No person having obtained a permit from the City shall construct, alter or repair any house connection sewer or any portion of any house connection sewer, or make a connection to any public sewer or house connection, pursuant to any permit, at any place other than that designated thereon. Neither shall the person fail, refuse or neglect to comply with any requirement contained or referred to in this section.

(2) At all times, while the work under any such permit is in progress, the original of the permit shall be kept at the place of the work and shall, on demand, be exhibited to the City or to any of its inspectors, agents or representatives, or to any police officer.

(k) The construction of all sewers, and all repairs to sewers, shall be in accordance with the Uniform Standard for Sewerage Improvements of the combined agencies of the City of Cleveland, Northeast Ohio Regional Sewer District, Cuyahoga County Sanitary Engineering Division, the Municipal Engineers Association of Northeast Ohio and Ohio EPA Northeast District Office.

(l) The provisions of this chapter are supplementary to the provisions of the City Building Code. (Ord. 12-40. Passed 11-19-12.)

911.05 READINESS-TO-SERVE CHARGE.

(a) No person, corporation, public agency, partnership or association whatsoever shall connect, or cause to be connected, any building or other structure either directly or indirectly with a sanitary sewer in the Rocky River Sewer District and the North Olmsted Sewer District of the City of Fairview Park for the purpose of discharging sanitary sewage or industrial waste therefrom without first receiving a permit for such purpose in a form prescribed by the City Engineer and without first paying to the City, a readiness-to-serve charge determined in accordance with the provisions of subsection (b) hereof.

(b) The City Engineer shall not issue a permit for the purpose described in subsection (a) hereof until the applicant for such permit has paid to this City, a readiness-to-serve charge to be determined in accordance with the following schedule:

Residence	Charge
Single family	$750.00
Multiple family (including apartments)	$550.00 for each family unit having one bedroom or less; plus $100.00 for each additional bedroom

Nonresidential buildings, structures or other facilities shall pay a readiness-to-serve charge determined by the City Engineer in the following manner: The City Engineer shall review the preliminary plans of the building, structure or other facility to be served by the connection, together with other pertinent information and, based upon accepted engineering practices, determine the anticipated daily quantity of sewage to be discharged from such building, structure or other facility to the sanitary sewer system. The quantity so determined shall then be divided by the average daily quantity of sewage discharged from a single family residence and the resulting quotient multiplied by seven hundred fifty dollars ($750.00) shall be the readiness-to-serve charge for such building, structure or other facility.

(c) In the event that the City Engineer ascertains that any property has been connected directly or indirectly to a sanitary sewer in violation of the provisions of this section, the City Engineer is authorized to disconnect such property until such violation ceases. The City shall be reimbursed for expenses incurred for disconnection by the property owner.
(Ord. 12-40. Passed 11-19-12.)

911.06 SANITARY SEWER DISCHARGE STANDARDS.

(a) (1) Except as provided in subsection (b) hereof, no person shall place, throw or deposit or cause or permit to be placed, thrown or deposited in any public sewer, drain, catch basin, water closet, privy, any dead animal, offal or garbage, fish, fruit, vegetable waste or any other solid matter or material of any kind whatsoever, of such a nature or in such quantities as will, or will be likely to clog or obstruct any public sewer, drain, or catch basin, or which will or will be likely to interfere with or prevent the effective or efficient use of the operation of any of the same.

(2) No person shall cause or permit to be deposited or discharged into any public sewer, drain or catch basin, water or sewage, or liquid waste of any kind, containing chemicals, greases, oil, tar or other matter or material which would by reason of precipitation or settlement of such matter or materials be likely to clog or obstruct any of the same, or which by reason thereof will be likely to interfere with or prevent the effective or efficient use of any of same, or which will be likely to necessitate or require frequent repair, cleaning out, or flushing of any sewer, drain or catch basin.

(b) Garbage from the preparation of any food or drink prepared on premises where they are served or proposed to be served for consumption, properly ground to such fineness and by such methods as may be from time to time approved by the City, may be discharged into a public sewer by such methods as may be from time to time approved by the City.

(c) No person shall intentionally allow sanitary sewage to flow into a sanitary sewer of the City which flows into the Rocky River Sewage Treatment Plant, which does not meet the following requirements:

(1) Wastewater having a temperature greater than 150 degrees Fahrenheit (65 degrees Celsius), or which will inhibit biological activity in the Rocky River wastewater treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius);

(2) Shall contain no gasoline, benzene, naphtha, fuel, oil or gases, or other flammable or explosive liquid, solid or gas, except as may be found in normal domestic sanitary sewage;

(3) Shall contain no unground garbage;

(4) Wastewater having a pH less than 6.0 or more than 9.0, or otherwise causing corrosive damage or hazard to the POTW or equipment or personnel; unless specifically allowed by a site-specific industrial wastewater discharge permit;

(5) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction, to injure or interfere with any wastewater treatment process, or constitute a hazard to humans or animals; Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; Any noxious or malodorous liquids, gases, or solids, which either singly or by interaction, are capable of creating a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for their maintenance and repair;

(6) Shall contain no cooling water;

(7) Shall contain no more than 10 milligrams per liter of the following gases: hydrogen sulfide, sulphur dioxide or nitrous oxide;

(8) Shall contain no phenols in excess of 0.5 milligrams per liter by weight. These limits may be modified at the discretion of the City if the aggregate of contributions throughout the area of service creates treatment difficulties, or produces a plant effluent discharge to receiving waters, which may be prohibitive;

(9) Shall have no corrosive properties either acid or alkaline capable of causing damage or hazard to structures, equipment and personnel of the department of sewers;

(10) Shall not contain a toxic or poisonous substance of high chlorine demand in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, or create any hazard to the receiving waters or stormwater overflows or the effluent of the wastewater treatment plant. Additional restrictions including BMP's may also be placed on other compounds, including mercury, when it is shown that the concentration of these materials at a treatment plant is sufficient to adversely affect any portion of the treatment process and the compliance with the NPDES permit.

(11) Any water or wastes containing the discharge of strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not;

(12) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable Local, State or Federal regulations;

(13) Any waters containing suspended solids of such character and quantity that unusual provisions, attention or expense is required to handle such materials at the wastewater treatment plant;

(14) Any waste exerting excessive or unusual chlorine demand in such quantities as to constitute a load greater than twenty percent (20%) of the normal average demand at the wastewater treatment plant;

(15) Any waste or water containing excessive amounts of phosphorus so as to constitute a load greater than twenty percent (20%) of the normal average load at the wastewater treatment plant; and

(16) Any waste which would cause the City to violate the pretreatment standards established by U.S. Environmental Protection Agency, Ohio EPA, NPDES permit and local Sewer Use Ordinances.

(17) Detergents, surface-active agents, or other substances that might cause excessive foaming in the POTW.

(d) No person shall intentionally permit or allow sanitary sewage to flow into a sanitary sewer of the City which flows into the North Olmsted Sewage Treatment Plant, which does not meet the following requirements:

(1) Shall have a five day biochemical oxygen demand not greater than 330 ppm by weight;
(2) Shall contain suspended solids not exceeding 550 ppm by weight;
(3) Shall have a temperature of not more than 150 degrees Fahrenheit;
(4) Shall contain not more than fifty ppm by weight of fat, oil or grease;
(5) Shall contain no gasoline, benzene, naphtha, fuel, oil or gases, except as may be found in normal domestic sanitary sewage;
(6) Shall contain no unground garbage;
(7) Shall contain no ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or other solid or viscous substances capable of causing obstruction to the flow in sewers or interference with the proper operation of the sewage works;
(8) Shall have a pH of more than 6.0 but less than 8.0;
(9) Shall contain no toxic, poisonous, noxious or malodorous substances in sufficient quantities to cause a public nuisance, hazard to humans or animals, or interference with any sewage treatment process; and
(10) Shall contain no cooling water.

(e) Any wastes which are highly colored, or wastes which are of unusual volume, concentration of solids, or composition, as for example in total suspended solids of inert nature (such as fuller's earth) or in total dissolved solids (such as sodium chloride, calcium chloride or sodium sulfate) or unusual in BOD, shall not be discharged into the sanitary sewer without special review by the City.

(f) Any water or wastes which by interaction with other water or wastes in the public sewer system, releases obnoxious gases; develops color of undesirable intensity (greater than 20 color units); forms suspended solids in objectionable concentration (greater than 2500 mg/l); or creates any other conditions deleterious to structures and treatment processes, shall be subject to control or shall be debarred from the system as determined by the City.

(g) No person shall deposit cesspool effluent or any waste or sewage into any manhole without a permit from the Director of Public Service and Development. The Director may permit operators of cesspool pump trucks holding valid certificates of registration issued by the County Health Officer to dispose of cesspool effluent into manholes designated by him upon payment of a disposal fee, as defined in Section 911.15, for each truckload; provided the effluent does not contain any substance which, in his opinion, is deleterious.

(h) Every person is hereby expressly prohibited from introducing into the sewage system of the City any wastes which exceed the standards herein provided. Introduction of such wastes into the City sewage system in excess of such standards is hereby declared to be a public nuisance which can be abated by court action on the part of the City.

(i) If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated above, and which in the judgment of the City may have a deleterious effect upon the wastewater facilities, processes, equipment or receiving waters, or cause a violation of the NPDES permit, or which otherwise create a hazard to life or constitute a public nuisance, the City may:
(1) Reject the wastes;
(2) Require pretreatment to an acceptable condition for discharge to the public sewers;

(3) Require control over the quantities and rates of discharge; and/or
(4) Require payment to cover added cost of handling and treatment of such wastes consistent with the user charge system and to generate revenue in proportion to cost incurred.

(j) The Control Authority through the Director of Public Safety-Service and/or the Superintendent of the Rocky River Wastewater Treatment Plant shall be authorized to enforce all provisions set forth in the above subsections (a) through (i) excluding (d).
(Ord. 12-40. Passed 11-19-12.)

911.07 NPDES PERMIT LIMITS.

The Rocky River Wastewater Treatment Plant and North Olmsted Sewage Treatment Plant are operated under conditions set forth in their current NPDES permit issued by the Ohio Environmental Protection Agency. Required pretreatment of wastes shall be in accordance with the NPDES permit conditions and Chapters 915, the Pretreatment Ordinances of Fairview Park and North Olmsted Sewage Treatment Plant, respectively as amended.

(a) (1) Every person, firm or corporation whose premises are served by a sewer connection which discharges sanitary sewage, industrial wastes, water or other liquids, other than domestic sewage, either directly or indirectly into the sewerage system under the jurisdiction of the City, shall be charged and shall pay a sewerage surcharge in addition to the sewerage service charge for normal sewage.
(2) Through the collection and analysis of wastewater samples from the sewer user and a review of water consumption, the City of Rocky River shall calculate the extra-strength surcharge for these sewer users, and transmit these charges to the City of Fairview Park, Director of Finance. The Director of Finance shall add the amount of the extra-strength surcharge to the normal user charge for that sewer user. All extra-strength surcharge revenue which is collected within a given user class shall be credited to that user class and not commingled among other user classes. The extra-strength surcharge revenue shall be credited to its particular user class prior to calculating the user charge for the user class for the upcoming year.

(b) Constituents discharged to the system other than the constituents of normal sewage which will affect the biological treatment process in such a manner as to increase treatment costs or increase sewer maintenance cost shall be subject to a surcharge other than as described in this section. The amount of surcharge shall be determined by the Director of Public Service and Development and Council. (Ord. 12-40. Passed 11-19-12.)

911.08 SURCHARGE FOR INDUSTRIAL WASTES.

(a) (1) Every person, firm or corporation whose premises are served by a sewer connection which discharges sanitary sewage, industrial wastes, water or other liquids, other than domestic sewage, either directly or indirectly into the sewerage system under the jurisdiction of the City, shall be charged and shall pay a sewerage surcharge in addition to the sewerage service charge for normal sewage.

(2) Through the collection and analysis of wastewater samples from the sewer user and a review of water consumption, the City of Rocky River shall calculate the extra-strength surcharge for these sewer users, and transmit these charges to the City of Fairview Park, Director of Finance. The Director of Finance shall add the amount of the extra-strength surcharge to the normal user charge for that sewer user. All extra-strength surcharge revenue which is collected within a given user class shall be credited to that user class and not commingled among other user classes. The extra-strength surcharge revenue shall be credited to its particular user class prior to calculating the user charge for the user class for the upcoming year.

(b) Constituents discharged to the system other than the constituents of normal sewage which will affect the biological treatment process in such a manner as to increase treatment costs or increase sewer maintenance cost shall be subject to a surcharge other than as described in this section. The amount of surcharge shall be determined by the Director of Public Service and Development and Council.
(Ord. 84-57. Passed 9-24-84.)

911.09 INSPECTION AND ENFORCEMENT.

(a) In enforcing the provisions of this chapter, the Director of Public Service and Development, or his duly authorized representative, bearing proper credentials and identification, may at any reasonable hour enter upon any premises. No person shall obstruct, hamper or interfere with him while performing these duties. The Director may enter any property to:

(1) Determine the size, depth and location of any connection with a public sewer or public storm drain;
(2) Determine the quantity and nature of industrial waste being discharged into any public sewer, public storm drain or watercourse;
(3) Inspect, test and sample the discharge of any device used to prevent the discharge into any sewer, storm drain or watercourse of waste prohibited by this section;
(4) Determine the location of roof, swimming pool and surface drains, and whether they are connected to a street gutter, storm drain or sewer;
(5) Determine the nature and quantity of flow in any open watercourse or storm drain;
(6) Determine whether there is a violation of the provisions of this section; and
(7) Exercise any other powers vested in him by this section.

(b) On entering any lot or parcel of land for any of the purposes mentioned in subsection (a) hereof, the Director or any employee designated by him may make the excavation and do such other work as may be necessary to make the tests herein authorized. Upon completion of the tests, the Director shall cause the premises to be restored as nearly as practicable to their condition before such tests were made.

(c) The City shall reserve the right to inspect any sewer contributing flow to the City collection system suspected of being in violation of this chapter. The inspection shall be made after proper notification to the potential violating entity. If the subject entity is determined to be in violation of proper maintenance, the cost of the inspection shall be borne by the violating entity. The City shall notify the subject entity that they are in violation of proper maintenance and shall further stipulate a reasonable time period for correcting the violation.

(d) The Director may inspect, as often as he may deem necessary, every public sewer, sewage pumping plant, sewage or industrial waste treatment plant, or facility, industrial connection sewer, interceptor, dilution basin, neutralization basin, or other similar appurtenance to ascertain whether the facilities are maintained and operated in accordance with the provisions of this chapter.

(e) The Director may require the installation of a manhole for the purpose of measuring the flow of sewage or for making periodic tests of the wastes from the sewer connection at the owner's expense.

(f) No person shall install, construct or place any permanent or temporary object or structure where it will interfere with ready and easy access to any pretreatment or treatment facility, sampling compartment, manhole, flow metering device, or any instrumentality for which a permit is required by this section. Any obstruction shall be removed upon order of the Director by the person responsible for it and at no expense to the City.

(g) It shall be the duty of the person to whom a sewer permit has been issued, on completion of any connection to be installed thereunder, to notify the Building Commissioner for inspection purposes and obtain his approval thereof before proceeding to cover any such connection or to fill the trench in which any such connection is located. The Building Commissioner shall, on receipt of such notification and without unnecessary delay, inspect the same and, if the connection as constructed conforms to the City's regulations and specifications, he shall approve same and endorse such approval on the copy of the permit.

(h) If, on the inspection of any such connection, the Building Commissioner shall find the same not constructed in accordance with the City's regulations and specifications, he shall indicate to the person in charge of the work in what particulars such connection fails to so conform, and the Building Commissioner shall order changes made therein to cause the work to so conform before giving his final approval thereof.

(i) When the Building Commissioner is satisfied that all work done to rectify a violation is completed, he shall reserve the right to inspect the work to see that it conforms to the requirements of this chapter and other such provisions of law as may be applicable.

(j) All fees received by the City under this section shall be deposited in the appropriate sewer fund to be maintained by the Director of Finance.
(Ord. 12-40. Passed 11-19-12.)

911.10 TEST PROCEDURES FOR ANALYSIS OF POLLUTANTS.

All measurements, tests and analysis shall be made in conformance with the latest edition of "Standard Methods for the Examination of Water and Wastewater" as published jointly by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation, and "Guidelines Establishing Test Procedures for the Analysis of Pollutants (40 CFR 136)". (Ord. 12-40. Passed 11-19-12.)

911.11 DISCHARGER PERMITS REPORTING.

The Director of Public Service and Development and City Engineer may require periodic discharge reports from any discharger as a condition of issuing a sewer permit under this chapter. Costs of any such testing and reporting shall be paid by the discharger.
(Ord. 12-40. Passed 11-19-12.)

911.12 APPEAL PROCEDURES.

Any person or entity receiving services under this chapter has the right to express grievances and/or appeal decisions to the Director of Public Service and Development and then to the appropriate committee of Council. (Ord. 12-40. Passed 11-19-12.)

911.13 INTENT AND PURPOSE OF SANITARY SEWER CHARGES.

It is hereby determined and declared to be necessary and conducive to the public health, safety, welfare and convenience of the City and its inhabitants to operate the sewerage system of the City as a public utility and to levy and collect sewer service or rental charges upon all lands, lots and premises served or to be served by connections with the system, and such charges, when collected, shall be used for the purposes hereinafter provided.
(Ord. 12-40. Passed 11-19-12.)

911.14 SEWER REVENUE FUNDS. (REPEALED)

EDITOR'S NOTE: Former Section 911.14 was repealed by Ordinance 09-78.

911.15 CHARGES AND RATES.

(a) Pursuant to the authority contained in Ohio R.C. 729.49 and related sections, and in order to provide a fund for the payment of all the necessary costs and expenses of the management, maintenance, operation and repair of the sewerage system, storm sewer system and sewerage pumping, treatment and disposal works, including but not limited to, debt service costs, construction and reconstruction costs, sewer maintenance and improvement costs and to meet the current obligations of the City as a party to agreements concerning the Rocky River Sanitary Sewer District and the North Olmsted Sewer District, and to maintain a fund to pay the future costs for such activities, there is hereby levied upon every person, firm or corporation, and each and every water consumer in the City of Fairview Park, a monthly minimum rate charge of thirteen dollars ($13.00) per .333 Mcf (three hundred thirty-three thousandth cubic foot) of water consumed each month as shown by the records of the Water Department of the City of Cleveland based upon actual water meter readings.

The sewer service or rental charge shall be as follows:

Beginning January 1, 2017 $13.00 per 0.333 Mcf

(b) Any and all sewer service or rental charges collected shall be deposited in the Fairview Park Sewer Fund and will be used to pay any and all expenses incurred as outlined in Section 911.15(a) as set forth above and in accordance with all applicable ordinances and provisions of the Ohio Revised Code.

(c) For extra-strength wastes, the following surcharges shall be assessed in accordance with Section 911.08.

BOD $0.18/lb; SS $0.13/lb; P $0.54/lb; O/G $0.08/lb

The proportionality of the above user charges shall be reviewed at least every two years to insure sufficient revenue and that each user pays its proportionate share of OM&R costs. Adjustments shall be made with the changes in water consumption by user classes. The review shall be the responsibility of the Mayor or official designate. Each user shall receive annual notification of the rate and portion of sewer service charge attributable to OM&R costs of wastewater treatment services. (Ord. 16-23. Passed 9-19-16.)

911.16 COLLECTION AND BILLING PROCEDURE.

(a) The sewer service or rental charges as hereinbefore established shall be computed monthly and shall be included as a separate item or charge on each monthly water bill, and included in such charge shall be a collection fee established by and for the benefit of the City of Cleveland, which it shall retain for each billing made by such City, whether such bill is collected or not. (Ord. 16-23. Passed 9-19-16.)

(b) Failure to pay the sewer service or rental charge by the due date on the delinquent notice sent on unpaid water bills, to which bills were added the sewer service or rental charges, shall result in terminating the water service, without regard to change of ownership or occupancy of such premises. Water shall not again be turned on or supplied until all sewer service or rental charges due and payable shall have been paid and discharged.
(Ord. 12-40. Passed 11-19-12.)

911.17 EFFECTIVE DATE.

The sewer charges established in Section 911.15 shall commence on passage of this section, except that charges for new connections shall commence when the building, structure or other facility is connected to the sanitary sewer system, or as of a date six months following the date on which a sanitary sewer was available for making such connection, whichever date first occurs. (Ord. 12-40. Passed 11-19-12.)

911.18 CHARGES A LIEN.

Every sewer service or rental charge which has become due and payable, and has remained unpaid for more than thirty days prior to July 1 of each year, shall be certified by the Director of Public Service and Development to the Director of Finance, who shall certify the same to the Auditor of Cuyahoga County on or before the second Monday in September of each year, together with a pertinent description of the premises to which the sewer service or rental charge has been made, and the amount so certified shall be placed by the Auditor on the tax duplicate of Cuyahoga County to be collected as other taxes are collected. In addition to such collection procedure, any such unpaid amount may be collected through civil action brought in the name of the City in any court of competent civil jurisdiction. (Ord. 12-40. Passed 11-19-12.)

911.19 LIABILITY FOR PAYMENT; LESSOR AND LESSEE.

In the case of leased lots, parcels of land or premises having a connection with the system, the lessor and lessee shall both be liable for the payment of the sewer charges herein provided to the lessor or the lessee or it may certify delinquent charges to the Auditor of Cuyahoga County as provided in Section 911.18. (Ord. 12-40. Passed 11-19-12.)

911.20 PAYMENT THROUGH BANKS.

The Director of Finance shall have the authority to make provisions for the payment of the sewer charges levied pursuant to this chapter through conveniently located branches of such banks which have been designated as depositories for public funds of the City as the Director of Finance may designate, pursuant to agreement with such depository banks.
(Ord. 12-40. Passed 11-19-12.)

911.21 ANNEXATION NOT A PREREQUISITE FOR SERVICE.

Property receiving services under this chapter shall not require annexation as a prerequisite for receiving such services. (Ord. 12-40. Passed 11-19-12.)

911.22 NO FREE SERVICES.

Every person, firm or corporation whose premises are served by a sewer connection which discharges sanitary sewage, industrial wastes, water or other liquids, either directly or indirectly, into sewerage facilities under the jurisdiction of the City, shall be charged for the use of such facilities and for the treatment of such sewage and wastes at the rates established by this chapter. (Ord. 12-40. Passed 11-19-12.)

911.99 PENALTY.

(a) Any entity in violation of this chapter who does not rectify the violation within a reasonable time period shall be penalized as provided in the State statute or as determined by the Director of Public Service and Development, and Council, and shall not be less than the damage incurred to the collection system or the treatment system. Each day shall constitute a separate violation subject to penalty.

(b) Whoever violates any provision of this chapter shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than six months or both. Each day's continued violation shall constitute a separate offense.
(Ord. 12-40. Passed 11-19-12.)

CHAPTER 915
Pretreatment

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CROSS REFERENCES
Sewer use and rate - see S.U. & P.S. Ch. 911
Sanitary sewer discharge standards - see S.U. & P.S. 911.06

915.01 GENERAL PROVISIONS.

(a) Purpose and Policy: This chapter sets forth uniform requirements for dischargers into the Rocky River Wastewater Treatment Plant irrespective of municipal corporation boundaries within the wastewater collection system in accordance with all applicable State and Federal laws, including the Clean Water Act and the General Pretreatment Regulations (40 CFR, Part 403).

(b) Control Authority: The City of Rocky River, as operator of the Rocky River Wastewater Treatment Plant, and through a multi-jurisdictional agreement, is empowered to enforce the applicable pretreatment regulations in the Cities of Bay Village, Fairview Park, Rocky River and Westlake, their Pretreatment Ordinance and/or the City of Rocky River Pretreatment Ordinance, whichever is most stringent.

(c) Objectives:

(1) To prevent the introduction of pollutants into the Rocky River Wastewater Treatment Plant that will interfere with its operation;

(2) To prevent the introduction of pollutants into the Rocky River Wastewater Treatment Plant that will pass through the Rocky River Wastewater Treatment Plant, inadequately treated, into receiving waters, or otherwise be incompatible with the Rocky River wastewater collection and treatment systems;

(3) To protect both Rocky River Wastewater Treatment Plant personnel who may be affected by wastewater and sludge in the course of their employment and the general public;

(4) To promote reuse and recycling of industrial wastewater and sludge from the Rocky River Wastewater Treatment Plant;
(5) To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Rocky River Wastewater Treatment Plant; and
(6) To enable the City of Rocky River to comply with its National Pollutant Discharge Elimination System (NPDES) permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the Rocky River Wastewater Treatment Plant is subject.

(d) Applicability:
(1) This chapter shall apply to all Users of the Rocky River Wastewater Treatment Plant. This Chapter authorizes the issuance of individual wastewater discharge permits, provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires User reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.
(2) Administration:
A. Except as otherwise provided herein, the Control Authority shall administer, implement and enforce the provisions of this chapter. Any powers granted to or duties imposed upon the Superintendent may be delegated by the Superintendent to a duly authorized City employee. (Ord. 12-38. Passed 11-19-12.)

915.02 DEFINITIONS. (Supplement Definitions in Section 911.00.)
As used in this chapter:
(1) ACT: The Clean Water Act (33 U.S.C. 1251 et seq), as amended.
(2) BEST MANAGEMENT PRACTICES OR BMP's: Means schedules of activities, prohibitions of practices, maintenance procedures, and other management Practices to implement the prohibitions listed in Section 915.03 [40 CFR 403.5(a)(1) and (b) and OAC 3745-3-04]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMPs also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical Pretreatment Standards and effluent limits.
(3) BYPASS : The intentional diversion of wastestreams from any portion of an Industrial Discharger's treatment facility.
(4) CATEGORICAL PRETREATMENT STANDARDS: National Pretreatment Standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged or introduced into the Rocky River WWTP by specific Industrial Dischargers.
(5) CITY: The City of Fairview Park, Ohio.
(6) CONTROL AUTHORITY: The City of Rocky River, Ohio through a Multi-Jurisdictional Agreement among the Cities of Bay Village, Fairview Park, Rocky River, and Westlake, as duly adopted by their Councils and Mayors, with amendment thereof subject to the terms of said Agreement.
(7) DISCHARGER/INDUSTRIAL DISCHARGER/USER: Any industrial, commercial, nondomestic, manufacturing or processing facility that discharges to the POTW.

(8) INDIVIDUAL WASTEWATER DISCHARGE: Permits issued to each Significant or Potentially Significant Industrial Discharger by the Control Authority. These permits advise the discharger of the applicability of the pretreatment regulations and specific discharge limitations; establish the required monitoring frequency and and parameters to be measured; and establish the frequency and schedule for submission of self-monitoring reports.

(9) INDIRECT DISCHARGE: The discharge or the introduction of non-domestic pollutants from a source regulated under Section 307(b), (c), or (d) of the Act, into the Rocky River WWTP.

(10) INDUSTRIAL: Solid, liquid or gaseous waste resulting from any WASTES industrial, manufacturing, trade or business process or from the development, recovery or processing of natural resources.

(11) INSTANTANEOUS LIMIT: The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

(12) INTERFERENCE: A discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the City of Rocky River's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations, including, but not limited to: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act ("RCRA"), as amended; any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act, as amended; the Clean Air Act, as amended; the Toxic Substances Control Act, as amended; and the Marine Protection, Research, and Sanctuaries Act, as amended.

(13) LOCAL LIMIT: The highest allowable amount of a pollutant that can be present in a User's industrial wastewater discharge. The local limit, established by the Control Authority, is expressed either as a concentration (milligrams per liter, micrograms per liter or nanograms per liter) or as a mass loading (pounds per day).

(14) MAY: Indicates a discretionary condition.

(15) NPDES: The National Pollutant Discharge Elimination System PERMITPermit issued by the U.S. EPA or the State of Ohio EPA under the Act regulating the discharge of water to navigable waters of the United States.

(16) NEW SOURCE: Any building, structure, facility or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

A. The building, structure, facility or installation is constructed at a site at which no other source is located; or

B. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

C. The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(17) OM &R: Operation, Maintenance and Replacement.

(18) OTHER WASTES: Decayed wood, sawdust, shavings, bark, lime, refuse, ashes, garbage, offal, oil, tar, chemicals and all other substances except sewage and industrial waste.

(19) PASS THROUGH: A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of violation of any requirements of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

(20) POLLUTANT: Any substance discharged into the Rocky River WWTP or the tributary collection system which includes dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

(21) PRETREATMENT: The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the Rocky River WWTP.

(22) PRETREATMENT COORDINATOR: The Laboratory Technician of the Rocky RiverWastewater Treatment Plant.

(23) PUBLICLY OWNED TREATMENT WORKS or POTW: A treatment works, as defined by section 212 of the Act (33 U.S.C. section 1292), which is owned by the Cities. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

(24) SEVERE PROPERTY DAMAGE: Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass.

(25) SEWAGE: Water-carried human wastes or a combination of water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface, storm or other waters as may be present.

(26) SEWER: Any pipe, conduit, ditch or other device used to collect and transport sewage or storm water from the generating source.

(27) SHALL: Is mandatory.

(28) SIGNIFICANT INDUSTRIAL USERS:

A. Except as provided in part B. of this definition, the the term Significant Industrial User includes:

1. All industrial users subject to categorical pretreatment standards; and

2. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the Rocky River WWTP; contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the Rocky River WWTP; or has a reasonable potential, in the opinion of the Pretreatment Coordinator, to adversely affect the Rocky River WWTP's operation or for violating any pretreatment standard or requirement.

B. The Pretreatment Coordinator may at any time, on his/her own initiative or in response to a petition received from an industrial user, determine that a non-categorical industrial user is not a Significant Industrial User if the industrial user has no reasonable potential to adversely affect the Rocky River WWTP's operation or for violating any pretreatment standard or requirement.

(29) SLUG LOAD or SLUG DISCHARGE: Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in this Chapter. A Slug Discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or Permit conditions.

(30) SUPERINTENDENT: The Superintendent of the Rocky River Wastewater Treatment Plant or duly authorized representative.

(31) TOXIC POLLUTANTS: Defined as those substances referred to in Section 307(a) of the Act as well as any other known potential substances capable of producing toxic affects.

(32) UPSET: An exceptional incident in which a Discharger unintentionally and temporarily is in a state of non-compliance with the standards set forth in Section 307(a) of the Act hereto due to factors beyond the reasonable control of the Discharger, and excluding non-compliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation thereof.

(33) WASTEWATER: Industrial waste, or sewage or any other waste including that which may be combined with any groundwater, surface water or storm water, that may be discharged to the Rocky River WWTP.

(34) WWTP: The Rocky River Wastewater Treatment Plant.

(Ord. 12-38. Passed 11-19-12.)

915.03 REGULATIONS.

(a) General Prohibitions. No Discharger shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes Pass Through or Interference. These general prohibitions apply to all Dischargers to the POTW whether or not they are subject to categorical Pretreatment Standards or any other National, State, or local Pretreatment Standards or Requirements.

(b) Specific Prohibitions. No Discharger shall contribute or cause to be discharged, directly or indirectly, any of the following described pollutants, substances, or wastewater into the wastewater disposal system or otherwise to the facilities of the City and the Control Authority:

(1) Pollutants that create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than one hundred forty (140) degrees Fahrenheit or sixty (60) degrees Celsius using the test methods specified in 40 CFR 261.21;

(2) Wastewater having a pH less than 6.0 or more than 9.0, or otherwise causing corrosive damage or hazard to the POTW or equipment or personnel; unless specifically allowed by a site-specific industrial wastewater discharge permit;

(3) Solid or viscous substances in amounts that will cause obstruction of the flow in the POTW resulting in Interference;

(4) Any Slugload or pollutants, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate or pollutant concentration that, either singly or by interaction with other pollutants, will cause Interference with the POTW;

(5) Wastewater having a temperature greater than one hundred fifty (150) degrees Fahrenheit or sixty-five (65) degrees Celsius, or which will inhibit biological activity in the Rocky River WWTP resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed one hundred four (104) degrees Fahrenheit (40 degrees Celsius);

(6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;

(7) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, or constitute a hazard to humans or animals. This includes, but is not limited to, pollutants that result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(8) Trucked or hauled pollutants, except at discharge points designated by the POTW per Section 915.03 (e);

(9) Any noxious or malodorous liquids, gases, or solids, which either singly or by interaction, are capable of creating a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for their maintenance and repair;

(10) Any substance which may cause the Rocky River WWTP effluent or treatment residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the Rocky River WWTP cause the Rocky River WWTP to be in non-compliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act; any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State standards applicable to the sludge management method being used;

(11) Any substance which will cause the Rocky River WWTP to violate its NPDES Permit;

(12) Any substance with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions;

(13) Any unpolluted water including, but not limited to non-contact cooling water;

(14) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as exceed limits established by the City in compliance with applicable State regulations;

(15) Any wastewater which causes a hazard to human life or creates a public nuisance; and

(16) Detergents, surface-active agents, or other substances which that might cause excessive foaming in the POTW.

(c) Limitations on Wastewater Strength.

(1) National Categorical Pretreatment Standards. National categorical pretreatment standards as promulgated by the U.S. Environmental Protection Agency (EPA) pursuant to the Act shall be met by all Dischargers of the regulated industrial categories. An application for modification of the national categorical pretreatment standards may be considered by submittal to the USEPA Regional Administrator by the Control Authority, when the Rocky River wastewater treatment system achieves consistent removal of the pollutants as defined by 40 CFR, 403.7.

(2) State Pretreatment Standards. Users must comply with the State of Ohio Pretreatment Rules codified at Ohio Administrative Code Chapter 3745-3.

(3) Local Limits. The Superintendent is authorized to establish Local Limits pursuant to 40 CFR 403.5(c). The following pollutant limits are established to protect against Pass Through and Interference. No person shall discharge wastewater containing in excess of the following concentrations. The following list is not intended to be a complete list of toxic pollutants. The average concentration of toxic substances into the sewage system from any one establishment shall be the magnitude of the stated concentrations with peak concentrations not greater than twice this amount (unless otherwise stated). However, where low downstream dilution might be expected, the requirements may be modified at the discretion of the Control Authority.

SUBSTANCE	CONCENTRATION
Arsenic	0.50 mg/L
Cadmium	0.10 mg/L
Chromium (Hexavalent)	0.37 mg/L
Copper	0.74 mg/L
Cyanide	0.10 mg/L
Lead	0.50 mg/L
Mercury	BMP's mg/L
Nickel	0.55 mg/L
Selenium	1.51 mg/L
Silver	0.50 mg/L
Zinc	10.00 mg/L

These limits may be modified as necessary to comply with State and Federal toxic waste discharge standards. The Control Authority may develop Best Management Practices (BMP's) in individual wastewater discharge permits, to implement Local Limits and the requirements of Section 915.03.

(4) Right of Revision. The City reserves the right to amend this chapter to provide for more stringent limitations or requirements on discharges to the Rocky River WWTP where deemed necessary to comply with the objectives set forth in Section 915.01(c).

(5) Dilution. No Discharger shall increase the use of potable or process water in any way, nor mix separate waste streams for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the standards set forth in this chapter.

(6) Calculation of Equivalent Mass and Concentration Limits for Categorical Standards. When the limits in a Categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the City may convert the limits to equivalent limitations expressed either as a mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Dischargers following the methodology contained in 40 CFR 403.6(c)(3) and (c)(4). Industrial Dischargers will be required to comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

(d) Accidental Discharge/ Slug Discharge Control Plans. The POTW shall evaluate whether each SIU needs an accidental discharge/slug discharge control plan or other action to control Slug Discharges. The POTW may require any User to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control Slug Discharges. Alternatively, the POTW may develop such a plan for any User. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

(1) Description of discharge practices, including nonroutine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the POTW of any accidental or Slug Discharge, as required below; and

(4) Procedures to prevent adverse impact from any accidental or Slug Discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

Each Discharger shall provide protection from accidental discharge of prohibited or regulated materials or substances established by this chapter. Where necessary, facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the Discharger's cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the Control Authority for review, and shall be approved by the Control Authority before construction of the facility. No Discharger who discharges to the Rocky River WWTP shall be permitted to introduce pollutants into the system until Slug Discharge Control Plans have been approved by the Control Authority. Review and approval of such plans and operating procedures by the Control Authority shall not relieve the Discharger from the responsibility to modify its facility as necessary to meet the requirements of this chapter.

Dischargers shall notify the Control Authority immediately upon the occurrence of a "slugload", or accidental discharge of substances prohibited by this chapter. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume and corrective actions. Any Discharger who discharges a slugload of prohibitive materials shall be liable for any expense, loss or damage to the Rocky River WWTP, in addition to the amount of any fines imposed on the City and/or Control Authority on account thereof under State or Federal law.

Signs shall be permanently posted in conspicuous places on Discharger's premises, advising employees whom to call in the event of a slug or accidental discharge. Employers shall instruct all employees who may cause or discover such a discharge with respect to emergency notification procedure.

Significant Industrial Users are required to notify the Control Authority immediately of any changes at its facility affecting the potential for a Slug Discharge.

(e) No person shall access the sewer system or Rocky River WWTP for any activity including discharge of hauled septic or industrial wastes except at locations and at times as designated by the Control Authority which also may prohibit the disposal of such hauled wastes. The discharge of hauled wastes is subject to all other requirements of this Chapter. Any removal of manhole lids, or other access to the sewer system for the purpose of discharging wastes at times and/or locations other than those designated by the Control Authority, or without the expressed permission of the Control Authority shall be considered a violation and shall be subject to enforcement action including fines and penalties allowed under this Chapter.
(Ord. 12-38. Passed 11-19-12.)

915.04 FEES.

(a) Purpose. It is the purpose of this Chapter to provide for the payment of fees from Discharger's to the City's and/or Control Authority wastewater disposal system, to compensate the City and/or Control Authority for the cost of administration of the pretreatment program established herein.

(b) Charges and Fees. The City and/or Control Authority may adopt charges which may include the fee for the following:

(1) Fees for monitoring, inspections and surveillance procedures.
(2) Fees for filing appeals.
(3) Fees for reviewing accidental discharge procedures and construction.
(Ord. 12-38. Passed 11-19-12.)

915.05 ADMINISTRATION.

(a) Wastewater Dischargers. It shall be unlawful to discharge sewage, industrial wastes or other wastes to any sewer within the jurisdiction of the City, and/or to the Rocky River WWTP without having first complied with the terms of this chapter. New sources shall install and have in operating condition, and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time, not to exceed ninety (90) days, new sources must meet all applicable pretreatment standards.

(b) Wastewater Discharge Data Disclosure.

(1) General Disclosure. All Industrial Dischargers proposing to connect to or to discharge sewage, industrial wastes and other wastes to the POTW shall comply with all terms of this chapter within ninety (90) days after the effective date of this chapter.

(2) Disclosure Forms and Baseline Monitoring Reports. Industrial Dischargers shall complete and file with the Control Authority, a disclosure declaration in the form prescribed by the Control Authority, and accompanied by the appropriate fee. Existing Industrial Dischargers shall file disclosure forms within thirty (30) days after the effective date of this chapter, and proposed new Dischargers shall file their disclosure forms at least ninety (90) days prior to connecting to the POTW. Existing Industrial Users, subject to categorical Pretreatment Standards and currently discharging to or scheduled to discharge to the POTW, shall complete and file a Baseline Monitoring Report as required by 40 CFR 403.12(b) within 180 days after the effective date of a categorical Pretreatment Standard to the Control Authority. New Sources, and sources that become Industrial Users subsequent to the promulgation of an applicable categorical Pretreatment Standards, shall complete and file a Baseline Monitoring Report as required by 40 CFR 403.12(b), at least ninety (90) days prior to commencement of discharge to the Control Authority. In addition to the above disclosure requirements, the disclosure to be made by the Discharger shall be made on written forms provided by the Control Authority and shall cover:

A. Disclosure of name, address and location of the Discharger.

B. Disclosure of Standard Industrial Classification (SIC) number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended.

C. Disclosure of wastewater constituents and characteristics including but not limited to those mentioned in this chapter, also referred in Section 307(a) of the Act and as defined by 40 CFR, 403.5 as appropriate, and determined by bona fide chemical and biological analysis. Sampling and analysis shall be performed in accordance with procedures established By the U.S. EPA and contained in 40 CFR, Part 136, as amended.

D. Disclosure of time and duration of discharges.

E. Disclosure of average daily and instantaneous peak wastewater flow rates, in gallons per day, including daily, monthly and seasonal variations, if any. All flows shall be measured unless other verifiable techniques are approved by the Control Authority due to cost or nonfeasibility.

F. Disclosure of site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, inspection manholes, sampling chambers and appurtenances by size, location and elevation.

G. Description of activities, facilities and plant processes on the premises including all materials which are or may be discharged to the sewers or works for the City and/or Control Authority.

H. Disclosure of the nature and concentration of any pollutants or materials prohibited by this chapter in the discharge, together with a statement regarding whether or not compliance is being achieved with this chapter on a consistent basis and if not, whether additional operation, maintenance and replacement activities and/or additional pretreatment is required for the Discharger to comply with this chapter.

I. Where additional pretreatment and/or operation, maintenance and replacement activities will be required to comply with this chapter, the Discharger shall provide a declaration of the shortest schedule by which the Discharger will provide such additional pretreatment and/or implementation of additional operational, maintenance and replacement activities.

1. The schedule shall contain milestone dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Discharger to comply with the requirements of this Ordinance including, but not limited to dates relating to hiring an engineer, hiring other appropriate personnel, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, and all other acts necessary to achieve compliance with this chapter.
2. Under no circumstances shall the Control Authority permit a time increment for any single step directed toward compliance which exceeds nine (9) months.
3. Not later than fourteen (14) days following each milestone date in the schedule and the final date for compliance, the Discharger shall submit a progress report to the Control Authority, including no less than a statement as to whether or not it completed with the increment of progress represented by that milestone date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the Discharger to return to the construction to the approved schedule. In no event shall more than nine (9) months elapse between such progress reports to the Control Authority.

J. Disclosure of each product produced by type, amount, process or processes and rate of production.

K. Disclosure of the type and amount of raw materials utilized (average and maximum per day).

L. All disclosure forms and the Baseline Monitoring Report shall be signed as provided in paragraph (c)(4) of this section below and by a qualified engineer (licensed to practice in the State of Ohio).

M. All sewers shall have an inspection and sampling manhole or structure with an opening of no less than twenty-four (24) inches diameter and an internal diameter of no less than thirty-six (36) inches containing measuring, recording and sampling equipment as required by the Control Authority to assure compliance with this chapter.

The Control Authority will evaluate the complete disclosure form and data furnished by the Discharger and may require additional information. Within thirty (30) days after full evaluation and acceptance of the data furnished, the Control Authority shall notify the Discharger of the Control Authority's acceptance thereof.

(3) Standards Modification. The City reserves the right to amend this chapter and the terms and conditions hereof in order to assure compliance by the City and Control Authority with applicable laws and regulations. Within nine (9) months of the promulgation of a National Categorical Pretreatment Standard, this chapter shall be amended to require compliance by Dischargers with such standards within the time frame prescribed by such standards. Where a Discharger, subject to a National Categorical Pretreatment Standard, has not previously submitted a disclosure form as required by Section 915.05(b)(2), the Discharger shall file a disclosure form with the Control Authority within one hundred eighty (180) days after the promulgation of the Applicable National Categorical Pretreatment Standard by the U.S. EPA. In addition, any Discharger operating on the basis of a previous filing of a disclosure statement, shall submit to the Control Authority within one hundred eighty (180) days after the promulgation of an applicable National Categorical Pretreatment Standard, the additional information required by paragraphs H. and I. of Section 915.05(b)(2). The Discharger shall be informed of any proposed changes in the chapter at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the chapter shall include a reasonable time schedule for compliance.

(c) Reporting Requirements for Discharger.

(1) Compliance Date Report. Within ninety (90) days following the date for final compliance by the Discharger with applicable Pretreatment Standards set forth in this chapter or ninety (90) days following commencement of the introduction of wastewater into the Rocky River WWTP by a new Discharger, any Discharger subject to this chapter shall submit to the Control Authority a report indicating the nature and concentration of all prohibited or regulated substances contained in its discharge, and the average and maximum daily flow in gallons. The report shall state whether the applicable Pretreatment Standards or Requirements are being met on a consistent basis and, if not, what additional OM&R and/or pretreatment is necessary to bring the Discharger into compliance with the applicable Pretreatment Standards or Requirements. This statement shall be signed as provided in paragraph (c)(4) of this Section, and by a qualified engineer (licensed to practice in the State of Ohio). In addition to the above required information, for Industrial Dischargers subject to equivalent mass or concentration limits, this report shall contain a reasonable measure of such Discharger's long term production rate. For all other Industrial Dischargers subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the Discharger's actual production during the appropriate sampling period.

(2) Periodic Compliance Reports.

A. Any Discharger subject to Individual Wastewater Discharge Permits, after the effective date of such Permits, shall submit to the Control Authority according to the schedule included in the Permits, a report indicating the nature and concentration of prohibited or regulated substances in the effluent which are limited by the

Pretreatment Standards as set forth in the Permits. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the Discharger must submit documentation required by the Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User.

In addition, this report shall include a record of all measured or estimated average and maximum daily flows during the reporting period reported in Section 915.05(c)(1), hereof. Flows shall be reported on the basis of actual measurement, provided however, where cost or feasibility considerations justify, the Control Authority may accept reports of average and maximum flow estimated by verifiable techniques. The Control Authority, for good cause shown considering such factors as local high or low flow rates, holidays, budget cycles, or other extenuating factors may authorize the submission of said reports on months other than those specified above. This report shall be signed as provided in paragraph (c) (4) of this Section.

B. Reports of Dischargers shall contain all results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where required by the Control Authority. The frequency of monitoring by the discharger shall be as prescribed by the Pretreatment Coordinator and set forth in the Individual Wastewater Discharge Permits. All sampling and analyses shall be performed in accordance with 40 CFR, Part 136 and amendments thereto, unless otherwise specified in an applicable categorical Pretreatment Standard. (Comment: Where 40 CFR, Part 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with the procedures set forth in the EPA publication, Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants, April, 1977, and amendments thereto, or with any other sampling and analytical procedures approved by the Administrator of the U.S. EPA.)

C. If sampling performed by an Industrial Discharger indicates a violation, the Discharger shall notify the Control Authority within twenty-four (24) hours of becoming aware of the violation. The Discharger shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within thirty (30) days after becoming aware of the violation, except the Industrial Discharger is not required to resample if:

1. The Control Authority performs sampling at the Industrial Discharger at a frequency of at least once per month, or
2. The Control Authority performs sampling at the Discharger between the time when the Discharger performs its initial sampling and the time when the Discharger receives the results of this sampling.

D. Sampling. Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

1. Except as indicated in subsections 2 and 3 below, the User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.
2. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
3. For sampling required in support of baseline monitoring and 90-day compliance reports required in subsections (b) and (c)(1) [40 CFR 403.12(b) and (d)], a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by paragraph (c)(2) (40 CFR 403.12(e) and 403.12(h)), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements.

E. Monitoring Waiver. The Control Authority may authorize the Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This Monitoring Waiver authorization is subject to the conditions in 40 CFR 403.12(e) (2) thru (e) (3) (iv).

(3) Notification of changed discharge. All Industrial Dischargers shall promptly notify the Control Authority in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under 40 CFR 403.12(p).

(4) Signatory requirements for Industrial Discharge Reports. The reports required by paragraphs (b)(2), (c)(1) and (c)(2) of this Section shall include the following certified statement:
"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

In addition, said reports shall be signed as follows:

A. By a responsible corporate officer, if the Industrial Discharger submitting the reports required by paragraphs (b)(2), (c)(1), and (c)(2), of this Section is a corporation. For the purpose of this paragraph, a responsible corporate officer means:
   1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
   2. The manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures, and if the manager has been assigned or delegated authority to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and of initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations, and if the manager is responsible for ensuring that the necessary systems are established or that the necessary actions are taken to gather complete and accurate information for the requirements of Pretreatment Standards, Individual permits, Local Limits, including BMP's and General Control Mechanisms.

B. By a general partner or proprietor if the Industrial Discharger submitting the reports required by paragraphs (b)(2), (c)(1), or (c)(2), of this section is a partnership or sole proprietorship respectively.

C. By a duly authorized representative of the individual designated in paragraphs (c)(4)A. or (c)(4)B. of this section if:
   1. The authorization is made in writing by the individual described in paragraph (c)(4)A. or (c)(4)B.;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and
3. The written authorization is submitted to the Control Authority.

D. If an authorization under paragraph (c)(4)C. of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company a new authorization satisfying the requirements of paragraph (c)(4)C. of this section must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.

(d) General Control Mechanisms.

(1) At the discretion of the Control Authority, the Control Authority may use general control mechanisms to control SIU discharges to the POTW if the following conditions are met. All facilities to be covered by a general control mechanism must:

A. Involve the same or substantially similar types of operations;
B. Discharge the same types of wastes;
C. Require the same effluent limitations;
D. Require the same or similar monitoring; and
E. In the opinion of the Control Authority, are more appropriately controlled under a general control mechanism than under individual wastewater discharge permits.

(2) To be covered by the general control mechanism, the SIU must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with Section 915.05 (c) (2) for a Monitoring Waiver for a pollutant neither present nor expected to be present in the Discharge, and any other information the POTW deems appropriate. A Monitoring Waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general control mechanism until after the Control Authority has provided written notice to the SIU that such a waiver request has been granted in accordance with Section 915.05 (c) (2).

(3) The Control Authority will retain a copy of the general control mechanism, documentation to support the POTW's determination that a specific SIU meets the criteria in subsection (d) (1) above and applicable State regulations, and a copy of the SIU's written request for coverage for three (3) years after the expiration of the general control mechanism.

(4) The Control Authority may not control an SIU through a general control mechanism where the facility is subject to production-based categorical Pretreatment Standards or categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for IUs whose limits are based on the Combined Wastestream Formula (40 CFR 403.6(e)) or Net/Gross calculations (40 CFR 403.15).

(e) Monitoring Facilities. Each Discharger shall provide and operate at the Discharger's own expense, a monitoring facility to allow inspection, sampling, and flow measurement of each sewer discharge to the Control Authority. Each monitoring facility shall be situated on the Discharger's premises, except where such location would be impractical or cause undue hardship on the Discharger, the City may concur with the facility being constructed in the public street or sidewalk area providing that the facility is located so that it will not be obstructed by landscaping or parked vehicles.

There shall be ample room in or near such sampling facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the Discharger.

All monitoring facilities shall be constructed and maintained in accordance with all applicable local construction standards and specifications. Construction shall be completed within one hundred twenty (120) days of receipt of permit by Discharger.

(f) Inspection and Sampling. The Control Authority may inspect the monitoring facilities of any Discharger to determine compliance with the requirements of this chapter. The Discharger shall allow the Control Authority or its representatives, upon presentation of credentials of identification, to enter upon the premises of the Discharger at all reasonable hours, for the purposes of inspection, sampling, or records examination. The Control Authority shall have the right to set up on the Discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations.

(g) Confidential Information. Information and data on a User obtained from reports, surveys, wastewater discharge permit applications, individual wastewater discharge permits and monitoring programs, and from the Superintendent's inspection and sampling activities, shall be available to the public without restriction, unless the User specifically requests, and is able to demonstrate to the satisfaction of the Superintendent, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable Ohio law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the User furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other effluent data, as defined at 40 CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction. (Ord. 12-38. Passed 11-19-12.)

915.06 ENFORCEMENT.

(a) Compliance Orders. The Control Authority shall issue orders to any industrial discharger to comply with any portion of this chapter, including categorical pretreatment standards, locally developed industrial discharge limits, other discharge limits and reporting requirements.

(b) Enforcement Response Plan.

(1) The Control Authority shall develop and implement an Enforcement Response Plan. This Plan shall contain detailed procedures indicating how the Control Authority will investigate and respond to instances of Industrial User non-compliance. The Plan shall include:

A. Description of how the Control Authority will investigate instances of non-compliance.

B. Description of the types of escalating enforcement responses the Control Authority will take in response to all anticipated types of Industrial User violations and the time periods within which response will take place;

C. Identify by title the official(s) responsible for each type of response;

D. Adequately reflect the Authority's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8(f)(1) and (f)(2).

(c) Enforcement Remedies:

(1) Emergency Suspension of Service and Discharge Permits (ESS). The Control Authority may for good cause shown suspend the wastewater treatment service to a Discharger when it appears to the Control Authority that an actual or threatened discharge presents or threatens an imminent or substantial danger to the health or welfare of persons, substantial danger to the environment, interfere with the operation of the Rocky River WWTP, or violate any pretreatment limits imposed by this chapter. Any Discharger notified of the suspension of wastewater treatment service shall within a reasonable period of time, as determined by the Control Authority, cease all discharges. In the event of failure of the Discharger to comply voluntarily with the suspension order within the specified time, the City shall commence judicial proceedings immediately thereafter to compel the Discharger's compliance with such order. The Control Authority shall reinstate the wastewater treatment service and terminate judicial proceedings pending proof by the Discharger of the elimination of the non-complying discharge or conditions creating the threat of imminent or substantial danger as set forth above.

(2) Revocation of Treatment Services (RTS): The Control Authority may seek to terminate the wastewater treatment services to any Discharger which fails to:

A. Factually report the wastewater constituents and characteristics of its discharge;

B. Report significant changes in wastewater constituents or characteristics;

C. Refuses reasonable access to the Discharger's premises by representatives of the Control Authority for the purpose of inspection or monitoring; or

D. Violates the conditions of this chapter, or any final judicial order entered with respect thereto.

(3) Notification of Violation - Administrative Adjustment (NOV): Whenever the Control Authority finds that any Discharger has engaged in conduct which justifies termination of wastewater treatment services, pursuant to Section 915.06(b) hereof, the Control Authority shall serve or cause to be served upon such Discharger, a written notice either personally or by certified or registered mail, return receipt requested, stating the nature of the alleged violation. Within thirty (30) days of the date of receipt of this notice, the Discharger shall respond personally or in writing to the Control Authority, advising of its position with respect to the allegations. Thereafter, the parties shall meet to ascertain the veracity of the allegations and where necessary, establish a plan for the satisfactory correction thereof.

(4) Show Cause Hearing (SCH): Where the violation of Section 915.06(b) hereof is not corrected by timely compliance by means of Administrative Adjustment, the Control Authority may order any Discharger which causes or allows conduct prohibited by Section 915.06(b) hereof, to show cause before the Control Authority or its duly authorized representative, why the proposed service termination action should not be taken. A written notice shall be served on the Discharger by personal service, certified or registered, return receipt requested, specifying the time and place of a hearing to be held by the Control Authority or its designee regarding the violation, the reasons why the enforcement action is to be taken, the proposed enforcement action, and directing the Discharger to show cause before the Control Authority or its designee why the proposed enforcement action should not be taken. The notice of the hearing shall be served no less than ten (10) days before the hearing. Service may be made on any agent, officer, or authorized representative of a Discharger. The proceedings at the hearing shall be considered by the Control Authority which shall then enter appropriate orders with respect to the alleged improper activities of the Discharger. Appeal of such orders may be taken by the Discharger in accordance with applicable local or State law.

(5) Judicial Proceedings (JP): Following the entry of any order by the Control Authority with respect to the conduct of a Discharger contrary to the provisions of Section 915.06(b) hereof, the Attorney for the City and/or Control Authority may, following the authorization of such action by the City, commence an action for appropriate legal and/or equitable relief in the appropriate local Court.

(6) Enforcement Actions - Annual Publication (AP): At least annually in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list shall be published of all industrial users which at any time during the previous twelve (12) months were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violations meet one or more of the following criteria:

A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit, including Instantaneous Limits, for the same pollutant parameter;

B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit, including Instantaneous Limits, multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);

C. Any other violation of a pretreatment effluent limit (daily maximum or longer term average or Instantaneous Limits) that the Pretreatment Coordinator determines has caused, alone or in combination with other dischargers, interference or pass through (including endangering the health of Rocky River WWTP personnel or the general public);

D. Any discharge of a pollutant that has caused imminent endangerment of human health, welfare or to the environment or has resulted in the Rocky River WWTP's exercise of emergency authority to halt or prevent such a discharge;

E. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a wastewater discharge permit, control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

F. Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90 day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules or any other reports required by the control authority;

G. Failure to accurately report noncompliance; and

H. Any other violation or group of violations, which may include a violation of Best Management Practices, which the Pretreatment Coordinator determines will or has adversely affected the operation or implementation of the City's and/or Control Authority's pretreatment program.

(d) Right of Appeal. Any Discharger or any interested party shall have the right to request in writing an interpretation or ruling by the Control Authority on any matter covered by this chapter and shall be entitled to a prompt written reply. In the event that such inquiry is by a Discharger and deals with matters of performance or compliance with this chapter for which enforcement activity relating to an alleged violation is the subject, receipt of a Discharger's request, shall stay all enforcement proceedings pending receipt of the aforesaid written reply. Appeal of any final judicial order entered pursuant to this chapter may be taken in accordance with local and State law.

(e) Operating Upsets. Any Discharger which experiences an upset in operations which places the Discharger in a temporary state of non-compliance with this chapter shall inform the Control Authority thereof within twenty-four (24) hours of first awareness of the commencement of the upset. Where such information is given orally, a written follow-up report thereof shall be filed by the Discharger with the Control Authority within five (5) days. The report shall address:

(1) Description of the upset, the cause thereof and the upset's impact on a Discharger's compliance status.

(2) Duration of non-compliance, including exact dates and times of non-compliance, and if the non-compliance continues, the time by which compliance is reasonably expected to occur.

(3) All steps taken or to be taken to reduce, eliminate and prevent recurrence of such an upset or other conditions of non-compliance.

A document and verified bona fide operation upset shall be an affirmative defense to any enforcement action brought by the City and/or Control Authority against a Discharger for any non-compliance with the chapter which arises out of violations alleged to have occurred during the period of the upset. (Ord. 12-38. Passed 11-19-12.)

915.07 PENALTIES.

(a) Penalties.

(1) Whenever any discharger who may have violated and/or who has neglected or failed to comply with any provision of this chapter, and the regulations, or rules of the City and/or Control Authority, or orders of any court of competent jurisdiction or orders issued pursuant to this chapter, the City and/or Control Authority may institute an appropriate action at law or in equity to restrain the execution in violation of this Chapter, and the violator shall be fined not more than one thousand dollars ($1,000.00) per violation per day. Each day's violation constitutes a separate offense.

(2) Any discharger who, with criminal intent or gross negligence, violated any provision of this chapter, and the regulations or rules of the City and/or Control Authority, or orders of any court of competent jurisdiction or orders issued pursuant to this chapter, shall be guilty of a first degree misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars ($1,000.00) or be subject to imprisonment for not more than six (6) months, or both.

(b) Recovery of Costs Incurred by the City and/or Control Authority. Any Discharger violating any of the provisions of this chapter, or who discharges or causes a discharge producing a deposit or obstruction, or causes damage to or impairs the City's and/or Control Authority's Wastewater Treatment Plant wastewater disposal system shall be liable to the City and/or Control Authority for any expense, loss, or damage caused by such violation or discharge. The City and/or Control Authority shall bill the Discharger for the costs incurred by the City for any cleaning, repair, or replacement work caused by the violation or discharge. Refusal to pay the assessed costs shall constitute a violation of this Ordinance enforceable under the provisions of Section 915.06.

(c) Falsifying Information. Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this chapter, shall, upon conviction be fined not more than one thousand dollars ($1,000.00) or be subject to imprisonment for not more than six (6) months or both. (Ord. 12-38. Passed 11-19-12.)

915.08 RECORDS RETENTION.

All Dischargers subject to this Chapter shall retain and preserve for no less than three (3) years, any records, books, documents, memoranda, reports, correspondence and any and all summaries thereof, relating monitoring, sampling and chemical analysis made by or in behalf of a Discharger in connection with its discharge. All records which pertain to matters which are the subject of Administrative Adjustment or any other enforcement or litigation activities brought by the City and/or Control Authority pursuant hereto shall be retained and preserved by the Discharger until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired. (Ord. 12-38. Passed 11-19-12.)

915.09 MISCELLANEOUS.

(a) Removal Credits. Where applicable, the Control Authority may elect to initiate a program of removal credits as part of this chapter to reflect the Rocky River WWTP's ability to remove pollutants in accordance with 40 CFR Part 403.7.

(b) Net/Gross Calculations. The Control Authority may elect to adjust Categorical Pretreatment Standards to reflect the presence of pollutants in the Discharger's intake water, in accordance with 40 CFR Part 403.15. (Ord. 12-38. Passed 11-19-12.)

915.10 SEPARABILITY.

If any provision, paragraph, or section of this chapter is invalidated by any Court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections shall not be affected and shall continue in full force and effect.
(Ord. 12-38. Passed 11-19-12.)

915.11 CONFLICT.

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this chapter shall supersede the extent of such inconsistency or conflict.
(Ord. 12-38. Passed 11-19-12.)

915.12 BYPASS.

(a) Bypass not violating applicable Pretreatment Standards or Requirements. An Industrial Discharger may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation.

(b) Notice.

(1) If an Industrial Discharger knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least ten days before the date of the bypass.

(2) An Industrial Discharger shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Control Authority within 24 hours from the time the Industrial Discharger becomes aware of the bypass. A written submission shall also be provided within five days of the time the Industrial Discharger becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(c) Prohibition of Bypass.

(1) Bypass is prohibited, and the City and/or Control Authority may take enforcement action against an Industrial Discharger for a bypass, unless:

A. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

B. The Industrial Discharger submitted notices as required under paragraph (b) of this section.

(2) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the conditions listed in paragraph (c)(1) of this Section.

(Ord. 12-38. Passed 11-19-12.)

APPENDIX A

TOXIC POLLUTANT LIST

(The Toxic Pollutant List contained in the Federal Environmental Protection Agency's Pretreatment Standards as contained in 40 CFR, Part 401.15 as revised are hereby adopted and incorporated herein by reference).
(Ord. 12-38. Passed 11-19-12.)

TITLE FIVE - Other Public Services

Chap. 921. Parks.
Chap. 923. Bain Park Cabin and the Dunson Community Room.
Chap. 925. Cemeteries.
Chap. 927. Recreation and Community Center Complex.
Chap. 929. Solid Waste Collection.

CHAPTER 921
Parks

921.01 Bohlken Park.
921.02 Morton Splash Park.
921.03 Bain Park.
921.04 Park hours of operation.
921.05 Park rules; penalty.
921.06 Tri-City Park rules.
921.07 Nelson Russ Park.

CROSS REFERENCES

Parks and Recreation Commission - see CHTR. Art. VII, §3; ADM. Ch. 135
Land appropriation for parks - see Ohio R. C. 715.21, 719.01
Power to regulate against fires - see Ohio R. C. 737.21, 737.37
Deposit of offensive garbage or refuse matter - see GEN. OFF. 521.05
License required for sales - see BUS. REG. 717.01
Permit for use after normal hours - see GEN. OFF. 541. 09
Bain Park Cabin - see S. U. & P. S. Ch. 923
Zoning regulations for Civic and Recreation Districts - see P. & Z. Ch. 1113

921.01 BOHLKEN PARK.

The tract of land known as Hawks Field is hereby designated as Bohlken Park in honor of and as a tribute to Mayor Karl A. Bohlken. (Res. 2383. Passed 4-18-55.)

921.02 MORTON SPLASH PARK.

(a) The Morton Splash Park is open for use by Fairview Park residents only. Proper identification must be shown for admittance. Proper identification includes a valid Ohio Drivers license, a State of Ohio ID, or a Fairview schools identification card that verifies Fairview Park as the place of residence for the individual. Each resident is entitled to a maximum of four non-resident guests. Non-resident guests must be accompanied by a Fairview Park resident at all times. (Ord. 05-36. Passed 6-20-05.)

(b) The park site located on the south side of Morton Avenue, heretofore acquired for municipal playground and park purposes, shall be designated as Morton Park.
(Res. 60-62. Passed 8-18-60.)

921.03 BAIN PARK.

The public park now known as the Fairview Community Park is hereby renamed Bain Park. (Ord. 57-44. Passed 10-7-57.)

921.04 PARK HOURS OF OPERATION.

As specified in Section 541.09, no person shall be allowed to enter or be in any of the City parks between sunset and sunrise daily, except in those certain illuminated facilities in the parks pursuant to lawfully authorized use after hours by the Director of Public Service and Development.

921.05 PARK RULES; PENALTY.

(a) The following park rules shall be observed by all users of the parks and shall be enforced by the Police Department:

(1) Normal park hours are sunrise to sunset daily.
(2) Dogs are prohibited in parks.
(3) Alcoholic beverages are prohibited.
(4) Golf practice is prohibited.
(5) Hard ball playing is permitted on diamonds only.
(6) Cars shall be parked only in designated areas.
(7) No model airplanes or rockets are permitted without permission of the Director of Public Service and Development.
(8) Ground fires are prohibited.
(9) Refuse must be placed in trash containers.
(10) Driving a motor vehicle on park lands, other than on designated parking areas shall be prohibited. This rule shall not apply to Police Department or Department of Public Service and Development motor vehicles while in the performance of their duty.

(b) Whoever violates any of these park rules is guilty of a minor misdemeanor. (Ord. 79-44. Passed 7-9-79.)

921.06 TRI-CITY PARK RULES.

The following rules and regulations for the Tri-City Park are hereby established.

(a) Hours. Tri-City Park shall be open from sunrise to sunset. The hours set forth herein may be extended by the Director of Public Service and Development with the concurrence of the Directors of Public Safety and Service of the cities of Rocky River and Westlake.

(b) Motor Vehicles.

(1) Motor vehicles shall be operated on vehicular roadways and drivers shall obey all traffic control devices. Where no such roadway exists, all four-wheel vehicles shall be parked in designated and marked areas, and all two and three-wheel motor vehicles, motorized bicycles, all purpose vehicles, mini-bikes, all-terrain bikes and snowmobiles shall be parked in such designated parking areas as are posted. No such vehicles shall be parked in areas where prohibited by posted "No Parking" signs, or by order of law enforcement officers and/or the Director of Public Service and Development, and the Directors of Public Safety and Service of the cities of Rocky River and Westlake.

(2) No person shall operate a motor vehicle on any grassy areas or in any wooded areas; nor off any such roadways nor shall any operator be in physical control of any motor vehicle off of the roadway or designated parking areas.

(3) No person shall park any vehicle after sunset at Tri-City Park.

(c) Animals.

(1) Dogs or any domestic animals shall be on a leash and shall not be permitted to run at large in Tri-City Park.

(2) Dogs and other domestic animals are prohibited from children's playground areas.

(3) The owner or person in charge of or in immediate control of any dog or domestic animal which defecates on park property shall remove all feces and dispose of same in a sanitary manner.

(d) Alcohol. No person shall possess or consume any intoxicating liquor, malt liquor or beer while on park grounds.

(e) Golf. No person shall practice golf or swing golf clubs in the park.

(f) Enforcement. Law enforcement officers or other duly appointed officials of the cities of Fairview Park, Rocky River and Westlake shall enforce provisions of this section.

(g) Penalty.

(1) Whoever violates any provision of this section is guilty of a minor misdemeanor.

(2) Parking tickets may be waived by payment of ten dollars ($10.00) within forty-eight hours of the time such citation is issued and twelve dollars ($12.00) thereafter.

(Ord. 86-20. Passed 4-21-86.)

921.07 NELSON RUSS PARK.

The tract of land located on the south side of MacBeth Avenue, heretofore acquired for municipal purposes, is hereby dedicated as a public, municipal park and is hereby designated as Nelson Russ Park in honor of and as a tribute to Nelson Russ.

(Ord. 91-88. Passed 9-16-91.)

CHAPTER 923
Bain Park Cabin and the Dunson Community Room

923.01 Management and operation.
923.02 Custodian.
923.03 Rental regulations.
923.04 Furniture, equipment and decoration.
923.05 Rates, charges and deposits.
923.06 False application statements, prohibited conduct.
923.07 Fee exemptions.
923.08 Bain Park Pavilion.
923.99 Penalty.

CROSS REFERENCES
Park rules - see S.U. & P.S. 921.05

923.01 MANAGEMENT AND OPERATION.

The management and operation of the Bain Park Cabin, is under the supervision of the Director of Recreation; the management and operation of the Dunson Community Room is under the supervision of the Director of Service and Development.
(Ord. 14-47. Passed 11-3-14.)

923.02 CUSTODIAN.

(a) The Director of Recreation and the Director of Service and Development are authorized to employ a custodian for respective facilities.

(b) The custodians shall perform such services for the management and operation including preparation for the use by residents, groups and organization, and cleaning up after each function, and such other custodial duties as the appropriate Director may determine.
(Ord. 14-47. Passed 11-3-14.)

923.03 RENTAL REGULATIONS.

(a) The Directors are authorized to rent the Bain Park Cabin, and the Dunson Community Room under the terms and conditions set forth in this chapter. All applications for rent shall be in writing and signed by the resident, or a member of the group organization. The application along with the non-refundable seventy-five dollar ($75.00) deposit rental fee shall be filed with the Director. Upon review and approval thereof, the Director, or their designee shall sign the permit. The permit shall be non-assignable and shall be used only by the resident, person, group or organization receiving the same.

(b) The rental application permit shall be retained by the appropriate Director. A copy shall be delivered to the applicant and the second copy to the custodian of the rented facility. If there is any damage or loss to the facility or equipment, the custodian shall deliver their copy of the permit to the appropriate Director with notations thereon regarding such loss or damage and any other remarks pertinent thereto. In case of any shortage or damage to the facility or equipment in the Bain Park Cabin or the Dunson Community Room, the decision of the appropriate Director shall be final and an assessment charged accordingly.

(c) Per Section 921.05(a)(3) of this Code, alcoholic beverages are prohibited in City parks and violators of this prohibition shall be guilty of a minor misdemeanor.

(d) The resident, group, person or organization holding a rental permit may cancel the permit by giving notice in writing to the appropriate Director, or their designee, at least ten (10) days in advance of the date and time for which the rental permit was issued. In such event, they shall forfeit fifty percent (50%) of the rental charge. If notice is not given as herein stated, the group, person or organization to whom the permit is issued shall forfeit the full one hundred percent (100%) of the rental charge.

(e) All moneys derived from the seventy-five dollar ($75.00) non-refundable rental fee for the rental of Bain Park Cabin shall be disbursed to the Bain Park Cabin Restoration Fund. All moneys derived from the seventy-five dollar ($75.00) non-refundable rental fee for the rental of the Dunson Community Room shall be paid to the General Fund.

(f) All moneys derived from the rental fee for the use of Bain Park Cabin and the Dunson Community Room shall be paid into the General Fund of the City and disbursement for the operation and maintenance of the Bain Park Cabin and the Dunson Community Room paid therefrom. (Ord. 14-47. Passed 11-3-14.)

923.04 FURNITURE, EQUIPMENT AND DECORATION.

(a) The furnishings and equipment at any rental facility shall be used only for the purpose for which they are intended. No decorations are to be permitted in or about the Bain Park Cabin or the Dunson Community Room unless approved by the Director or the custodian. In no case will permanent decorations be allowed at any time unless approved by the Director.

(b) All furniture of the Bain Park Cabin is to remain inside the cabin at all times. Any furniture or equipment furnished by the resident, group, person or organization and used in the Bain Park Cabin, or the Dunson Community Room shall be removed on the same date that the Bain Park Cabin or any other Municipal facility is used by such resident, groups, persons or organizations. The custodian shall check in and out all such furniture and equipment. Kitchen fee is included in the rental fee.
(Ord. 14-47. Passed 11-3-14.)

923.05 RATES, CHARGES AND DEPOSITS.

(a) Schedule of Rates.

Definitions:

(1) "Local resident, group or organization":
A "local resident" shall be a resident whose legal address is located within the City. The "local resident" making the application for rental must be in attendance during the hours rented.
A "local group or organization" shall be based in the City of Fairview Park and composed of at least seventy-five percent (75%) of residents whose legal address is located within the City.

(2) "Local nonprofit corporation" means an organization who qualifies under U.S. Internal Revenue Service Code and Regulations as a nonprofit entity and whose legal address is located within the City of Fairview Park.

(3) "Daily Rate" means a one-time day or evening rental.

(4) "Yearly Rate" means a rate to Fairview Park Local Groups/Organizations to rent Bain Park Cabin or the Dunson Community Room more than once during the calendar year to conduct business.

BAIN PARK CABIN RATES FOR LOCAL FAIRVIEW PARK RESIDENTS

Monday-Sunday	9:00 a.m. to 4:00 p.m.	$150.00 - $75.00 is non-refundable
Monday-Thursday	5:30 p.m. to Midnight	$150.00 - $75.00 is non-refundable
Friday-Sunday	5:30 p.m. to Midnight	$200.00 - $75.00 is non-refundable
Holidays	Rates as listed above PLUS $75.00 additional fee - $75.00 is non-refundable	

BAIN PARK CABIN "DAILY" RATES FOR LOCAL GROUPS OR ORGANIZATIONS

Monday-Sunday	9:00 a.m. to 4:00 p.m.	$100.00 - $75.00 is non-refundable
Monday-Sunday	5:30 p.m. to Midnight	$100.00 - $75.00 is non-refundable
Holidays	Rates as listed above PLUS $75.00 additional fee - $75.00 is non-refundable	

BAIN PARK CABIN "YEARLY" RATES FOR LOCAL GROUPS OR ORGANIZATIONS

Yearly Rate offers local groups or organizations an opportunity to use Bain Park Cabin more than once during one calendar year to conduct business or hold functions.

A one-time non-refundable fee of $75.00 is required when booking for the year and is included in the rental fee.

Monday-Friday	9:00 a.m. to 4:00 p.m.	$150.00 per year - $75.00 is non-refundable
Monday-Thursday	5:30 p.m. to Midnight	$150.00 per year - $75.00 is non-refundable
Saturday-Sunday	9:00 a.m. to 4:00 p.m.	$225.00 per year - $75.00 is non-refundable
Friday-Sunday	5:30 p.m. to Midnight	$225.00 per year - $75.00 is non-refundable
Holidays	Rates as listed above PLUS $75.00 additional fee - $75.00 is non-refundable	

BAIN PARK CABIN RATES FOR NON-RESIDENTS, OUTSIDE GROUPS, ORGANIZATIONS AND NONPROFIT GROUPS

Monday-Sunday	9:00 a.m. to 4:00 p.m.	$240.00 - $75.00 is non-refundable
Monday-Thursday	5:30 p.m. to Midnight	$275.00 - $75.00 is non-refundable
Friday-Sunday	5:30 p.m. to Midnight	$335.00 - $75.00 is non-refundable
Holidays	Rates as listed above PLUS $100.00 additional fee - $75.00 is non-refundable	

DUNSON COMMUNITY RATES FOR LOCAL FAIRVIEW PARK RESIDENTS

Monday-Friday	9:00 a.m. to 4:00 p.m.	$150.00 - $75.00 is non-refundable
Monday-Friday	5:30 p.m. to 9:30 p.m.	$150.00 - $75.00 is non-refundable

Kitchen facility is not available weekdays from 9:00 a.m. to Noon.

DUNSON COMMUNITY "DAILY" RATES FOR LOCAL GROUPS OR ORGANIZATIONS

Monday-Friday	9:00 a.m. to 4:00 p.m.	$100.00 - $75.00 is non-refundable
Monday-Friday	5:30 p.m. to 9:30 p.m.	$100.00 - $75.00 is non-refundable

Kitchen facility is not available weekdays from 9:00 a.m. to Noon.

DUNSON COMMUNITY "YEARLY" RATES FOR LOCAL GROUPS OR ORGANIZATIONS

Yearly Rate offers local groups or organizations an opportunity to use the Dunson Community Room more than once during the calendar year to conduct business or hold functions.

A one-time non-refundable fee of $75.00 is required when booking for the year and is included in the rental fee.

Monday-Friday	9:00 a.m. to 4:00 p.m.	$150.00 per year - $75.00 is non-refundable
Monday-Friday	5:30 p.m. to 9:30 p.m.	$150.00 per year - $75.00 is non-refundable

Kitchen facility is not available weekdays from 9:00 a.m. to Noon.

DUNSON COMMUNITY RATES FOR NON-RESIDENTS, OUTSIDE GROUPS, ORGANIZATIONS AND NONPROFIT GROUPS

Monday-Friday	9:00 a.m. to 4:00 p.m.	$250.00 - $75.00 is non-refundable
Monday-Friday	5:30 p.m. to 9:30 p.m.	$250.00 - $75.00 is non-refundable

Kitchen facility is not available weekdays from 9:00 a.m. to Noon.

(b) Use of Bain Park Cabin and the Dunson Community Room Municipal Facilities Before 9:00 a.m. on Saturdays, Sundays and Holidays. At the discretion of the Director, permission may be granted to allow use of the facilities before 9:00 a.m. on Saturdays, Sundays or Holidays. The rental charge shall then be adjusted for use at twenty dollars ($20.00) per hour or fraction therefor until 9:00 a.m., and thereafter the rates shall be charged as set forth in subsection (a) hereof.

(c) Time Extension to 1:00 a.m. On Friday and Saturday nights, the Director may permit an extension of the rental time at Bain Park Cabin or the Dunson Community Room to, and not to exceed 1:00 a.m. Such time extension shall be noted on the application by the renter and arranged for at the time of the application submission approved by the Mayor or Director. There shall be an additional fee of fifty dollars ($50.00) for such time extension for all residents, groups, person, organizations or nonprofit organizations.

(d) Non-Refundable Rental Fee. The non-refundable rental fee of seventy-five dollars ($75.00) is included in the base rate of charges for local resident and nonresident groups. A one-time nonrefundable rental fee of seventy-five dollars ($75.00) is required for Fairview Park civic and community organizations when applicable is booked for the entire year.

(e) Charges for Damages. All residents, groups, persons, organizations, nonprofits and/or non-resident organizations shall be charged for shortage or damage to equipment at the facilities, if any, in such amount as may be determined by the Director. The applicant responsible for the rental shall be liable for payment of any and all damages and may be denied further rentals of City property until restitution has been made to the City.

(f) Nonprofit Organizations Only. The Bain Park Cabin and the Dunson Community Room shall not be available for private, profit making activities. The determination of the qualification of such activity shall be determined by the Mayor.
(Ord. 14-47. Passed 11-3-14.)

923.06 FALSE APPLICATION STATEMENTS, PROHIBITED CONDUCT.

Any person making an application for the use of the Bain Park Cabin or the Dunson Community Room shall give true and accurate information and statements and failure to do so shall be deemed a misdemeanor and shall be punished as in Section 923.99. Persons responsible for the contract must be present during the full contracted time.
(Ord. 14-47. Passed 11-3-14.)

923.07 FEE EXEMPTIONS.

With the exception of members of Council, City officials and City board members and Commissioners and City committees who are permitted to use Bain Park Cabin or the Dunson Community Room for any municipal purpose or function free of charge, no person, group, corporation or organization shall be permitted to use these facilities without paying the charges heretofore set forth with the following exceptions:

(a) Recreational activities sponsored by the Recreation Department shall be granted free use of the Bain Park Cabin or the Dunson Community Room. The Fairview Park PTA shall be granted free of any charge use of the Dunson Community Room for distribution of fundraising products. The American Red Cross and the Cuyahoga Board of Elections shall be granted free of any charge use of both facilities.

(b) There shall be no exemptions to the seventy-five dollar ($75.00) non-refundable rental fee, except for those listed above, which benefits the Bain Park Cabin Restoration Fund and the Dunson Community Room as specified in Section 923.05(e).

(c) The Mayor shall have the discretion to exempt the rental fee for local organizations whose membership is composed of City residents and are recognized by the City of Fairview Park, provided that the function is limited to award affairs, service projects and joint activities where no profit is to be derived by the participating organization or organizations. There shall be no exemptions to the seventy-five dollar ($75.00) non-refundable fee which benefits the Bain Park Cabin Restoration Fund and the Dunson Community Room as specified in Section 923.05(e). (Ord. 14-47. Passed 11-3-14.)

923.08 BAIN PARK PAVILION.

The Bain Park Pavilion is available for reservation for Fairview Park residents only. Permits are to be issued by the Director of Recreation, or his designee, to qualified residents on a first come, first serve basis. A nonrefundable application fee of fifty dollars ($50.00) is part of the permit process. (Ord. 14-47. Passed 11-3-14.)

923.99 PENALTY.

Whoever violated any provision of this chapter shall be fined not more than fifty dollars ($50.00). Each day's continued violation shall constitute a separate offense.
(Ord. 14-47. Passed 11-3-14.)

(EDITOR'S NOTE: The next printed page is page 81.)

CHAPTER 925
Cemeteries

925.01 Grave lot prices.
925.02 Charge for opening grave.
925.03 Monuments; foundation fee.
925.04 Permitted burial vault materials.

CROSS REFERENCES
Burials may be prohibited - see Ohio R.C. 759.05
Management and control - see Ohio R.C. 759.09
Union cemeteries - see Ohio R.C. 759.27 et seq.
Burial permits - see Ohio R.C. 3705.24 et seq.
Burial of indigent persons - see Ohio R.C. 5113.15

925.01 GRAVE LOT PRICES.

(a) Residents. The price of single-grave lots in Fairview Park Cemetery to residents of the City is fifty dollars ($50.00) each.

(b) Nonresidents. The price of single-grave lots in Fairview Park Cemetery to nonresidents of the City is one hundred dollars ($100.00) each.
(Ord. 70-64. Passed 12-21-70.)

925.02 CHARGE FOR OPENING GRAVE.

The charge for opening each grave in Fairview Park Cemetery shall be seventy-five dollars ($75.00). (Ord. 70-64. Passed 12-21-70.)

925.03 MONUMENTS; FOUNDATION FEE.

All monuments in Fairview Park Cemetery shall be subject to the approval of the Director of Public Service and Development and shall be set on foundations provided by the Service Department.

The charge for a monument foundation of a dimension not to exceed two and one-half feet long by one and one-half feet wide by two and one-half feet deep shall be thirty dollars ($30.00); all other foundations exceeding such dimensions shall be fifty dollars ($50.00)
(Ord. 70-64. Passed 12-21-70.)

925.04 PERMITTED BURIAL VAULT MATERIALS.

Only steel reinforced concrete, metal, copper and fiberglass burial vaults shall be used in the Fairview Park Cemetery. Cement slab boxes and wood type boxes are specifically prohibited.
(Ord. 70-64. Passed 12-21-70.)

CHAPTER 927
Recreation and Community Center Complex

927.01 **Management and operation.**
927.02 **Fees for use of Recreation and Community Center Complex.**
927.03 **Rental regulations.**
927.04 **Furniture, equipment and decoration.**
927.05 **Persons prohibited in playgrounds, parks and recreation facilities.**

927.01 MANAGEMENT AND OPERATION.

The management and operation of the Recreation and Community Center Complex shall be under the supervision of the Director of Recreation hereinafter referred to as "Director". (Ord. 07-15. Passed 4-2-07.)

927.02 FEES FOR USE OF RECREATION AND COMMUNITY CENTER COMPLEX.

Fees for the use of the Recreation Community Center Complex at any time shall be determined by the Director of Recreation and may be adjusted periodically by the Director. (Ord. 07-15. Passed 4-2-07.)

927.03 RENTAL REGULATIONS.

(a) The Director is hereby authorized to rent the Recreation and Community Center Complex. All applications for rent shall be in writing and signed by a member of the group or organization. The application along with the required application fees and charges shall be filed with the Director. Upon review and approval thereof, the Director shall sign the permit. The permit shall not be assignable and shall be used only by the person, group or organization receiving the same.

(b) The permit shall be in triplicate, the original of which shall be retained by the Director. The first copy shall be delivered to the applicant and the second copy to the custodian of the rented facility. If there is any damage or loss to the facility or equipment the custodian shall deliver his copy of the permit to the Director with notations thereon regarding such loss or damage and any other remarks pertinent thereto as outlined in the Recreation and Community Center Complex Rules and Regulations. In case of any shortage or damage to the equipment in the Recreation and Community Center Complex, the decision of the Director shall be final and an assessment charged accordingly.

(c) Alcohol is permitted in the Community Rooms of the Recreation and Community Center Complex as stipulated in the Recreation and Community Center Complex Rules and Regulations.

(d) The application for the permit and the permit shall be in a form satisfactory to the Director.

(e) The group, person or organization holding a permit may cancel the permit by giving notice in writing to the Director at least thirty (30) days in advance of the date and time for which the permit was issued for any of the individual Community Rooms, A, B or C. If all Community Rooms, A, B and C are rented together combined 2 or all 3, then the written cancellation request must be submitted at least sixty (60) days in advance to the date and time for which the permit was issued.

(f) All moneys derived from the application and rental fees shall be paid into the Recreation Community Center Fund of the City and disbursement for the operation and maintenance of the Recreation and Community Center Complex paid there from.
(Ord. 07-15. Passed 4-2-07.)

927.04 FURNITURE, EQUIPMENT AND DECORATION.

(a) The furnishings and equipment at any rental facility located within the Recreation and Community Center Complex shall be used only for the purpose for which they were intended. No decorations are to be permitted in or about the Recreation and Community Center Complex unless approved by the Director or the Director's designee. In no case will permanent decorations be allowed at any time unless approved by the Director.

(b) Any furniture or equipment furnished by the group, person or organization and used in the Recreation and Community Center Complex, shall be removed on the same date that the Recreation and Community Center Complex is used by such groups, persons or organizations. The custodian shall check in and out such furniture and equipment. Kitchen fee is included in the rental fee. (Ord. 07-15. Passed 4-2-07.)

927.05 PERSONS PROHIBITED IN PLAYGROUNDS, PARKS AND RECREATION FACILITIES.

(a) As used in this section:

(1) "Registered Offender" means any person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or a child-victim oriented offense as defined in Section 2950.01 of the Ohio Revised Code and said person has been classified pursuant to the provisions of Chapter 2950 of the Ohio Revised Code as a Tier I, II or III sex offender/child-victim offender and is required to register his or her address with the County Sheriff's Department.

(2) "Park Facilities" includes all land and buildings owned or controlled by the City and used for park or recreation purposes, including but not limited to the Gemini Center Recreation and Community Center Complex, including athletic fields, Morton Park and Splashground, Bohlken Park, Bain Park, Bain Park Cabin, Nelson Russ Park, Grannis Park, and their playgrounds, ball fields, rest room facilities and pavilions.

(3) "Offenses of Violence" include those defined in Ohio Revised Code Section 2901.01(A)(9).

(4) "Public Body" has the same meaning as found in Ohio Revised Code Section 121.22.

(b) No registered offender as defined in Section 927.05(a)(1) herein or any person convicted of an offense of violence as defined in Ohio Revised Code Section 2901.01(A)(9) shall enter or remain upon any park facility except, and only to the extent necessary, to attend meetings of the public bodies.

(c) Whoever violates this section shall be guilty of criminal trespass as provided in Fairview Park Codified Section 541.05 or Ohio Revised Code Section 2911.21.
(Ord. 09-81. Passed 1-19-10.)

CHAPTER 929
Solid Waste Collection

929.01 Rates.
929.02 Payments.
929.03 Billing. (Repealed)
929.04 Late payment penalty. (Repealed)
929.05 Funds.
929.06 Expiration.

CROSS REFERENCES
Loads dropping or leaking - see TRAF. 339.08

929.01 RATES.

There is hereby established and imposed upon all residential parcels that are subject to collection of solid waste by the City's vendor within the City of Fairview Park a monthly charge in the amount of ten dollars ($10.00) beginning April 1, 2010, for the collection and disposal of solid waste and refuse. (Ord. 10-10. Passed 3-15-10.)

929.02 PAYMENTS.

The charges established by Section 929.01 shall be assessed upon residential properties within the City of Fairview Park and placed on the tax duplicate of each residence for the collection as any other municipal tax and shall be reimbursed to the City by the Cuyahoga County Fiscal Officer. (Ord. 12-24. Passed 6-4-12.)

929.03 BILLING. (REPEALED)

(EDITOR'S NOTE: Former Section 929.03 was repealed by Ordinance 12-24, passed June 4, 2012.)

929.04 LATE PAYMENT PENALTY.(REPEALED)

(EDITOR'S NOTE: Former Section 929.04 was repealed by Ordinance 12-24, passed June 4, 2012.)

929.05 FUNDS.

The payments received from the collection of the charges established by Chapter 929 shall be deposited into the General Fund. (Ord. 10-10. Passed 3-15-10.)

929.06 EXPIRATION.

The charges established under this Chapter shall expire on December 31, 2019. (Ord. 17-39. Passed 10-2-17.)

CODIFIED ORDINANCES OF FAIRVIEW PARK

PART ELEVEN - PLANNING AND ZONING CODE

TITLE ONE - Zoning

Chap. 1101. General Provisions.
Chap. 1105. Definitions.
Chap. 1109. Zoning Districts.
Chap. 1113. Civic and Recreational Districts.
Chap. 1117. Residential One and Two-Family Districts.
Chap. 1121. Residential Multi-Family, Garden and High Rise Districts.
Chap. 1125. Automobile Parking Districts. (Repealed)
Chap. 1129. Office Building Districts.
Chap. 1133. Low-Rise Planned Development District.
Chap. 1137. General Business Districts.
Chap. 1139. Senior Citizen Housing District.
Chap. 1141. Nonconforming Buildings and Uses.
Chap. 1145. Signs.
Chap. 1147. Wireless Telecommunications Facilities.
Chap. 1149. Administrative Provisions.
Chap. 1153. Board of Zoning and Building Appeals.
Chap. 1155. Designation of Landmarks.
Chap. 1157. Amendments.
Chap. 1159. Design Review Guidelines.

TITLE THREE - Subdivision Regulations

Chap. 1183. General Provisions.
Chap. 1187. Minor Subdivisions.
Chap. 1191. Major Subdivisions.
Chap. 1195. Storm Drainage.

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Chap. 1153. Board of Zoning and Building Appeals.
Chap. 1155. Designation of Landmarks.
Chap. 1157. Amendments.
Chap. 1159. Design Review Guidelines.

CHAPTER 1101
General Provisions

1101.01 Title.
1101.02 Purposes.
1101.03 Intent; planning goals.
1101.04 Compliance with Zoning Code.
1101.05 Relation to other regulations.
1101.06 Separability.
1101.07 Effective date.

CROSS REFERENCES
Zoning of annexed areas - see Ohio R.C. 303.25, 519.18
Enforcement - see P.& Z. 1149.07
Penalty - see P. & Z. 1149.99

1101.01 TITLE.
This Code shall be known as the Zoning Code for the City of Fairview Park, the main purpose of which is: to regulate the height, design, location and use of buildings, and the use of land; to divide the City into various districts; and to provide regulations for the administration, interpretation and amendment of this Zoning Code.
(Ord. 67-17. Passed 5-15-67.)

1101.02 PURPOSES.
This Zoning Code is adopted to promote and protect the public health, safety, convenience, comfort, prosperity and/or the general welfare: by regulating the use of buildings and land for residence, business or other purposes; by regulating the area and dimensions of land, yards and other open spaces; by regulating and restricting the bulk, height, design, percent of lot occupancy and location of buildings; by regulation and limiting population density; and, for the aforesaid purposes, to divide the City into districts of such number and dimensions as may be deemed best suited to carry out these regulations.
(Ord. 67-17. Passed 5-15-67.)

1101.03 INTENT; PLANNING GOALS.
This Zoning Code is intended, among other purposes:
(a) To protect the character and values of residential, business, institutional and public uses and to insure their orderly and beneficial development;
(b) To provide adequate, open spaces for light and air, to prevent overcrowding of the land, to prevent excessive concentration of population, and on the other hand, to prevent sparse and uncoordinated development;
(c) To locate buildings and uses in relation to streets according to plans in a way that will cause the least interference with, and be damaged least by traffic movements, and result in lessened street congestion and improved public safety;
(d) To establish zoning patterns that insure economical extensions for sewers, water supply and other public utilities, and developments for recreation, schools and other facilities;
(e) To guide the future development of the City so as to bring about the gradual conformity of land and building uses in accordance with a comprehensive plan; and
(f) To accomplish the specific intents set forth in the introduction to the respective districts or groups of districts.
(Ord. 67-17. Passed 5-15-67.)

1101.04 COMPLIANCE WITH ZONING CODE.

All public officials of the City, vested with the duty and authority to issue legal documents, shall not issue permits or certificates for any building or use that shall result in conflict with provisions of this Zoning Code. However, should such a permit or certificate in conflict with the provisions of this Zoning Code be issued, it shall be deemed null and void.
(Ord. 67-17. Passed 5-15-67.)

1101.05 RELATION TO OTHER REGULATIONS.

(a) The provisions of this Zoning Code shall not annul or in any way interfere with existing codes, laws, rules, regulations or permits previously adopted or issued.

(b) Where this Zoning Code is more restrictive as to the use of buildings or land, and/or limits the height or bulk of buildings, or requires larger areas and yards than are required by other codes, laws, ordinances, rules and regulations, this Zoning Code shall govern and conversely, other regulations shall govern where they are more restrictive in nature than this Zoning Code.

(c) This Code shall not be construed as removing or rendering inoperative any deed or land restriction formerly established by restrictive covenants running with the land, easements or other agreements between parties.
(Ord. 67-17. Passed 5-16-67.)

1101.06 SEPARABILITY.

If any provision, or the application of any provision, of this Zoning Code or amendments thereto is declared to be invalid by a judicial decision of a court of competent jurisdiction, the effect of such determination shall be limited to that provision or provisions expressly stated to be invalid, and such determination shall not affect, impair or nullify this Code as amended as a whole or any other part thereof.
(Ord. 67-17. Passed 5-15-67.)

1101.07 EFFECTIVE DATE.

This Zoning Code shall take effect and be in force on June 14, 1967.
(Ord. 67-17. Passed 5-15-67.)

CHAPTER 1105
Definitions

1105.01 General.
1105.02 Areas.
1105.03 Automotive: garages, parking areas, service stations.
1105.04 Block.
1105.05 Buildings and structures.
1105.06 Dwellings and other living accommodations.
1105.07 Family.
1105.08 Grades.
1105.09 Height of building; one-story, one and one-half story dwelling; story.
1105.10 Home occupations and professional offices.
1105.11 Loading space.
1105.12 Lot.
1105.13 Nonconforming building, lot and use.
1105.14 Occupancy certificate.
1105.15 Signs.
1105.16 Street.
1105.17 Use.
1105.18 Variance.
1105.19 Yards and courts.

CROSS REFERENCES
Sign definitions - see P.& Z. 1145.03
Subdivision Regulations definitions - see P. & Z. 1183.04

1105.01 GENERAL.
As used in this Zoning Code:
(a) The word "shall" is to be interpreted as mandatory and not directory; the word "may" is permissive.
(b) The phrase "used for" shall include "arranged for", "designed for", "intended for", "maintained for" or "occupied for".
(c) All words used in the singular shall include the plural, and all words used in the present tense shall include the future tense, unless the context clearly indicates the contrary.
(d) "City" means the City of Fairview Park.
(e) "Commission" means the Planning and Design Commission of the City.
(f) "Board" means the Board of Zoning and Building Appeals.
(Ord. 67-17. Passed 5-15-67.)

1105.02 AREAS.

(a) "Area of buildings" means the area at the ground level of the main building and all accessory buildings, excluding unenclosed porches, terraces and steps, measured from the outside surface of exterior walls.

(b) "Area of dwelling unit" means the sum of the gross floor areas above the basement level, including those rooms, and closets, having the minimum ceiling height, light, ventilation and other features as required by the Building Code and as further defined in Section 1117.19.

(c) "Area of lot" means the total horizontal area within the lot boundary lines of a zoning lot. Refer to Section 1105.12(b) hereof.
(Ord. 67-17. Passed 5-15-67.)

1105.03 AUTOMOTIVE: GARAGES, PARKING AREAS, SERVICE STATIONS.

(a) "Private garage" means an accessory building or part of the main building used for the parking or temporary storage of occupants' (of one or two-family dwellings) passenger automobiles, and in which no occupation, business or service may be conducted for remuneration.

(b) "Storage garage" means an accessory building or part of the main building, other than a private garage, used for the parking or temporary storage of passenger automobiles, and in which no occupation, business or service can be conducted for remuneration, except parking and/or storage fees may be charged.

(c) "Repair garage" means a main or accessory building in which general repair work is performed or work on motor vehicles.

(d) "Service garage" means a repair garage accessory to an automobile salesroom.

(e) "Accessory parking area" means an open or enclosed area, other than a street or driveway, accessory to a dwelling or other building, and used for the parking of passenger automobiles for occupants, their guests or customers, of such building.

(f) “Public parking area" means an open or enclosed area, other than an accessory parking area, used for passenger automobile parking, with or without a fee.

(g) "Sales lot" means an open area used for the display, sales or rental of new or used motor vehicles, in which no repair work, except minor and then only incidental to items sold, is performed.

(h) "Service station" means a building and land, including pumps, tanks or grease racks, used for retail sale of gasoline, lubricants, batteries, tires and other automobile accessories, and limited to performing minor services and repairs.
(Ord. 67-17. Passed 5-15-67.)

1105.04 BLOCK.

"Block" means an area of land bounded by streets, public parks, bulkhead or shore lines or by other definite limits.
(Ord. 67-17. Passed 5-15-67.)

1105.05 BUILDINGS AND STRUCTURES.

(a) "Structure" means that which is constructed and located more or less permanently on the ground or permanently attached to something located on the ground.

"Structure" includes buildings, barriers, bridges, bulkheads, fences, outdoor seating facilities, platforms, pools, poles, tanks, tents, towers, roadside stands, sheds, signs and walls. "Structure" does not include trailers and other vehicles whether on wheels or other support.

(b) "Building" means a structure which is permanently affixed to the land, having one or more floors and a roof, being bounded by either open space or lot lines, and used as shelter or enclosure for persons, animals and/or property. This term shall be used synonymously with structure unless otherwise provided, and shall be construed as if followed by the words "or part or parts thereof".

(c) "Main building" means the building occupied by the chief use or activity on the premises, all parts of which buildings are connected in a substantial manner by common walls or a continuous roof.

(d) "Accessory building" means a subordinate building detached from, but located on the same zoning lot as the main building, the use of which is customarily incident to that of the main building or use.

(e) "Building line" or "setback line" means a line established by this Zoning Code, generally parallel with and measured from a front lot line, defining the limits of a front yard in which no building or structure aboveground may be located, except as otherwise provided herein.

(f) "Completely enclosed building" means a building separated on all sides from the adjacent open space or from other buildings, by a permanent roof and by exterior walls or party or single walls, pierced only by windows, entrance or exit doors.

(g) "Detached building" means a building surrounded by open space.

(h) "Basement" means a story or space with a floor level below the surface of the ground. (Ord. 67-17. Passed 5 15-67.)

(i) "Direct broadcast satellite receiving station" means an antenna of a maximum dimension of more than two feet of parabolic, or spherical or other geometric surface design permanently attached to a concrete base or caissons located on the ground or permanently attached to the roof of a main or accessory building and designed or used to receive, and/or process, and/or amplify satellite television signals. Such stations consist of the antenna or "dish", may include a low noise amplifier, and which is connected by coaxial cable to a receiver.
(Ord. 89-43. Passed 12-4-89.)

1105.06 DWELLINGS AND OTHER LIVING ACCOMMODATIONS.

(a) "Dwelling unit" means space within a dwelling comprising living, dining and/or kitchen facilities, sleeping room or rooms and space and equipment for bathing and toilet facilities.

(b) "Dwelling" means a building designed or occupied exclusively for nontransient residential use, including one-family, two-family or multi-family buildings.

(c) "One-family dwelling" means a building consisting of one dwelling unit only, detached or separate from other dwelling units by open spaces.

(d) "Two-family dwelling" means a building consisting of two dwelling units which are either attached side by side or one above the other, and each unit having either a separate or combined entrance or entrances, including duplexes and flats.
(Ord. 67-17. Passed 5-15-67.)

(e) "Multi-family dwelling" means a building consisting of three or more dwelling units with varying arrangements of entrances and party walls, including:

(1) "Row house" or "townhouse" means a multi-family dwelling comprised of dwelling units attached in a row or group, attached side by side, having party walls, and each unit having at least one separate outside entrance.

(2) "Apartment building" means a multi-family dwelling comprised of three or more dwelling units (apartments) arranged side by side and/or one above the other, and each unit having a separate entrance or entrances connected to a common outside entrance or entrances or connected to a common hall leading to the exterior.

(3) "Apartment hotel" means a dwelling which is similar to an apartment building, except that the rooms may be designed for dual use and the unit intended for more or less transient occupancy.

(4) "Senior citizen housing" means a building or group of buildings containing apartments or other dwelling units designed and administered for the special needs of elderly persons, together with related recreation, social and health facilities, administered in such a manner as to restrict occupancy to persons sixty-two years of age or older or, in the case of married couples, one of whom is sixty-two years of age or older, and to handicapped persons. "Senior citizen housing" shall also include "congregate housing". "Congregate housing" means a building or group of buildings containing apartments or other dwelling units designed and administered for the special needs of elderly persons wherein residents shall be provided at least one meal per day, central kitchen, dining and recreation, social, hobby, craft and physical therapy facilities, housekeeping and laundry assistance, limited nursing care, health monitoring and other personal services, and administered in a manner as to restrict occupancy to persons sixty-two years of age or older or, in the case of married couples, one of whom is sixty-two years of age or older, and to handicapped persons. Both "senior citizen housing" and "congregate housing" shall provide a twenty-four hour, seven day a week emergency call assistance service wherein each dwelling unit is directly connected to an office having both visual and voice communication capability within the building itself.
(Ord. 86-22. Passed 4-4-88.)

(f) "Accessory living accommodations" means a building, or part thereof, used solely as accommodations for occupants' personal guests, persons employed on the premises or other nonpaying transients, and in which no cooking or similar housekeeping equipment is provided.

(g) "Rooming house" means a building or part thereof, operated by a resident family, in which a room or rooms, excluding cooking facilities within the rental unit, are occupied for compensation by more than one person but not more than three persons by the day or for a more extended period of time.

(h) "Tourist house" means a one-family dwelling, operated by a resident family, in which only overnight guests are lodged for compensation.
(Ord. 67-17. Passed 5-15-67.)

(i) "Hotel" means every structure which, in whole or in part, as a main or accessory use is kept, used, maintained, advertised or held out to the public to be a place where living and/or sleeping accommodations, excluding cooking facilities within the rental unit, are offered for consideration to transient guests and having a common entrance or entrances. The term "transient guests" means persons who contract to occupy the premises for thirty days or less.

(j) "Motel" means every structure or group of structures, detached or semi-detached, having separate outside entrances which, in whole or in part, as a main or accessory use, is kept, used, maintained, advertised or held out to the public to be a place where only overnight sleeping accommodations, excluding cooking facilities within the rental unit, are offered for consideration to transient guests, principally automobile travelers. The term "transient guests" means persons who contract to occupy the premises on a daily basis not to exceed thirty days.
(Ord. 89-44. Passed 12-4-89.)

1105.07 FAMILY.

(a) "Family" means one person who shall be the head of the household and may include the following persons who live with the head of the household as a single housekeeping unit in a single dwelling unit:

(1) Persons related by blood, guardianship or adoption under an order of a court of competent jurisdiction, or marriage to the head of the household;

(2) Not more than two persons, including roomers and servants, not related by blood, guardianship, adoption under an order of a court of competent jurisdiction, or marriage, to the head of the household.

(3) In no event shall the number of occupants of a dwelling unit exceed the number allowed by the Housing Code.

(b) "Single housekeeping unit" means persons who join with the head of the household in sharing meals, using the living room, dining room, kitchen facilities and other common areas within a dwelling unit, and sharing customary household obligations.

(c) "Head of the household" means:

(1) In an owner occupied dwelling unit with a single owner, the head of the household is the single owner.

(2) In an owner occupied dwelling unit with more than a single owner, the head of the household is the adult owner who has the greatest number of related family members, or such other adult owner as the co-owners may designate. In no event shall the number of family members exceed those allowed under the Housing Code.

(3) In a nonowner occupied dwelling unit with a single lessee or tenant, the head of the household is the single lessee or tenant.

(4) In a nonowner occupied dwelling unit with more than a single occupant, the head of the household is the adult occupant who has the greatest number of related occupant family members, or such other adult occupant as the co-occupants may designate. In no event shall the number of family members exceed those allowed under the Housing Code.

(d) "Roomer" means a person who renders service, pays rent or provides other consideration for occupancy of one or more rooms within a dwelling unit, but less than the entire dwelling unit, who is not a member of the resident family, and who occupies or contracts to occupy the room or rooms for more than thirty consecutive days. A roomer shall either have sole and exclusive occupancy of his/her sleeping quarters or shall share such sleeping quarters with only one other person. (Ord. 89-44. Passed 12-4-89.)

1105.08 GRADES.

(a) "Established street grade" means the elevation established by the City, at the roadway center line or curb in front of the lot.

(b) "Natural grade" means the elevation of the undisturbed natural surface of the ground prior to any excavation or fill.

(c) "Finished grade" means the elevation of the finished surface of the ground adjoining the building after final grading and normal settlement.
(Ord. 67-17. Passed 5-15-67.)

1105.09 HEIGHT OF BUILDING; ONE-STORY, ONE-AND-ONE-HALF STORY DWELLING; STORY.

(a) "Height of building" means the vertical surface measured from the highest point of the coping or the ridge of a roof, measured to the average finished grade across the front of the building. (Ord. 96-83. Passed 3-3-97.)

(b) "One-story dwelling" means a dwelling in which there are not habitable rooms above the first floor.

(c) "One-and-one-half story dwelling" means a dwelling in which the areas of habitable rooms are substantially less than the areas of habitable rooms on the first floor with at least two opposite exterior walls meeting the sloping roof not over three feet above that floor level.

(d) "Story" means that part of a building between any floor and the next floor above, and if there is no floor above, then the ceiling above. A basement is a story if its ceiling has one-half of its clear story height above grade level of the lot and is used as the first floor of the building on which it is included or where used as a dwelling.
(Ord. 81-78. Passed 9-21-81.)

1105.10 HOME OCCUPATIONS AND PROFESSIONAL OFFICES.

(a) "Home occupation" means a gainful occupation generally accepted as incidental and secondary to the use of a dwelling for residential purposes, and, unless otherwise permitted by the provisions of the Zoning Code, conducted wholly within a dwelling, or in a building accessory thereto, only by members of the resident family.
(Ord. 89-99. Passed 4-2-90.)

(b) "Home professional office" means a secondary office, accessory to and located in the dwelling occupied by a person practicing accounting, architecture, art, engineering, law, music, medicine or similar occupations or professions.
(Ord. 67-17. Passed 5-15-67.)

1105.11 LOADING SPACE.

"Loading space" means an open or enclosed space, other than a street, used for the temporary parking of a commercial vehicle while its goods are being loaded or unloaded.
(Ord. 67-17. Passed 5-15-67.)

1105.12 LOT.

(a) "Lot of record" means land designated as a separate parcel on a plot, or deed subdividing land in accordance with law and filed in the records of Cuyahoga County.

(b) "Zoning lot" means a single tract of land abutting a dedicated street, occupied or intended to be occupied by a use, building or group of buildings and their accessory uses and buildings as a unit, together with such open spaces as are required by this Zoning Code, which may or may not coincide with a lot of record, and which may or may not be entirely in the same zoning district. Unless the context clearly indicates the contrary, the term "lot" is used synonymously with "zoning lot" through this Zoning Code.

(c) "Corner lot" means a lot abutting on two streets at their intersections, where the interior angle of intersection is not more than 135 degrees.

(d) "Interior lot" means a lot other than a corner lot or through lot.

(e) "Through lot" means a lot which has two street lines opposite each other, and which are parallel, or within forty-five degrees of being parallel, to each other.

(f) "Lot line" means the boundary of a lot separating it from adjoining public or private land, including a public street.

(g) "Front lot line" means the lot line separating an interior lot from the street upon which it abuts, or the shortest lot line of a corner lot which abuts upon a street, except when lot lines abutting streets are of equal length, the front lot line shall be considered on the street having the longest frontage within the same block. Unless the context clearly indicates the contrary, the term front lot line shall be synonymous with street line.

(h) "Rear lot line" means a lot line parallel or within forty-five degrees of being parallel to the front lot line.

(i) "Side lot line" means a lot line which is neither a front nor rear lot line.

(j) "Lot depth" means the mean horizontal distance of a lot measured along the building line at right angle to the mean lot depth line. Width at front lot line is measured on front lot line. (Ord. 67-17. Passed 5-15-67.)

1105.13 NONCONFORMING BUILDING, LOT AND USE.

(a) "Nonconforming building" means a building which was lawful prior to the adoption of the Zoning Code, or an amendment thereto, but which does not conform to the lot area, dwelling area, yard regulations, height, or bulk of building, yard regulations or other regulations of the district in which it is located by reason of such adoption or amendment.

(b) "Nonconforming lot" means a lot which was lawful prior to the adoption of the Zoning Code, or an amendment thereto, but which does not conform to the lot, area, width, access or other requirements of the district in which it is located by reason of such adoption or amendment.

(c) "Nonconforming use" means the use of a building or land which was lawful prior to the adoption of the Zoning Code, or an amendment thereto, but which does not conform to the use regulations or off-street parking and/or loading requirements of the district in which it is located by reason of such adoption of amendment.
(Ord. 93-86. Passed 2-7-94.)

1105.14 OCCUPANCY CERTIFICATE.
"Occupancy certificate" means an official statement asserting that a given building, other structure, or parcel of land, is in compliance with the provisions of all existing codes and hence may be used lawfully for the purposes designated thereon.
(Ord. 67-17. Passed 5-15-67.)

1105.15 SIGNS.
Refer to Section 1145.03 for sign definitions.
(Ord. 80-104. Passed 6-1-81.)

1105.16 STREET.
"Street" means an existing public way affording the principal means of access to abutting property. (Ord. 67-17. Passed 5-15-67.)

1105.17 USE.
(a) "Use" means any purpose for which buildings, other structures or land may be arranged, designed, intended, maintained or occupied, or any occupation, business, activity or operation carried on in a building or other structure or zoning lot.

(b) "Main use" means the principal purpose of or activity in a building, other structure or zoning lot.

(c) "Accessory use" means a use, located on the same zoning lot which the main use of building or land, but incidental to the main use of the main building or land.

(d) "Similar use" means a use similar to the permitted buildings and uses in a zoning district as determined by the Planning and Design Commission in accordance with the following criteria:

(1) That such a use is not listed in any other classification of permitted buildings and uses; and
(2) That such a use does not create traffic to a greater extent than the other permitted buildings and uses of the particular zoning district; and
(3) That such a use does not create dangers to health and safety, and does not create offensive noise, vibration, air pollution, glare or other objectionable influences greater than normally resulting from other permitted buildings and uses of the particular zoning district; and
(4) That such a use would be an asset to the community and be related more closely to the basic characteristics of the particular zoning district than to any other zoning district. (Ord. 82-21. Passed 6-7-82.)

(e) "Conditional use" means a use which is permitted in a zoning district as regulated by the provisions of the Zoning Code, approved by the Planning and Design Commission and Council, and which meets special conditions of use.
(Ord. 86-22. Passed 4-4-88.)

1105.18 VARIANCE.
"Variance" means a modification of the provisions of this Zoning Code.
(Ord. 67-17. Passed 5-15-67.)

1105.19 YARDS AND COURTS.
(a) "Yard" means that portion of the open area on a zoning lot extending between a building and the nearest lot line, open and unobstructed from the ground upward.

(b) "Front yard" means the yard extending from the front wall of the building to the front lot line across the full width of the lot.

(c) "Rear yard" means the yard extending from the rear wall of the building to the rear lot line across the full width of the lot.

(d) "Side yard" means the yard extending between a side lot line and the nearest wall of the building, and from the front yard to the rear yard, provided that, for a corner lot, the side yard extends from the front yard to the rear lot line on the street side.

(e) "Required yard" means the minimum yard required between a lot line and a line for building, to comply with the regulations of the district in which the zoning lot is located.

(f) "Court" means an open space other than a yard, bounded on two or more sides by exterior walls of the building, or bounded by exterior walls of a building and lot lines.
(Ord. 67-17. Passed 5-15-67.)

CHAPTER 1109
Zoning Districts

1109.01 Establishment of districts.
1109.02 Establishment of regulations.
1109.03 Establishment of Zone Map.
1109.04 District boundary lines.
1109.05 Zoning lot divided by district boundary.

CROSS REFERENCES
Basis of districts - see Ohio R.C. 713.10
Amendment procedure for change in districting - see P. & Z. Ch. 1157

1109.01 ESTABLISHMENT OF DISTRICTS.
In order to carry out the purpose of this Zoning Code, the City is hereby divided into the following districts:

Title	Abbreviation
Civic and Recreational	CR
Residential Districts	
One-family 75	R1F-75
One-family 60	R1F-60
One-family 50	R1F-50
One-family 40	R1F-40
Two-family	R2F
Multi-family garden	RMF-G
Multi-family - high-rise	RMF-HR
Multi-family - townhouse	RMF-TH
Low-Rise Planned Development	PD
Senior Citizen Housing District	SH
Business Districts	
General Business - "A"	GB-A
General Business - " B"	GB-B
Office Building - " 1 "	OB- 1
Office Building - "2"	OB-2
Office Building - "3"	OB-3

Whenever the abbreviated terms, R1F-75, GB-A, etc. are used in this Zoning Code, they shall be construed as referring to their corresponding district titles. The Office Building District is divided into three Height Districts known as Office Building - "1", Office Building - “2" and Office Building - "3". The schedules and zoning regulations applicable to Office Building Districts shall be applicable to the three Height Districts other than those schedules and zoning regulations applicable to a specific Height District only.
(Ord. 98-34A. Passed 11-16-98.)

1109.02 ESTABLISHMENT OF REGULATIONS.

Any building and any tract of land may be used, and the use of any building and any tract of land may be changed or extended, and any existing building may be altered, converted, enlarged, reconstructed, moved or maintained, for any use permitted or required by the regulations for the district in which the building or tract of land is located, and for no other use.

Such use, change, extension, alteration, conversion, enlargement, reconstruction, relocation or maintenance shall be subject to all area, yard, height and all other regulations set forth or referred to for the district in which the building or tract of land is located and to all other applicable regulations of this Zoning Code.
(Ord. 67-17. Passed 5-15-67.)

1109.03 ESTABLISHMENT OF ZONE MAP.

The aforesaid districts are designated by symbols and the locations and boundaries of such districts are established on a map entitled, "Zone Map of the City of Fairview Park, Ohio", dated March 6, 1995. All notations, schedules and other information shown thereon and all amendments thereto are hereby made a part of this Zoning Code, and it may be amended in the same manner as any other part of this Zoning Code or in the manner provided by the Charter of the City of Fairview Park.
(Ord. 94-96. Passed 3-6-95.)

1109.04 DISTRICT BOUNDARY LINES.

The district boundary lines of the Zone Map enclose an area of a designated district and generally follow the center lines of streets or alleys, lot lines or their extensions. However, where a boundary line is shown by dimension or relationship as being located a specific distance from and parallel to a street line, this distance shall control. Where a boundary line does not coincide with any of the aforesaid lines, and where it is not located by dimensions shown on the map, it shall be determined by use of the scale appearing thereon. In cases of uncertainty, the Board of Zoning and Building Appeals shall determine the exact location.
(Ord. 67-17. Passed 5-15-67.)

1109.05 ZONING LOT DIVIDED BY DISTRICT BOUNDARY.

Where any lot is partly in one district and partly in another district with different regulations, the part of such zoning lot within each district shall conform to the regulations of that district, with the exception that the area of the entire zoning lot may be used to compute the unit area requirements set forth in this Zoning Code. In the event that the area, or any part thereof, of the entire zoning lot is used to compute the unit area requirements set forth in this Zoning Code, then the entire area of such zoning lot shall be landscaped and maintained as such, as required by the Planning and Design Commission.
(Ord. 67-17. Passed 5-15-67.)

CHAPTER 1113
Civic and Recreational Districts

1113.01 Use regulations.
1113.02 Schedule of permitted buildings and uses.
1113.03 Yard regulations.
1113.04 Height regulations.
1113.05 Accessory parking facilities required.
1113.06 Measurement standards.
1113.07 Schedule.
1113.08 Accessways to parking areas.
1113.09 Surface improvements; parking.
1113.10 Approval of off-street parking facilities.
1113.11 Illumination of off-street parking facilities; accessways.
1113.12 Survey and approval of the City Engineer required.
1113.13 Application and design of parking areas.
1113.14 Required trash areas.
1113.15 Deposit for survey of public sanitary and storm sewers.

CROSS REFERENCES
Nonconformance - see P. & Z. Ch. 1141
Signs - see P. & Z. Ch. 1145

1113.01 USE REGULATIONS.

Buildings and land shall be used, and buildings shall be erected, altered, moved or maintained only for the uses set forth in the schedules and regulations of this chapter.

(a) Main buildings and uses listed in Section 1113.02 shall be permitted as the principal building or use of a lot or parcel located only in a district in which it is specifically permitted.

(b) Accessory buildings and uses listed in Section 1113.02 shall be permitted as a subordinate building or use which is clearly incident to, and located on the same zoning lot or parcel as the main building or use is permitted.

(Ord. 67-17. Passed 5-15-67.)

1113.02 SCHEDULE OF PERMITTED BUILDINGS AND USES.

(a) Main Uses.

(1) Governmental. Municipal, County, State, Federal and other public buildings and uses principally for administrative functions and use by the public.

(2) Civic. Publicly owned art galleries, museums, club and community centers, memorials, cemeteries, libraries and lodge halls.

(3) Educational. Primary and secondary public, private or parochial schools, public or private colleges or universities.

(4) Recreational. Public parks, recreation fields and playgrounds, gymnasiums and auditoriums, stadiums, pools and theaters.

(5) Religious. Churches, synagogues and tabernacles.

(Ord. 93-2. Passed 4-5-93.)

(b) Accessory Uses.

(1) Accessory off-street parking and loading facilities as required by this chapter.

(2) Signs as regulated by Chapter 1145.

(3) Storage buildings and comfort stations.

(4) Structures and facilities for active or passive recreation.

(5) Residences for custodians, guards, or employees.

(6) Maintenance and heating facilities.

(7) Exterior condensers of central air conditioning systems.

(8) Direct broadcast satellite receiving stations, and other telecommunications structures as set forth in Section 1113.04(a).

(Ord. 95-67. Passed 10-16-95.)

1113.03 YARD REGULATIONS.

(a) All main uses permitted in a Civic District shall have the following minimum required yards:

Front - 30 feet

Rear - 50 feet.

(b) A side yard is not required. The Planning and Design Commission may require landscape buffering or landscape screening in accordance with Section 1113.09 and Section 1149.05 along a side or rear lot or parcel line provided that any wall or any fencing whether incorporated as part of a landscape buffer or whether used as a landscape screen along the side lot line of the front yard of an adjacent Residential District or any other zoning district with an existing residence thereon shall not be constructed, erected or installed closer than twenty feet from the right-of-way line. Except as otherwise specifically permitted or as specifically required by the provisions of this chapter, trees, shrubs, yard structures and other landscape features shall not be constructed, erected or installed closer than twenty feet from the right-of-way line. Required front yards shall not be used for parking. Open parking areas in side or rear yards shall not be closer than six feet to an adjoining lot line of a Residential District or any other zoning district with an existing residence thereon.

(c) Direct broadcast satellite receiving stations shall be located only in rear yards subject to the provisions and requirements of Section 1117.17, or on the roof of a main or accessory building subject to the provisions and requirements of Section 1113.04.
(Ord. 95-67. Passed 10-16-95.)

1113.04 HEIGHT REGULATIONS.

(a) The height of any main or accessory building shall not exceed sixty feet in a Civic and Recreational District. Church spires, cupolas, domes, towers and monuments shall not exceed 100 feet above finished grade. In a Civic and Recreational District stacks, water tanks, elevator penthouses, bulkheads, skylights, ventilators, air conditioning and temperature control equipment, other mechanical appurtenances relating to the operation of the main or accessory building itself and penthouse enclosures for mechanical appurtenances erected upon or constituted as an integral part of the main or accessory building itself and not used for human occupancy may be erected to a height not to exceed fifteen feet above the finished roof line of the building.

Wireless, broadcasting, receiving and transmitting towers, radio and television antennae (except as provided in subsection (b) hereof), chimneys, flag poles and other like structures may be erected above the height limits specified herein, subject to the following constraints:

(1) The height from the base of such structure, or the uppermost point at which such structure is attached to a main or accessory building, to the top of such structure shall not be greater than the horizontal distance from the base of such structure to the nearest adjoining property line.

(2) A variance approved by the Board of Zoning and Building Appeals shall be required for any such structure over thirty-five feet in height if detached from the main building, or over fifteen feet in height above the uppermost point of attachment to the main building.

No wireless, broadcasting, receiving and transmitting tower and no radio or television antennae shall be erected in a front yard. Any wireless, broadcasting, receiving and transmitting tower and any radio or television antennae may be erected only in a side yard or in a rear yard in accordance with the provisions of this section.

Wireless, broadcasting, receiving and transmitting towers, radio and television antennae, chimneys, flag poles and other like structures shall be designed and constructed to withstand windloads in accordance with ANSI (American National Standards Institute) A 58.1. Structural calculations and details for the installation shall be furnished to the Division of Building.

(b) A direct broadcast satellite receiving station may be placed on the roof of a main or accessory building provided all of the following conditions are satisfied:

(1) The receiving station is not linked or otherwise connected to receivers which are not located within the same premises as the antenna;

(2) The highest point of the satellite receiving dish shall not exceed three feet greater than the dimension of the dish above the plane upon which it is mounted which shall include the height of any base upon which the dish is mounted;

(3) The satellite receiving dish shall not exceed nine feet in dimension;

(4) The satellite receiving dish shall be constructed and anchored in such a manner as to withstand wind loads in accordance with ANSI (American National Standards Institute) A 58.1. Structural calculations, including calculations certifying to the capability of the roof to support the dish and the base, and details for the installation shall be furnished to the Division of Building;

(5) The satellite receiving dish shall be affixed in a permanent fashion such that it would only be removable for repair or replacement;

(6) The dish shall not be placed closer than twenty feet from any roof edge;

(7) Only one such station shall be permitted at any one time on the same building;

(8) No lettering, numerals, symbols, pictorial signs or designs exceeding one-half inch in any dimension shall be permitted on any surface.

(Ord. 95-67. Passed 10-16-95.)

1113.05 ACCESSORY PARKING FACILITIES REQUIRED.

Required off-street parking facilities, including access driveways, accessory to an existing use, and those required as accessory to a use created or a building constructed or altered hereafter, shall be continued and maintained in operation, and shall not be reduced below the requirements during the period that the main use is maintained. Failure by the owner or owners to supply such off-street parking shall cause the Building Commissioner to revoke the occupancy of a sufficient area in order to bring the facility into conformity with parking requirements.

(a) Whenever the use of an existing building is changed to a use requiring more parking facilities, or whenever an existing building is altered and there is an increase in seating capacity or floor area, appropriate additional parking facilities shall be provided on the same lot or on an adjacent lot under the same ownership.

(Ord. 84-93. Passed 6-17-85.)

(b) Permitted main uses may share up to, but not more than, fifty percent (50%) of their off-street parking requirements in an adjoining General Business District A or B including adjoining parking areas which are accessory to permitted General Business "A" or "B" uses which normally have different hours of operation.

(Ord. 95-67. Passed 10-16-95.)

(c) Where there is a sharing of parking facilities as permitted by subsection (b) hereof, there shall be a written agreement covering such indefinite period of time as may be required by the Planning and Design Commission whereby the owner of the land on which the facilities are to be located shall be bound by a long term lease or by a covenant filed and recorded in the Office of the County Recorder requiring such owner, his heirs, successors or assigns to make such parking facilities available to such use.

(Ord. 93-2. Passed 4-5-93.)

1113.06 MEASUREMENT STANDARDS.

(a) "Accessory parking space" means an open or enclosed area (garage) directly accessible from a public street for parking of motor vehicles of owners, patrons, occupants, employees, customers or tenants of the main building or use. Each space shall be directly accessible from a drive or aisle, and shall have a minimum rectangular dimension of not less than nine feet in width and eighteen feet in length for ninety degree parking; nine feet in width and twenty-two feet in length for parallel parking; ten feet in width and eighteen feet in length for sixty degree parking and twelve feet in width and eighteen feet in length for forty-five degree parking, exclusive of all drives, aisles, ramps and other circulation areas, and determined from an accurate plan of the area.

(b) “Employees", wherever the parking requirement is based on employees, means the maximum number of employees on duty on the premises at one time or on any two successive shifts, whichever is the greater.

(c) "Seating capacity" means the number of seating units installed or indicated on plans for places for assembly; where not indicated on plans, it shall be assumed that a seating unit shall occupy six square feet of floor area exclusive of all aisles or areas used for assembly.

(d) Where the computation of required spaces results in a fractional unit, one additional space shall be provided. (Ord. 93-2. Passed 4-5-93.)

1113.07 SCHEDULE.

	Nature of Facility	Spaces Required
(a)	Governmental. Municipal, County State, Federal and other public assembly buildings.	1 per 4 seats of area used for public plus 1 per each 2 employees
(b)	Civic. Art galliers, libraries museums, churches, synagogues and tabernacles, club and community centers.	1 per 3 seats of seating capacity of area used for assembly plus 1 per each 2 employees
(c)	Educational. Public and private and parochial primary and secondary schools, public, private or parochial colleges or universities.	1 per 3 seats of seating capacity of area used for assembly plus 1 space per faculty and staff member
(d)	Places of Assembly. Auditoriums, lodge halls, theaters, gymnasiums, pools, stadiums.	1 per 3 seats of seating capacity of area used for public assembly

(Ord. 93-2. Passed 4-5-93.)

1113.08 ACCESSWAYS TO PARKING AREAS.

The location and width of entrance and exit driveways to parking facilities shall be planned to interfere as little as possible with the use of nearby property and with pedestrian and vehicular traffic on adjacent streets. Whenever possible, the center line of the access driveways on the frontage street shall be at least forty feet from the right-of-way lane of the nearest intersecting street and spaces at not less than 120 feet intervals, measured from the center line of the driveways.

Parking areas shall be designated so that vehicles can be driven forward into the street. Those of fifteen spaces or less shall have at least one single-lane driveway with a maximum of two single-lane or one two-lane driveway. Those of sixteen spaces or more shall have at least two single-lane or one two-lane driveway. Each accessway to a parking area of sixteen spaces or more shall be limited to two lanes.

The width of driveways, measured at the setback line, shall conform to the following schedule. At no point where adjoining a public sidewalk shall the maximum widths be exceeded.

Lanes	Minimum (feet)	Maximum (feet)
1	10	12
2	18	24

The angle of intersection between the driveway and the street shall be between sixty degrees and ninety degrees. The radius at the edge from the apron shall be at least twelve feet, twenty feet recommended, so that a motor vehicle entering or leaving may not obstruct vehicles in other traffic lanes in the driveway or in the curb lane of the street.
(Ord. 84-93. Passed 6-17-85.)

1113.09 SURFACE IMPROVEMENTS; PARKING.

(a) Proposed and existing parking areas and access driveways shall be improved with asphalt concrete or portland cement concrete or other impervious surface and shall be so graded and drained into proper inlets so that all water is drained within the lot on which the parking area or driveway is located in such manner that water shall not drain across other public or private property.

(b) Parking areas shall be so arranged and marked as to provide for orderly and safe parking and storage of vehicles in accordance with the design standards in this chapter, and shall be improved, except at entrances and exits with guard rails, curbs or other devices to define parking spaces or limits of paved areas, so as to prevent encroachment of vehicles into adjacent areas of public ways, yards or setbacks required by the Zoning Code, and so as to regulate the flow of traffic within the lot.
(Ord. 84-93. Passed 6-17-85.)

(c) The Planning and Design Commission may require landscape buffering or landscape screening to be provided on the parking area property to insulate the parking areas and driveways from a side or rear lot line of other property in Residential Districts or any other zoning district with an existing residence thereon. Landscape buffering may include, but shall not be limited to, evergreen trees and bushes, compact hedges, shrubs, earth berms or a combination thereof. Landscape screening shall include plant material or other nonliving durable material, including, but not limited to, walls, berms or substantially solid decorative wood fencing. Where trees and shrubs are used to provide a landscape buffer, such shall provide a year-round state of being substantially impervious to rays of light. It shall be acceptable to incorporate fencing as part of the landscape buffer where noise and lights create a need that such landscape buffer include fencing. Fencing may also be used to provide landscape screening. Wherever used, fences shall be of a decorative style and type. Walls and berms shall be used only in the most unusual cases.

The desired buffering or screening effect shall be achieved not later than twelve months after the initial installation. The Planning and Design Commission may extend this twelve month period of time when a hardship would be created because of expected growth or material shortages, but such extension shall not be for more than two years from the time the initial installation was to have been or has been installed. All buffering and screening requirements imposed under the provisions of this subsection shall be installed and constructed before a certificate of occupancy is issued for a new building or structure. No existing building, structure or vehicular use area adjoining a Residential District or any other zoning district with an existing residence thereon shall be expanded, altered or modified until the plans are submitted by the owner or developer to the Planning and Design Commission for its determination as to whether the change adversely affects any properties in a Residential District or any other zoning district with an existing residence thereon. The Commission, after its review, shall require, where necessary, the establishment of a landscape buffering area or the installation of landscape screening, or a revision of a previously established buffered area or screening. The width and height of the landscape buffer or landscape screening shall be determined by the Planning and Design Commission provided, however, that the maximum height of fencing, whether incorporated as part of the landscape buffer or whether used as a landscape screen, which may be permitted shall be seven feet above finished grade. The owner or developer shall be responsible for the maintenance and replacement, if necessary, of the landscape buffer or landscape screening.

Owners or developers of off-street parking areas shall be required to include a plan for buffering or screening the parking areas and driveways, including a detailed description and sketch of the landscape buffer or landscape screening which visually and verbally outlines the nature and the effect of the proposed landscape buffer or landscape screening. A certificate of occupancy shall not be granted until the buffering or screening requirements have been completed. If completion, in the case of living materials, is delayed because of the growing season, a temporary permit to occupy may be granted by the Building Commissioner. Such delay shall not extend beyond the next growing season following the date upon which the certificate of occupancy is requested. (Ord. 95-67. Passed 10-16-95.)

(d) The Planning and Design Commission may require landscaping of lands to break up the expanse of pavement for a parking area of twenty or more vehicles to carry out the objectives of this Zoning Code and to preserve the use and enjoyment of adjoining property. (Ord. 84-93. Passed 6-17-85.)

1113.10 APPROVAL OF OFF-STREET PARKING FACILITIES.

Detailed drawings of off-street parking facilities shall be submitted to the Planning and Design Commission for review and approval in accordance with all the provisions of this chapter before a building permit or certificate of occupancy may be issued. Such drawings shall show the number of spaces and locations, dimensions and descriptions of all features as set forth in this chapter. (Ord. 84-93. Passed 6-17-85.)

1113.11 ILLUMINATION OF OFF-STREET PARKING FACILITIES; ACCESSWAYS.

Areas used to provide required off-street parking, and accessways thereto, shall be illuminated whenever deemed necessary by the Planning and Design Commission to protect the public safety. Illumination shall be reduced in intensity after the close of business of the main use or uses. Lighting fixtures shall be so designed and located as not to reflect direct rays of light upon adjoining residential properties and streets or cause a glare hazardous to pedestrians or drivers of motor vehicles on adjacent public streets, and shall be subject to the approval of the Commission. (Ord. 84-93. Passed 6-17-85.)

1113.12 SURVEY AND APPROVAL OF THE CITY ENGINEER REQUIRED.

The City Engineer shall make a survey of the public sanitary and storm sewers to be affected by the proposed building or use set forth in the application for a building permit and shall forward his approval to the Building Commissioner prior to the issuance of a building permit. (Ord. 95-67. Passed 10-16-95.)

1113.13 APPLICATION AND DESIGN OF PARKING AREAS.

(a) Application for Providing Facilities. An application for a building permit pertaining to constructing a building or parking facility or for a certificate of occupancy for a change in use of land or a building shall include a site plan drawn to scale and fully dimensioned, showing the proposed design of the parking area to be provided in accordance with the space requirement schedules that are a part of this Zoning Code.
(Ord. 84-93. Passed 6-17-85.)

(b) Determination of Required Parking Facilities. The minimum number of spaces required for accessory off-street parking shall be determined by applying the measurement standards in Section 1113.06, the standards for designing parking areas in subsection (c) hereof, the schedule of accessory parking requirements for the various uses in Section 1113.07 and any other applicable provisions of this Zoning Code.

The Planning and Design Commission may modify the parking requirements of Section 1113.07 under such terms and conditions as it determines will protect the public interest where it finds based upon the factual evidence presented that due to the nature of the particular use such requirements will not be adequate to provide sufficient parking or where the strict application of the requirements will result in an excessive amount of parking related to the particular use.
(Ord. 95-67. Passed 10-16-95.)

(c) Design Standards. The plan of the parking spaces of a parking area included with an application to construct a building or parking area, or change in use, shall be designed, dimensioned and the number of spaces determined in accordance with such standards for designing parking areas as may be adopted by the Planning and Zoning Commission. Design standards for enclosed parking areas and garages, shall be in accordance with other provisions of the Zoning Code.

(d) Handicapped parking spaces shall be provided in accordance with the provisions of the Ohio Basic Building Code.
(Ord. 84-93. Passed 6-17-85.)

1113.14 REQUIRED TRASH AREAS.

All civic and recreational uses that provide trash and/or garbage collection areas shall be enclosed on at least three sides by a solid wall or fence of at least four feet in height if such area is not within an enclosed building or structure. Provisions for adequate vehicular access to and from such area or areas for collection of trash and/or garbage as determined by the Planning and Design Commission shall be required.
(Ord. 84-93. Passed 6-17-85.)

1113.15 DEPOSIT FOR SURVEY OF PUBLIC SANITARY AND STORM SEWERS.

A deposit by the applicant for a building permit shall be made with the Finance Director in the amount of one hundred fifty dollars ($150.00) to cover the cost and expense of such survey of public sanitary and storm sewers. The cost and expense of such survey shall be paid by the City from such deposit. (Ord. 85-65. Passed 9-3-85.)

CHAPTER 1117
Residential One and Two-Family Districts

1117.01 Use regulations.
1117.02 Schedule of permitted buildings and uses.
1117.03 Temporary uses.
1117.04 Removal of soil.
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CROSS REFERENCES

Swimming pools - see Ohio Administrative Code Ch. 3701-31; BLDG. Ch. 1321
Dwelling definitions - see P. & Z. 1105.06
Family defined - see P. & Z. 1105.07
Home occupation and home professional office defined - see P. & Z. 1105.10
Senior Citizen Housing District - see P. & Z. Ch. 1139

1117.01 USE REGULATIONS.

Buildings and land shall be used, and buildings shall be erected, altered, moved or maintained only for the uses set forth in the schedules and use regulations of this chapter.

(a) Main buildings and uses, listed in Section 1117.02, shall be permitted as the principal building, use or activity of a zoning lot located only in a district in which it is specifically permitted.

(b) Accessory buildings and uses, listed in Section 1117.02, shall be permitted as a subordinate building or use, which is clearly incident to, and located on the same lot, as the main building or use. These shall be located only in a district in which specifically permitted.
(Ord. 67-17. Passed 5-15-67.)

1117.02 SCHEDULE OF PERMITTED BUILDINGS AND USES.

(a) Main Uses.

District	Use
R1F-75 R1F-60 R1F-50 R1F-40	One-family dwellings with or without attached garage
R2F	(1) One-family dwellings with or without attached garage (2) Two-family dwellings with or without attached garage

(Ord. 92-14. Passed 6-15-92.)

(b) Accessory Uses.

(1) One detached private garage not exceeding seven hundred twenty-five (725) square feet, outside foundation measurements, shall be permitted subject to the area requirements in Section 1117.09 and the yards for accessory building requirements in Section 1117.15. The maximum permitted size of a detached private garage shall be reduced in an amount equivalent to the square feet in floor area of a permitted utility building or like permitted accessory building erected or to be erected on the same lot.
(Ord. 96-83. Passed 3-3-97.)

(2) Accessory off-street parking as regulated by Section 1117.21.

(3) Private garden and recreation uses and structures, pools, fences, walls as provided in Section 1117.17.

(4) The renting from a resident family of not more than two rooms to not more than two roomers unrelated to each other by blood, marriage, adoption or guardianship is permitted, provided that the exterior character of the dwelling is not changed, no separate cooking facilities are maintained and off-street parking is provided as set forth in Section 1117.21.

(5) Home occupations: Home occupations shall be permitted in accordance with the provisions of this subsection.

A. Home professional offices, and office space for businesses, services and home occupations provided that:

1. Such office space is used only by members of the family residing within the dwelling and does not involve the employment of any person not a resident of the household; and

2. The space used does not occupy more than twenty percent (20%) of the floor area of the dwelling; and

3. The residential character of the dwelling exterior or accessory building is not changed; and

4. No equipment or machinery is employed or used in conducting such business, service, profession or occupation which shall create dust, noise, odors, glare, vibrations or electrical interferences beyond the lot and any equipment or machinery otherwise employed or utilized is limited to typewriters, adding machines and other similar office equipment; and
5. The activity does not involve the delivery of materials by any motor vehicle other than a passenger automobile; and
6. The activity does not involve the parking of more than two vehicles at any one time by patrons, clients or customers; and
7. Except as otherwise permitted by Chapter 1145, the operation of such activity is not advertised by any sign on the dwelling or lot; and
8. No item shall be manufactured on the premises or retail sales made or materials displayed from the premises.

B. Child day care service as defined and permitted by Section 1149.18.

(6) Private swimming pools.

A. "Private swimming pool" means a pool, pond, lake or open tank not located within an enclosed building, containing at least one and one-half feet of water at any point, and which is maintained by:
1. An individual for the exclusive use of his household and guests;
2. The owners or managers of a multi-family development for the exclusive use of tenants and guests, and operated without charge for admission and not operated for profit; or
3. Home associations for the exclusive use of members and guests.

B. A private swimming pool shall be permitted in a residential district provided that:
1. It is located on the same lot as the building or buildings served;
2. In a one and two-family district, the pool is located only in the rear yard and is not less than ten feet from any side lot line and eight feet from the rear lot line;
3. It is located on common land under the control of a homes association.

C. Safety requirements, construction, maintenance and operation of swimming pools shall be in accordance with Chapter 1321 of the Building Code.

(7) Vehicular recreational equipment as regulated by Sections 1117.07 and 1117.09.

(8) Central air conditioning condensers shall be permitted in any of the residential districts. Such units shall be permitted in side or rear yards subject to Section 1117.11.

(9) Signs shall conform to Chapter 1145 which established an exterior and interior sign code.

(10) A utility building shall be permitted in a rear yard for the storage of recreational equipment, garden and yard tools, swimming pool maintenance equipment and general household items provided that such building is not more than 144 square feet in floor area, not more than ten feet six inches (10' 6") in height and subject to the area requirements in Section 1117.09 and to the yards for accessory building requirements in Section 1117.15. (Ord. 92-14. Passed 6-15-92.)

1117.03 TEMPORARY USES.

(a) Temporary office, storage and other structures, of contractors or builders, are permitted in One and Two-Family Residential Districts, provided such uses are deemed necessary to the development of the premises and provided a building permit has been obtained. Such structures shall be removed within thirty days after completion of work on the premises of if construction is not pursued diligently.

(b) Temporary living space, or those spaces used until the main dwelling is completed, and generally located in basements, garages or nonstructures such as trailers, shall not be permitted in any One or Two-Family Residential Districts. A dwelling, however, may be temporarily occupied on or above the ground floor, provided:

(1) The exterior of the dwelling is enclosed;

(2) The plumbing, heating and electrical wiring is installed and safely enclosed;

(3) The walls and ceiling of the principal rooms are covered with the basic wall material; and

(4) A temporary certificate of occupancy is obtained for a period not to exceed 120 days.

(Ord. 67-17. Passed 5-15-67.)

1117.04 REMOVAL OF SOIL.

Soil, sand or gravel shall not be stripped or removed in One and Two-Family Districts except excess soil, sand or gravel resulting from excavation or grading in connection with the construction or alteration of a building for which a building permit has been issued.
(Ord. 67-17. Passed 5-15-67.)

1117.05 ACCESS TO LESS RESTRICTIVE AREAS.

Driveways, walks or other accessways to any use which is not permitted in the district shall be prohibited. (Ord. 67-17. Passed 5-15-67.)

1117.06 OPEN STORAGE PROHIBITED.

Garden tractors, snow plows, similar equipment for dwelling home use and all other equipment and supplies, shall be stored in an enclosed structure at all times when not in use. (Ord. 74-47. Passed 12-15-75.)

1117.07 OUTDOOR STORAGE AND PARKING OF RECREATIONAL EQUIPMENT; PROHIBITIONS AND EXCEPTIONS; PERMIT REQUIREMENTS.

(a) Definitions. As used in this chapter; "recreational equipment" means and includes the following:

(1) "Travel trailer" means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, permanently identified travel trailer by the manufacturer.

(2) "Pick-up camper" means a structure designed primarily to be mounted on a pick-up truck chassis and with sufficient equipment to render as suitable for use as a temporary dwelling for travel, recreational and vacation uses.

(3) "Truck camper" means a pick-up truck with a slide in camper mounted on it.

(4) "Motor home" means a portable dwelling designed and constructed as an integral part of self-propelled vehicle.

(5) "Folding tent trailer" means a canvas folding structure mounted on wheels and designed for travel and vacation uses.

(6) "Boats" and "boat trailers" includes boats, floats, rafts and snowmobiles, plus the normal equipment to transport the same on the highway.

(b) Outdoor Parking and Storage on Private Property, Exceptions and Permit Requirements. No person shall park or store, or permit to be parked or stored, recreational equipment upon any lot or land designated within the boundaries of the residential one and two-family districts except as hereinafter provided. Any owner of recreational equipment may park or store such equipment not in excess of twenty-eight feet overall length, eight feet in width and eleven feet in height, such height being measured from ground level, only on property where he is living in accordance with the following conditions:

(1) Under no circumstances shall any recreational equipment have fixed connections to electricity, water, gas or sanitary sewer facilities, nor shall such equipment be used at any time, while parked or stored on any residential lot within the City, for living, overnight sleeping, storage or housekeeping purposes.

(2) All recreational equipment shall be stored or parked as far from side and rear lot lines as practicable, and in no case less than three feet from such lines and not in front of the extension of the rear foundation line of the main dwelling or structure. Loading and unloading of such vehicle or equipment shall be done in the rear yard only, and then placed in its approved location as permitted as soon thereafter as possible but not to exceed twenty-four hours thereafter.

(3) All recreational equipment shall be kept in good repair and carry a current year's license plate and registration where required by law.

(4) No person shall make or cause to be made major repairs, alterations or conversions of recreational equipment unless such repair, alteration or conversion is done in a completely enclosed garage. Repairs of a major type are herein defined to include, but not limited to spray painting, body, plumbing, heating, spring and frame repairs, radiator repair, major overhauling of engines requiring the removing of engine cylinder head or crankcase pan or removing the motor and conversion of any other type of motor. The conversion of any vehicle of a size larger than stipulated in subsection (b) hereof is expressly prohibited.

(5) No materials of any nature may be stored beneath such recreational vehicle.

(6) When such vehicle is parked or stored outside of a garage in such approved or permitted location, the wheels shall be left on such vehicle or vehicle conveyance so that it may be moved in case of an emergency.

(7) If the owner or person in charge of such vehicle as described in subsection (a) hereof, is a guest of the occupant or occupants of such property, it shall be the responsibility of the occupant to obtain prior approval from the Building Commissioner for such vehicle or equipment to be parked or stored. Such approval shall be limited to fourteen days in the aggregate. Parking of such guest vehicles as herein described shall not be permitted on any public street.

(8) No recreational vehicle shall be parked or stored unless it is titled to, leased or used exclusively by one of the permanent occupants of the residence where the recreational vehicle is located, or has otherwise conformed to subsection (b)(7) hereof. (Ord. 76-42. Passed 10-18-76.)

(9) All owners of recreational vehicles and equipment who desire to store their vehicles or equipment as heretofore described, outside of a garage shall apply for a permit to do so. Two plot plans showing the size and location of all structures on the lot, with the proposed location of the vehicle or equipment shall be submitted. The dimensions of such vehicle or equipment shall be included. The permit fee shall be as set forth in Chapter 1307. The criteria used for location of outdoor storage shall include but is not limited to:

A. Location of vehicle parking area to adjacent residences.

B. View of parking area from the street and neighboring properties.

C. Use of existing or natural screening, such as, building walls, fencing, evergreen planting or shrubbery.

The Building Division shall review such plans for approval and based on its determination, a permit shall be issued for location of recreational vehicles and equipment.

(Ord. 87-27. Passed 9-8-87.)

(10) All new residents of the City, who have or intend to purchase such recreational equipment, as herein defined, as well as those residents who may acquire such vehicles or equipment after the effective date of this chapter, shall be bound by all provisions herein enacted with the following exception: providing such residents and/or property owner may store or park such vehicle or equipment as provided in subsection (b)(2) hereof, they shall have sixty days of their residency or acquisition of such vehicle or equipment, to apply for a permit for such parking or storage location as herein provided.

(c) In such instances where the owner or person in charge of such vehicles or equipment as described in subsection (a) hereof, being unable to park such vehicle or equipment in accordance with the requirements of subsection (b) hereof, then in that event such owner or person in charge shall be permitted for the purpose of loading and unloading such vehicle to park such vehicle for a period of twelve hours in his driveway without securing prior approval of the Division of Building, and for a period not to exceed five forty-eight hour periods per calendar year with the approval of the Division of Building. Parking of such vehicle as herein described shall not be permitted on any public street.
(Ord. 76-42. Passed 10-18-76.)

1117.08 AREA REGULATIONS.

Land and buildings shall be erected and used in accordance with the following area regulations:

(a) There shall be not more than one dwelling on a lot. No dwelling shall be erected to the rear of another building on the same lot. There may be one or more accessory buildings on the same zoning lot with a main building.

(b) The width of a zoning lot shall be not less than the width required for the type of dwelling permitted in the district in which the lot is located, as set forth in Section 1117.09, and shall be measured on the building line. Each zoning lot shall abut upon a dedicated street for the required lot width, except, on curved streets, the width at the front lot line may be less but shall be at least sixty percent of the width required at the building line.

(c) A parcel of land may be divided into two or more zoning lots, provided all lots resulting therefrom shall conform to all area and width regulations of the district in which it is located. A lot of record, whether vacant or occupied, which was owned separately from adjoining lots on the effective date of this Zoning Code, and which has an area or width equal to, or less than, that required by these regulations shall not be further reduced in any manner except by its entire conveyance to adjacent owners.
(Ord. 67-17. Passed 5-15-67.)

1117.09 SCHEDULE OF AREA REQUIREMENTS.

	Lot area per dwelling unit (square feet)	Width of lot at building line (feet)	Maximum percent of lot covered by buildings
R1F-75	11,250	75	40
R1F-60	7,800	60	35
R1F-50	7,500	50	35
R1F-40	5,000	40	35
R2F	7,500	50	35

(Ord. 07-74. Passed 3-3-08.)

1117.10 LOT OF RECORD OF INSUFFICIENT AREA AND/OR WIDTH.

A lot of record on the effective date of this Zoning Code, or any amendment thereto, which does not comply with the area or width of lot regulations of the district in which it is located and is thereby nonconforming, may be used as follows:

(a) If occupied by a building, such building may be maintained, repaired or altered provided front, rear and side yards of less dimensions than required for the district may not be further reduced.

(b) If vacant, the lot may be used as site for a dwelling, provided:

(1) Rear yard requirements of the district are complied with;

(2) Side yards are not less than three feet on one side and eight feet on the opposite side where the lot has a frontage of less than fifty feet; or five feet and ten feet where the frontage is fifty feet or more; and

(3) Front yards shall not be less than the distance to the established setback of existing residences on the same side of the street and within the same block. (Ord. 67-17. Passed 5-15-67.)

1117.11 YARD REGULATIONS.

Land and buildings shall be used and erected in accordance with the following yard regulations

(a) The front yard depth of a zoning lot shall be measured from the front lot line to the nearest exterior wall of the building as set forth in Section 1117.12.

(b) Two side yards shall be provided for every one and two-family dwelling on a zoning lot. Widths of such yards of a lot shall be not less than as set forth in Section 1117.12, except: where side yards are narrower than required for the district in which the building and lot are located, the building may be maintained or altered but may not be enlarged in width unless the total width of the side yards complies with the dimensions set forth in Section 1117.12.

(c) The minimum and maximum side line requirements as herein provided shall be respectively on the same side of the lot as the majority of existing properties on the same side of the street within the same block.

(d) Yards on corner lots shall be not less than the required setback from the front lot line at the front, and the width of the side yard on the street side shall be not less than twenty percent of the width of the lot at the building line.
(Ord. 67-17. Passed 5-15-67.)

1117.12 SCHEDULE OF YARD REQUIREMENTS.

(a) Except as provided in Section 1117.10(b) and in subsection (b) and (c) hereof, the following shall be the schedule of yard requirements:

	Minimum front yard depth (feet)	Minimum side yard width (feet)	Rear yard depth (feet)
R1F-75	40	7-1/2 & 10	28
R1F-60	40	5 & 10	28
R1F-50	40	5 & 10	28
R1F-40	40	3 & 8	28
R2F	40	5 & 10	28

(Ord. 07-74. Passed 3-3-08.)

(b) Where the minimum front yard depth of residential buildings between two successive intersecting streets is less than specified in subsection (a) hereof, for the respective district, the residential buildings shall be considered as conforming with respect to the aforesaid minimum front yard depth.

(c) Where fifty percent (50%) or more of the street frontage between two successive intersecting streets is occupied by residential dwellings of the type permitted by Section 1117.02 which have an average front yard depth greater than that required by subsection (a) hereof, such average front yard depth shall be the minimum required front yard depth for any lot between such intersecting streets.
(Ord. 92-14. Passed 6-15-92.)

1117.13 YARD REGULATIONS; GROUP DEVELOPMENT.

In order to encourage greater attractiveness, flexibility and fuller utilization of yard spaces, the following planned variations to yard regulations may be permitted with a group of three or more contiguous one or two-family dwellings, designed or developed as a unit: the depth of front yards may be varied by increasing or decreasing the setback, provided any setback line is increased or decreased not more than five feet from the established building line, and the average depth of the front yards for the entire unit development is not less than the minimum depth required for front yards in the district in which they are located.
(Ord. 67-17. Passed 5-15-67.)

1117.14 REQUIRED YARDS TO BE MAINTAINED.

The required yards surrounding an existing building shall not be separated in ownership from that portion of the lot upon which the building is located, and no part shall be considered as providing a yard for any other existing building on the same or adjacent lot.

A yard shall not be reduced to less than the required dimensions for the district in which it is located by enlarging an existing building, and a yard of less than the required dimensions shall not be further reduced. Every required yard shall be open and unobstructed from the ground upward except for accessory buildings as set forth in Section 1117.15, and permitted projections as set forth in Section 1117.16.

(Ord. 67-17. Passed 5-15-67.)

1117.15 YARDS FOR ACCESSORY BUILDINGS.

On an interior lot, an accessory building may be located in a rear yard but not less than three feet from a rear or side lot line, except an existing accessory building located not less than eighteen inches from a side or rear lot line may be altered or expanded.

On a corner lot, an accessory building shall be set back from the side yard lot line on the street side not less than forty percent of the width of the lot at the building line.

(Ord. 92-14. Passed 6-15-92.)

1117.16 PROJECTIONS INTO YARDS.

A projection is that part or feature of a building which extends outside of the enclosing surfaces into a yard. Required front, side and rear yards shall be open and unobstructed from the ground to the sky except for the following:

(a) Architectural features, including a balcony, chimney, cornice or solid overhang, not more than ten feet wide, may project not more than three and one-half feet into a required front yard, and not more than three feet into a required side yard, provided the projection shall be not less than four feet, vertical projection, from any side lot line, and the distance from such lot line shall be increased two inches for each foot the feature exceeds ten feet in width.

(b) Entrance features, including a platform, steps, landing, terrace or other feature not extending above the first floor of a building, may project not more than eight feet into a required front yard, and not more than three feet into a required side yard, provided such projection is not less than three feet from any side lot line.

(c) Shelters, including a roofed, but unenclosed porch, carport and other similar structure or part thereof, shall comply with all yard regulations.

(d) Shading devices:

(1) An awning which is retractable may project into a required front, side or rear yard but not less than three feet from any side lot line.

(2) An awning which is not removed seasonally, and not more than ten feet wide, may project into a required front, side or rear yard not more than three feet, provided such projection is not less than three feet from any side lot line, and the distance shall be increased two inches for each foot the awning exceeds ten feet in width.

(3) A trellis, louvers and similar horizontal shading devices, more than seventy-five percent of the area open may project into a required front or rear yard not more than eight feet, and may project into a side yard to within three feet of any side lot line.
(Ord. 67-17. Passed 5-15-67.)

1117.17 YARD STRUCTURES AND LANDSCAPE FEATURES.

(a) Purpose. The purpose of this section is to establish specific regulations controlling the use of yard structures including fences, trellises, walls, pools and outdoor fireplaces and landscape features, including trees and shrubs whereby a lot owner may have the privilege of privacy and of landscape design with due consideration to the environment of other lots, the appearance of the community and the safety of the public and the individual.

(b) Scope and Application. The provisions of this section shall apply to any new yard structure and, where applicable, to any existing yard structure. The provisions of this section shall not apply to planting of plants, trees and shrubs except as specifically provided in this section. Retaining walls erected pursuant to Section 1317.03 are specifically excluded from the regulations and provisions of this section. The provisions of this section shall not be construed to apply to the foundation planting of plants, trees and shrubs.

(c) Definitions.

(1) "Fence" means any permanent enclosing structure which encloses or partially encloses any yard or part of any yard.

(2) "Fifty percent (50%) open to through passage of light and air" as used in this section means where the construction of the fence consists of two separate planes of material, either vertical or horizontal, they shall be spaced at equidistant intervals where the total open area is at least equal to or exceeds the area consisting of the planes of material when viewed perpendicular to the elevation of the fence, where the two planes do not overlap, and where the planes are separated from each other by a minimum of one and one-half inches of space and a maximum of three and one-half inches of space.

(3) "Yard structure" includes fences, trellises, walls, pools and outdoor fireplaces.

(d) Permit Required. No person shall construct, erect or install any yard structure without first making a proper application to and obtaining a permit from the Division of Building. (Ord. 94-76. Passed 3-20-95.)

(e) Yard Structure and Yard Landscape Feature Regulations.

(1) General. Yard structures shall be designed to be aesthetically attractive. Fences shall present a finished side to the adjoining property. Yard structures shall be maintained in good repair and appearance. Except as may otherwise be provided in this section, the surface of any fence or wall shall be constructed so fence or wall is not solid. Five-sixths (5/6) of the vertical height may be solid, the remaining one sixth (1/6) shall be at least fifty percent (50%) of each lineal foot open to through passage of light and air. (Ord. 02-35. Passed 7-22-02.)

(2) Any yard.

A. The requirements for swimming pool protective barriers shall take precedence when such requirements are in conflict with the provisions of this section.

B. Barbed wire and electrified fences shall not be permitted except as provided in Section 547.08(b) of the Codified Ordinances.

C. Structures including floodlights, lampposts, garden lighting and other outdoor lighting fixtures, searchlights and loud speakers shall not be constructed, erected, installed, or used in any manner that constitutes a public nuisance or that causes a public hazard or a nuisance to the occupants of other premises.

(Ord. 94-76. Passed 3-20-95.)

(3) Front yards. No yard structure shall be constructed, erected or installed in a front yard other than an ornamental fence adjacent to the front entrance walkway. Such an ornamental fence shall not exceed four feet in height above finished grade and shall be placed no closer than thirty-five feet from the front lot line. An ornamental fence for the purposes of this subsection is defined as a post or posts interconnected and in a manner to be self supporting and shall not be connected to another fence. This ornamental fence shall be at least thirty-five percent (35%) of each lineal foot open to through passage of light and air (typical types--picket/crossback/split rails, etc.). Individual trees, shrubs and plants shall be permitted in a front yard provided such trees, shrubs and plants are not planted, arranged or growing so as to enclose or partially enclose a front yard or a part of a front yard.

(Ord. 02-35. Passed 7-22-02.)

(4) Rear yards. Along a rear lot line or a side lot line of a rear yard, a fence shall be permitted to a height not to exceed six feet above finished grade. At least one gate or a fence opening of a minimum of thirty-six inches in width shall be provided in order to permit emergency access to the rear of the property. Any enclosing structure intended to serve primarily as an animal run shall be permitted only in a rear yard, shall be set back at least ten feet from the rear lot line or the side lot lines of the rear yard and shall otherwise conform to the regulations and requirements of this section. Recreational uses and structures such as pools, trellises when not used as a fence, decks, patios and garden lighting which are incidental to the main use are permitted in a rear yard. The placement of pools shall, where applicable, be governed by the provisions of Section 1117.02 and Chapter 1321 of the Codified Ordinances. Any unenclosed patio or deck shall be located not less than three feet from the rear lot line and the side lot lines of the rear yard. Except as otherwise provided herein, any other yard structure or recreational use and structure shall be located not less than five feet from the rear lot line and the side lot lines of the rear yard.

(5) Side yards. Side yard fences shall be permitted to a height not to exceed four feet above finished grade. Side yard fence shall start at rear foundation and continue no further forward than the front foundation of the house being also the front set back of the established street.

(Ord. 94-76. Passed 3-20-95; Ord. 00-44. Passed 6-26-00.)

(6) Corner lots. On a corner lot a fence and landscape feature such as trees and shrubs may be constructed, erected or installed in front, rear and side yards subject to the specific regulations and requirements applicable to fences and other landscape features in such yards provided open sight lines shall be provided within a triangle at street intersections of at least twenty-five feet along each right-of-way line and having a clear horizontal bend between two and one-half feet and six feet above finished grade. Yard structures and landscape features on corner lots shall in all other respects comply with the requirements of this section.

(7) Privacy screens.

A. On lot lines contiguous with the easement right-of-way of I-480, privacy screens whose vertical surface is less than fifty percent (50%) of each lineal foot open to through passage of light and air when viewed perpendicular to the screen shall be permitted to a height not to exceed six feet above finished grade.

B. Privacy screens whose vertical surface is less than fifty percent (50%) of each lineal foot open to through passage of light and air when viewed perpendicular to the screen shall be permitted to a height not to exceed six feet above finished grade on any lot provided:

1. The privacy screen is not located in any side or front yard;
2. The privacy screen shall not completely or partially enclose more than two sides of an area;
3. The total length of the privacy screening on any lot shall not exceed ten percent of the perimeter of the area of the rear yard;
4. The privacy screen shall not exceed twenty-four feet in any one direction;
5. The privacy screen is constructed, erected or installed behind and within the outer rear enclosing wall;
6. The privacy screen, or any part thereof, is not located closer than ten feet from the rear lot line;
7. The privacy screen permitted by this subsection presents a finished side to the adjoining property; and
8. Adequate landscape screening as required by the Planning and Design Commission shall be provided and permanently maintained on all exterior sides of the screen. In determining the adequacy of the screening the Commission shall consider the height and length of the screen, the size of the subject lot, the proximity of the main dwelling units on adjacent properties and existing landscaping or screening on the subject and adjacent properties.

C. A nonbearing wall, fence, screen, trellis or other similar structure on one or more sides of any patio or deck structure shall be constructed, erected or installed in accordance with the regulations and requirements set forth in subsection (e)(4) or (e)(7)B. hereof, whichever is applicable, the height thereof to be measured from finished grade. Any railing or other similar structure on one or more sides of any patio or deck structure shall not exceed four feet in height measured from the floor of the patio or deck structure.

(8) Perimeter trees and shrubs. Landscape features such as trees, shrubs and other plants along a side lot line of a rear yard or a rear lot line shall be installed, placed and maintained not less than a distance of a minimum of one foot plus fifty percent (50%) of the mature width of the tree, shrub or other plant measured from the lot line to the center of the tree, shrub or other plant. A minimum of one foot from the lot line shall be maintained for maintenance of such trees, shrubs and other plants.
(Ord. 94-76. Passed 3-20-95.)

(9) Adjacent to business districts. Fences on one and two family lots adjacent to general business and office districts with an existing one or two family residence thereon shall be permitted to a height not to exceed seven (7) feet in height above finished grade above the property lines which abut such districts and may have a solid surface for the purpose of shielding the premises. Such fences installed along a side lot line of a front yard shall not be constructed, erected or installed closer than twenty (20) feet from the front right away line. Trees, shrubs and other landscape features also shall not be constructed, erected or installed closer than twenty feet from the right-of-way line except as otherwise specifically permitted by this section.
(Ord. 08-52. Passed 9-15-08.)

(10) Material. All yard structures shall be built from new materials as approved by the Building Commissioner.

(11) Harmful projections. No person shall construct, erect, install or cause to be constructed, erected or installed or permit any yard structure, or any part thereof, to contain any exposed projection which may cause injury or harm to any person upon rubbing, bumping or otherwise touching such projection. (Ord. 10-06. Passed 3-15-10.)

(f) Repair or Replacement. Any fence, including any fencing along any one lot line, and any other yard structure or landscape feature which is in need of repair or replacement, or which is repaired or replaced, to an extent of fifty percent (50%) more shall conform to the provisions of this section.
(Ord. 08-52. Passed 9-15-08.)

(g) Satellite Receiving Station. Direct broadcast satellite receiving stations as defined in Section 1105.05(i) shall be permitted as an accessory use provided that:

(1) The receiving station is not linked or otherwise connected to receivers which are not located on the same lot;

(2) The receiving station is placed only in a rear yard, not affixed to any main or accessory building, and any such station or part thereof, including any supporting appurtenance thereto, shall not be closer than ten feet to any side lot line of a rear yard or ten feet from any rear lot line;

(3) The highest point of the satellite receiving dish shall not exceed three feet greater than the dimension of the dish above the plane upon which it is mounted which shall include the height of any base upon which the dish is mounted;

(4) The satellite receiving dish shall not exceed nine feet in dimension;

(5) Suitable landscape screening as required by the Planning and Design Commission, subject to the limitations of this section, shall be provided and maintained around the satellite receiving station and any supporting appurtenances thereto. In determining the adequacy of screening, the Commission shall consider the size and dimension of the station, the size of the subject lot, the proximity of the main dwelling units on adjacent properties and existing landscaping or screening on the subject and adjacent properties;

(6) The color of the satellite receiving station dish shall be reviewed and approved by the Commission;

(7) The satellite receiving dish shall be constructed and anchored in such a manner as to withstand wind loads in accordance with ANSI (American National Standards Institute) A 58.1. Structural calculations and details for the installation shall be furnished to the Division of Building.

(8) The satellite receiving dish shall be affixed in a permanent fashion such that it would only be removable for repair or replacement;

(9) Only one such direct broadcast satellite receiving station shall be permitted at any one time on the same lot;

(10) No lettering, numerals, symbols, pictorial signs or designs exceeding one inch in any dimension shall be permitted on the surface of the dish.

(Ord. 94-76. Passed 3-20-95.)

1117.18 HEIGHT REGULATIONS.

(a) The height of a main building permitted on a zoning lot shall not exceed thirty-five feet. The height of any accessory building permitted on a zoning lot shall not exceed eighteen feet if the roof slope is greater than 3:12 pitch or twelve feet if the roof slope is less than 3:12 pitch. (Ord. 96-83. Passed 3-3-97.)

(b) Wireless, broadcasting, receiving and transmitting towers, radio and television antennae, chimneys, flag poles and other like structures may be erected above the height limit specified in subsection (a) hereof, subject to the following constraints:

(1) The height from the base of such structure, or the uppermost point at which such structure is attached to a main or accessory building, to the top of such structure shall not be greater than the horizontal distance from the base of such structure to the nearest adjoining property line.

(2) A variance approved by the Board of Zoning and Building Appeals shall be required for any such structure over thirty-five feet in height if detached from or not attached to the main building, or over fifteen feet in height above the upper point of attachment to the main building.

No wireless, broadcasting, receiving and transmitting tower and no radio or television antennae shall be erected in a front yard. Any wireless, broadcasting, receiving, and transmitting tower and any radio or television antennae may be erected in a side yard or in a rear yard only in accordance with the provisions of this section.

Wireless, broadcasting, receiving, and transmitting towers, radios and television antennae, chimneys, flag poles and other like structures shall be designed and constructed to withstand windloads in accordance with ANSI (American National Standards Institute) A 58.1. Structural calculations and details for the installation shall be furnished to the Division of Building.
(Ord. 93-7. Passed 5-3-93.)

1117.19 DWELLING UNIT AREA REQUIREMENTS.

Dwellings shall be erected, altered, moved, maintained or used only in accordance with the following standards:

(a) The area of a dwelling unit shall be the sum of the gross floor areas above the basement level. It shall include those rooms, and closets, having a minimum ceiling height and the natural light and ventilation as required by the Building Code. Rooms above the first floor may be included which are directly connected by a permanent stairs and hall, and spaces under pitched roofs having a minimum knee wall height of four feet, if two-thirds of the room area has a minimum ceiling height of seven feet.

The area shall be measured from the interior face of the enclosing walls at the first floor line and the interior face of the walls of those rooms which may be included under a pitched roof for a one-family dwelling. Measurement shall be from the center line of party walls, where applicable, for two-family dwellings. Excluded are all areas within garages and porches and utility and general storage areas in basementless dwellings.

(b) The minimum area of a dwelling unit shall be not less than that set forth in Section 1117.20.

(c) General storage area: in addition to the minimum area requirements, general storage space, or spaces, exclusive of closets, shall be provided each dwelling unit on the following basis:

(1) Each one-family dwelling shall have at least 100 square feet of such space with an average ceiling height of five feet and located on the ground floor unless provided in a basement.

(2) Each dwelling unit of a two-family house shall have at least fifty square feet of such space with an average ceiling height of at least six feet.
(Ord. 67-17. Passed 5-15-67.)

1117.20 SCHEDULE OF DWELLING UNIT AREA REQUIREMENTS.

(a) Except as provided in subsection (b) hereof, the following shall be the dwelling unit area requirements:

	Minimum main building area per dwelling unit (square feet)	
District	One-story building	Two-story building
R1F-75	1250	1500
R1F-60	950	1250
R1F-50	950	1250
R1F-40	700	950
R2F (1 family dwelling)	950	1250
R2F (2 family dwelling)	850	950

(b) A building in existence at the time of the enactment of this Zoning Code, which does not comply with the above minimum area requirements may be altered or improved without the necessity of meeting such minimum area requirements.
(Ord. 67-17. Passed 5-15-67.)

1117.21 ACCESSORY OFF-STREET PARKING AND PROHIBITIONS.

(a) Except as provided in subsection (b) hereof, access drives shall be constructed into the property parallel with the side lot lines, or in the case of a corner lot, shall be constructed parallel with the rear lot line or with a side lot line. No lot shall have more than one access drive, except as provided in subsection (b) hereof. No access drive parallel with the side lot lines or parallel with the rear lot line shall exceed eighteen feet in width between the front lot line and the nearest exterior wall of the main building or between the exterior side lot line and the side yard lot line on a corner lot when the access drive is constructed parallel with the rear lot line.

(b) Crescent (half circle) drives within the front yard are permitted provided that all the following design criteria are met:

(1) The distance of the outside radius of the curve is a minimum of thirty feet;
(2) There is no curve within five feet of the front lot line;
(3) No part of the crescent drive is curbed;
(4) No part of the crescent drive is located closer than five feet from the front foundation of the main dwelling;
(5) No part of the crescent drive is located closer than three feet from any side lot line or access drive of an abutting property;
(6) No part of the crescent drive exceeds sixteen feet in width;
(7) There is provided sufficient landscape features, such as compact evergreen hedges or shrubs not more than four feet in height above natural grade, subject to the provisions of Section 1117.17, as required by the Planning and Design Commission, to screen the expanse of pavement from view.

(c) Two parking spaces shall be provided per each dwelling unit for a vehicle carrying a license provided for passenger cars, one of which shall be enclosed for each dwelling unit.

(d) The outside parking or the outside storage of passenger vehicles on any lot shall be permitted only on access drives, crescent drives, or on improved asphalt concrete, portland cement or other impervious surface parking areas.

(e) The rebuilding, overhauling or dismantling of any vehicle as defined in Section 301.51 or the storage of motor or body parts in an open yard is prohibited. Accessory off-street parking facilities may be used for minor repair services on passenger vehicles of an occupant of the dwelling or a member of the occupant's family only. Permitted minor repair services shall be completed within forty-eight hours; otherwise such repairs shall be performed within a permitted building.

(f) Except for recreational equipment as defined and permitted in Section 1117.07, one motor vehicle which does not exceed three-fourths ton capacity and which either carries or is required to carry a license other than a license provided for passenger vehicles or which is not used for general highway transportation may be stored or parked on a lot provided that such vehicle is stored or parked at all times within an enclosed private garage, the rebuilding, overhauling, repairing, modifying or dismantling of such vehicle is confined to an enclosed private garage and, provided further, that such vehicle storage or parking shall be permitted only if such vehicle is used solely by an occupant of the dwelling.

(g) Upon lots abutting an arterial street as defined herein, a turnaround or parking pad may be installed in a front yard provided the turnaround or parking pad is an integral part of the access drive, does not exceed eighteen feet in width or eighteen feet in length, is not installed closer than twenty feet from the front lot line or five feet from a side lot line, and is constituted of asphalt concrete, portland cement concrete or other impervious surface. Arterial street as used herein means: Story Road, Wooster Road, West 210th Street, West 220th Street, Mastick Road, Brookpark Road, Lorain Road and Westwood Road.
(Ord. 94-32. Passed 6-6-94.)

1117.22 SURFACE IMPROVEMENTS TO PARKING AREAS.

Access drives, crescent drives and other front yard parking or maneuvering facilities shall be graded and drained so as to dispose of all surface water and drainage into proper inlets so that all water is drained within the lot on which the access drive, crescent drive or other front yard parking or maneuvering facility is located in such manner that water will not drain across other public or private property. Access drives, crescent drives and other front yard parking or maneuvering facilities shall be improved with asphalt concrete, Portland cement concrete or other impervious surface.
(Ord. 84-112. Passed 7-15-85.)

CHAPTER 1121
Residential Multi-Family, Garden and High Rise Districts

1121.01 One and two-family units in Multi-Family District.
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1121.32 Illumination of accessory parking facilities.
1121.33 Recreational facilities on single-family portion of multi-family parcel.
1121.34 Survey and approval of City Engineer required.
1121.35 Application and design of parking areas.
1121.36 Required trash areas.
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CROSS REFERENCES

Swimming pools - see Ohio Administrative Code Ch. 3701-31; BLDG. Ch. 1321
Apartment rental license; fee - see BUS. REG. 707.02
Dwelling definitions - see P. & Z. 1105.06
Family defined - see P. & Z. 1105.07
Home occupation and home professional office defined - see P. & Z. 1105.10

1121.01 ONE AND TWO-FAMILY UNITS IN MULTI-FAMILY DISTRICT.

One and two-family dwellings located in Multi-Family Garden, Multi-Family-High-Rise and Multi-Family-Townhouse Districts are permitted subject to each and all of the regulations set forth in Section 1121.03.
(Ord. 94-61. Passed 9-6-94.)

1121.02 USE REGULATIONS.

Buildings and land shall be used, and buildings shall be designed, erected, altered, moved or maintained only for the uses set forth in the schedules and regulations of this chapter.

(a) Main buildings and uses, listed in Section 1121.03, shall be permitted as the principal buildings, use or activity of a zoning lot located only in a district in which it is specifically permitted.

(b) Accessory buildings and uses, listed in Section 1121.03 or Section 1121.04(d) shall be permitted as subordinate building or use, which is clearly incident to, and located on, the same zoning lot as the main building or use. Accessory buildings and uses shall be located only in a district in which specifically permitted.

(c) Conditional buildings and uses, listed in Section 1121.03, may be permitted only in a district in which they are specifically permitted in accordance with the criteria! regulations and conditions as set forth in this Code and as approved by the Planning and Design Commission and Council.
(Ord. 86-22. Passed 4-4-88.)

1121.03 SCHEDULE OF PERMITTED BUILDINGS AND USES.

(a) Main Uses.

(1) Multi-Family Townhouse (RMF-TH) District. The permitted main buildings and uses are:

A. Main buildings and uses as permitted and regulated in R1F-50 District.

B. Main buildings and uses as permitted and regulated in R2F District.

C. Townhouses with a minimum of 4,000 square feet of land area per dwelling unit and a maximum height not to exceed two and one-half stories or thirty-five feet, whichever is the lesser, and as otherwise permitted and regulated in this chapter.

(2) Multi-Family Garden (RMF-G) District. The permitted main buildings and uses are:

A. Main buildings and uses as permitted and regulated in Multi-Family Townhouse District (RMF-TH).

B. Apartment buildings with a minimum of 2,000 square feet of land area per dwelling unit and a maximum height not to exceed three stories or forty feet, whichever is the lesser, and as otherwise permitted and regulated in this chapter.

(3) Multi-Family High-Rise (RMF-HR) District. The permitted main buildings and uses are:

A. Main buildings and uses as permitted and regulated in Multi-Family Garden District (RMF-G).

B. Apartment buildings with a minimum of 1,500 square feet of land area per dwelling unit and a maximum height not to exceed twelve stories or 120 feet, whichever is the lesser, and as otherwise permitted and regulated in this chapter.

C. Senior Citizen Housing (SH) as defined in Section 1105.06 and as otherwise permitted and regulated in Chapter 1139.

(Ord. 94-61. Passed 9-6-94.)

(b) Accessory Uses.

(1) Except as otherwise specifically regulated and limited by Section 1121.04(a) and (b), the permitted accessory buildings and uses for one- and two-family residences shall be only as permitted in and as regulated by Chapter 1117.

(2) In Multi-Family Townhouse (RMF-TH), Multi-Family-Garden (RMF-G) and Multi-Family-High-Rise (RMF-HR) Districts, the following accessory buildings and uses only shall be permitted subject to both the regulations set forth therefore in this chapter and as set forth in other ordinances of the City.

A. Accessory off-street parking facilities.

B. Private gardens, and recreational uses and structures, pools, fences and walls.

C. Home occupations as limited in Section 1121.04(a).

D. Signs as permitted and as regulated by Chapter 1145.

E. Recreational facilities.

F. Storage uses and structures.

G. Direct broadcast satellite receiving stations, and other telecommunications structures as set forth in Section 1121.19(b).

H. Exterior condensers of central air conditioning systems. Such units shall be permitted in side or rear yards only, subject to Section 1121.15.

I. Parking areas for other than occupant use.

(Ord. 95-68. Passed 10-16-95.)

(c) Conditional Uses.

(1) In Multi-Family High-Rise District only, food and beverage services and facilities whether in a separate building or on the same or adjoining lot located within an apartment building provided such conditional use is considered and approved by the Planning and Design Commission and by Council according to the procedures and standards set forth in Section 1149.16 and, further provided, that:

A. No part of such conditional use or any entrance thereto shall be adjacent to, or within 100 feet of, a public sidewalk or public street or be adjacent to any one- or two-family residential district; and

B. Such conditional use provides the accessory off-street parking spaces as required by Section 1137.12(g) independent of those required by Section 1121.27; and

C. Any sign used to indicate the existence or presence of such conditional use shall not be in addition to those otherwise permitted by Section 1145.14 and as regulated by Chapter 1145.
(Ord. 94-61. Passed 9-6-94.)

1121.04 ACCESSORY USES.

(a) Home occupations: Home occupations shall be permitted in accordance with the provisions of this subsection.

(1) Home professional offices, and office space for businesses, services and home occupations provided that:

A. Such office space is used only by members of the family residing within the dwelling unit and does not involve the employment of any person not a resident of the household; and

B. The space used does not occupy more than twenty-five percent (25%) of the floor area of the dwelling unit; and

C. The residential character of the dwelling exterior or accessory building is not changed; and

D. No equipment or machinery is employed or used in conducting such business, service, profession or occupation which will create dust, noise, odors, glare, vibrations or electrical interferences beyond the lot, or if in an apartment building, beyond the dwelling unit, and any equipment or machinery otherwise employed or utilized is limited to typewriters, adding machines and other similar office equipment; and

E. The activity does not involve the delivery of materials by any motor vehicle other than a passenger automobile; and

F. If conducted on the premises of a one or two-family dwelling in a Multi-Family District, the activity does not involve the parking of more than two vehicles at any one time by patrons, clients or customers; otherwise, the activity shall not attract any greater number of motor vehicles to such premises than can be accommodated by accessory off-street parking facilities; and

G. Except as otherwise permitted by Chapter 1145, the operation of such activity is not advertised by any sign on the dwelling or lot; and

H. No item shall be manufactured on the premises or retail sales made or materials displayed from the premises; and

I. No motor vehicle which carries or is required to carry a license other than a license provided for passenger vehicles shall be parked overnight in open yards.

(2) Child day care services as defined and permitted in Section 1149.18.

(b) The renting from a resident family of not more than two rooms to not more than two roomers unrelated to each other by blood, marriage, adoption or guardianship is permitted in one and two-family dwellings in Multi-Family Districts, provided that the exterior character of the dwelling is not changed, no separate facilities are maintained and off-street parking is provided as set forth in Section 1117.17.
(Ord. 89-99. Passed 4-2-90.)

(c) (EDITOR'S NOTE: This subsection was repealed by Ordinance 94-61, passed September 6, 1994.)

1121.05 TEMPORARY USES.

(a) Temporary offices, storage and other structures of contractors or builders are permitted in Residential Multi-Family Districts provided such uses are deemed necessary to the development of the premises and provided a building permit has been obtained.

Such structures shall be removed within thirty days after completion of work on the premises or if construction is not pursued diligently.

(b) Temporary living space shall be applied only to one and two-family dwellings in Residential Multi-Family Districts and shall be subject to the regulations set forth in Section 1117.03(b) of this Zoning Code.
(Ord. 67-17. Passed 5-15-67.)

1121.06 REMOVAL OF SOIL.

Soil, sand or gravel shall not be stripped or removed in Residential Multi-Family Districts, except excess soil or gravel resulting from excavations or grading in connection with the construction or alteration of a building for which a building permit has been issued.
(Ord. 67-17. Passed 5-15-67.)

1121.07 ACCESS TO LESS RESTRICTIVE AREAS.

Driveways, walks or other accessways to any use which is not permitted in the district shall be prohibited. (Ord. 67-17. Passed 5-15-67.)

1121.08 OPEN STORAGE PROHIBITED.

Boats, trailers, garden tractors, snow plows, etc., shall be stored in an enclosed structure, except for a period of not more than thirty days a year they may be temporarily stored in a rear yard. All other equipment and supplies shall be stored in an enclosed structure at all times.
(Ord. 67-17. Passed 5-15-67.)

1121.09 AREA REGULATIONS.

Land and buildings shall be used in accordance with the lot area regulations set forth in the following sections:

(a) There may be more than one apartment building on a lot. In addition there may be one or more accessory buildings on the same zoning lot.

(b) The width of a zoning lot, as set forth in Section 1121.10, shall be not less than the width required for the type of dwelling or other building permitted in the district in which the lot is located and shall be measured on the building line. Each zoning lot shall abut upon a dedicated street for the required lot width, except on curved streets, the width at the front lot line may be less but shall be at least sixty percent of the width required at the building line.

(c) For computation of the number of dwelling units permitted on a parcel for a group development of multi-family dwellings, areas that are dedicated or to be used for street purposes shall be excluded for the gross site area.

(d) A parcel of land may be divided into two or more zoning lots, provided all lots resulting from such division shall conform to all area and width regulations of the district in which it is located. A lot of record, whether vacant or occupied, which was owned separately from adjoining lots on the effective date of this Zoning Code and which has an area or width equal to or less than required by these regulations shall not be further reduced in any manner except by its entire conveyance to adjacent owners. (Ord. 67-17. Passed 5-15-67.)

1121.10 SCHEDULE OF AREA REQUIREMENTS; MINIMUM LOT SIZE.

(a)

Dwelling	Area per dwelling (square feet)	Width at building line (feet)	Maximum percent of lot covered by buildings
One-family	7,500	50	25
Two-family	5,500	60	25
Garden apartment	2,000	100	25
Townhouse	4,000	100	25
High-rise apartment	1,500	20	20*

* Applies to buildings four stories or more in height.
(Ord. 93-75. Passed 12-6-93.)

(b) The minimum outdoor liveable area, which is equal to gross land area minus ground area of buildings, driveways and parking areas, including such areas which are enclosed parking garages and/or structures, shall not be less than twenty-five percent (25%) of the gross land area in garden apartments, or less than fifty percent (50%) in townhouse districts; or less than thirty percent (30%) of the gross land area in high-rise apartments. Outdoor liveable area is land area planted with grass, ground cover, landscape material, trees, natural vegetation or land area for recreation uses, structures and facilities.
(Ord. 91-39. Passed 8-19-91.)

1121.11 YARD REGULATIONS; GENERALLY.

(a) Where side yards are narrower than required for the district in which the building and lot are located, the building may be maintained or altered but may not be enlarged in width unless the total width of the side yards complies with this chapter.

(b) The front yard depth of a zoning lot shall be measured from the front lot line to the nearest exterior wall of the building and shall be as set forth in Section 1121.12.
(Ord. 67-17. Passed 5-15-67.)

1121.12 SCHEDULE OF YARD REQUIREMENTS.

(a) Minimum Dimensions (feet):

Dwelling	Front	Side	Rear
One-family	40	5 & 10	40
Two-family	40	5 & 10	40
Garden - one-story	30	20 & 20	40
Garden - two story	30	25 & 25	40
Garden - three story	30	30 & 30	40
Townhouse	40	40 & 40	40
High-rise - four story	50	35 & 35	75
High-rise - five story	50	40 & 40	75
High-rise - six story	53	45 & 45	78
High-rise - seven story	56	50 & 50	81
High-rise - eight story	59	55 & 55	84
High-rise - nine story	63	57-1/2 & 57-1/2	88
High-rise - ten story	67	60 & 60	92
High-rise - eleven story	72	62-1/2 & 62-1/2	97
High-rise twelve story	77	65 & 65	102

See subsection (b) hereof for additional side yard requirements.

(b) Additional Requirements; Side Yard. The distances established in subsection (a) hereof, shall be increased two inches for each additional foot the wall exceeds forty feet in length to and including eighty feet, and one inch for each foot in excess of eighty feet.

(c) Open Parking Areas. Open parking areas in side and rear yards shall not be closer than six feet to an adjoining lot line of a One or Two-Family Residential District.
(Ord. 91-39. Passed 8-19-91.)

1121.13 YARD REGULATIONS; SINGLE DEVELOPMENT.

Yards for one building per lot or parcel shall be not less than set forth in Section 1121.12.
(Ord. 67-17. Passed 5-15-67.)

1121.14 YARD REGULATIONS; GROUP DEVELOPMENT, TWO OR MORE BUILDINGS.

The following terms are used in connection with apartment buildings:

(a) Overlapping Walls. "Overlapping walls" means that portion of the walls of two buildings which are directly opposing when two buildings parallel or within thirty degrees of parallel, face each other across an open space.

(b) Wall Relationship. "Wall relationship" means the yard or distance between the walls of buildings if only one story in height and facing each other across an open space or court shall be not less than thirty feet.

(c) Walls Not Overlapping. Where walls of two buildings, if only one story in height, do not directly face each other, or overlap, the yard, or distance between their nearest corners shall not be less than twenty feet.

(d) Increased Story Height. Distances between buildings in each of the relationships described in subsections (a) and (b) hereof shall be increased two and one-half feet for each story each of the buildings exceeds one story.

(e) Lot Lines and Building Relationship. The width of the yards at the boundary of a group development shall be not less than the required yards for a single development set forth in Sections 1121.12 and 1121.13.
(Ord. 67-17. Passed 5-15-67.)

(f) Use of Yards. The above required yards shall be landscaped and may be used for pedestrian walks, recreational areas and parking areas. If, however, yards between buildings are used for parking areas, driveways or playgrounds, the distance between buildings shall be increased by the total width of such intermediary facilities. The site shall be designed so that entrances to all buildings shall be located not more than 200 feet from any access drive, the distance to be measured along pedestrian walks.
(Ord. 95-68. Passed 10-16-95.)

(g) Development Plans. Development plans showing locations of buildings, yards, driveways, parking areas, recreation areas and other site improvements for group developments shall be submitted to the Planning and Design Commission, and until found by it to comply with the provisions of this Code, and approved by it, building permits shall not be issued.
(Ord. 67-17. Passed 5-15-67.)

1121.15 REQUIRED YARDS TO BE MAINTAINED.

The required yards surrounding an existing building shall not be separated in ownership from that portion of the lot upon which the building is located, and no part shall be considered as providing a yard for any other existing building on the same or adjacent lot. A yard shall not be reduced to less than the required dimensions for the district in which it is located by enlarging an existing building. A yard of less than the required dimensions shall not be further reduced. Every required yard shall be open and unobstructed from the ground upward except for accessory buildings as provided in Section 1121.16, and permitted projections as provided in Section 1121.17. (Ord. 67-17. Passed 5-15-67.)

1121.16 YARDS FOR ACCESSORY BUILDINGS.

On an interior lot, an accessory building may be located in a rear yard, but not less than three feet from a side or rear lot line, except an existing accessory building located not less than eighteen inches from a rear or side lot line may be altered or expanded.

On a corner lot, an accessory building shall be set back from the side street line not less than forty percent of the width of the lot at the building line.
(Ord. 67-17. Passed 5-15-67.)

1121.17 PROJECTIONS INTO YARDS.

A projection is that part or feature of a building which extends outside of the enclosing surfaces into a yard. Required front, side or rear yards shall be open and unobstructed from the ground upward except for the projections and regulations set forth in Section 1117.16.
(Ord. 67-17. Passed 5-15-67.)

1121.18 YARD STRUCTURES AND LANDSCAPE FEATURES.

(a) As defined in Section 1117.17, yard structures and landscape features shall be permitted on one- and two-family residences located in a Residential Multi-Family-Garden, Residential Multi-Family High-Rise and Multi-Family-Townhouse Districts subject to the regulations set forth therefore in Section 1117.17.

(b) Yard structures and landscape features shall otherwise be permitted in any Multi-Family District as permitted and as required by Section 1121.30 and Section 1149.05 provided that any wall or any fencing whether incorporated as part of a landscape buffer or whether used as a landscape screen along the side lot line of the front yard of an adjacent Residential District or any other zoning district with an existing residence thereon shall not be constructed, erected or installed closer than twenty feet from the right-of-way line. Except as otherwise specifically permitted or as specifically required by the provisions of this chapter, trees and shrubs, yard structures and other landscape features shall not be constructed, erected or installed closer than twenty feet from the right-of-way line.
(Ord. 95-68. Passed 10-16-95.)

(c) Direct broadcast satellite receiving stations shall be located in rear yards only subject to the provisions and requirements of Section 1117.17 or on the roof of a main or accessory building subject to the provisions an requirements of Section 1121.19(d).
(Ord. 89-43. Passed 12-4-89.)

1121.19 HEIGHT REGULATIONS AND SCHEDULE.

(a) Except as provided herein, the height of a main building shall not exceed the number of stories, or height in feet, whichever is the lesser, as follows:

Dwelling	Stories or Height
One and two-family dwelling	2-1/2 stories or 35 feet
Garden apartment	3 stories or 40 feet
Townhouse	2-1/2 stories or 35 feet
High-rise apartment	12 stories or 120 feet

(Ord. 91-39. Passed 8- 19-91.)

(b) Stacks, water tanks, elevator penthouses, bulkheads, skylights, ventilators, air conditioning and temperature control equipment, other mechanical appurtenances relating to the operation of the main or accessory building itself and penthouse enclosures for mechanical appurtenances erected upon or constituted as an integral part of the main or accessory building itself and not used for human occupancy may be erected to a height not to exceed fifteen feet above the finished roof line of the building.

Wireless, broadcasting, receiving and transmitting towers, radio and television antennae (except as provided in subsection (d) hereof), chimneys, flagpoles and other like structures may be erected above the applicable height limit specified in subsection (a) or (c) hereof, subject to the following constraints:

(1) The height from the base of such structure, or the uppermost point at which such structure is attached to the main or accessory building, to the top of such structure shall not be greater than the horizontal distance from the base of such structure to the nearest adjoining property line.

(2) A variance approved by the Board of Zoning and Building Appeals shall be required for any such structure over thirty-five feet in height if detached from or not attached to the main building, or over fifteen feet in height above the uppermost point of attachment to the main building.

No wireless, broadcasting, receiving and transmitting tower and no radio or television antennae shall be erected in a front yard. Any wireless, broadcasting, receiving, and transmitting tower and any radio or television antennae may be erected only in a side yard or in a rear yard in accordance with the provisions of this section.

Wireless, broadcasting, receiving and transmitting towers, radio and television antennae, chimneys, flag poles and other like structures shall be designed and constructed to withstand windloads in accordance with ANSI (American National Standards Institute) A 58.1. Structural calculations and details for the installation shall be furnished to the Division of Building.
(Ord. 95-68. Passed 10-16-95.)

(c) The height of accessory buildings shall not exceed one story or fourteen feet.
(Ord. 85-37. Passed 9-3-85.)

(d) A direct broadcast satellite receiving station may be placed on the roof of a main or accessory building provided all of the following conditions are satisfied:

(1) The receiving station is not linked or otherwise connected to receivers which are not located within the same premises as the antenna;

(2) The highest point of the satellite receiving dish shall not exceed three feet greater than the dimension of the dish above the plane upon which it is mounted which shall include the height of any base upon which the dish is mounted;

(3) The satellite receiving dish shall not exceed nine feet in dimension;

(4) The satellite receiving dish shall be constructed and anchored in such a manner as to withstand wind loads in accordance with ANSI (American National Standards Institute) A 58.1. Structural calculations, including calculations certifying to the capability of the roof to support the dish and the base, and details for the installation shall be furnished to the Division of Building;

(5) The satellite receiving dish shall be affixed in a permanent fashion such that it would only be removable for repair or replacement;
(6) The dish shall not be placed closer than twenty feet from any roof edge;
(7) Only one such station shall be permitted at any one time on the same building;
(8) No lettering, numerals, symbols, pictorial signs or designs exceeding one-half inch in any dimension shall be permitted on any surface.
(Ord. 95-68. Passed 10-16-95.)

1121.20 DWELLING UNIT AREA REQUIREMENTS.

Dwellings shall be erected, altered, maintained or used only in accordance with the following standards:

(a) The area of a dwelling unit shall be the sum of the gross floor area above the basement level, including those rooms and closets, having a minimum ceiling height and the natural light and ventilation as required by the Building Code. The area shall be measured from the interior face of the enclosing walls and from the center line of party walls, where applicable. All areas within garages, porches, public halls, utility and storage rooms shall be excluded.

(b) In addition to the minimum requirements, there shall be at least fifty square feet of general storage space, having an average height of at least six feet, provided for each dwelling unit. (Ord. 67-17. Passed 5-15-67.)

1121.21 SCHEDULE OF DWELLING UNIT AREA REQUIREMENTS.

Type of Dwelling	One-story Building (square feet)	More than one-story Building (square feet)
One-family	950	1250
Two-f amily	850	950

	Number of Bedrooms	Dwelling Unit Size (square feet)
Apartment-garden and high-rise	One bedroom unit	700
	Two bedroom unit	850
	Each additional bedroom	150
Townhouse	One bedroom unit	Not permitted
	Two bedroom unit	1000
	Three bedroom unit	1200
	Each additional bedroom	200

(Ord. 91-39. Passed 8-19-91.)

1121.22 SIGN PURPOSE, TYPE AND NUMBER.

The signs permitted in Multi-Family Districts as to purpose, type and number shall be as regulated in Chapter 1145.
(Ord. 95-68. Passed 10-16-95.)

1121.23 SIGN AREA.

The area of signs shall be as regulated in Chapter 1145.
(Ord. 80-106. Passed 6-1-81.)

1121.24 SIGN LOCATION.

The location of signs shall be as regulated in Chapter 1145.
(Ord. 80-107. Passed 6-1-81.)

1121.25 ACCESSORY PARKING FACILITIES REQUIRED.

Accessory off-street parking facilities shall be determined in conformance with the provisions of this chapter as a condition precedent to the occupancy of the several buildings or uses.

(a) Whenever a building is constructed or a new use established, facilities shall be provided for the entire building or use on the same lot or on an adjoining lot under the same ownership;

(b) Whenever the use of an existing building is changed to a use requiring more parking facilities, or whenever an existing building is altered and there is an increase of the number of dwelling units, or other measurement criteria, facilities shall be provided for the additional building or use on the same lot or on an adjoining lot under the same ownership; or

(c) Required off-street parking facilities, including access driveways, accessory to an existing use, and those required as accessory to a use created or a building constructed or altered hereafter, shall be continued and maintained in operation, and shall not be reduced below the requirements during the period that the main use is maintained. Failure by the owner or owners to supply such off-street parking shall cause the Building Commissioner to revoke the occupancy of a sufficient number of the dwelling units in order to bring the facility into conformity with parking requirements. Accessory off-street parking facilities shall not be used for the rebuilding, overhauling, or dismantling of any vehicle as defined in Section 301.51 or for the storage of motor or body parts. Accessory off-street parking facilities may be used for minor repair services on passenger vehicles of an occupant or tenant only. Permitted minor repair services shall be completed within forty-eight hours; otherwise such repairs shall be performed within a permitted building. (Ord. 84-94. Passed 6-17-85.)

1121.26 MEASUREMENT STANDARDS.

The following definitions and standards shall be used to determine accessory off-street parking requirements:

(a) "Accessory parking space" means an open or enclosed area (garage) directly accessible from a public street for parking of motor vehicles of owners, occupants, employees, customers or tenants of the main building or use. Each space shall be directly accessible from a drive or aisle, and shall have a minimum rectangular dimension of not less than nine feet in width and eighteen feet in length for ninety degree parking; nine feet in width and twenty-two feet in length for parallel parking; ten feet in width and eighteen feet in length for sixty degree parking and twelve feet in width and eighteen feet in length for forty-five degree parking, exclusive of all drives, aisles, ramps and other circulation areas, and determined from an accurate plan of the area.

(b) Required Minimum Parking Spaces. Where the computation results in a fractional unit, one additional off-street parking space shall be provided.
(Ord. 84-94. Passed 6-17-85.)

1121.27 SCHEDULE.

Each dwelling unit in any Multi-Family District shall be provided with two off-street parking spaces. At least fifty percent of the required parking spaces shall be enclosed.

(a) For one building of eight suites or less, the enclosed spaces shall be in a garage structure built above or below ground level.

(b) For a building or development of more than eight suites such enclosed parking spaces shall be:

(1) In a structure, all of which is at, or below, the level of the surrounding finished grade. Such structure shall be on the same lot as the main building or on an adjoining lot under the same ownership; and/or

(2) Above or below the level of the surrounding finished grade within the walls of the main building.

For any other building or use not shown, the Planning and Design Commission shall apply the unit of measurement required by the provisions in this Zoning Code or where no specific requirement is set forth in this Zoning Code that unit of measurement deemed to be the most similar to the proposed use by the Commission.
(Ord. 95-68. Passed 10-16-95.)

1121.28 ACCESSWAYS TO PARKING AREAS.

The location and width of entrance and exit driveways to parking facilities shall be planned to interfere as little as possible with the use of nearby property and with pedestrian and vehicular traffic on the adjacent streets. Whenever possible, the center line of the access driveways on the frontage street shall be at least forty feet from the right-of-way line of the nearest intersecting street and spaced at not less than 120-foot intervals, measured from the center line of the driveway.

Parking areas shall be designed so that vehicles may be driven forward into the street. Parking areas of fifteen spaces or less shall have at least one single-lane driveway, and the maximum width occupied by all driveways shall be twenty-four feet. Parking areas of sixteen spaces or more shall have two single-lane driveways if possible or at least one two-lane driveway; each accessway shall be limited to two lanes.

The width of such entrances and exits, measured at the setback line, shall conform to the following schedule:

Lanes	Minimum Feet	Maximum Feet
One	10	12
Two	18	24

The angle of intersection between the driveway and the street shall be between sixty degrees and ninety degrees. The radius at the edge from the apron shall be at least twelve feet, twenty feet recommended, so that a motor vehicle entering or leaving may not obstruct vehicles in other traffic lanes in the driveway or in the curb lane of the street.
(Ord. 84-94. Passed 6-17-85.)

1121.29 LOCATION AND USE OF PARKING FACILITIES.

Accessory parking facilities shall not be permitted in required front yards. Driveways shall not be used for parking within required front yards.
(Ord. 95-68. Passed 10-16-95.)

1121.30 SURFACE IMPROVEMENTS OF PARKING AREAS.

(a) Proposed and existing parking areas and access driveways shall be improved with asphalt concrete or Portland cement concrete or other impervious surface and shall be so graded and drained into proper inlets so that all water is drained within the lot on which the parking area or driveway is located in such manner that water shall not drain across other public or private property.

(b) Parking areas shall be so arranged and marked as to provide for orderly and safe parking and storage of vehicles in accordance with the design standards in this chapter and shall be improved, except at entrances and exits with guard rails, curbs or other devices to define parking spaces or limits of paved areas, so as to prevent encroachment of vehicles into adjacent areas or public ways, yards or setbacks required by the Zoning Code, and so as to regulate the flow of traffic within the lot.
(Ord. 84-94. Passed 6-17-85.)

(c) The Planning and Design Commission may require landscape buffering or landscape screening to be provided on the parking area property to insulate the parking areas and driveways from a side or rear lot line of other property in any Residential District or any other zoning district with an existing residence thereon. Landscape buffering may include, but shall not be limited to, evergreen trees and bushes, compact hedges, shrubs, earth berms or a combination thereof. Landscape screening shall include plant material or other nonliving durable material, including, but not limited to, walls, berms or substantially solid decorative wood fencing. Where trees and shrubs are used to provide a landscape buffer, such shall provide a year-round state of being substantially impervious to rays of light. It shall be acceptable to incorporate fencing as part of the landscape buffer where noise and lights create a need that such landscape buffer include fencing. Fencing may also be used to provide landscape screening. Whenever used, fences shall be of a decorative style and type. Walls and berms shall be used only in the most unusual cases.

The desired buffering or screening effect shall be achieved not later than twelve months after the initial installation. The Planning and Design Commission may extend this twelve month period of time when a hardship would be created because of expected growth or material shortages, but such extension shall not be for more than two years from the time the initial installation was to have been or has been installed. All buffering and screening requirements imposed under the provisions of this subsection shall be installed and constructed before a certificate of occupancy is issued for a new building or structure. No existing building, structure or vehicular use area adjoining a Residential District or any other zoning district with an existing residence thereon shall be expanded, altered or modified until the plans are submitted by the owner or developer to the Planning and Design Commission for its determination as to whether the change adversely affects any properties in a Residential District or any other zoning district with an existing residence thereon. The Commission, after its review, shall require, where necessary, the establishment of a landscape buffering area or the installation of landscape screening, or a revision of a previously established buffered area or screening. The width and height of the landscape buffer or landscape screening shall be determined by the Planning and Design Commission, provided, however, that the maximum height of fencing, whether incorporated as part of the landscape buffer or whether used as a landscape screen, which may be permitted shall be seven feet above natural grade. The owner or developer shall be responsible for the maintenance and replacement, if necessary, of the landscape buffer or landscape screening.

Owners or developers of off-street parking areas shall be required to include a plan for buffering or screening the parking areas and driveways, including a detailed description and sketch of the landscape buffer or landscape screening which visually and verbally outlines the nature and the effect of the proposed landscape buffer or landscape screening. A certificate of occupancy shall not be granted until the buffering or screening requirements have been completed. If completion, in the case of living materials, is delayed because of the growing season, a temporary permit to occupy may be granted by the Building Commissioner. Such delay shall not extend beyond the next growing season following the date upon which the certificate of occupancy is requested. (Ord. 95-68. Passed 10-16-95.)

(d) In order to carry out the objectives of this Zoning Code and to preserve the use and enjoyment of adjoining property not less than five percent (5%) of an off-street parking area of a lot with twenty or more off-street accessory parking spaces shall have landscaping islands to break up the expanse of pavement. Each landscaping island shall not be less in size than the required area of one off-street parking space, shall be interspersed throughout the entire off-street parking area and shall have trees and such other landscaping as may be required by the Planning and Design Commission. Areas of landscaping surrounded by at least three sides by accessory off-street parking areas or accessories to parking areas may be considered a landscaped island. (Ord. 98-38. Passed 7-6-98.)

1121.31 APPROVAL OF PARKING FACILITIES.

Detailed drawings of off-street parking facilities shall be submitted to the Planning and Design Commission for review and approval in accordance with all the provisions of this chapter before a building permit or certificate of occupancy may be issued. Such drawings shall show the number of spaces and locations, dimensions and descriptions of all features as set forth in this chapter. (Ord. 84-94. Passed 6-17-85.)

1121.32 ILLUMINATION OF ACCESSORY PARKING FACILITIES.

Areas used to provide required off-street parking, and accessways thereto, shall be illuminated whenever deemed necessary by the Planning and Design Commission to protect the public safety. Lighting fixtures shall be so designed and located so as not to reflect direct rays of light upon adjoining residential properties, occupants of the building and streets or cause a glare hazardous to pedestrians or drivers of motor vehicles on adjacent public streets, and shall be subject to the approval of the Commission.
(Ord. 84-94. Passed 6-17-85.)

1121.33 RECREATIONAL FACILITIES ON SINGLE-FAMILY PORTION OF MULTI-FAMILY PARCEL.

A lot or parcel may be divided by a zoning district boundary. When the rear portion of such lot lies in a One or Two-Family Residential District, such portion may be used for recreational purposes in conjunction with a residential building located on the front, or multi-family residential portion, of the lot. Such landscape features and recreational yard structures as may be permitted in Section 1117.17, shall be permitted, provided yard and other regulations of this Zoning Code and other City ordinances are complied with. The Planning and Design Commission may require the erection of a wall, fence or other screening along that portion of the lot line adjacent to residences in a One or Two-Family Residential District.
(Ord. 67-17. Passed 5-15-67.)

1121.34 SURVEY AND APPROVAL OF CITY ENGINEER REQUIRED.

The City Engineer shall make a survey of the public sanitary and storm sewers to be affected by the proposed building or use set forth in the application for a building permit and shall forward his approval to the Building Commissioner prior to the issuance of a building permit.
(Ord. 95-68. Passed 10-16-95.)

1121.35 APPLICATION AND DESIGN OF PARKING AREAS.

(a) Application for Providing Facilities. An application for a building permit pertaining to constructing a building or parking facility or for a certificate of occupancy for a change in use of land or a building shall include a site plan drawn to scale and fully dimensioned, showing the proposed design of the parking area to be provided in accordance with the space requirement schedules that are a part of this Zoning Code.

(b) Determination of Required Parking Facilities. The minimum number of spaces required for accessory off-street parking shall be determined by applying the measurement standards in Section 1121.26, the standards for designing parking areas in subsection (c) hereof, the schedule of accessory parking requirements for the various uses in Section 1121.27 and any other applicable provisions of this Zoning Code.
(Ord. 84-94. Passed 6-17-85.)

(c) Design Standards. The plan of the parking spaces of a parking area included with an application to construct a building or parking area, or change in use, shall be designed, dimensioned and the number of spaces determined in accordance with the Standards for Designing Parking Areas as may be adopted by the Planning and Design Commission. Design standards for enclosed parking areas and garages, shall be in accordance with the applicable provisions of the Zoning Code.
(Ord. 95-68. Passed 10-16-95.)

1121.36 REQUIRED TRASH AREAS.

All multi-family residential uses that provide trash and/or garbage collection areas shall be enclosed on at least three sides by a solid wall or fence of at least four feet in height if such area is not within an enclosed building or structure. Provisions for adequate vehicular access to and from such area or areas for collection of trash and/or garbage as determined by the Planning and Design Commission shall be required.
(Ord. 84-94. Passed 6-17-85.)

1121.37 DEPOSIT FOR SURVEY OF PUBLIC SANITARY AND STORM SEWERS.

A deposit by the applicant for a building permit shall be made with the Finance Director in the amount of one hundred fifty dollars ($150.00) to cover the cost and expense of such survey of public sanitary and storm sewers. The cost and expense of such survey shall be paid by the City from such deposit.
(Ord. 85-65. Passed 9-3-85.)

CHAPTER 1125
Automobile Parking Districts (Repealed)

EDITOR'S NOTE: Former Chapter 1125 was repealed by Ordinance 98-34A, passed November 16, 1998. The next printed page is page 71.

CHAPTER 1129
Office Building Districts

1129.01 Use regulations.
1129.02 Schedule of permitted buildings and uses.
1129.03 Construction of residential buildings prohibited. (Deleted)
1129.04 Office buildings in General Business Districts. (Deleted)
1129.05 Schedule of area requirements.
1129.06 Yard regulations.
1129.07 Projections into yards.
1129.08 Height regulations.
1129.09 Sign purpose, type and number.
1129.10 Sign area.
1129.11 Sign location.
1129.12 Sign illumination.
1129.13 Signs; miscellaneous. (Repealed)
1129.14 Accessory parking facilities required.
1129.15 Measurement standards.
1129.16 Schedule.
1129.17 Accessways to parking areas.
1129.18 Surface improvements of parking areas.
1129.19 Approval of parking facilities.
1129.20 Illumination of parking facilities.
1129.21 Application and design of parking areas.
1129.22 Required trash areas.
1129.23 Approval of City Engineer required.
1129.24 Reserved.
1129.25 Standards and criteria for Mixed-Use Developments.

CROSS REFERENCES
Signs - see P. & Z. Ch. 1145
Building permit - see P. & Z. 1149.02

1129.01 USE REGULATIONS.

Buildings and land shall be used, and buildings shall be erected, altered, moved or maintained only for the uses set forth in the schedules and regulations of this chapter.

(a) Main buildings and uses listed in Section 1129.02 shall be permitted as the principal buildings, use or activity of a lot zoned for office buildings.

(b) Accessory buildings and uses listed in Section 1129.02 shall be permitted as a subordinate building or use which is clearly incident to, and located on, the same zoning lot as the main building or use.

(Ord. 16-16A. Passed 6-20-16.)

1129.02 SCHEDULE OF PERMITTED BUILDINGS AND USES.

(a) Main Uses permitted in the Office Building "1", "2" and "3" Districts shall be permitted as listed in Schedule 1129.02:

1129.02 Schedule of Permitted Buildings and Uses

Permitted Uses	Office Building "1" (OB-1)	Office Building "2" (OB-2)	Office Building "3" (OB-3)
Office Buildings for business and professional use [1]	X	X	X
Research and Development Laboratories	X	X	X
Mixed-Use Developments pursuant to Section 1129.25			X
[1] Including administrative, training, statistical, financial and similar purposes in connection with such uses.			

Any other office or laboratory use determined to be similar by the Planning and Design Commission is also permitted.

(b) Accessory Uses.

(1) Buildings and uses immediately and exclusively accessory to the main uses permitted on the site.

A. Accessory off-street parking facilities.

B. Direct broadcast satellite receiving stations, and other telecommunications structures as set forth in Section 1129.08(a).

C. Signs

(2) Uses within the main building or buildings.

A. Central air conditioning and power plants.

B. Incidental storage of documents or other property.

C. Training facilities for employees.

D. Living quarters for a custodian or caretaker of the office building or buildings.

E. Clinics, cafeterias, lunch rooms, banks, post offices, recreation and meeting rooms, retail trade and service uses where necessary for the comfort, convenience and use of the tenants, employees and business visitors in the building or buildings.

(Ord. 16-16A. Passed 6-20-16.)

1129.03 CONSTRUCTION OF RESIDENTIAL BUILDINGS PROHIBITED. (DELETED)

EDITOR'S NOTE: Former Section 1129.03 was deleted by Ordinance 16-16A.

1129.04 OFFICE BUILDINGS IN GENERAL BUSINESS DISTRICTS. (DELETED)

EDITOR'S NOTE: Former Section 1129.04 was deleted by Ordinance 16-16A.

1129.05 SCHEDULE OF AREA REQUIREMENTS.

Maximum area covered by main buildings	Thirty percent (30%)
Maximum area covered by all buildings and all accessory buildings and structures on or above grade	Forty percent (40%)
Minimum "Green Space Area"	Twenty-five percent (25%)

*The minimum "Green Space Area" is equal to gross land area minus ground area of buildings, driveways and parking areas, including such areas which are enclosed on or above grade parking garage areas and/or structures. The Minimum Green Space Area is land area planted with grass, ground cover, landscape material, trees, natural vegetation or land area for recreation uses, structures and facilities. A lessor Green Space Area percentage may be considered by the Planning and Design Commission for a Mixed-Use Development when the Planning and Design Commission determines that such lower percentage is appropriate and necessary to achieve the objectives of Section 1129.25.
(Ord. 16-16A. Passed 6-20-16.)

1129.06 YARD REGULATIONS.

(a) For every main or accessory building or use, the following yards shall be provided:

		Front (Feet)	Side (Feet)	Rear (Feet)
(1)	For every main or accessory building in Office Building "1", "2", and Office Building "3"	30	10	10
(2)	For every main or accessory building In Office Building - "1" Office Building - "2", Office Building "3" adjacent to a Residential District as enumerated in Section 1109.01	N/A	40*	10
(3)	For every main or accessory building in an Office Building "3" adjacent to a public park or dedicated open space	NA	10	10
(4)	Accessory open off-street parking	20	10	10
(5)	Accessory open off-street parking adjacent to a Residential District as enumerated in Section 1109.01	N/A	15*	15*

*Landscape buffering and/or landscape screening shall be provided as required by subsection (c) hereof.

The specific setback requirement as set forth herein as is specifically applicable to a specific wall of a main or accessory building shall be increased one foot for each one foot the highest point of the roof of such wall of the building exceeds twelve feet in height above grade.

(b) A curb or other barrier shall be erected on the line marking required yards pertaining to off-street parking. The remaining yard shall be landscaped and attractively maintained.

(c) The Planning and Design Commission may require landscape buffering or landscape screening in accordance with Section 1149.05 along a side or rear lot line provided that any wall or any fencing whether incorporated as part of a landscaped buffer or whether used as a landscape screen along the side lot of the front yard of an adjacent Residential District or any other zoning district with an existing residence thereon shall not be constructed, erected or installed closer than twenty feet from the right-of-way line. Except as otherwise specifically permitted or as specifically required by the provisions of this chapter, trees and shrubs, yard structures and other landscape features shall not be constructed, erected or installed closer than twenty feet from the right-of-way line.

(d) Direct broadcast satellite receiving stations shall be located only in rear yards subject to the provisions and requirements of Section 1117.17 or on the roof of a main or accessory building subject to the provisions and requirements of Section 1129.08.
(Ord. 16-16A. Passed 6-20-16.)

1129.07 PROJECTIONS INTO YARDS.

No portion of a building, such as fire escapes or balconies, may project into a required front yard except signs as permitted in Section 1129.11.
(Ord. 16-16A. Passed 6-20-16.)

1129.08 HEIGHT REGULATIONS.

(a) The height of any main or accessory building in Office Building Districts "1" shall not exceed twenty-five feet. The height of any main or accessory building in Office Building District - “2" shall not exceed fifty feet. The height of any main or accessory building in Office Building District - "3" shall not exceed seventy-five feet.

In any Office Building District stacks, water tanks, elevator penthouses, bulkheads, skylights, ventilators, air conditioning and temperature control equipment, other mechanical appurtenances relating to the operation of the main or accessory building itself and penthouse enclosures for mechanical appurtenances erected upon or constituted as an integral part of the main or accessory building itself and not used for human occupancy may be erected to a height not to exceed fifteen feet above the finished roof line of the building.

Wireless, broadcasting, receiving and transmitting towers, radio and television antennae (except as provided in subsection (b) hereof), chimneys, flag poles and other like structures may be erected above the applicable height limit specified in subsection (a) hereof, subject to the following constraints:

(1) The height from the base of such structure, or the uppermost point at which such structure is attached to the main or accessory building, to the top of such structure shall not be greater than the horizontal distance from the base of such structure to the nearest adjoining property line.

(2) A variance approved by the Board of Zoning and Building Appeals shall be required for any such structure over thirty-five feet in height if detached from or not attached to the main building, or over fifteen feet in height above the uppermost point of attachment to the main building.

No wireless, broadcasting, receiving and transmitting tower and no radio or television antennae shall be erected in a front yard. Any wireless, broadcasting, receiving and transmitting tower and any radio or television antennae may be erected only in a side yard or in a rear yard in accordance with the provisions of this section.

Wireless, broadcasting, receiving and transmitting towers, radio and television antennae, chimneys, flag poles and other like structures shall be designed and constructed to withstand wind loads in accordance with ANSI (American National Standards Institute) A 58.1 Structural calculations and details for the installation shall be furnished to the Division of Building.

(b) A direct broadcast satellite receiving station may be placed on the roof of a main or accessory building provided all of the following conditions are satisfied:

(1) The receiving station is not linked or otherwise connected to receivers which are not located within the same premises as the antenna;

(2) The highest point of the satellite receiving dish shall not exceed three feet greater than the dimension of the dish above the plane upon which it is mounted which shall include the height of any base upon which the dish is mounted;

(3) The satellite receiving dish shall not exceed nine feet in dimension;

(4) The satellite receiving dish shall be constructed and anchored in such a manner as to withstand wind loads in accordance with ANSI (American National Standards Institute) A 58.1. Structural calculations, including calculations certifying to the capability of the roof to support the dish and the base, and details for the installation shall be furnished to the Division of Building;

(5) The satellite receiving dish shall be affixed in a permanent fashion such that it would only be removable for repair or replacement;

(6) The dish shall not be placed closer than twenty feet from any roof edge;

(7) Only one such station shall be permitted at any one time on the same building;

(8) No lettering, numerals, symbols, pictorial signs or designs exceeding one-half inch in any dimension shall be permitted on any surface.

(Ord. 16-16A. Passed 6-20-16.)

1129.09 SIGN PURPOSE, TYPE AND NUMBER.

The signs permitted in Office Building Districts as to purpose, type and number shall be as regulated in Chapter 1145. (Ord. 16-16A. Passed 6-20-16.)

1129.10 SIGN AREA.

The area of signs shall be as regulated in Chapter 1145.
(Ord. 16-16A. Passed 6-20-16.)

1129.11 SIGN LOCATION.

The location of signs shall be as regulated in Chapter 1145.
(Ord. 16-16A. Passed 6-20-16.)

1129.12 SIGN ILLUMINATION.

Signs in Office Building Districts may be illuminated subject to the regulations of Chapter 1145. (Ord. 16-16A. Passed 6-20-16.)

1129.13 SIGNS; MISCELLANEOUS.

(EDITOR'S NOTE: This section was repealed by Ordinance 80-117, passed June 1, 1981. See Chapter 1145 for relevant provisions.)

1129.14 ACCESSORY PARKING FACILITIES REQUIRED.

Accessory off-street parking facilities, including access driveways, shall be determined in conformance with the standards set forth in this chapter.

(a) Such facilities shall be provided on the same lot or on an adjoining lot under the same ownership whenever:

(1) A building is constructed;

(2) An existing building is altered, resulting in an increase in measurement capacity.

(b) Required off-street parking facilities, including access driveways, accessory to an existing use, and those required as accessory to a use created or a building constructed or altered hereafter, shall be continued and maintained in operation and shall not be reduced below the requirements during the period that the main use is maintained. Failure by the owner or owners to supply such off-street parking shall cause the Building Commissioner to revoke the occupancy of a sufficient number of the units in order to bring the facility into conformity with parking requirements. Accessory off-street parking facilities shall not be used for the rebuilding, overhauling or dismantling of any vehicle as defined in Section 301.51 or for the storage of motor or body parts or for minor repair services on any vehicle.

(c) Required parking spaces may be either enclosed, underground or open.

(Ord. 16-16A. Passed 6-20-16.)

1129.15 MEASUREMENT STANDARDS.

(a) "Accessory parking space" means an open or enclosed area (garage) directly accessible from a public street for parking of motor vehicles of owners, occupants, employees, customers or tenants of the main building or use. Each space shall be directly accessible from a drive or aisle, and shall have a minimum rectangular dimension of not less than nine feet in width and eighteen feet in length for ninety degree parking; nine feet in width and twenty-two feet in length for parallel parking; ten feet in width and eighteen feet in length for sixty degree parking and twelve feet in width and eighteen feet in length for forty-five degree parking, exclusive of all drives, aisles, ramps and other circulation areas, and determined from an accurate plan of the area.

(b) "Floor area" means the total area of all the floors of the building measured from the exterior faces of the building. Basement areas or other floors or parts thereof designed, arranged or used exclusively for storage or similar uses may be excluded from the floor area if the areas or floors or parts thereof are not open to the public.

Such areas as stairs, hallways, restrooms, equipment or furnace rooms, elevator shafts, etc. shall be excluded.

(c) When the computation results in a fractional unit, one additional space shall be provided. (Ord. 16-16A. Passed 6-20-16.)

1129.16 SCHEDULE.

For other than medical and dental offices and clinics, one off-street parking space per each 150 square feet of floor area of 6,000 square feet or less; forty off-street parking spaces plus one space per each 200 square feet of floor area over 6,000 square feet. For medical and dental offices and clinics, one off-street parking space shall be provided per each 100 square feet of floor area to 10,000 square feet and one space per each 200 square feet of floor area over 10,000 square feet. (Ord. 16-16A. Passed 6-20-16.)

1129.17 ACCESSWAYS TO PARKING AREAS.

The location and width of entrance and exit driveways to parking facilities shall be planned so as to interfere as little as possible with the use of nearby property and with pedestrian and vehicular traffic on the adjacent streets.

(a) Whenever possible, the center line of the access driveways on the frontage streets shall be at least forty feet from the right-of-way line of the nearest intersecting street and be spaced at not less than 120-foot intervals, measured from the center line of the driveways.

(b) Parking areas shall be designed so that vehicles can be driven forward into the street. Those of fifteen spaces or less shall have at least one single-lane or one two-lane driveway; those of sixteen spaces or more shall have at least two single-lane, or one two-lane driveway. Each entrance to, or exit from, a parking area of sixteen spaces or more shall be limited to two lanes.

(c) The widths of driveways, measured at the setback line, shall conform to the following schedule. At no point where adjoining a public sidewalk shall the maximum widths be exceeded.

Lanes	Minimum feet	Maximum feet
One	10	12
Two	18	24

(d) The angle of intersection between the driveway and the street shall be between sixty degrees and ninety degrees. The radius at the edge from the apron shall be at least twelve feet, twenty feet recommended, so that a motor vehicle entering or leaving may not obstruct vehicles in other traffic lanes in the driveway or in the curb lane of the street.

(Ord. 16-16A. Passed 6-20-16.)

1129.18 SURFACE IMPROVEMENTS OF PARKING AREAS.

(a) Proposed and existing parking areas and access driveways shall be improved with asphalt concrete or Portland cement concrete or other impervious surface and shall be so graded and drained into proper inlets so that all water is drained within the lot on which the parking area or driveway is located in such manner that water shall not drain across other public or private property.

(b) Parking areas shall be so arranged and marked as to provide for orderly and safe parking and storage of vehicles in accordance with the design standards in this chapter, and shall be improved, except at entrances and exits with guardrails, curbs or other devices to define parking spaces or limits of paved areas, so as to prevent encroachment of vehicles into adjacent areas or public ways, yards or setbacks required by the Zoning Code, and so as to regulate the flow of traffic within the lot.

(c) The Planning and Design Commission may require landscape buffering or landscape screening to be provided on the parking area property to insulate the parking areas and driveways from a side or rear lot line of other property in Residential Districts or any other Zoning District with an existing residence thereon. Landscape buffering may include, but shall not be limited to, evergreen trees and bushes, compact hedges, shrubs, earth berms or a combination thereof. Landscape screening shall include plant material or other nonliving durable material, including, but not limited to, walls, berms or substantially solid decorative wood fencing. Where trees and shrubs are used to provide a landscape buffer, such shall provide a year-round state of being substantially impervious to rays of light. It shall be acceptable to incorporate fencing as part of the landscape buffer where noise and lights create a need that such landscape buffer include fencing. Fencing may also be used to provide landscape screening. Whenever used, fences shall be of a decorative style and type. Walls and berms shall be used only in the most unusual cases.

The desired buffering or screening effect shall be achieved not later than twelve months after the initial installation. The Planning and Design Commission may extend this twelve month period of time when a hardship would be created because of expected growth or material shortages, but such extension shall not be for more than two years from the time the initial installation was to have been or has been installed. All buffering and screening requirements imposed under the provisions of this subsection shall be installed and constructed before a certificate of occupancy is issued for a new building or structure. No existing building, structure or vehicular use area adjoining a Residential District or any other zoning district with an existing residence thereon shall be expanded, altered or modified until the plans are submitted by the opener on developer to the Planning and Design Commission for its determination as to whether the change adversely affects any properties in a Residential District or any other zoning district with an existing residence thereon. The Commission, after its review, shall require, where necessary, the establishment of a landscape buffering area or the installation of landscape screening, or a revision of a previously established buffered area or screening. The width and height of the landscape buffer or landscape screening shall be determined by the Planning and Design Commission provided, however, that the maximum height of fencing, whether incorporated as part of the landscape buffer or whether used as a landscape screen, which may be permitted shall be seven feet above finished grade. The owner, tenant and developer shall be responsible for the maintenance and replacement, if necessary, of the landscape buffer or landscape screening.

Owners or developers of off-street parking areas shall be required to include a plan for buffering or screening the parking areas and driveways, including a detailed description and sketch of the landscape buffer or landscape screening which visually and verbally outlines the nature and the effect of the proposed landscape buffer or landscape screening. A certificate of occupancy shall not be granted until the buffering or screening requirements have been completed. If completion, in the case of living materials, is delayed because of the growing season, a temporary permit to occupy may be granted by the Building Commissioner. Such delay shall not extend beyond the next growing season following the date upon which the certificate of occupancy is requested.

(d) In order to carry out the objectives of this Zoning Code and to preserve the use and enjoyment of adjoining property not less than five percent (5%) of an off-street parking area of a lot with twenty or more off-street accessory parking spaces shall have landscaping islands to break up the expanse of pavement. Each landscaping island shall not be less in size than the required area of one off-street parking space, shall be interspersed throughout the entire off-street parking area and shall have trees and such other landscaping as may be required by the Planning and Design Commission. Areas of landscaping surrounded by at least three sides by accessory off-street parking areas or accessories to parking areas may be considered a landscaped island. (Ord. 16-16A. Passed 6-20-16.)

1129.19 APPROVAL OF PARKING FACILITIES.

Detailed drawings of off-street parking facilities shall be submitted to the Planning and Design Commission for review and approval in accordance with all the provisions of this chapter before a building permit or certificate of occupancy may be issued. Such drawings shall show the number of spaces and locations, dimensions and descriptions of all features as set forth in this chapter. (Ord. 16-16A. Passed 6-20-16.)

1129.20 ILLUMINATION OF PARKING FACILITIES.

Areas used to provide required off-street parking, and accessways thereto shall be illuminated whenever deemed necessary by the Planning and Design Commission to protect the public safety. The illumination of parking areas in office building districts shall be reduced in intensity after the close of business of the main use or uses. Lighting fixtures shall be so designed and located so as not to reflect direct rays of light upon adjoining residential properties and streets or cause a glare hazardous to pedestrians or drivers of motor vehicles on adjacent public streets, and shall be subject to the approval of the Commission.
(Ord. 16-16A. Passed 6-20-16.)

1129.21 APPLICATION AND DESIGN OF PARKING AREAS.

(a) Application for Providing Facilities. An application for a building permit pertaining to constructing a building or parking facility or for a certificate of occupancy for a change in use of land or a building shall include a site plan drawn to scale and fully dimensioned, showing the proposed design of the parking area to be provided in accordance with the space requirement schedules that are a part of this Zoning Code.

(b) Determination of Required Parking Facilities. The minimum number of spaces required for accessory off-street parking shall be determined by applying the measurement standards in Section 1129.15, the standards for designing parking areas in subsection (c) hereof, the schedule of accessory parking requirements for the various uses in Section 1129.16 and any other applicable provisions of this Zoning Code.

The Planning and Design Commission may modify the parking requirements of Section 1129.16 under such terms and conditions as it determines will protect the public interest where it finds based upon the factual evidence presented that due to the nature of the particular use such requirements will not be adequate to provide sufficient parking or where the strict application of the requirements will result in an excessive amount of parking related to the particular use.
(Ord. 95-69. Passed 10-16-95.)

(c) Design Standards. The plan of the parking spaces of a parking area included with an application to construct a building or parking area, or change in use, shall be designed, dimensioned and the number of spaces determined in accordance with the standards for designing parking areas as may be adopted by the Commission and which is part of this Zoning Code. Design standards for enclosed parking areas and garages, shall be in accordance with other provisions of this Zoning Code.

(d) Handicapped parking spaces shall be provided in accordance with the provisions of the Ohio Basic Building Code.
(Ord. 16-16A. Passed 6-20-16.)

1129.22 REQUIRED TRASH AREAS.

All office building uses that provide trash and/or garbage collection areas shall be enclosed on at least three sides by a solid wall or fence of at least four feet in height if such area is not within an enclosed building or structure. Provisions for adequate vehicular access to and from such area or areas for collection of trash and/or garbage as determined by the Planning and Design Commission shall be required.
(Ord. 16-16A. Passed 6-20-16.)

1129.23 APPROVAL OF CITY ENGINEER REQUIRED.

The City Engineer shall make a survey of the public sanitary and storm sewers to be affected by the proposed building or use set forth in the application for a building permit and shall forward his approval to the Building Commissioner prior to the issuance of a building permit.
(Ord. 16-16A. Passed 6-20-16.)

1129.24 RESERVED.

EDITOR'S NOTE: This section is reserved for future legislation.

1129.25 DEVELOPMENT STANDARDS AND CRITERIA FOR MIXED-USE DEVELOPMENTS.

(a) Purposes: The purposes of Mixed-Use Development are to:

(1) Encourage a mixture of complementary land uses that includes residential, retail, offices, lodging, theaters and other places of assembly to create economic vitality all in the same location.

(2) Encourage skillful planning by allowing flexibility in the type and placement of buildings while promoting coordinated architectural design within a unified development area

(3) Provide flexibility in the siting and design of the development and subsequent redevelopment to anticipate changes in the marketplace.

(4) Utilize design criteria for the new developments that are aesthetically pleasing and foster pedestrian movement among the facilities in the development and to and from the adjacent areas to the extent practicable.

(b) Use Parameters:

(1) In a Mixed-Use Development the following uses are permitted in addition to the permitted Office Uses listed in section 1129.02 "Schedule of Permitted Buildings and Uses:"

A. Retail Uses when in completely enclosed buildings and shall include the retail sales of goods and personal services such as beauty and barber shop, banks and savings and loan, travel agency and other similar uses, Permitted retail explicitly excludes automotive services such as, but not limited to, new and used car dealerships, tire sales, vehicle maintenance and repair services, auto or truck wash, gasoline service stations and similar automotive services as determined by the Planning and Design Commission.

B. Hotels.

C. Restaurants which may include outdoor dining as approved by the Planning and Design Commission.

D. Residential including: Multiple Family development, Senior Citizen Housing, Congregate Housing for Independent and/or Assisted Living, and Nursing Care.

E. Assembly Facilities which are limited to conference center, Meeting Halls, theaters and similar places of assembly.

(2) Retail (Subsection (1)A, above) and Assembly Facilities (Subsection (1)E, above), combined, shall not comprise more than thirty (30 %) percent of the total floor area - including both existing and new floor area.

(3) Residential shall not comprise more than seventy (70%) of the total floor area - including both existing and new floor area. The minimum size of the dwelling units shall be: 1-bedroom 550 sq. ft.; 2-bedroom 750 sq. ft.; and 3-bedroom 900 sq. ft.).

(4) The retail and residential percentage limitations, above, do not include ancillary or accessory uses such as dining areas, fitness centers, conference facilities, or similar activity areas when determined by the Planning and Design Commission to be provided primarily for the residents and/or guests at the hotel.

(c) The Project Size shall be a minimum of eight (8) acres to be eligible for a Mixed-Use Development.

(d) Setbacks, Coverage, Height, etc. shall comply with Sections 1129.05 through 1129.08.

(e) Off-Street Parking shall be developed in compliance with Sections 1129.14 through 1129.21 except as modified herein:

(1) The number of parking spaces required in a Mixed-Use Development shall be as a minimum:

A. Offices (non-medical) - 1 space per 300 square feet of floor area.

B. Medical offices, dental offices and clinics - 1 space per 200 square feet of floor area.

C. Hotels - .85 spaces per room.

D. Retail - 1 space per 250 square feet of floor area.

E. Residential - Attached Single Family Homes - 2 enclosed spaces per dwelling unit; Apartments - one and one-half (1.5) spaces per dwelling unit; Senior Apartments - one and one-quarter (1.25) spaces per dwelling unit; Assisted Living - one-half (.5) of a parking space per bed and Nursing Care.

F. Restaurants - 1 space for 75 square feet of floor area.

G. Assembly Facilities - 1 space for every 3 seats of capacity.

(2) The minimum width of a parking space shall be nine (9) feet for angled parking and eight (8) feet for parallel parking when permitted on a designated public or private street or driveway.

(3) Shared Parking: Notwithstanding the requirements set forth in this Section, in a Mixed-Use Development, the Planning and Design Commission may approve a lesser amount of parking than the total spaces required taking into consideration: the hours of operation of uses; the overlap in parking demand by different adjacent uses; and the operating characteristics of the specific uses proposed.

(4) For any off-street parking that is located on adjacent land which is not part of the development site (because such land, for example, is not owned by the applicant or the land is in another municipal jurisdiction such as the City of Cleveland) and such land is needed to satisfy the parking requirements of Fairview Park, the applicant shall provide the City of Fairview Park, with the development plan application, sufficient binding documentation and legal instruments, acceptable to the Law Director, that the parking is sufficiently secured to meet the parking requirements for the proposed mixed-use development.

(f) Signs: Signs in a Mixed-Use Development shall comply with the requirements of Chapter 1145 except that:

(1) Wall signs for each building or tenant unit (Section 1145.15 (c)(1);

(2) Canopy signs (Section 1145.15 (c)(3), and

(3) Monument signs (Section 1145.15 (c)(6)

will not be confined to the above size and height limitations of Chapter 1145 if the Planning and Design Commission determines - because of the location of the proposed development, the large size of the buildings, the overall scale of the development, and/or the location of the proposed signs relative to the adjacent street - that such larger and higher signs are compatible with the scale of the development, are appropriate to meet the needs of the businesses, and are consistent with the intent and purposes of this Section 1129.25.

(g) Review Procedures for Mixed-Use Developments: Development plan review is required for a Mixed-Use Development in accordance with the procedures in Section 1149.05. When reviewing the development plan the Planning and Design Commission shall consider, in addition to the criteria in Sections 1149.05 and 1149.10, and the specific intent of a Mixed-Use Development as set forth in Sub-section 1129.25 (a), above.
(Ord. 16-16A. Passed 6-20-16.)

CHAPTER 1133
Low-Rise Planned Development District

1133.01 Permitted uses.
1133.02 Area regulations.
1133.03 Height regulations.
1133.04 Yard regulations.
1133.05 Parking and driveways.
1133.06 Landscaping and open space.
1133.07 Signing and lighting.
1133.08 Building and site design standards.
1133.09 Site development plans.
1133.10 Cluster planning.

CROSS REFERENCES
Architectural Board of Review - see CHTR. Art. VII §6; ADM. Ch. 139
Apartment rental license; fee - see BUS. REG. 707.02
Signs - see P. & Z. Ch. 1145

1133.01 PERMITTED USES.

Land and buildings shall be used and buildings designed, erected, moved and altered only in accordance with the use regulations set forth in this chapter.

(a) Main Uses and Buildings. Townhouses and multi-family dwellings limited to units which form single integrated homes with separate exterior entrances and fire walls dividing each unit. Where one unit is built above or below another unit, these units may have a common public entrance.

(b) Accessory Uses and Buildings.

(1) Private accessory automobile garages or carports for each dwelling.

(2) Visitor off-street parking of passenger automobiles.

(3) Private non-commercial swimming pools, recreation areas and facilities intended and used solely by the occupants and their guests.

(4) Private accessory storage and maintenance structures needed for the operation and maintenance of the buildings and site.

(5) Landscape features including gardens, fountains, sidewalks, walls and decorative fences and lawns.
(Ord. 74-10. Passed 4-15-74.)

(6) Direct satellite receiving stations, and other telecommunications structures as set forth in Section 1133.03(a), air conditioning and ventilation equipment and necessary utility equipment as permitted in this chapter and approved by the Planning and Design Commission.

(7) One identification sign disclosing only the name and address of the development.
(Ord. 95-70. Passed 10-16-95.)

1133.02 AREA REGULATIONS.

Land and buildings shall be designed, improved and maintained only in accordance with the following schedules:

(a) Site Area. The area of a parcel or parcels of land shall contain a minimum of 100,000 square feet and shall be under common ownership.
(Ord. 84-97. Passed 6-17-85.)

(b) Building Ground Coverage. All buildings and structures shall not cover more than twenty-five percent of the gross land area under development.
(Ord. 95-70. Passed 10-16-95.)

(c) Lot Frontage. Each Low-Rise Planned District shall have a minimum lot frontage at the building line of not less than 150 feet.
(Ord. 84-97. Passed 6-17-85.)

(d) Dwelling Unit Areas. Each dwelling unit in a Low-Rise Planned District shall have gross land area and minimum floor area of not less than:

Number of Bedrooms	Gross Land Area (square feet)	Livable Floor Area (Square Feet)
One	2,500	750
Two	2,700	850
Three	3,000	1,000
Each additional bedroom	300	200

(Ord. 95-70. Passed 10-16-95.)

1133.03 HEIGHT REGULATIONS.

(a) The height of any main building in a Low-rise Planned Development District shall not exceed thirty-five feet or two and one-half stories, whichever is the lesser. In a Low-rise Planned Development District, stacks, water tanks, elevator penthouses, bulkheads, skylights, ventilators, air conditioning and temperature control equipment, other mechanical appurtenances relating to the operation of a main or accessory building itself and penthouse enclosures for mechanical appurtenances erected upon or constituted as an integral part of the main or accessory building itself and not used for human occupancy may be erected to a height not to exceed fifteen feet above the finished roof line of the building. Wireless, broadcasting, receiving and transmitting towers, radio and television antennae (except as provided in subsection (c) hereof), chimneys, flag poles and other like structures may be erected above the height limit specified in this subsection or subsection (b) hereof subject to the following constraints:

(1) The height from the base of such structure, or the uppermost point at which the structure is attached to the main or accessory building, to the top of the structure shall not be greater than the horizontal distance from the base old such structure to the nearest adjoining property line.

(2) A variance approved by the Board of Zoning and Building Appeals shall be required for any such structure over thirty-five feet in height if detached from or not attached to the main building, or over fifteen feet in height above the uppermost point of attachment to the main building.

No wireless, broadcasting, receiving and transmitting tower and no radio or television antennae shall be erected in a front yard. Any wireless, broadcasting, receiving and transmitting tower and any radio or television antennae may be erected in a side yard or in a rear yard only in accordance with the provisions of this section.

Wireless, broadcasting, receiving and transmitting towers, radio and television antennae, chimneys, flag poles and other like structures shall be designed and constructed to withstand windloads in accordance with ANSI (American National Standards Institute) A 58.1. Structural calculations and details for the installation shall be furnished to the Division of Building.
(Ord. 93-7. Passed 5-3-93.)

(b) Accessory buildings, carports and accessory storage and maintenance structures shall not exceed fifteen feet in height above finished grade.

(c) A direct broadcast satellite receiving station may be placed on the roof of a main or accessory building provided all of the following conditions are satisfied:

(1) The receiving station is not linked or otherwise connected to receivers which are not located within the same premises as the antenna;

(2) The highest point of the satellite receiving dish shall not exceed three feet greater than the dimension of the dish above the plane upon which it is mounted which shall include the height of any base upon which the dish is mounted;

(3) The satellite receiving dish shall not exceed nine feet in dimension;

(4) The satellite receiving dish shall be constructed and anchored in such a manner as to withstand wind loads in accordance with ANSI (American National Standards Institute) A 58.1. Structural calculations, including calculations certifying to the capability of the roof to support the dish and the base, and details for the installation shall be furnished to the Division of Building;

(5) The satellite receiving dish shall be affixed in a permanent fashion such that it would only be removable for repair or replacement;

(6) The dish shall not be placed closer than twenty feet from any roof edge;

(7) Only one such station shall be permitted at any one time on the same building;

(8) No lettering, numerals, symbols, pictorial signs or designs exceeding one-half inch in any dimension shall be permitted on any surface.
(Ord. 95-70. Passed 10-16-95.)

1133.04 YARD REGULATIONS.

(a) Front Yards. Each residential or accessory building shall have a front yard for the lot and on any interior street of less than forty feet. Parking within the required front yard shall not be permitted.

(b) Side and Rear Yards. Side and rear yards for any residential or accessory building shall be no less than twenty-five feet and where a Low-Rise Planned Development District borders a single-family, a two-family district or any other Zoning District with an existing residence thereon an additional five foot landscape buffer approved by the Planning and Design Commission shall be provided.

(c) Use of Yards.

(1) Required yards shall not be used for buildings, structures or recreation facilities such as tennis courts, swimming pools, parking or any type of storage.

(2) No use shall be permitted in side or rear yards except:

A. On-site open parking or drives up to fifteen feet of a lot line.

B. Landscaping, sidewalks, trees and open spaces as required by the Planning and Design Commission.

C. Underground utilities.

D. Swimming pools within the rear yard subject to the swimming pool regulations.

(3) No use shall be permitted in a front yard except:

A. Required ingress and egress and pedestrian walks.

B. Landscaping features.

C. One development identification sign as controlled in this chapter.

D. Underground utilities.

(d) Direct broadcast satellite receiving stations shall be located in only rear yards subject to the provisions and requirements of Section 1117.17 or on the roof of a main or accessory building subject to the provisions and requirements of Section 1133.03(d).
(Ord. 95-70. Passed 10-16-95.)

1133.05 PARKING AND DRIVEWAYS.

Parking areas and driveways shall be properly related to the public street and residential buildings so as to promote safety, convenience and to minimize congestion or hazards. In addition to the provisions of Chapter 1121 the following standards shall be met:

(a) Every planned development shall provide two garage spaces for each living unit. One of the spaces shall be within a garage or carport, the other may be an open off-street space.
(Ord. 84-97. Passed 6-17-85.)

(b) Ingress and egress from public streets shall be provided for every parcel, but not more than one access driveway shall open upon a public street for every 120 feet of frontage fronting a public street. Driveways shall be planned and constructed at locations designed to avoid traffic congestion and hazards, and shall be approved by the Planning and Design Commission.
(Ord. 95-70. Passed 10-16-95.)

1133.06 LANDSCAPING AND OPEN SPACE.

In order to provide light, ventilation and open spaces within the City and to provide environmental amenities to the occupants of the development, a land area not covered by buildings, parking areas, drives, sidewalks, plazas or other hard surfaced uses shall be developed and maintained in grass or other landscape planting as approved by the Planning and Design Commission.

(a) Minimum Area. Grade level landscaped open space shall be not less that fifty percent of the site. This minimum landscaped area may include required yards and garage roofs which are covered with earth, grass, plantings and as approved by the Planning and Design Commission.

(b) Required Private Open Space for Residential Uses. Every dwelling unit shall have available to it a separate private yard containing at least 400 square feet, with screening provided as part of the planned development as to ensure adequate privacy. Such screening shall be subject to the provisions of this Zoning Code with respect to fences and shall be approved by the Planning and Design Commission.

(c) Submitted Landscaping Plan. The site development plan for review by the Planning and Design Commission shall show all landscape and open space areas as well as provisions for buffering and screening.

(Ord. 95-70. Passed 10-16-95.)

1133.07 SIGNING AND LIGHTING .

Development shall conform to the standards and provisions which apply to this district as specified in Chapter 1145 and subject to approval of the Planning and Design Commission.
(Ord. 95-70. Passed 10-16-95.)

1133.08 BUILDING AND SITE DESIGN STANDARDS.

Buildings, site development and uses shall be designed and arranged so as to provide a unified building complex which shall be an asset to the City, residents and occupants of the development:

(a) All utilities serving the buildings and site, including electric, telephone and all supporting equipment thereto including meters, transformers, etc., shall be placed underground within a building.

(b) All buildings and grounds shall be designed, constructed and maintained as approved in the site development plan. All landscaping, sidewalks, pedestrian plazas, parking areas and building exteriors shall be maintained free of any unsafe, unsightly or blighting condition which deteriorates the appearance, character, safety or value of the City or surrounding area.

(c) The developers of every Low-Rise Planned Development District shall make provision for the maintenance, upkeep and repair of common land, utilities, roofs, walls, driveways, sidewalks and other areas or facilities under common or joint use, for the payment of expenses, taxes and assessments thereon, and shall establish standards for the maintenance which shall be filed with the Building Commissioner and repair of individually owned and operated areas, in accordance with laws applicable to condominium or incorporated association ownership. Such provisions, agreements, easements and covenants shall be subject to the approval of the Director of Law in order that such maintenance, repair and payment of taxes may be guaranteed.

(d) All developments shall be designed and constructed so as to relate to and to improve the character and quality of the surrounding properties and the City. The orientation and construction of buildings and the location of private space and common space shall be designed to promote the utmost privacy and individuality of units and to form a unified composition of buildings and space and a variety of perspectives according to sound architectural and planning principals.
(Ord. 74-10. Passed 4-15-74.)

1133.09 SITE DEVELOPMENT PLANS.

Until a preliminary development plan has been approved by Council for a low-rise planned development, all provisions of this Zoning Code applicable to the existing zoning district in which any land is located shall be applicable to such land. After approval of a preliminary development plan and the rezoning of the parcel to this use district, the provisions of this chapter with respect to low-rise planned development shall be applicable to the land in such development.

No building, structure or land shall be erected or used in accordance with the provisions of the Low-Rise Planned Development District unless a final site development plan thereof has been submitted to, reviewed by and approved by the Planning and Design Commission. Such site development plans shall conform to all provisions and procedures of Section 1149.12.
(Ord. 95-70. Passed 10-16-95.)

1133.10 CLUSTER PLANNING.

In districts zoned Low-Rise Planned Development District, a group of three or more dwellings may be designed as clusters.

(a) Criteria. The cluster concept is intended to encourage the use of free and irregular yard patterns between dwellings and without uniform relation to the street system. The layout shall be designed in order to create an orderly arrangement with the landscape and topography of the area, and shall be in scale with surrounding residential buildings. Landscape features such as walls, fences and hedges may be incorporated intone design in order to create a variety of open spaces for common and private uses in keeping with the natural topography of the land and in order to preserve existing trees.

(b) Standards. The use regulations provided for in Section 1133.01, the area regulations provided for in Section 1133.02, the height regulations provided for in Section 1133.03 and the yard regulations provided for in Section 1133.04 shall be applicable to cluster developments except as modified herein:

(1) Area. The area and width of the dwelling lots may vary, but the average area for the cluster development shall not be less than 12,000 square feet per dwelling unit including the roadway, whether public or private, which serves the development.

(2) Front setback. The front setback of the individual dwelling units may vary, but in no case shall a structure be located closer than twenty feet to a roadway or required sidewalk.
(Ord. 80-75. Passed 3-2-81.)

(c) Approval Procedures. Cluster developments shall be subject to the approval procedures set forth in this chapter and of Chapter 1149.
(Ord. 95-70. Passed 10-16-95.)

CHAPTER 1137
General Business Districts

1137.01 **Residential buildings in Business Districts.**
1137.015 **Conversion of residential dwellings to limited commercial or business use.**
1137.02 **Use regulations.**
1137.03 **Schedule of permitted buildings and uses; General Business Classification "A".**
1137.04 **Schedule of permitted buildings and uses; General Business Classification "B".**
1137.05 **Prohibited uses.**
1137.06 **Illumination of open yards used for retail business or services.**
1137.07 **Yard regulations and schedule.**
1137.08 **Projections into yards.**
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1137.10 **Accessory parking facilities required.**
1137.11 **Measurement standards.**
1137.12 **Schedule.**
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1137.14 **Separate or combined use of facilities.**
1137.15 **Accessways to parking areas.**
1137.16 **Surface improvements of parking areas.**
1137.17 **Off-street loading space.**
1137.18 **Approval of parking facilities.**
1137.19 **Illumination of accessory parking facilities.**
1137.20 **Survey and approval of City Engineer required.**
1137.21 **Application and design of parking areas.**
1137.22 **Required trash areas.**
1137.23 **Deposit for survey of public sanitary and storm sewers.**

CROSS REFERENCES
Signs - see P. & Z. Ch. 1145
Building permit - see P. & Z. 1149.02

1137.01 RESIDENTIAL BUILDINGS IN BUSINESS DISTRICTS.

(a) Residential buildings, or parts thereof, located in Business Districts, shall comply with each and all of the regulations established in Multi-Family Districts, except multi-family housing for the elderly and handicapped authorized under Section 202 of the Housing Act of 1959, as amended, Public Law 86-372, 73 Stat. 667, 12 U.S.C. §1701q shall comply with each and all of the regulations adopted pursuant thereto when in conflict with this Zoning Code.

(b) Buildings and structures, or parts thereof, used for one- or two-family residences, or intended to be used as such, shall not be permitted on the same zoning lot on which is located a commercial or business establishment or use of any kind. Except as otherwise specifically provided in and permitted by Section 1137.015, existing one- and two-family residences, whether detached from or attached to or part of another structure on the same zoning lot or whether an integral part of a structure on a zoning lot, shall not be occupied, in whole or in part, by any other use or converted into a commercial or business establishment or use.
(Ord. 92-48. Passed 7-6-92.)

1137.015 CONVERSION OF RESIDENTIAL DWELLINGS TO LIMITED COMMERCIAL OR BUSINESS USE.

(a) An existing one- or two-family dwelling, whether detached from or attached to or part of another structure on the same zoning lot or whether an integral part of a structure on a zoning lot may be converted to and thereafter occupied and used for the uses permitted by this section subject to the provisions of this section.

(b) Design Criteria and Requirements. The following design criteria and requirements shall apply to all one- and two-family residences converted to and thereafter occupied and used for the uses permitted by this section:

(1) The entire building or structure shall be redesigned and reconstructed to express and serve the proposed use in regard to exterior design, the building plan and the site plan.

(2) The dwelling shall, to the maximum extent possible, be renovated and preserved to its original design except as may be necessary to comply with other applicable ordinances of the City, the provisions of this section and such concepts as are adopted by the Planning and Design Commission.

(3) In addition to such concepts as are adopted by the Commission, in considering the appropriateness of any proposed exterior design or of any change to the exterior surface of structures or of the appropriateness of existing or proposed landscaping and exterior signs, the following criteria shall be considered and applied by the Commission:

A. The distinguishing original qualities or character of a period building, structure or site shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features shall be avoided.

B. Alterations that have no historical basis or which seek to create an earlier appearance inconsistent or inappropriate to the original design or integrity of the building shall be avoided.

C. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.

D. Significant architectural details and features which have deteriorated shall be repaired rather than replaced whenever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of architectural details and features should be based on accurate duplications, and if possible, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

E. The surface cleaning of structures shall be undertaken with methods designed to minimize damage to historic building materials. Cleaning methods that will damage the historic building materials shall be avoided.

F. Any reconstruction or rehabilitation shall conform to the distinguishing, original exterior qualities and character of the structure and its site.

G. The use of contemporary materials such as aluminum, other metals, fiberglass and plastics for exterior surfaces shall be prohibited unless it is specifically determined by the Commission that the use of such materials would contribute to the preservation or enhancement of existing traditional materials and the overall integrity and longevity of a structure.

H. Traditional colors and combinations of colors as approved by the Commission shall be used for all structure exteriors including for all exterior remodeling and exterior maintenance.

(c) Signs. All signs shall conform to the material and color provisions of subsection (b) hereof, shall be of such a style and design that reflects the era during which the structure was built, and shall otherwise conform to the requirements of Chapter 1145 except that the structural type of such signs shall be limited to ground signs, wall signs, and window signs as defined in Section 1145.03(c). Such permitted signs shall not cover, "blank-out" or close existing window or doorway openings or otherwise hide important architectural details or features

(d) Interior Renovation. The interior of any dwelling converted to a commercial or business establishment or use shall be renovated in a manner as is necessary to comply with the Building Code and the National Electrical Code as such are applicable to premises used for a commercial or business establishment or use.

(e) Any existing one- or two-family dwelling, whether detached from or attached to or part of another structure on the same zoning lot or whether an integral part of a structure on a zoning lot, converted to or to be converted to a commercial or business establishment or use, shall not be added to or enlarged. Where the yards of existing one- or two-family dwellings are less than the minimum required yards as set forth in Section 1137.07, such residential dwelling shall be considered as conforming with respect to such yard requirements provided that yards of less dimensions than that required by Section 1137.07 shall not be further reduced. Such converted residential dwellings shall, in all other respects, comply with the requirements of this chapter.

(f) Permitted Main Uses. The use of any one- or two-family residence converted or to be converted to a commercial or business establishment or use shall be conducted wholly within buildings and shall be limited to the following:

(1) The sale of objects of art, crafts and antiques;
(2) The teaching of arts, crafts and the restoration or repair of antiques;
(3) The creation, assembly, and/or repair of arts and crafts;
(4) The restoration of antiques;
(5) Professional, financial, public utility, executive, governmental and administrative offices;
(6) Real estate offices;
(7) Retail business stores and services as enumerated in Section 1137.03(a)(1);
(8) Nursery schools, child day-care centers;
(9) Dwelling units on the upper floor(s) of a building as set forth in Section 1137.03(c); and
(10) Other similar uses (See Section 1105.17(d)).

(g) Permitted accessory buildings and uses shall be those specified in Section 1137.03(d)(1), (2) and (3).

(h) This section shall not be construed or applied so as to prohibit the construction of additional buildings or structures on the same zoning lot on which is located an existing one- or two-family dwelling which has been converted to a business or commercial establishment or use pursuant to the provisions of this section provided that a thirty foot wide fire separation is provided between the converted dwelling and such additional buildings or structures and that all other applicable ordinances are complied with including the provisions of this chapter.
(Ord. 18-12. Passed 6-25-18.)

1137.02 USE REGULATIONS.

Buildings and land shall be used, and buildings shall be designed, erected, altered, moved or maintained only for the uses set forth for each district respectively, in the schedules and regulations of this chapter.

(a) Main buildings and uses, listed in Sections 1137.03 and 1137.04, shall be permitted as the principal buildings, use or activity of a zoning lot located only in a district in which it is specifically permitted.

(b) Accessory buildings and uses, listed in Sections 1137.03 and 1137.04, shall be permitted as a subordinate building or use, which is clearly incident to, and located on, the same zoning lot as the main building or use. Accessory buildings and uses shall be located only in a district in which specifically permitted.

(c) Conditional buildings and uses, listed in Sections 1137.03 and 1137.04, may be permitted only in a district in which they are specifically permitted in accordance with the criteria, regulations and conditions as set forth in this Code and as approved by the Planning and Design Commission and Council.
(Ord. 86-22. Passed 4-4-88.)

(d) Main buildings and uses, listed in Section 1137.015, shall be permitted as the principal buildings, use or activity of a one- or two-family dwelling located in a General Business "A" or General Business "B" Zoning District converted to a business establishment or use.
(Ord. 92-48. Passed 7-6-92.)

1137.03 SCHEDULE OF PERMITTED BUILDINGS AND USES; GENERAL BUSINESS CLASSIFICATION "A".

(a) Main uses conducted wholly within buildings.

(1) Retail business stores and services.

A. The sale of all food, confectionery, dairy products, frozen food lockers and State liquor stores;

B. The sale and serving of all beverages and eating places, including dancing and live entertainment, provided that the building is sufficiently sound insulated to confine any noise to the building; (Ord. 91-69. Passed 10-7-91.)

C. The sale of all general merchandise including drugs, tobacco, jewelry, gifts, flowers, periodicals, books, stationery, clothing and accessories, shoes, and notions, and department and variety stores provided that no adult book store shall be located within 1000 feet of another adult book store nor within 1000 feet from any church, school, library, playground or to any other use classified as civic and recreational nor within 1000 feet of a residential district or as enumerated in Section 1109.01 or any other Zoning District with an existing residence thereon.

1. "Adult book store" means an establishment having a substantial and significant portion of its stock in books, magazines, newspapers, pamphlets and other periodicals, posters, pictures, images, figures, records, tapes, cassettes, discs, video cassettes, video discs, films, slides, transparencies, mechanical or nonmechanical devices and other similar materials which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".

2. "Specified sexual activities" means human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; or fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

3. "Specified anatomical areas" means less than completely and opaquely covered human genitals, pubic region, buttock; female breast below a point immediately above the top of the areola; and human male genitals in a discernibly turgid state even if completely and opaquely covered.

(Ord. 95-71. Passed 10-16-95.)

D. The sale and servicing of all hardware including electrical, plumbing and heating supplies, paint and garden supplies, tools, lawn and garden equipment, appliances, china, furniture, floor and wall covering and business equipment;

E. The sale of music, radio and television equipment provided that no loud speakers broadcast into the street; radio and television equipment repair;
(Ord. 91-69. Passed 10-7-91.)

F. The sale of bicycles, motorized bicycles, outboard motors, sports and athletic equipment;

G. Pet shops, animal hospitals provided that noise and odors are effectively confined to the building and further provided that animal hospitals shall comply with and meet the standards established by the American Animal Hospital Association or its successor; that animal hospitals shall not erect, maintain or cause to be created or maintained any outside animal run or cage and that there shall not be permitted any boarding of animals on the premises except for convalescent purposes;
(Ord. 95-71. Passed 10-16-95.)

H. Shops for custom work such as carpentry, woodworking, plumbing, tin, furnace repair, heating, electrical, upholstery, decorating, signs, ornamental iron, for the making of articles to be sold only at retail on the premises;

I. All personal service establishments such as beauty and barber shops, dry cleaning agencies, tailor shops, laundry agencies and self-service laundries, shoe and hat repair, carpet cleaning;

J. Photographic developing, blueprinting and small printing shops; photographic studios;

(2) Radio and television broadcasting stations, telephone exchanges and transformer stations.

(3) Wholesale offices and show rooms with storage limited to samples.

(4) Bus passenger stations and taxi stations.

(5) Banks and similar financial institutions. (Ord. 91-69. Passed 10-7-91.)

(6) Office buildings for professional, financial, governmental, public utility, executive and/or administrative offices, excluding sales offices with samples and merchandising services not incidental to the main use.
(Ord. 98-38. Passed 7-6-98.)

(7) Laboratories for basic and applied research, experimental or testing provided, research of production processes is limited to laboratory of nonpilot scale. Provided further that all operations shall not be offensive to adjoining properties by reason of the emission of dust, gas, smoke, noise, fumes, odors, vibrations, glare or other objectionable features, and that prior to the issuance of a building permit, evidence shall be required that adequate controls, measures or devices have been provided.

(8) Hospitals, medical laboratories and clinics.
(9) Funeral homes.
(10) Nursery schools, child day-care centers.
(Ord. 91-69. Passed 10-7-91.)
(11) Motels and hotels provided that rooms, units, suites or accommodations thereof shall not be used as the permanent or voting residence of any person. Any person occupying any room, unit, suite or accommodation or any combination or series of rooms, units, suites or accommodations on the premises of such motel or hotel in excess of thirty days shall be presumed to be a permanent resident in violation hereof. Any person, including any owner, operator, manager, lessor, agent or employee of such motel or hotel who contracts with, permits, authorizes, allows, suffers or causes any person to occupy any room, unit, suite or accommodation or any combination or series of rooms, units, suites or accommodations on the premises of such motel or hotel in excess of thirty days shall be presumed to have permitted the occupancy of a motel or hotel as a permanent residence in violation hereof.
(Ord. 92-13. Passed 6-15-92.)
(12) Amusement services and recreational services such as assembly and meeting halls, billiard halls, bowling alleys, game rooms, indoor theaters, social, fraternal, sport or recreational establishments or private clubs, provided they are conducted wholly within a building and are sufficiently sound insulated as to confine any noise to the premises and provided that none of the following uses shall be located within 1000 feet from any church, school, library, playground or to any other use classified as civic and recreational nor within 1000 feet of a residential district as defined in Section 1109.01 and provided that none of the following uses shall be located within 1000 feet of the same or another of the following:
A. Adult book store;
B. Adult motion picture theater;
C. Adult mini-motion picture theater;
D. Adult entertainment cabaret;
and provided further that no premises shall have or offer more than one of the uses listed in subsection (a)(12)(A). to D. hereof. "Adult book store" means the same as set forth in subsection (a)(l)C.1. hereof. "Adult motion picture theater" means an enclosed building with a capacity of fifty or more persons used for presenting materials whether by film, video cassette, video disc, cable television or any other visual media distinguished or characterized by an emphasis on material depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein. "Adult mini-motion picture theater" means an enclosed building with a capacity of less than fifty persons used for presenting materials whether by film, video cassette, video disc, cable television or any other visual media distinguished or characterized by an emphasis on material depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein. "Specified sexual activities" and "specified anatomical areas" means the same as set forth in subsection (a)(l)C.2. and 3. hereof. "Adult entertainment cabaret" means an establishment which features persons exhibiting "specified anatomical areas". "Specified anatomical areas" means the same as set forth in subsection (a)(l)C.3. hereof.
(Ord. 95-71. Passed 10-16-95.)

(13) Vocational schools and other training schools of a private, technical or professional nature.

(14) Nursing homes, rest homes, convalescent homes, geriatric hospitals and other similar institutions wherein patients are in permanent or semipermanent residence provided such institutions comply with both the provisions of this chapter and the provisions of the Zoning Code applicable to General Business Classification "A" buildings and uses not in conflict with the following:

A. The minimum lot size for such institutions shall not be less than two acres;

B. The minimum width at the building line for such institutions shall not be less than one hundred feet;

C. The minimum side yards for such institutions shall not be less than twenty-five feet;

D. The minimum front yard for such institutions shall not be less than thirty feet;

E. The minimum rear yard for such institutions shall not be less than forty feet;

F. The maximum height of any main or accessory building for such institutions shall be twenty-five feet;

G. All accessory parking facilities for such institutions shall be located behind the front building line; shall be located no closer than ten feet from a side or rear property line; and shall be provided in a number equivalent to that required of hospitals as set forth in Section 1137.12.

(15) Other similar uses. (Ord. 91-69. Passed 10-7-91.)

(b) Retail sales and services in open yards to the following extent:

(1) Garden supplies and furniture and nursery stock, provided the operation is in connection with an established business conducted within a building not more than 150 feet therefrom, and provided merchandise not sold, displayed or stored in a required yard.

(2) The sale of Christmas trees provided that the sale is in connection with an established business conducted within a building not more than 150 feet therefrom, and provided trees are not sold, displayed or stored in a required yard.

(3) Sales outside an enclosed building conducted by a tenant or owner of the premises at which sale is held with such owner or tenant also conducting its regular business wholly within an enclosed building at the sale location provided that no merchandise is sold, displayed or stored in a required yard; the display area of such sale shall not exceed the width of tenant's or owner's individual store frontage and shall not block any entrance or exit or obstruct the use of public sidewalks; such sale is conducted only during the tenant's or owner's normal business hours with all personal property to be returned to the enclosed building at the end of each business day; and such sale is limited to the same type of merchandise generally sold by the tenant or owner wholly within an enclosed building at the premises where the sale is being conducted.

(4) Any activity, event or function conducted by or on behalf of any recognized non-profit, educational, philanthropic, civic, religious, political or charitable organization or group provided that the aforementioned organization or group or person on its behalf first registers with the Building Commissioner stating the name of the organization or group, the nature of the activity, event or function being conducted, the duration and location of such activity, event or function and providing such other information deemed necessary by the Commissioner, including evidence satisfactory to the Commissioner that the organization or group is a recognized nonprofit, educational, philanthropic, civic, religious, political or charitable organization or group and that the person registering the organization or group is, in fact, authorized to act on its behalf. Written consent of the owner of the premises or other duly authorized person shall be provided. The registration shall be valid for a period not to exceed three days from the date the activity, event or function first commences unless earlier revoked.

Unless earlier revoked, any such registration shall be renewed once in any calendar year not less than six months after the expiration of the initial registration for an additional three days. No registration shall be assigned or transferred to any other organization, group or person. The proposed location of the activity, event or function shall not constitute a hazard to the public health, safety and welfare and shall be approved by the Commissioner. The approval of a registration shall constitute a temporary waiver of use restrictions, yard requirements, height regulations and accessory off-street parking requirements. No registration issued pursuant to this section shall be issued to any one given premises more than four times in any calendar year.

Any false, misleading or deceptive information provided by the registrant shall be cause for immediate revocation of the registration.

(c) Dwelling unit(s) on upper floor(s) of a building provided the lot has frontage on Lorain Road and the minimum floor area of the dwelling unit(s) shall be at least:

A. Studio or 1-bedroom 550 square feet;
B. 2-bedroom 750 square feet;
C. 3-bedroom 900 square feet; and
D. 150 square feet for each additional bedroom.

(d) Conditional Uses. (Reserved for future legislation)

(e) Accessory buildings and uses.

(1) Accessory off-street parking and loading facilities as required by this chapter.
(2) Maintenance, storage or processing operations clearly incident to the conduct of retail or service establishments or offices provided that no goods or merchandise shall be made upon the premises or repaired or other services rendered except those incident to a permitted building or use and for no other outlet except on the premises.
(3) Employee's lunch rooms and similar facilities.
(4) On the first floors of office buildings, uses permitted in other General Business "A" categories provided such uses do not exceed twenty-five percent (25%) of total office building floor area.
(5) Signs as permitted and as regulated by Chapter 1145.
(6) Direct broadcast satellite receiving stations, and other telecommunications structures as set forth in Section 1137.09(a).

(Ord. 18-12. Passed 6-25-18.)

1137.04 SCHEDULE OF PERMITTED BUILDINGS AND USES; GENERAL BUSINESS CLASSIFICATION "B".

(a) Main Uses.

(1) Any main use permitted in Section 1137.03 in accordance with the regulations applicable thereto.

(2) Automotive sales and services, auto washes and repair and service garages excluding heavy body work. The sale of gasoline and oil, and the display and sale of small automotive accessories, such as wiper blades, radiator and gas caps at a service station is permitted in an open yard. The display and sale of automotive tires in an open yard at service stations shall also be permitted so long as such display and sale is not considered by the Police Department to constitute a traffic hazard. (Ord. 95-71. Passed 10-16-95.)

(3) The sale of motor vehicles is permitted in open yards provided:

A. The operation is in connection with a new car sales agency located in the City;

B. All vehicles, advertising and structures other than signs as permitted and regulated by Chapter 1145 are not located in front of the building line of the lot or less than ten feet from the front lot line, whichever is greater; and

C. A curb or other barrier is erected on the aforesaid ten-foot line and the front yard is landscaped and maintained attractively.

(Ord. 86-22. Passed 4-4-88.)

(4) Drive-ins, where facilities are provided for serving food and/or nonalcoholic drink, wholly or in part, to customers remaining within or on their motor vehicles, or to customers returning to their motor vehicles after securing such food and/or nonalcoholic drink themselves, such food and/or nonalcoholic drink to be consumed wholly or in part upon the premises of the establishment. (Ord. 95-71. Passed 10-16-95.)

(5) Other similar uses.

(b) Conditional Uses.

(c) Accessory Buildings and Uses.

(1) Accessory off-street parking and loading facilities as required by this chapter.

(2) Maintenance, storage or processing operations clearly incident to the conduct of retail or service establishments or offices provided that no goods or merchandise shall be made upon the premises or repaired or other services rendered except those clearly incident to a permitted building or use and for no other outlet except on the premises.

(3) Permitted accessory uses for General Business "A" main uses shall be as set forth in Section 1137.03(d).

(4) Employee lunch rooms and similar facilities.

(5) Signs as permitted and as regulated by Chapter 1145.

(6) Direct broadcast satellite receiving stations, and other telecommunications structures as set forth in Section 1137.09(a).

(Ord. 18-12. Passed 6-25-18.)

1137.05 PROHIBITED USES.

The following buildings and uses are specifically prohibited in the City:

(a) The use by any person, firm or corporation other than by the City of any site, location, parcel, land, lot, installation, building or structure as a main use for the incineration, distillation, landfilling, dumping, burying, storage or any other method of disposal, transfer or treatment of infectious waste, hazardous waste, solid waste, garbage, refuse, rubbish, junk, offal and other waste generated from any other building or land, including, but not limited to, any facility or building that extracts materials from solid waste, a combustion facility or building, and a facility or building used for the gasification of solid waste by destructive distillation. The provisions of this subsection shall not be construed to apply to any accessory building, structure or use used for the temporary storage of any waste generated from a main building or use on the same zoning lot or to legitimate recycling activities imposed or required by law of the main building or use.

(b) Any other building or use not clearly similar to those set forth in Sections 1137.03 and 1137.04 hereof. (Ord. 91-69. Passed 10-7-91.)

1137.06 ILLUMINATION OF OPEN YARDS USED FOR RETAIL BUSINESS OR SERVICES.

Open yards used for permitted retail businesses or services may be illuminated provided that illumination fixtures are shielded from adjacent residences and streets and shall be extinguished after the close of business provided that such illumination shall not be on between the hours of 10:00 p.m. and 6:00 a.m. (Ord. 95-71. Passed 10-16-95.)

1137.07 YARD REGULATIONS AND SCHEDULE.

(a) No building in a General Business "A" or in a General Business "B" District shall be erected closer than thirty feet to any lot in a Residential District as enumerated in Section 1109.01. This distance of thirty feet shall be increased five feet for every twelve feet or fraction thereof the building exceeds twenty-five feet in height above finished grade.

(b) For every main or accessory building or use, the following yards shall be provided where not in conflict with subsection (a) hereof:

Building or Use	Front feet	Side feet	Rear feet
(1) For every main or accessory building in General Business "A" and General Business "B"	10	0	0
(2) For every main or accessory building in General Business "A" and General Business "B" adjacent to a Residential District as enumerated in Section 1109.01	N/A	10*	10*
(3) Accessory open off-street parking	4	0	6
(4) Accessory open off-street adjacent to a residential district as enumerated in Section 1109.01	N/A	10*	10*

*Landscape buffering and/or landscape screening shall be provided as required by subsections (c) and (e) hereof.

(c) Front yards may be used for parking but not within four feet of the front property line. A curb or other barrier shall be erected on such four-foot line, the remaining yard shall be landscaped and attractively maintained. Any such parking shall be further subject to the regulations set forth in this chapter.

(d) Front yards shall not be used to display or sell merchandise and no structure shall be erected in a required front yard, except:

(1) Gasoline pumps constructed and operated as part of a service station or garage may be erected, but not less than fifteen feet from the front lot line;
(2) Signs as permitted by Chapter 1145;
(3) The sale of gasoline and oil and the display and sale of small automotive accessories as set forth in Section 1137.04(a)(2);
(4) Vending machines and newspaper dispensing devices subject to the provisions of Chapter 735 of the Codified Ordinances and provided that the location of such machines and devices is first approved by the Division of Building;
(5) Retail sales and services as regulated by Section 1137.03(b); and
(6) The sale of motor vehicles as regulated by Section 1137.04(a)(3).

All driveways, platforms and curbs of service stations shall be designed to service vehicles standing only within the premises.

(e) Where a yard is required under conditions set forth under subsections (a) and (b)(2) hereof, or when a yard is otherwise provided and adjoining a Residential District or any other Zoning District with an existing residence thereon, the Planning and Design Commission may require landscape buffering or landscape screening in accordance with Section 1137.16 and Section 1149.05 along a side or rear lot line provided that any wall or any fencing whether incorporated as part of a landscape buffer or whether used as a landscape screen along the side lot line of the front yard of an adjacent Residential District shall not be constructed, erected or installed closer than twenty feet from the right-of-way line. Except as otherwise specifically permitted or as specifically required by the provisions of this chapter, trees, shrubs, yard structures and other landscape features shall not be constructed, erected or installed closer than twenty feet from the right-of-way line.

(f) Direct broadcast satellite receiving stations shall be located only in rear yards subject to the provisions and requirements of Section 1117.17 or on the roof of a main or accessory building subject to the provisions and requirements of Section 1137.09.
(Ord. 98-41. Passed 10-5-98.)

1137.08 PROJECTIONS INTO YARDS.

No portion of a building, such as fire escapes or balconies, may project into a required front yard except signs as permitted in Chapter 1145.
(Ord. 67-17. Passed 5-15-67.)

1137.09 HEIGHT REGULATIONS.

(a) The height of any main or accessory building shall not exceed sixty feet in a General Business District.

In a General Business District stacks, water tanks, elevator penthouses, bulkheads, skylights, ventilators, air conditioning and temperature control equipment, other mechanical appurtenances relating to the operation of the main or accessory building itself and penthouse enclosures for mechanical appurtenances erected upon or constituted as an integral part of the main or accessory building itself and not used for human occupancy may be erected to a height not to exceed fifteen feet above the finished roof line of the building.

Wireless, broadcasting, receiving and transmitting towers, radio and television antennae (except as provided in subsection (b) hereof), chimneys, flag poles and other like structures may be erected above the height limit specified in subsection (a) hereof, subject to the following constraints:

(1) The height from the base of such structure, or the uppermost point at which the structure is attached to the main or accessory building, to the top of the structure shall not be greater than the horizontal distance from the base of such structure to the nearest adjoining property line.

(2) A variance approved by the Board of Zoning and Building Appeals shall be required for any such structure over thirty-five feet in height if detached from or not attached to the main building, or over fifteen feet in height above the uppermost attachment to the main building.

No wireless, broadcasting, receiving and transmitting tower and no radio or television antennae shall be erected in a front yard. Any wireless, broadcasting, receiving and transmitting tower and any radio or television antennae may be erected in a side yard or in a rear yard only in accordance with the provisions of this section.

Wireless, broadcasting, receiving and transmitting towers, radio and television antennae, chimneys, flag poles and other like structures shall be designed and constructed to withstand windloads in accordance with ANSI (American National Standards Institute) A 58.1. Structural calculations and details for the installation shall be furnished to the Division of Building.

Canopies and other similar structures at service stations shall not exceed twenty feet in height above finished grade.

(Ord. 93-7. Passed 5-3-93.)

(b) A direct broadcast satellite receiving station may be placed on the roof of a main or accessory building provided all of the following conditions are satisfied:

(1) The receiving station is not linked or otherwise connected to receivers which are not located within the same premises as the antenna;.

(2) The highest point of the satellite receiving dish shall not exceed three feet greater than the dimension of the dish above the plane upon which it is mounted which shall include the height of any base upon which the dish is mounted;

(3) The satellite receiving dish shall not exceed nine feet in dimension;

(4) The satellite receiving dish shall be constructed and anchored in such a manner as to withstand wind loads in accordance with ANSI (American National Standards Institute) A 58.1. Structural calculations, including calculations certifying to the capability of the roof to support the dish and the base, and details for the installation shall be furnished to the Division of Building;

(5) The satellite receiving dish shall be affixed in a permanent fashion such that it would only be removable for repair or replacement;

(6) The dish shall not be placed closer than twenty feet from any roof edge;
(7) Only one such station shall be permitted at any one time on the same building;
(8) No lettering, numerals, symbols, pictorial signs or designs exceeding one-half inch in any dimension shall be permitted on any surface.
(Ord. 95-71. Passed 10-16-95.)

1137.10 ACCESSORY PARKING FACILITIES REQUIRED.

Accessory off-street parking facilities, including access driveways, shall be determined in conformance with the standards set forth in this chapter.

(a) Such facilities shall be provided on the same lot or on an adjoining lot under the same ownership as provided in this chapter whenever:
(1) A building is constructed;
(2) An existing building is altered, resulting in an increase in seating capacity, floor area or other measurement criteria;
(3) The use of an existing building is changed to a use requiring more off-street parking facilities.

(b) Required off-street parking and loading facilities accessory to an existing use, and those required as accessory to a use created or a building constructed or altered hereafter shall be continued and maintained in operation and shall not be reduced below the requirements during the period that the main use is maintained. Failure by the owner or owners to supply such off-street parking and loading facilities shall cause the Building Commissioner to revoke the occupancy of a sufficient amount of the area in order to bring the facility into conformity with parking requirements and off-street loading facilities. Accessory off-street parking facilities shall not be used for the rebuilding, overhauling or dismantling of any vehicle as defined in Section 301.51 or for the storage of motor or body parts or for minor repair services on any vehicle.
(Ord. 84-98. Passed 6-17-85.)

1137.11 MEASUREMENT STANDARDS.

For the purpose of determining accessory off-street parking requirements, definitions and standards shall be as follows:

(a) "Accessory parking space" means an open or enclosed area (garage) directly accessible from a public street for parking of motor vehicles of owners, patrons, occupants, employees, customers or tenants of the main building or use. Each space shall be directly accessible from a drive or aisle, and shall have a minimum rectangular dimension of not less than nine feet in width and eighteen feet in length for ninety degree parking; nine feet in width and twenty-two feet in length for parallel parking; ten feet in width and eighteen feet in length for sixty degree parking and twelve feet in width and eighteen feet in length for forty-five degree parking, exclusive of all drives, aisles, ramps and other circulation areas, and determined from an accurate plan of the area.

(b) "Floor area" means the total area of the floors of the building measured from the exterior faces of the building. Basement areas or other floors or parts thereof, designed, arranged or used exclusively for storage or similar uses may be excluded from the floor area if the areas or floors or parts thereof are not open to the public. Such areas as stairs, hallways, restrooms, equipment or furnace rooms, elevator shafts, etc. shall be excluded.

(c) "Seat" means the number of seating units installed or indicated, or each twenty-four lineal inches of benches, or space for loose chairs or similar seating facilities. Spacing of rows shall be thirty inches on center.

(d) Where the computation results in a fractional unit, one additional space shall be provided.

(e) "Employees", wherever the parking requirement is based on employees, means the maximum number of employees on duty on the premises at one time or on any two successive shifts, whichever is the greater.

(f) Floor area; loading requirements means the total floor area used for the main and accessory activities and the storage areas of the building served.

(Ord. 84-98. Passed 6-17-85.)

1137.12 SCHEDULE.

(a)	Theaters, lodge halls, auditoriums, stadiums, meeting rooms, social halls and other places of assembly:	1 per 3 seats.
(b)	Dance halls, skating rinks, swimming pools:	1 per 50 sq. ft. of area used for dancing, skating or swimming, plus such spaces applicable to businesses or services operated or provided in conjunction with the main use.
(c)	Bowling alley	3 per bowling lane plus such additional spaces applicable to businesses or services operated or provided in conjunction with the main use.
(d)	Medical and dental offices and clinics:	l per each 100 sq. ft. floor area to 10,000 sq. ft. and 1 per each 200 sq. ft. floor area over 10,000 sq. ft.
(e)	Hospitals:	2 per 1 bed plus 1 per each employee.

(f)	Retail stores, banks, service establishments, laboratories, other office buildings:	1 space per each 150 sq. ft. of floor area of 6,000 sq. ft. Or less; 40 spaces plus 1 per each 200 sq. ft. of floor area over 6,000 sq. ft.
(g)	Eating places, bars, taverns, snack bars, party rooms and other places serving food and drinks:	1 per 50 sq. ft. floor area or 1 per 2 seats, whichever results in the greater number.
(h)	Motels and hotels:	1 per room or similar living unit plus 1 per each employee plus such spaces applicable to businesses or services operated or provided in conjunction with the main use.
(i)	Funeral homes:	1 per 30 sq. ft. of assembly rooms or 1 per each 3 seats whichever results in the greater number.
(j)	Gymnastics, gymnastics training school and body conditioning, vocational schools and other training schools of a private, technical or professional nature:	1 per each employee and 1 per each 3 seats or 1 per each employee and 1 per each 150 sq. ft. floor area to 6,000 sq. ft. or less; 40 spaces plus 1 per each 200 sq. ft. floor area over 6,000 sq. ft., whichever (employees plus seats or employees plus sq. ft. floor area) results in the greater number.

(k) Drive-in windows, pick-up and control stations, ticket booths and similar facilities shall provide spaces in a waiting line of not less than 120 feet on the lot occupied by the facility for each such service point. Driveways to such service and parking areas shall be located in accordance with provisions of Section 1137.15.

(l) For a specific building or use not scheduled above, the Planning and Design Commission shall apply the unit of measurement from the above schedule deemed to be the most similar to the proposed building or use.
(Ord. 84-98. Passed 6-17-85.)

1137.13 MODIFICATION TO SCHEDULE.

When an existing building or use, except residential, does not conform to parking requirements as set forth in this chapter, and where land is not available for parking on the same lot, the Planning and Design Commission may modify the location of parking facilities to permit such facilities on an adjoining lot under the same ownership or may modify the location of parking facilities to permit such facilities to be shared in an amount not to exceed fifty percent (50%) of the parking requirements in an adjoining Civic and Recreational District where the main use(s) normally has different hours of operation. Where there is a joint use of parking facilities on an adjoining lot under the same ownership or in an adjoining Civic and Recreational District, there shall be a written agreement covering such indefinite period of time as may be required by the Planning and Design Commission whereby the owner of the land on which the parking facilities are to be located shall be bound by a long term lease or by a covenant filed and recorded in the office of the County Recorder requiring such owner, his heirs, successors or assigns to maintain a required number of parking facilities for the duration of the use served as a condition precedent to the continuation of such use provided however that the joint use of such spaces shall not reduce the number exclusively provided for the use or uses on such adjoining lot to less than that required by this chapter and provided further that should any of the uses on such adjoining lot be changed so as to require additional parking spaces or the joint use of the facilities be discontinued, then the required spaces for the use or uses served by such facilities shall be provided on another adjoining lot under the same ownership as a condition precedent to the continued use of such building(s) or use(s). (Ord. 95-71. Passed 10-16-95.)

1137.14 SEPARATE OR COMBINED USE OF FACILITIES.

A building occupied by one use shall provide the off-street spaces as required for the specific use. A building, or group of buildings, occupied by two or more uses, operating normally during the same hours, shall provide spaces for not less than the sum of the spaces required for each use. A large unit development of business uses, such as a regional shopping center or office building complex shall provide spaces for the total floor area of the building or buildings, instead of the requirements based on separate uses.

Whenever a group of adjoining stores and services have been developed and owned separately, the Planning and Design Commission may find it to be in the public interest to require the coordination of the circulation system, ingress and egress driveways and insulation from surrounding residential uses.
(Ord. 84-98. Passed 6-17-85.)

1137.15 ACCESSWAYS TO PARKING AREAS.

The location and width of entrance and exit driveways to parking facilities shall be planned as to interfere as little as possible with the use of nearby property and with pedestrian and vehicular traffic on the adjacent streets.

(a) Whenever possible, the center line of the access driveways on the frontage streets shall be at least forty feet from the right-of-way line of the nearest intersecting street and be spaced not less than 120-foot intervals, measured from the center line of the driveways.

(b) Parking areas shall be designed so that vehicles can be driven forward into the street. Those of fifteen spaces or less shall have at least one single-lane driveway with a maximum of two single-lane or one two-lane driveway; those of sixteen spaces or more shall have at least two single-lane, or one two-lane driveway. Each entrance to, or exit from, a parking area of sixteen spaces or more shall be limited to two lanes.

(c) The widths of driveways, measured at the setback line, shall conform to the following schedule. At no point where adjoining a public sidewalk shall the maximum widths be exceeded.

Lanes	Minimum Feet	Maximum Feet
One	10	12
Two	18	24

The angle of intersection between the driveway and street shall be between sixty degrees and ninety degrees. The radius at the edge from the apron shall be at least twelve feet, twenty feet recommended, so that a motor vehicle entering or leaving may not obstruct vehicles in other traffic lanes in the driveway or in the curb lane of the street.
(Ord. 84-98. Passed 6-17-85.)

1137.16 SURFACE IMPROVEMENT OF PARKING AREAS.

(a) Proposed and existing parking areas and access driveways shall be improved with asphalt concrete or Portland cement concrete or other impervious surface and shall be so graded and drained into proper inlets so that all water is drained within the lot on which the parking area or driveway is located in such manner that water shall not drain across other public or private property.

(b) Parking areas shall be so arranged and marked as to provide for orderly and safe parking and storage of vehicles in accordance with the design standards in this chapter, and shall be improved, except at entrances and exits with guard rails, curbs or other devices to define parking spaces or limits of paved areas, so as to prevent encroachment of vehicles into adjacent areas or public ways, yards or setbacks required by the Zoning Code, and so as to regulate the flow of traffic within the lot.
(Ord. 84-98. Passed 6-17-85.)

(c) The Planning and Design Commission may require landscape buffering or landscape screening to be provided on the parking area property to insulate the parking areas and driveways from a side or rear lot line of other property in Residential Districts or any other Zoning District with an existing residence thereon. Landscape buffering may include, but shall not be limited to, evergreen trees and bushes, compact hedges, shrubs, earth berms or a combination thereof. Landscape screening shall include plant material or other nonliving durable material, including, but not limited to, walls, berms or substantially solid decorative wood fencing. Where trees and shrubs are used to provide a landscape buffer, such shall provide a year-round state of being substantially impervious to rays of light. It shall be acceptable to incorporate fencing as part of the landscape buffer where noise and lights create a need that such landscape buffer include fencing. Fencing may also be used to provide landscape screening. Whenever used, fences shall be of a decorative style and type. Walls and berms shall be used only in the most unusual cases.

The desired buffering or screening effect shall be achieved not later than twelve months after the initial installation. The Planning and Design Commission may extend this twelve month period of time when a hardship would be created because of expected growth or material shortages, but such extension shall not be for more than two years from the time the initial installation was to have been or has been installed. All buffering and screening requirements imposed under the provisions of this subsection shall be installed and constructed before a certificate of occupancy is issued for a new building or structure. No existing building, structure or vehicular use area adjoining a Residential District or any other Zoning District with an existing residence thereon shall be expanded, altered or modified until the plans are submitted by the owner or developer to the Planning and Design Commission for its determination as to whether the change adversely affects any properties in a Residential District or any other Zoning District with an existing residence thereon. The Commission, after its review, shall require, where necessary, the establishment of a landscape buffering area or the installation of landscape screening, or a revision of a previously established buffered area or screening. The width and height of the landscape buffer or landscape screening shall be determined by the Planning and Design Commission provided, however, that the maximum height of fencing, whether incorporated as part of the landscape buffer or whether used as a landscape screen, which may be permitted shall be seven feet above finished grade. The owner, tenant or developer shall be responsible for the maintenance and replacement, if necessary, of the landscape buffer or landscape screening.

Owners or developers of off-street parking areas shall be required to include a plan for buffering or screening the parking areas and driveways, including a detailed description and sketch of the landscape buffer or landscape screening which visually and verbally outlines the nature and the effect of the proposed landscape buffer or landscape screening. A certificate of occupancy shall not be granted until the buffering or screening requirements have been completed. If completion, in the case of living materials, is delayed because of the growing season, a temporary permit to occupy may be granted by the Building Commissioner. Such delay shall not extend beyond the next growing season following the date upon which the certificate of occupancy is requested.
(Ord. 95-71. Passed 10-16-95.)

(d) In order to carry out the objectives of this Zoning Code and to preserve the use and enjoyment of adjoining property not less than five percent (5%) of an off-street parking area of a lot with twenty or more off-street accessory parking spaces shall have landscaping islands to break up the expanse of pavement. Each landscaping island shall not be less in size than the required area of one off-street parking space, shall be interspersed throughout the entire off-street parking area and shall have trees and such other landscaping as may be required by the Planning and Design Commission. Areas of landscaping surrounded by at least three sides by accessory off-street parking areas or accessories to parking areas may be considered a landscaped island. (Ord. 98-38. Passed 7-6-98.)

1137.17 OFF-STREET LOADING SPACE.

Accessory loading and unloading facilities shall be provided as a condition precedent to occupancy of all general business hereafter erected, or altered to such use, and shall be maintained as long as the building is occupied by such uses.

(a) Allocation of Use. Space required and allocated for any off-street loading facility shall not, while so allocated be used to satisfy the space requirements for off-street parking. An off-street loading space shall not be used for repairing or servicing of motor vehicles.

(b) Location of Facility. All required accessory loading facilities shall be related to the building and use served to provide for loading and off-loading of delivery and other service vehicles and shall be so arranged that they may be used without blocking or otherwise interfering with the use of access ways, parking facilities, public streets or sidewalks. Such facilities shall be located not less than forty-five feet from the front property line when facing the main street nor shall such facilities be located in a required rear or side yards.

(c) Access Driveways. Each required off-street loading space shall be designed for direct vehicular access by means of a driveway or driveways, to a public street in a manner which will least interfere with adjacent traffic movements and interior circulation. The driveway shall be located so that the driveway center line shall be not less than forty feet from the nearest intersecting street right-of-way.

(d) Improvements. All accessory off-street loading spaces shall be improved as required for parking areas.

(e) Minimum Size Criteria. A required off-street loading space shall be at least twelve feet wide by at least thirty feet in length. This area shall be exclusive of maneuvering space, and each loading facility shall have a vertical clearance of at least fourteen feet.

(f) At least one off-street loading space shall be provided for each building devoted to general business or storage having a gross floor area of 15,000 to 30,000 square feet and one additional space shall be provided for each additional 40,000 square feet or fraction thereof.
(Ord. 84-98. Passed 6-17-85.)

1137.18 APPROVAL OF PARKING FACILITIES.

Detailed drawings of off-street parking (and/or loading) facilities shall be submitted to the Planning and Design Commission for review and approval in accordance with all the provisions of this chapter before a building permit or certificate of occupancy may be issued. Such drawings shall show the number of spaces and locations, dimensions and descriptions of all features as set forth in this chapter. (Ord. 84-98. Passed 6-17-85.)

1137.19 ILLUMINATION OF ACCESSORY PARKING FACILITIES.

Areas used to provide required off-street parking, and accessways thereto, shall be illuminated whenever deemed necessary by the Planning and Design Commission to protect the public safety. The illumination of parking areas in business districts shall be reduced in intensity after the close of business of the main use or uses. Lighting fixtures shall be so designed and located so as not to reflect direct rays of light upon adjoining residential properties and streets or cause a glare hazardous to pedestrians or drivers of motor vehicles on adjacent public streets, and shall be subject to the approval of the Commission.
(Ord. 84-98. Passed 6-17-85.)

1137.20 SURVEY AND APPROVAL OF CITY ENGINEER REQUIRED.

The City Engineer shall make a survey of the public sanitary and storm sewers to be affected by the proposed building or use set forth in the application for a building permit and shall forward his approval to the Building Commissioner prior to the issuance of a building permit.
(Ord. 95-71. Passed 10-16-95.)

1137.21 APPLICATION AND DESIGN OF PARKING AREAS.

(a) Application for Providing Facilities. An application for a building permit pertaining to constructing a building or parking facility or for a certificate of occupancy for a change in use of land or a building shall include a site plan drawn to scale and fully dimensioned, showing the proposed design of the parking area and loading facilities to be provided in accordance with the space requirement schedules that are a part of this Zoning Code.

(b) Determination of Required Parking Facilities. The minimum number of spaces required for accessory off-street parking shall be determined by applying the measurement standards in Section 1137.11, the standards for designing parking areas in subsection (c) hereof, the schedule of accessory parking requirements for the various uses in Section 1137.12 and any other applicable provisions of this Zoning Code.

The Planning and Design Commission may modify the parking requirements of Section 1137.12 under such terms and conditions as it determines will protect the public interest where it finds based upon the factual evidence presented that due to the nature of the particular use such requirements will not be adequate to provide sufficient parking or where the strict application of the requirements will result in an excessive amount of parking related to the particular use.
(Ord. 95-71. Passed 10-16-95.)

(c) Design Standards. The plan of the parking spaces of a parking area included with an application to construct a building or parking area, or change in use, shall be designed, dimensioned and the number of spaces determined in accordance with such standards for designing as may be adopted by the Planning and Design Commission. Design standards for enclosed parking areas and garages, shall be in accordance with other provisions of the Zoning Code.

(d) Handicapped parking spaces shall be provided in accordance with the provisions of the Ohio Basic Building Code. (Ord. 84-98. Passed 6-17-85.)

1137.22 REQUIRED TRASH AREAS.

All general business uses that provide trash and/or garbage collection areas shall be enclosed on at least three sides by a solid wall or fence of at least four feet in height if such area is not with an enclosed building or structure. Provisions for adequate vehicular access to and from such area or areas for collection of trash and/or garbage as determined by the Planning and Design Commission shall be required.
(Ord. 84-98. Passed 6-17-85.)

1137.23 DEPOSIT FOR SURVEY OF PUBLIC SANITARY AND STORM SEWERS.

A deposit by the applicant for a building permit shall be made with the Finance Director in the amount of one hundred fifty dollars ($150.00) to cover the cost and expense of such survey of public sanitary and storm sewers. The cost and expense of such survey shall be paid by the City from such deposit.
(Ord. 85-65. Passed 9-3-85.)

CHAPTER 1139
Senior Citizen Housing District

1139.01 Definition.
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CROSS REFERENCES
Senior Life Office - see ADM. Ch. 147
Nonconformance- see P. & Z. Ch. 1141
Signs - see P. & Z. Ch. 1145

1139.01 DEFINITION.
Refer to Section 1105.06 for the definition of senior citizen housing.
(Ord. 86-22. Passed 4-4-88.)

1139.02 PURPOSE.
A Senior Citizen Housing District and regulations therefor is established in order to achieve among others, the following purposes:

(a) To provide appropriate sites for the development of dwelling facilities for elderly persons in locations convenient to and within safe walking distance to the community's social and recreational facilities, convenient to shops and public transportation; and

(b) To provide in such development dining, recreational and social facilities for the comfort and convenience of the occupants; and
(c) To regulate the density of population within such districts, so as to provide ample outdoor livable space, to retain a sense of personal identity, intimacy and human scale within the development; and
(d) To regulate the bulk, height and spacing of buildings within the development in order to obtain proper light, air, privacy and open space for passive recreation and landscaped amenities; and
(e) To enable elderly persons to obtain suitable, safe, sanitary and decent housing designed to meet their special needs; and
(f) To protect adjacent residential properties by requiring adequate yards and screening and to protect and insulate the development from surrounding incompatible uses. (Ord. 81-19. Passed 5-4-81.)

1139.03 PERMITTED USES.

(a) Main Uses.
(1) Dwelling facilities erected and maintained in accordance with this chapter.
(2) Recreational facilities, hobby and craft rooms.
(3) Social and dining facilities, assembly and semi-private rooms.
(4) Administrative offices.
(5) A multi-purpose senior center when not ancillary to dwelling facilities erected and maintained in accordance with this chapter.
(Ord. 81-19. Passed 5-4-81.)

(b) Accessory Uses.
(1) Snack bars and food-and-beverage services.
(2) Service and maintenance buildings.
(3) Valet and laundry service.
(4) Off-street parking and garages as regulated in this chapter.
(5) Storage facilities, for housekeeping functions and storage of occupants' possessions.
(6) Private garden and outdoor recreation facilities.
(7) Direct broadcast satellite receiving stations, and other telecommunications structures as set forth in Section 1139.14(a).
(Ord. 95-72. Passed 10-16-95.)

(c) Required Ancillary Facilities. Each Senior Citizen Housing Development containing dwelling units shall also contain the following ancillary facilities, which shall be incidental to the main use, shall be planned and developed integrally with the main building(s) in accordance with this chapter and which have no injurious effect on adjoining uses:
(1) A multi-purpose senior center which shall be available for use to all residents of the City who are sixty years of age or older, except where legal requirements specify other age limits. Services provided by the center should include but are not limited to the following:

A. Preventative medical services, diagnostic and treatment services and counseling on health matters, which are provided by a licensed physician, by a registered nurse or other qualified health professionals;
B. A program to locate full or part-time employment;
C. Information and counseling by professionals or other persons specially trained or qualified on personal matters including income, health, housing, transportation and social relationships;
D. A listing of services available in the community or county for elderly persons;
E. Legal advice and assistance by an attorney or legal assistant acting under the supervision of an attorney; and
F. Passive and active recreation, social activities and educational activities.

(2) All safety and convenience features required by this chapter.
(Ord. 81-19. Passed 5-4-81.)

1139.04 ACCESSORY USES.

Food-and-beverage services, snack bars and valet-and-laundry services, and the facilities associated with such services shall be permitted, provided that:

(a) Such use is limited to the confines of the building;
(b) No part of such accessory use or the entrance thereto shall be adjacent to or within 100 feet of a public sidewalk, street or a residential one-and two-family district; and
(c) No sign or display indicating the existence of such accessory use shall be visible from outside the building.
(Ord. 81-19. Passed 5-4-81.)

1139.05 TEMPORARY USES.

Temporary offices, storage and other structures of contractors or builders are permitted subject at the regulations of Section 1121.05.
(Ord. 81-19. Passed 5-4-81.)

1139.06 REMOVAL OF SOIL.

Soil, sand or gravel shall not be stripped or removed in Senior Citizen Housing Districts, except excess soil or gravel resulting from excavations or grading in connection with the construction or alteration of a building for which a building permit has been issued.
(Ord. 81-19. Passed 5-4-81.)

1139.07 ACCESS TO LESS RESTRICTIVE AREAS.

Driveways, walks or other accessways to any use which is not permitted in the Senior Citizen Housing District shall be prohibited.
(Ord. 81-19. Passed 5-4-81.)

1139.08 OPEN STORAGE PROHIBITED.

All equipment and supplies shall be stored in an enclosed structure at all times.
(Ord. 81-19. Passed 5-4-81.)

1139.09 LOT AREA AND WIDTH REGULATIONS.

A lot in a Senior Citizen Housing District shall have a minimum lot area of two acres and shall have a minimum lot frontage at the building line of not less than 150 feet. The lot area shall not be less than 2,200 square feet for each dwelling unit.
(Ord. 84-40. Passed 11-18-85.)

1139.10 SCHEDULE OF YARD REGULATIONS.

(a) Intent. The yards of buildings shall be related to the plan of the dwelling units within the buildings as well as the yards. Buildings shall be arranged so as to assure privacy between adjacent buildings and intersecting wings of buildings, from streets, parking areas and recreation areas, and to provide insulation from adjacent nonresidential buildings. To accomplish these purposes and objectives, the following criteria are to be applied.

(b) Definitions. The following definitions shall apply to the terms used in this section:

(1) "Main wall" means any exterior wall containing the principal windows of a living, dining or sleeping room or rooms.

(2) "Secondary wall" means any exterior wall, other than a main wall, containing minor windows of a living, dining or sleeping room, or principal or minor windows of kitchens or bathrooms.

(3) "D" means the minimum required horizontal distance between any wall of one building and the nearest wall of another building or between any building and any lot line.

(4) "L_1" means the total length of building "1" which shall be the length of the portion or portions of any wall or walls of building "1" from which lines drawn perpendicular shall intersect any wall of building "2".

(5) "L_2" means the total length of building "2" which shall be the length of the portion or portions of any wall or walls of building "2" from which lines drawn perpendicular shall intersect any wall of building "1".

(6) "H_1" means the height of building "1".

(7) "H_2" means the height of building "2".

(8) "PL" means the length of the side or rear property line formed by perpendicular lines drawn from the property line intersecting a wall or walls of a building.

(c) Formulae for Determining Minimum Yards. The following formulae shall be used in determining the minimum required yards for the design, construction, alteration, moving or maintaining of buildings in a Senior Citizen Housing District.

(1) Where a building wall is opposite another building wall, the minimum distance between the two shall be determined by the following formulae:

$$D = \frac{L_1 + L_2 + 2(H_1 + H_2)}{5}$$

but in no case shall the minimum distance be less than twenty feet.

(2) Where a building wall is opposite a side or rear lot line of a lot in any district, the minimum distance between such wall and the side or rear lot line shall be determined by using the following formulae:

$$D = \frac{PL + 2H}{4}$$

but in no case shall the minimum distance between the building and the property line be less than twenty feet.

(3) Where lines drawn perpendicular from a building do not intersect the walls of the adjacent building, the minimum distance between the two buildings shall be determined by using the formulae:

$$D = \frac{2(H_1 + H_2)}{5}$$

(4) The front yard (set back) for all buildings shall be not less than fifty feet from the front lot line to the nearest exterior wall of the building.

(d) Yards for Accessory Buildings and Uses. Yards for accessory buildings and uses in a Senior Citizen Housing District shall be not less than that set forth in the following schedule:

SIDE AND REAR YARDS
Minimum Distance (ft.)

	From Building		From Lot Line		
Accessory Bldg. or Use	Main Wall	Sec. Wall	Adj. to 1 - 2 Family District	Adj. to Multi-Family District	Adj. to Other District
Storage Garage	30	15	15	10	0
Parking Area, Drive*	30	10	10	5	0
Walk	15	10	5	3	0
Recreation Area	40	25	40	20	10

*A drive may be located not less than ten feet from a building in the vicinity of an entrance to a building.

(Ord. 81-19. Passed 5-4-81.)

1139.11 YARD REGULATIONS; GENERALLY.

(a) The required yards shall not be separated in ownership from that portion of the lot upon which a building is located, and no part shall be considered as providing a yard for any other building on the same or adjacent lot. A required yard shall not be reduced to less than the required dimensions. Every required yard shall be open and unobstructed from the ground upward except for accessory buildings as provided in Section 1139.10 and permitted projections as provided in Section 1139.12.
(Ord. 81-19. Passed 5-4-81.)

(b) The required yards shall be landscaped in a manner approved by the Planning and Design Commission, and may be used for pedestrian walks, recreation areas and parking areas except as provided in Section 1139.19.
(Ord. 95-72. Passed 10-16-95.)

1139.12 PROJECTIONS INTO YARDS.

Projections within the required front, side or rear yards are permitted subject to the regulations set forth in Section 1117.16.
(Ord. 81-19. Passed 5-4-81.)

1139.13 MAXIMUM LAND COVERAGE.

(a) The maximum area of a parcel to be occupied by main buildings and accessory buildings shall not exceed twenty percent (20%) of the gross land area. The area of any building shall be computed from the perimeter of the first floor exclusive of overhangs.

(b) The minimum outdoor liveable area minus ground area of buildings, driveways and parking areas, shall not be less than thirty-five percent (35%) of the gross land area.
(Ord. 81-19. Passed 5-4-81.)

1139.14 HEIGHT REGULATIONS.

(a) The height of any main building in a Senior Citizen Housing District shall not exceed eighty feet. In a Senior Citizen Housing District, stacks, water tanks, elevator penthouses, bulkheads, skylights, ventilators, air conditioning and temperature control equipment, other mechanical appurtenances relating to the operation of the main or accessory building itself and penthouse enclosures for mechanical appurtenances erected upon or constituted as an integral part of the main or accessory building itself and not used for human occupancy may be erected to a height not to exceed fifteen feet above the finished roof line of the building. Wireless, broadcasting, receiving and transmitting tower, radio and television antennae (except as provided in subsection (d) hereof), chimneys, flag poles and other like structures may be erected above the height limit specified in this subsection subject to the following constraints:

(1) The height from the base of such structure, or the uppermost point at which the structure is attached to the main or accessory building, to the top of the structure shall not be greater than the horizontal distance from the base of such structure to the nearest adjoining property line.

(2) A variance by the Board of Zoning and Building Appeals shall be required for any such structure over thirty-five feet in height if detached from or not attached to the main building, or over fifteen feet in height above the uppermost point of attachment to the main building.

No wireless, broadcasting, receiving and transmitting tower and no radio or television antennae shall be erected in a front yard. Any wireless, broadcasting, receiving and transmitting tower and any radio or television antennae may be erected in a side yard or in a rear yard only in accordance with the provisions of this section.

Wireless, broadcasting, receiving and transmitting towers, radio and television antennae, chimneys, flag poles and other like structures shall be designed and constructed to withstand windloads in accordance with ANSI (American National Standards Institute) A 58.1. Structural calculations and details for the installation shall be furnished to the Division of Building.

When developed as a main use and not an ancillary facility, a multi-purpose center shall not exceed thirty-five feet in height. (Ord. 93-7. Passed 5-3-93.)

(b) In determining the appropriate height for a main residential building, the Planning and Design Commission shall consider:

(1) The height of adjacent buildings, if any;
(2) The maximum building height permitted in adjacent districts;
(3) The land use of adjoining properties;
(4) The size of the development site; and
(5) The desirability of concentration of senior housing units in the particular area. (Ord. 84-41. Passed 11-18-85.)

(c) The height of accessory buildings shall not exceed fourteen feet above finished grade.

(d) A direct broadcast satellite receiving station may be placed on the roof of a main or accessory building provided all of the following conditions are satisfied:

(1) The receiving station is not linked or otherwise connected to receivers which are not located within the same premises as the antenna;
(2) The highest point of the satellite receiving dish shall not exceed three feet greater than the dimension of the dish above the plane upon which it is mounted which shall include the height of any base upon which the dish is mounted;
(3) The satellite receiving dish shall not exceed nine feet in dimension;
(4) The satellite receiving dish shall be constructed and anchored in such a manner as to withstand wind loads in accordance with ANSI (American National Standards Institute) A 58.1. Structural calculations, including calculations certifying to the capability of the roof to support the dish and the base, and details for the installation shall be furnished to the Division of Building;
(5) The satellite receiving dish shall be affixed in a permanent fashion such that it would only be removable for repair or replacement;

(6) The dish shall not be placed closer than twenty feet from any roof edge;
(7) Only one such station shall be permitted at any one time on the same building;
(8) No lettering, numerals, symbols, pictorial signs or designs exceeding one-half inch in any dimension shall be permitted on any surface.
(Ord. 95-72. Passed 10-16-95.)

1139.15 DWELLING UNIT AREA REQUIREMENTS.

(a) Definitions.

(1) The term "dwelling unit area" as used in this section means the sum of the gross floor area above the basement level measured from the interior face of the enclosing walls and from the center line of party walls, where applicable, used by the occupants as and for their kitchen, dining room, bedroom, living room, including clothes closets and other similar uses having a minimum ceiling height and the natural light and ventilation as required by the Building Code, which is in contrast to such portion as is used for a utility or furnace room, garages, porches, public areas and halls, storage rooms or similar use which shall be excluded.

(2) The term "studio efficiency" as used in this section means a dwelling unit in which the living-dining area and the sleeping facilities are all located within one room.

(b) Minimum Required. Except as otherwise provided by any statute, code, law, rule or regulation specifically applicable to the development project:

(1) One bedroom units shall have a minimum dwelling unit area of not less than 540 square feet.

(2) Two bedroom units shall have a minimum dwelling unit area of not less than 800 square feet.

(3) A studio efficiency shall have a minimum dwelling unit area of not less than 415 square feet.

(c) The number of studio efficiencies shall be approved by the Planning Commission but in no event shall the number exceed twenty-five percent (25%) of the total number of units to be erected. Ten percent (10%) of the individual dwelling units shall be designed to be handicapped accessible.

(d) In addition to the minimum dwelling unit area requirements, there shall be at least sixty square feet of general storage space, having a height of at least six feet, provided for each dwelling unit. (Ord. 84-42. Passed 12-16-85.)

1139.16 SIGNS.

Signs in a Senior Citizen Housing District are permitted as regulated by Chapter 1145 Signs. (Ord. 81-19. Passed 5-4-81.)

1139.17 YARD STRUCTURES AND LANDSCAPE FEATURES.

(a) As defined in Section 1117.17, yard structures and landscape features shall be permitted on one- and two-family residences located in a Senior Citizen Housing District subject to the regulations set forth therefore in Section 1117.17.
(Ord. 89-43. Passed 12-4-89.)

(b) Yard structures and landscape features shall otherwise be permitted in a Senior Citizen Housing District as permitted and as required by Section 1139.19 and Section 1149.05 provided that any wall or any fencing whether incorporated as part of a landscape buffer or whether used as a landscape screen along the side lot line of the front yard of an adjacent Residential District shall not be constructed, erected or installed closer than twenty feet from the right-of-way line. Except as otherwise specifically permitted or as specifically required by the provisions of this chapter, trees and shrubs, yard structures and other landscape features shall not be constructed, erected or installed closer than twenty feet from the right-of-way line.

(c) Direct broadcast satellite receiving stations shall be located only in rear yards subject to the provisions and requirements of Section 1117.17 or on the roof of a main or accessory building subject to the provisions and requirements of Section 1139.14(d).
(Ord. 95-72. Passed 10-16-95.)

1139.18 ILLUMINATION.

Illumination of all exterior public areas shall be provided in the manner required by the Building Code to protect the public safety. All illumination shall be so designed and shielded so as not to shine, glare, reflect or be directed into or towards any premises used for residential purposes, toward public streets or on occupants of the building, and shall be approved by the Planning and Design Commission.
(Ord. 81-19. Passed 5-4-81.)

1139.19 GARAGE AND OFF-STREET PARKING.

(a) Standards and Definitions. The following standards and definitions shall be used to determine accessory off-street parking requirements.

(1) "Accessory parking space" means an open or enclosed area (garage) directly accessible from a public street for parking of motor vehicles of owners, occupants, employees, customers or tenants of the main building or use. Each space shall be directly accessible from a drive or aisle, and shall have a minimum rectangular dimension of not less than nine feet in width and eighteen feet in length for ninety degree parking; nine feet in width and twenty two feet in length for parallel parking; ten feet in width and eighteen feet in length for sixty degree parking and twelve feet in width and eighteen feet in length for forty-five degree parking, exclusive of all drives, aisles, ramps and other circulation areas, and determined from an accurate plan of the area.

(2) "Employees" wherever the parking requirement is based on employees, means the maximum number of employees on duty on the premises at one time or on any two successive shifts, whichever is the greater.

(3) Required minimum parking spaces. Where the computation results in a fractional unit, one additional off-street parking space shall be provided.

(b) Minimum Required. Off-street parking spaces may either be provided in an enclosed garage or in an open lot and, except as otherwise provided by any statute, code, law, rule or regulation specifically applicable to the development project, shall be provided in accordance with the following schedule:

(1) One parking space for each dwelling unit, plus one parking space for each person employed at the development.

(2) When a multi-purpose senior center is developed as a main use rather than as an ancillary facility, the number of off-street parking spaces shall be provided in accordance with Section 1137.12(a).

(c) Location of Off-Street Parking Facilities. Off-street parking shall be provided for the entire building or use on the same lot or under an adjoining lot under the same ownership whenever a building is constructed or new use established or whenever an existing building is altered, resulting in an increase of the number of dwelling units, seating capacity or other measurement criteria. Accessory parking facilities shall not be permitted in required front yards. Driveways shall not be used for permanent overnight parking within required front yards.

(d) Separate or Combined Use of Facilities. A building containing one use shall provide the required off-street parking spaces as required for the specific use. A building or group of buildings, containing two or more uses which have different off-street parking requirements shall provide parking spaces for not less than the sum required for each use.

(e) Accessways to Parking Areas. The location and width of entrance and exit driveways to parking facilities shall be planned as to interfere as little as possible with the use of nearby property and with pedestrian and vehicular traffic on the adjacent streets. Whenever possible, the center line of the access driveways on the frontage streets shall be at least forty feet from the right-of-way line of the nearest intersecting street and spaced at not less than 120 foot intervals, measured from the center line of the driveways.

Parking areas shall be designed so that vehicles may be driven forward into the street. Those of fifteen spaces or less shall have at least one single-lane driveway with a maximum of two single-lane or one two-lane driveway; those parking areas of sixteen spaces or more shall have two single lane driveways or one two-lane driveway; and each accessway shall be limited to two lanes.

The width of such entrances and exits, measured at the setback line, shall conform to the following schedule:

Lanes	Minimum Feet	Maximum Feet
One	10	12
Two	18	24

The angle of intersection between the driveway and the street shall be between sixty degrees and ninety degrees. The radius at the edge from the apron shall be at least twelve feet, twenty feet recommended, so that a motor vehicle entering or leaving may not obstruct vehicles in other traffic lanes in the driveway or in the curb lane of the street.

(f) Improvements to Parking Areas.

(1) Proposed and existing parking areas and access driveways shall be improved with asphalt concrete or Portland cement concrete or other impervious surface and shall be so graded and drained into proper inlets so that all water is drained within the lot on which the parking area or driveway, is located in such manner that water shall not drain across other public or private property.

(2) Parking areas shall be so arranged and marked as to provide for orderly and safe parking and storage of vehicles in accordance with the design standards in this chapter, and shall be improved, except at entrances and exits with guardrails, curbs or other devices to define parking spaces or limits of paved areas, so as to prevent encroachment of vehicles into adjacent areas or public ways, yards or setbacks required by the Zoning Code, and so as to regulate the flow of traffic within the lot.
(Ord. 84-99. Passed 12-16-85.)

(3) The Planning and Design Commission may require landscape buffering or landscape screening to be provided on the parking area property to insulate the parking areas and driveways from a side or rear lot line of other property in Residential Districts or any other Zoning District with an existing residence thereon. Landscape buffering may include, but shall not be limited to, evergreen trees and bushes, compact hedges, shrubs, earth berms or a combination thereof. Landscape screening shall include plant materials or other nonliving durable material, including, but not limited to, walls, berms or substantially solid decorative wood fencing. Where trees and shrubs are used to provide a landscape buffer, such shall provide a year-round state of being substantially impervious to rays of light. It shall be acceptable to incorporate fencing as part of the landscape buffer where noise and lights create a need that such landscape buffer include fencing. Fencing may also be used to provide landscape screening. Whenever used, fences shall be of a decorative style and type. Walls and berms shall be used only in the most unusual cases. The desired buffering or screening effect shall be achieved not later than twelve months after the initial installation. The Planning and Design Commission may extend this twelve month period of time when a hardship would be created because of expected growth or material shortages, but such extension shall not be for more than two years from the time the initial installation was to have been or has been installed. All buffering and screening requirements imposed under the provisions of this subsection shall be installed and constructed before a certificate of occupancy is issued for a new building or structure.

No existing building, structure or vehicular use area adjoining a Residential District or any other Zoning District with an existing residence thereon shall be expanded, altered or modified until the plans are submitted by the owner or developer to the Planning and Design Commission for its determination as to whether the change adversely affects any properties in a Residential District or any other Zoning District with an existing residence thereon. The Commission, after its review, shall require, where necessary, the establishment of a landscape buffering area or the installation of landscape screening, or a revision of a previously established buffered area or screening. The width and height of the landscape buffer or landscape screening shall be determined by the Planning and Design Commission provided, however, that the maximum height of fencing, whether incorporated as part of the landscape buffer or whether used as a landscape screen, which may be permitted shall be seven feet above finished grade. The owner, tenant and developer shall be responsible for the maintenance and replacement, if necessary, of the landscape buffer or landscape screening. Owners or developers of off-street parking areas shall be required to include a plan for buffering or screening the parking areas and driveways, including a detailed description and sketch of the landscape buffer or landscape screening which visually and verbally outlines the nature and the effect of the proposed landscape buffer or landscape screening. A certificate of occupancy shall not be granted until the buffering or screening requirements have been completed. If completion, in the case of living materials, is delayed because of the growing season, a temporary permit to occupy may be granted by the Building Commissioner. Such delay shall not extend beyond the next growing season following the date upon which the certificate of occupancy is requested.
(Ord. 95-72. Passed 10-16-95.)

(4) In order to carry out the objectives of this Zoning Code and to preserve the use and enjoyment of adjoining property not less than five percent (5%) of an off-street parking area of a lot with twenty or more off-street accessory parking spaces shall have landscaping islands to break up the expanse of pavement. Each landscaping island shall not be less in size than the required area of one off-street parking space, shall be interspersed throughout the entire off-street parking area and shall have trees and such other landscaping as may be required by the Planning and Design Commission. Areas of landscaping surrounded by at least three sides by accessory off-street parking areas or accessories to parking areas may be considered a landscaped island. (Ord. 98-38. Passed 7-6-98.)

(g) Approval of Parking Plans. Detailed drawings of off-street parking facilities shall be submitted to the Planning and Design Commission for review and approval in accordance with all the provisions of this chapter before a building permit or certificate of occupancy may be issued. Such drawings shall show the number of spaces and locations, dimensions and descriptions of all features as set forth in this chapter.

(h) Required off-street parking facilities, including access driveways, accessory to an existing use, and those required as accessory to a use created or a building constructed or altered hereafter, shall be continued and maintained in operation, and shall not be reduced below the requirements during the period that the main use is maintained. In the event any such senior citizen development should cease to be occupied by at least seventy-five percent (75%) of persons sixty-two years of age or older, the off-street parking requirements would be at the rate of two spaces per dwelling unit. Failure by the owner or owners to supply such off-street parking shall cause the Building Commissioner to revoke the occupancy of a sufficient number of the dwelling units or seating capacity in order to bring the facility into conformity with parking requirements. Accessory off-street parking facilities shall not be used for the rebuilding, overhauling or dismantling of any vehicle as defined in Section 301.51 or for the storage of motor or body parts. Accessory off-street parking facilities may be used for minor repair services on passenger vehicles of an occupant or tenant only. Permitted minor repair services shall be completed within forty-eight hours; otherwise such repairs shall be performed within a permitted building.

(i) Areas used to provide required off-street parking, and accessways thereto, shall be illuminated whenever deemed necessary by the Planning and Design Commission to protect the public safety. Lighting fixtures shall be so designed and located so as not to reflect direct rays of light upon adjoining residential properties, occupants of the buildings and streets or cause a glare hazardous to pedestrians or drivers of motor vehicles on adjacent public streets, and shall be subject to the approval of the Commission.
(Ord. 84-99. Passed 12-16-85.)

1139.20 SEWER SURVEY AND APPROVAL OF CITY ENGINEER REQUIRED.
The City Engineer shall make a survey of the public sanitary and storm sewer to be affected by the proposed building or use set forth in the application for a building permit and shall forward his approval to the Building Commission prior to the issuance of a building permit.
(Ord. 95-72. Passed 10-16-95.)

1139.21 DEVELOPMENT PLANS CRITERIA.
(a) A senior citizen housing development should be designed specially for this purpose, incorporating all necessary safety and convenience features. In general, the site amenities provided should be more attractive than for multi-family projects since the elderly spend nearly all their time on the site. The yards and passive recreation areas should be extensive in quantity and fully landscaped. There should be a composition of small, intimate, private yard and court areas for a variety of passive activities.

(b) Safety shall be emphasized both in scope and design. In addition to the requirements of the Building Code, each development shall be fully sprinklered and each building shall be provided with wet standpipes having a diameter of six inches. Each building shall have an unencumbered access to a public right of way. Vehicular circulation drives shall only be at the perimeter of the project; subject to the requirements of Section 1139.10, parking areas may penetrate into the perimeter of the site. Abrupt grades shall be avoided, all changes in grades in the walk system shall be accomplished by ramps; there shall be not more than two exterior steps to any building used by occupants. All buildings, two or more stories measured from the main entrance, shall be served by at least two elevators, the minimum size being five feet by seven feet each and equipped with heat-sensing devices.

(c) Electric and telephone service wires shall be underground between point of service and the building. Each building shall have a public easement for underground improvements such as sewer and water.

(d) When developed as an ancillary use, the multi-purpose senior center shall be centrally located within the development.
(Ord. 81-19. Passed 5-4-81.)

(e) When required side and rear yards border a one- and two-family residential district or any other zoning district with an existing residence thereon, a landscape buffer shall be provided and maintained in a manner approved by the Planning and Design Commission.
(Ord. 95-72. Passed 10-16-95.)

1139.22 DEPOSIT FOR SURVEY OF PUBLIC SANITARY AND STORM SEWERS.

A deposit by the applicant for a building permit shall be made with the Finance Director in the amount of one hundred fifty dollars ($150.00) to cover the cost and expense of such survey of public sanitary and storm sewers. The cost and expense of such survey shall be paid by the City from such deposit. (Ord. 85-65. Passed 9-3-85.)

1139.23 APPLICATION AND DESIGN OF PARKING AREAS.

(a) Application for Providing Facilities. An application for a building permit pertaining to constructing a building or parking facility or for a certificate of occupancy for a change in use of land or a building shall include a site plan drawn to scale and fully dimensioned, showing the proposed design of the parking area to be provided in accordance with the space requirement schedules that are a part of this Zoning Code.

(b) Determination of Required Parking Facilities. The minimum number of spaces required for accessory off-street parking shall be determined by applying the measurements standards in Section 1139.19, the standards for designing parking areas in subsection (c) hereof, the schedule of accessory parking requirements for the various uses in Section 1139.19 and any other applicable provisions of this Zoning Code.

(c) Design Standards. The plan of the parking spaces of a parking area, included with an application to construct a building or parking area, or change in use, shall be designed, dimensioned and the number of spaces determined in accordance with the standards for designing parking areas as may be adopted by the Planning and Design Commission. Design standards for enclosed parking areas and garages, shall be in accordance with other provisions of the Code.
(Ord. 84-99. Passed 12-16-85.)

1139.24 REQUIRED TRASH AREAS.

All senior citizen housing residential uses that provide trash and/or garbage collection areas shall be enclosed on at least three sides by a solid wall or fence of at least four feet in height if such area is not within an enclosed building or structure. Provisions for adequate vehicular access to and from such area or areas for collection of trash and/or garbage as determined by the Planning and Design Commission shall be required.
(Ord. 84-99. Passed 12-16-85.)

CHAPTER 1141
Nonconforming Buildings and Uses

1141.01 Nonconforming buildings.
1141.02 Nonconforming use of buildings.
1141.03 Nonconforming use due to reclassification.
1141.04 Termination and reversion. (Repealed)
1141.05 Nonconforming use of land.
1141.06 Changes, additions or improvements.

CROSS REFERENCES
Nonconforming building, lot and use defined - see P. & Z. 1105.13
Nonconforming signs - see P. & Z. 1145.05

1141.01 NONCONFORMING BUILDINGS.

A building or other structure, existing lawfully at the time this Zoning Code became effective, but which does not now conform by reason of such adoption or amendment to the lot area, dwelling area, yard regulations, building height or off-street parking regulations, or as to design, not designed for the use, or other regulations of the district in which it is located, may be continued only under the following conditions:

(a) Maintenance and Repair. A nonconforming building may continue to be used, maintained and normal repairs may be made. Normal repairs include the ordinary maintenance of a building or structure and the replacement of equipment which is required for safety of operation and the replacement or substitution of equipment. Normal repairs do not include the replacement of structural parts except when required by law to restore the building or structure to a safe condition or to make the building or structure conforming.

(b) Additions. A nonconforming building may be added to or enlarged, provided the whole building as well as the additions or enlargements are made to conform to all of the regulations of the district in which it is located.

(c) Moving. A nonconforming building may be moved in whole or in part to any other location on the lot or to another lot, provided every portion of such building so moved conforms to all of the regulations applicable to the lot on which it is located or to which it is to be relocated.

(d) Restoration of Damaged Buildings. If a nonconforming building is damaged, destroyed or removed by whatever cause, including acts of God, up to the extent of fifty percent (50%) of its reproduction value those portions so destroyed, damaged or removed may be restored to not more than their former size, provided such restoration is completed within a period of one year from the date of the damage, destruction or removal; and the nonconforming use existing prior to damage, destruction or removal may be continued.

If a nonconforming building is damaged, destroyed or removed by whatever cause, including acts of God, more than fifty percent (50%) of its reproduction value, it may only be repaired, reconstructed, restored or rebuilt in conforming with all use, area, yard, height, off-street parking, design and all other regulations of the district in which the building is located.

(e) Any accessory building or structure incident to or accessory to a nonconforming building shall be subject to the provisions of this section.

(Ord. 91-38. Passed 8-19-91.)

1141.02 NONCONFORMING USE OF BUILDINGS.

The nonconforming use of a building which was lawful prior to the adoption of this Zoning Code, but which does not conform by reason of such adoption or amendment as to use regulations, dimensions, area, yard, height, percent of lot coverage, or as to design or other regulations of the district in which it is located may be continued only under the following conditions:

(a) Change of Use. The nonconforming use of a building, or any part thereof, may only be changed to a conforming use. If the use of a nonconforming building, or any part thereof, is changed to a conforming use, thereafter it shall not be changed back to the former or any other nonconforming use.

(b) Nonexpansion of Use. A nonconforming use of a building, or any part thereof, shall not be expanded or extended.

(c) Discontinuance of Use. If a nonconforming use within a building or portion thereof is discontinued for a continuous period of one year or changed to a conforming use, any future use of such building, or portion thereof, so discontinued or changed, shall be in conformity with the district regulations in which the building is located.

(Ord. 91-38. Passed 8-19-91.)

1141.03 NONCONFORMING USE DUE TO RECLASSIFICATION.

The provisions of this chapter shall also apply to buildings, structures, land or other uses hereafter becoming nonconforming as a result of future reclassification of districts or of other amendments made to this Zoning Code.

(Ord. 91-38. Passed 8-19-91.)

1141.04 TERMINATION AND REVERSION.

(EDITOR'S NOTE: This section was repealed by Ordinance 93-24, passed June 7, 1993.)

1141.05 NONCONFORMING USE OF LAND.

"Nonconforming use of land" means any parcel of land nonconforming as to use, existing lawfully at the time this Zoning Code or any amendment thereto became effective but which does not conform with the use and/or other regulations of the district in which it is located. Any nonconforming use of land may be continued only under the following conditions:

(a) Change of Use. The nonconforming use of land shall not be changed except to any other use which complies with this Zoning Code.

(b) Expansion of Use. The use of a lot or any part thereof, nonconforming as to use, shall not be expanded or extended.

(c) Discontinuance of Use. If any lot or part thereof, nonconforming as to use is discontinued for a continuous period of one year, any future use of such lot or part thereof, shall comply with the use regulations of this Zoning Code.

(Ord. 91-38. Passed 8-19-91.)

1141.06 CHANGES, ADDITIONS OR IMPROVEMENTS.

(a) Notwithstanding the other provisions of this chapter with the exception of Section 1141.02(c) and Section 1141.05(c) and notwithstanding Section 1153.01(c), the Board of Zoning and Building Appeals may permit an existing nonconforming building or an existing nonconforming use of building to be structurally altered, rebuilt, expanded or enlarged provided the Board first determines that the general standards as set forth in Section 1153.06 do exist and provided that the Board further determines that the proposed changes, additions and/or improvements shall upgrade the existing nonconforming building or existing nonconforming use of building and, further, make the resulting development more compatible to the district for which it is zoned and more compatible to the adjacent and abutting uses.

(b) The provisions of this section shall apply only to the following types of changes, additions or improvements:

(1) Enlargements of a nonconforming structure or of a structure housing a nonconforming use by an addition attached physically to the original structure to form an integral part thereof;

(2) Construction of a new separate main use building that is a replacement for the existing nonconformity;

(3) Construction of a new separate use building that would be a replacement for an existing nonconformity and that would be a permitted accessory use in and/or for the existing nonconformity;

(4) Moving the nonconforming use from one existing building to another existing building located on the same zoning lot.

(c) The provisions of this section, however, shall not be construed, applied or interpreted to authorize or permit the Board to permit or authorize a new nonconforming main or accessory use to be introduced nor to permit or authorize the extension of the nonconforming use to an adjoining zoning lot. (Ord. 97-60. Passed 1-20-98.)

CHAPTER 1145
Signs

1145.01 Intent.
1145.02 Establishing regulations; exemptions.
1145.03 Classification of signs; definitions.
1145.04 Measurement standards.
1145.05 Design standards.
1145.06 Illumination of signs.
1145.07 Application for permits: approval.
1145.08 Maintenance and removal of signs.
1145.09 Nonconforming signs.
1145.10 Variance.
1145.11 Fees.
1145.12 Duties of Building Commissioner.
1145.13 Residential one- and two-family districts.
1145.14 Residential multi-family, garden, townhouse, high-rise, low-rise planned development and senior citizen housing districts.
1145.15 Office building and general business districts.
1145.16 Reserved.
1145.17 Signs permitted in all districts, standards.
1145.18 Temporary signs - political.
1145.19 Civic and recreational districts.
1145.20 Mural or pictorial signs.
1145.21 Areas of special control.
1145.22 Prohibited signs in all districts.
1145.23 Severability.
1145.24 Review.
1145.99 Penalty.

CROSS REFERENCE
Sign permit fee - see BLDG. 1307.08(g)

1145.01 INTENT.

Sign regulations, including provisions to control the type, design, size, location, illumination and maintenance thereof, are established and shall be strictly construed in order to achieve, among others, the following purposes:

(a) To promote and maintain attractive high value residential and business districts by preventing the blighting influence of excessive signage;

(b) To provide reasonable, yet appropriate, conditions for identifying and advertising goods sold or services rendered in business districts by relating the size, type and design of signs to the type and size of establishments;
(c) To provide for appropriate signs for the identification of commercial development;
(d) To control the design of signs so that their appearance shall be aesthetically harmonious with their surroundings and an overall urban design for the area;
(e) To eliminate any conflict between advertising (or identification) signs and traffic control signs which would be hazardous to the safety of the motoring or pedestrian public;
(f) To provide review procedures which enable the City to comprehensively evaluate the appropriateness of the sign to the site, building and surroundings;
(g) To provide for the control of temporary signs to avoid the blighting influence of excessive and/or deteriorating temporary signage; and
(h) To prohibit all signs not expressly permitted by this code.

In establishing these purposes, the City has determined that signs which do not comply with these regulations (type, size, location and limitation on the number of signs) are a public nuisance and are a detriment to the general health, safety and welfare of the community. Unregulated signs are unduly distracting to motorists and pedestrians and reduce the effectiveness of signs needed to direct the public.
(Ord. 03-37. Passed 11-3-03.)

1145.02 ESTABLISHING REGULATIONS; EXEMPTIONS.

(a) Signs shall be designed, erected, altered, reconstructed, moved and maintained, in whole or in part, in accordance with the type, design, size, location, illumination and other provisions set forth in this chapter.

(b) The construction, erection, safety, maintenance and painting of all signs shall be in accordance with this chapter, Chapter 1159 the Design Review Guidelines and with the Building Code. The provisions of this chapter shall not amend or in any way modify other codes, rules or regulations governing traffic signs within the City or other signs erected by or pursuant to public authority within the City.

(c) The display of official public notices and the flag, emblem or insignia of an official governmental body shall not be affected by these regulations. Nor shall signs used for safety purposes relative to the repair or maintenance of streets, sidewalks or of utilities in the public right of way be affected by the provisions of these regulations. Name and informational signs containing emblems of service clubs, places of worship, civic organizations and the like consolidated with a single frame placed on public property with the permission of the Director of Public Service and Development are not subject to these regulations provided such emblems do not exceed three square feet in area, provided the frame does not exceed eight feet above finished grade and further provided the sign is not illuminated. Also exempt from the provisions of the chapter are standard signs approved by the Director which are required to be erected by any law, code, rule or regulation in force and in effect within the City. The provisions of this chapter shall not govern the display of signs which are part of the original construction of a vending machine, newspaper dispensing device or fuel pump.
(Ord. 03-37. Passed 11-3-03.)

1145.03 CLASSIFICATION OF SIGNS; DEFINITIONS.

(a) "Sign" means any display, figure, word, number, symbol, geometric shape, model, painting, drawing, placard, letter, poster, pennant, insignia, device or other structure or representation or combinations thereof visible from a public way which is designed, intended or used to convey a message, advertise, inform or direct attention to a person, institution, organization, business activity, place, object or product.

(b) Classification by Functional Type.

(1) "Abandoned sign" means a sign which no longer directs or exhorts, advertises a bonafide business, lessor, lessee, owner, product or activity conducted or available on the premises where the sign is located. Abandoned signs are prohibited in the City of Fairview Park.

(2) "Billboard" means a sign directing attention to a specific business, product, service, entertainment or any other activity sold, offered or conducted elsewhere than upon the same lot on which the sign is located. Billboard signs are prohibited in the City of Fairview Park.

(3) "Bulletin board" means an announcement sign which directs attention to and which is located on the lot of a public or semi-public institution, or of a charitable or religious facility.

(4) "Business sign" (general advertising) means a sign advertising the name of the business or establishment, the goods or commodities sold and/or brand names thereof, or services rendered on the lot which the sign is located. (The terms "advertising" and "brand names" distinguish business signs from identification signs)

(5) "Development sign" means a sign directing attention to the promotion, development or construction of a building or subdivision or property on the parcel of land on which the sign is located and which bears the name, address, subplot number or other identifier of the contractor or the name, owner or manager of the development.

(6) "Directional sign" means a sign intending to direct the safe flow of vehicular and pedestrian traffic and includes "enter", "exit" and arrow signs. Standard traffic devices may be used if approved by the Chief of Police.

(7) "Flashing signs" means any illuminated sign which exhibits changing lights or color effects and includes electronically controlled message centers or readerboards but does not include public service signs displaying date, time and temperature. Flashing signs are prohibited in the City of Fairview Park.

(8) "Identification sign" means a sign, other than a nameplate, indicating the name, owner, manager and/or address of an existing building or business. (The term "name" may include the type of goods sold or services rendered, but not brand names.)

(9) “Illuminated sign" means a sign that has characters, letters, figures, designs or outline illuminated by electric lights or luminous tubes as part of the sign proper, or which is illuminated by the reflector method.

(10) "Informational sign" means a sign which is designed to give general information to the public concerning areas of natural scenic beauty or outdoor recreation facilities and similar information, or indicating a condition on the property which requires the exercise of ordinary care, or which provides public safety information or other public information.

(11) "Integral sign" means a sign indicating the name of a building, date of erection, monumental citations, commemorative tablets and the like when carved into stone, concrete or similar material or made of bronze, aluminum or other permanent type construction and made an integral part of the structure.

(12) "Memorial sign" means a sign designed, intended or used to preserve the memory of a person, place or event, including landmark and historical plaques.

(13) "Mural or pictorial signs" means an artistic scene or picture devoid of any advertising or commercial aspects, slogans, words, letters, script, numbers, diagrams or text, which is printed or painted upon any wall of a building or structure.

(14) "Nameplates" means a sign indicating the name, address or profession of the person or persons occupying the lot or building or part of a building.

(15) "Permanent sign" means a sign which is designed or intended to be used indefinitely, or used indefinitely without change in its state or place.

(16) "Political sign" means a sign promoting or opposing any candidate seeking any elective office, promoting or opposing any ballot measure to be voted upon by the electors of the City and any sign expressing an opinion or advocating or urging action on any public issue. A "Political Sign" shall not be construed to mean or include any other functional type of sign as defined in this subsection.

(17) "Real estate sign" means a sign directing attention to the promotion, development, construction, rental, sale or lease of property on which it is located.

(18) "Security sign" means a sign indicating that the property is protected by a security surveillance system of any nature.

(19) "Temporary sign - civic" means a sign of any type to announce charitable, educational, religious, civic or community affairs, event or function of a public or semipublic nature and design and intended for use for a limited period of time. Such a sign may be suspended over or on public property or any other location only by permission of the Director of Public Service and Development. Such signs may be a banner, pennant or poster constructed of cloth, canvas, plastic sheet, cardboard, or wallboard and may be displayed twenty-one days prior to and three days after the affair, event or function.

(20) "Temporary sign - commercial" means either a sign constructed of paper, cloth or another durable material announcing sales, new products, special business events or being decorative/seasonal in nature, attached or affixed to the interior or exterior surfaces of a window or door of a building providing that such signs shall not cover more than 25% of the total surface area to which they are affixed and displayed for a period of time not to exceed thirty days or a sign constructed of durable material announcing the opening of a new business or the reopening of an existing business for use in a General Business District erected, placed or located not less than five feet from a lot line, not to exceed twenty square feet in area per side and six feet in height above natural grade, which is limited to no more than two colors, and displayed for a period of time not to exceed thirty days.

(c) Classification by Structural Type.

(1) “Banner sign” means a sign constructed of fabric or any non-rigid material with no enclosing framework.

(2) "Canopy sign" means a sign attached to the soffit or fascia of a canopy or of a covered entrance or walkway, or attached to or displayed and applied on an awning, canopy or marquee.

(3) "Monument sign" means a freestanding sign which has a supporting base designed as an integral part of the sign and resting totally or primarily on the ground.

(4) "Pole sign" means a sign which is supported wholly by a pole or poles, posts or braces upon the ground and not attached to any building. Pole signs are prohibited in the City of Fairview Park.

(5) "Portable sign" means a sign which is designed to be portable and is not permanently attached to any part of a building or permanently anchored to the ground. Portable signs are prohibited in the City of Fairview Park.

(6) "Projection sign" means a sign, other than a wall sign, erected on the outside wall of a building and which projects out at an angle therefrom, extending more than fifteen inches from the face of the wall of the building, wall or other structure and is supported thereby.

(7) "Roof sign" means a sign erected upon and completely over the roof of any building or a sign constructed or wholly maintained upon or over the roof or parapet wall with the principal support on the roof. Roof signs are prohibited in the City of Fairview Park.

(8) "Wall sign" means a sign integral with the exterior face of an exterior wall of a building, or attached to the wall or parallel with the wall and extending no higher than the ridge lines on the top of the parapet wall and projecting not more than twelve inches from the wall. Wall signs shall be a single faced cabinet or individual channel type letters.

(9) "Window sign" means a sign attached or affixed to the interior or exterior surface of windows or doors of a building, or other than merchandise, that which is located within three feet of the interior surface of the glass.

(10) "Attraction devices" refers to anything that attracts via mechanical contrivance that causes animation, revolution, movement up-and-down or sideways, inflatable devices and windblown devices such as ribbons, spinners and streamers whether part of a sign or not. Attraction devices are prohibited in the City of Fairview Park.

(d) Any sign classified pursuant to subsection (b) hereof as a "billboard", "bulletin board", "business sign", "identification sign" or "informational sign" may, subject to the provisions of this chapter, contain noncommercial messages.
(Ord. 03-37. Passed 11-3-03.)

1145.04 MEASUREMENT STANDARDS.

The size of signs is regulated in this chapter by relating the gross area of signs to the building or use of a lot, or to the size of the building unit to which the sign is accessory.

(a) The gross area of signs for a building or use shall include all permanent surfaces visible from a public way and shall be measured as follows:

(1) The area of the surface, or surfaces, of an opaque or translucent panel used or intended for displaying a message within a single continuous perimeter enclosing the extreme limits of such sign. However, such perimeter shall not include any structural elements lying outside the sign limits which are not an integral part of the information or visual attraction unless otherwise provided herein; plus

(2) The area within the smallest rectangle enclosing a sign composed of letters or characters which are individually attached to a building wall or other structural element not designed as a panel such as where the background wall is not changed, painted, or designed to form a distinct or contrasting background surface in relation to the remaining wall surface; plus

(3) The area of permanent window and door signs.

(b) Whenever the gross area of the signs is related to the size of the building or lot: the frontage of a building shall be the width in lineal feet of the facade of the building, business, office or industrial unit which faces the principal street, or the facade containing the main entrance of a business office or industrial building. The frontage of a lot not occupied by a building shall be the number of lineal feet the lot abuts on the principal street.

(c) Buildings or lots having frontage on a second street may be permitted additional signs along such second street which shall, however, not exceed twenty-five percent (25%) of the area of the signs permitted along the main facade; however, any additional sign area allowed as a result hereof shall only be used on the building facade facing the second street or on the portion of the same lot on the second street. (Ord. 03-37. Passed 11-3-03.)

1145.05 DESIGN STANDARDS.

Signs, as permitted install use districts, shall be designed to be compatible in character and style with regard to materials, color and size of the building, other signs designed or located on the same building and other signs on adjoining buildings in order to produce an overall unified effect, and in accordance with the standards set forth in this section. Signs shall be reviewed with respect to each of the provisions of this section and shall require approval by the Planning and Design Commission except the signs listed in Section 1145.07 (h).

(a) Continuity. Signs shall be considered in relationship to their surrounding environment and, if seen in series, should have a continuity of design.

(b) Style and Color. The style of a sign shall be generally consistent throughout the particular building or block involved; the color of signs shall be a component of the color of the building facade and the total number of colors on any sign shall be limited to three. Company logos would be exempt but shall be limited in size to twenty percent (20%) of sign. Black and white are to be considered colors.

(c) Lettering. The lettering on a sign shall be large enough to be easily read but not overly large or out of scale with the building upon which it is placed. An excessive amount of information on signs, where visual clutter could create a potential safety hazard to motorists or pedestrians, shall not be permitted. All letters, figures, characters or representations in cut-out or irregular form maintained in conjunction with, attached to or superimposed upon any sign shall be safely and securely built or attached to the sign structure.

(d) Materials. Signs shall be fabricated on and out of materials which are of good quality, good durability and complementary to the building of which they are to become a part.

(1) When noncombustible outdoor signs or display structures are required by this chapter, all parts including the supporting structure shall be of noncombustible material; provided, however, that wood, approved plastic or other material not more combustible than wood or approved plastic shall be permitted for small ornamental moldings, cappings, nailing strips, individual letters, symbols, figures, and insignia, and on the face of a sign, provided that the aggregate area of such facing for any sign shall not exceed that permitted by this chapter.

(2) All metal parts used in any sign or structure, supports and braces shall be of corrosion-resistant material or shall be galvanized and/or painted with corrosive-resistant paint at least once every two years. When existing structures are used for new or remodeled sign installation, all remaining parts shall be brought to new like condition and painted with rust and corrosion-resistant paint. Existing sign supports are subject to the approval process of this chapter being used in new or remodeled sign installation.

(3) Every permitted sign shall be securely attached to the building walls, marquees or structures using suitable metal supports, metal anchors, bolts, chains, stranded cables, steel rods or braces and the working stresses of chains, cables and steel rods and their fastenings shall not exceed one-quarter of their ultimate strengths.

(4) Wall signs attached to exterior walls of solid masonry or concrete shall be safely and securely attached to same by metal anchors, bolts or lead expansion anchors of not less than three-eighths inch in diameter and shall be imbedded to manufacturer's required depth for device used.

A. No wooden blocks or anchorage with wood used in connection with screws, nails, spikes or staples shall be considered proper anchorage.

B. Wall signs attached to wood walls may be supported by lag screws of not less than one-fourth inch in diameter, but shall be of size and length to support load involved.

(e) Structural Design. Any graphic, or other sign structure, marquee, canopy, or awning as defined in this chapter, shall be designed and constructed to withstand a wind pressure of not less than thirty pounds per square foot of net surface area, allowing for wind from any direction, and shall be constructed to withstand loads as required in the Building Code. Signs shall not be attached to parapets. The construction, bracing, anchorage and support of permanent signs shall be in accordance with the requirements of the Building Code of the City and of this chapter. The roofs of all marquees shall be properly guttered and drained.

(f) Vertical Clearance. The lowest member for all signs, unless otherwise specifically provided in this chapter, shall not be less than eight feet above the finished grade of a sidewalk or any pedestrian way; and if located over a pavement used for vehicular traffic or within twenty-four inches of the vertical projection of the edge of such pavement, the lowest member of the signs shall be not less than twelve feet above the finished pavement.

(g) Relation to Traffic Devices. Signs shall not be erected so as to obstruct sight lines along any public way, traffic control lights, street name signs at intersections or street sight lines. Signs visible from the sight lines along a street shall not contain an arrow or words such as "stop", "go", "slow", etc. and the movement, content, coloring or manner of illumination shall not resemble highway traffic signs or interfere with the sight lines of a traffic signal.

(h) Other Safety Requirements. No sign shall be erected or placed so that any part thereof, including cables, guys, braces, supports, etc., shall be within a fifteen-foot distance of public utility electric conductors carrying not more than 600 volts, and for conductors carrying more than 600 volts, not within a distance of thirty feet of such conductors, except that this provision shall not apply to electric conductors which serve the sign.

(i) Changeable Copy Signs. Any sign or any portion thereof where the message or graphics is not permanently attached to the structure, framing or background and may be periodically replaced or covered over, manually or by electronic or mechanical devices is subject to the provisions of this chapter, including the design standards of this section, the provisions for illumination of signs in Section 1145.06, and the provisions for applications for permits; approval in Section 1145.07.

When reviewing the proposed sign, the Planning and Design Commission shall consider and establish standards applicable for the changeable copy which shall include, but are not limited to: determining the portion of the sign permitted for changeable copy; determining the suitable materials and method for making changes and the manner for fastening the new copy; and establishing the color and design criteria. These standards shall be set forth in the sign permit and shall apply for the life of the sign unless otherwise amended by the Commission pursuant to Section 1145.07. (Ord. 03-37. Passed 11-3-03.)

1145.06 ILLUMINATION OF SIGNS.

(a) Light sources to illuminate signs shall be shielded from all adjacent residential buildings and streets and shall not be of such brightness so as to cause glare hazardous to pedestrians or motorists or so as to cause reasonable objection from adjacent residential districts and shall be, in any event, concentrated on the area of the sign.

(b) Animated, blinking, flashing, fluttering, moving or outline illumination shall not be permitted in any district except that a permit may be granted for movement showing the date, the time and the temperature exclusively. Beacon lights and search lights are prohibited. No sign shall be constructed and/or operated to create an appearance of illusion of writing.

(c) No exposed reflective type bulbs shall be permitted. Neon tube illumination bent to form letters, symbols or other shapes for any sign, other than that used for permanent window signs not exceeding two in number for any building or use on a lot, or used other than to backlight silhouetted letters, or used for the internal illumination of plastic faced signs or letters, shall not be permitted. Strobe lights or incandescent lamps shall not be used on the exterior surface of any sign so as to expose the face of the bulb, light or lamp to any public street or adjacent property. Strings of lights are not permitted. Neon tubing except as otherwise provided herein shall not be visible to the eye and shall not be closer than one inch to the plastic face or letter of any sign.

(d) The methods of illumination permitted are colored light, illuminated surface colors, internal illumination (a light source concealed or contained within the sign, and which becomes visible in darkness through a translucent surface) and indirect illumination (a light source not seen directly), provided that within residential areas or within 500 feet thereof only white shall be permitted.

(e) Display signs illuminated by electricity, or equipped in any way with electric devices or appliances, shall conform in wiring and appliances to the provisions of the National Electrical Code, most current edition, and there shall be a lock-type switch.

(f) Subject to the regulations herein, all permanent signs in office building and business districts and bulletin boards for institutions may be illuminated. Signs in residential districts, other than nameplates and as otherwise specifically permitted, shall not be illuminated.
(Ord. 03-37. Passed 11-3-03.)

1145.07 APPLICATION FOR PERMITS: APPROVAL.

(a) Applications for permits to erect, place, paint, illuminate, alter or otherwise effectuate a change in a sign shall be submitted on forms furnished by the City and shall be made either separately or included with an application for a building permit. Such application shall be dated and include the name, address and telephone number of the applicant and the name of the person erecting the sign. Written consent of the owner of the building, structure or lot on which the sign is to be erected shall be required when such owner is not the applicant. The location of the building, structure or lot on which the sign is to be erected is also required.

(b) Each application shall be accompanied by drawings to scale and photographs, showing the following:

(1) The design and layout proposed, including the total area and dimensions of signs, the size, height, character, materials, colors and type of lines, lettering or other symbols;

(2) Photographs or drawings of the building for which the signs are proposed and photographs of surrounding buildings, signs and uses;
(3) The number and types of lamps and lens material to be used in any illuminated signs;
(4) The total area, dimensions, weight and physical composition of the proposed sign;
(5) The exact location of the sign in relation to the building and property and in relation to nearby buildings or structures; and
(6) Details and specifications for construction, erection and attachment as may be required by the Building Code and this chapter.

(c) A sign permit is applicable only to the specific sign (or signs) for which it is granted. Once a sign permit is granted, no temporary or permanent sign shall be attached or added to the given sign. A sign permit shall become null and void if the work for which the permit was issued has not been completed within a period of six months after the date of the permit. A permit may be renewed once.

(d) All signs and drawings, required by subsection (b) hereof unless otherwise specifically excepted by this section shall be referred by the Building Commissioner to the Planning and Design Commission for its approval, approval with modification or disapproval.

(e) The following operations shall not be considered as creating a sign and shall not require a sign permit:
(1) Replacing copy. Subject to the provisions of Section 1145.05(i), the changing by a permit holder of the advertising copy or message on an approved sign which is specifically designed and approved for the use of changeable copy.
(2) Maintenance. Painting, repainting, cleaning and other normal maintenance and repair of a sign or a supporting sign structure unless a structural change or other modification is made.

(f) No permit for a sign issued hereunder shall be deemed to constitute permission or authorization to maintain an unlawful sign nor shall any permit issued hereunder constitute a defense in an action to abate an unlawful sign.

(g) The Building Commissioner is hereby authorized and directed to revoke any permit issued upon failure of the holder thereof to comply with any provisions of this chapter or any regulation pertaining to signs or where the permit was issued on the basis of fraud or misstatement.

(h) The permit provisions of this section shall not apply to the following signs; however, such signs shall be subject to the other regulations in this chapter:

(1) Memorial signs;
(2) Traffic signs, legal notices and informational signs;
(3) Federal, State, County or Municipal signs; house (street) numbers; or name plates in one- and two-family residential districts;
(4) Security signs;
(5) Credit card signs;
(6) Real estate signs except those permitted by Section 1145.14(d)(2);
(7) Political signs;
(8) Permanent window signs;
(9) Home sale signs;
(10) Temporary signs - civic; and
(11) Temporary signs - commercial.

(i) For buildings housing more than one business entity requiring signs, a comprehensive sign scheme shall be submitted indicating the typical sign design standard, locations, sizes, details, lettering type and size, colors and other information required by Section 1145.07(b) to be used for the installation of any signs requiring a permit on the premises. Sign submittals which comply with a previously approved sign scheme in the opinion of the Building Commissioner, shall not require further approval, from the Planning and Design Commission. (Ord. 03-37. Passed 11-3-03.)

1145.08 MAINTENANCE AND REMOVAL OF SIGNS.

(a) All signs and sign structures shall be maintained in good repair and in a safe, attractive condition, free of structural defects and electrical violations, so as not to constitute a public nuisance, blight or deteriorating influence on adjacent property or a safety hazard. Signs and sign poles which no longer serve the purpose for which they were intended or which have been abandoned or are not maintained in accordance with this section and other applicable regulations of the City shall be removed by the person on whose premises such sign is displayed or by the City at the expense of such person. Any sign now or hereafter existing which no longer relates to a business being conducted on the premises shall be removed by the person on whose premises such sign is displayed or by the City at the expense of such person within thirty days. These removal provisions shall not apply where a succeeding owner or lessee conducts the same type of business and agrees to maintain the sign as provided in this chapter or changes copy on the sign(s) to advertise the type of business being conducted, and provided the sign complies with all other provisions of this chapter.

(b) The Division of Building shall inspect, as it deems necessary, each sign or other structure regulated by this chapter for the purpose of ascertaining whether the same is secure or insecure and whether it is in need of removal or repair.

(c) The occupant or owner of any premises upon which a violation of this chapter is apparent or the owner of any sign placed or remaining anywhere in violation of this chapter shall be deemed responsible for the violation so evidenced and subject to the penalty provided therefor. (Ord. 03-37. Passed 11-3-03.)

1145.09 NONCONFORMING SIGNS.

A sign nonconforming as to the regulations prevailing on the effective date of this chapter (Ordinance 03-37, passed November 3, 2003) which does not conform to the regulations of this chapter or a subsequent amendment, shall be deemed a nonconformity.

(a) Purpose. The purpose of this chapter, in addition to providing specific standards for the design, construction and erection of every new graphic, sign, marquee, canopy and awning is to cause every graphic or other sign in violation of any provision of this chapter to be eventually removed, altered or replaced so as to conform with the provisions of this chapter.

(b) Authority to Continue Existing Nonconformities. Any graphic, sign, marquee, canopy or awning as defined in Section 1145.03 which is deemed to be a nonconformity, which was erected in accordance with the provisions of any prior sign code pursuant to a City permit and in place on the effective date of this chapter and which remains or becomes a nonconformity upon the adoption of this chapter or any subsequent amendment thereto, may be continued only in accordance with the following regulations:

(1) Repairs. Ordinary repairs and nonstructural alterations may be made to a nonconforming sign. No structural alterations shall be made in, to or upon such nonconforming sign, except those required by law to make the sign conform to the regulations of this chapter.

(2) Additions and enlargements. A nonconforming sign shall not be added to or enlarged in any manner, except to make the sign conform to the regulations of this chapter.

(3) Moving. No nonconforming sign shall be moved in whole or in part to any other location unless such sign, and the use thereof, is made to conform to all regulations of this chapter.

(4) Restoration of damaged nonconforming signs. A nonconforming sign which is destroyed or damaged by accident, wind, fire, vandalism or other cause to the extent that the cost of restoration shall equal to or exceed twenty-five percent (25%) of the replacement cost of such sign, shall not be restored unless it is made to conform to all the regulations of this chapter, or any subsequent amendment thereto. In the event that such damage or destruction is less than twenty-five percent (25%) of the replacement cost of such sign, no repairs, restoration or reconstruction shall be made unless such restoration is started within six months from the date of the partial damage or destruction and is diligently pursued to completion.

(5) Discontinuance of use of nonconforming signs. A nonconforming sign, the use of which is discontinued for a period of thirty days, shall thereafter be removed.

(6) Change of use of nonconforming signs. Where the business use or identity associated with the nonconforming sign at the time of the adoption of this chapter or any amendment thereto, thereafter terminates or changes, such termination or change of use shall require termination of the nonconforming sign, and the use of such sign shall thereafter conform to the regulations of this chapter.

(7) Effective permit. No permit shall become effective for any new sign which replaces an existing or nonconforming sign unless and until such existing or nonconforming sign is removed.

(Ord. 03-37. Passed 11-3-03.)

1145.10 VARIANCE.

A variance from the strict application of the provisions of this chapter may be granted by the Board of Zoning and Building Appeals in regard to an existing nonconforming sign or a new sign to be installed, erected, constructed or painted in accordance with Chapter 1153.
(Ord. 03-37. Passed 11-3-03.)

1145.11 FEES.

(a) Every applicant, before being granted a permit hereunder, shall pay to the City the fees required by Chapter 1307 of the Codified Ordinances for each sign permit required by this chapter.

(b) The amount of any and all permit fees as have been established shall be doubled if the erection of the sign or supporting structural framework has been commenced before a permit for such work has been obtained.
(Ord. 03-37. Passed 11-3-03.)

1145.12 DUTIES OF BUILDING COMMISSIONER.

(a) It shall be the duty of the Building Commissioner upon the filing of an application to examine such plans and specifications and other data and the premises upon which it is proposed to erect the sign or other advertising structure. If the proposed sign is in compliance with the requirements of this chapter and all other pertinent ordinances of the City and has been approved by the Planning and Design Commission, a permit shall be issued.

(b) In the event the proposed sign is not in compliance with the requirements of the City, the Commissioner shall not issue the permit until review and approval by the Board of Zoning and Building Appeals as well as review and approval by the Planning and Design Commission.

(c) Notwithstanding any other provision of this chapter, the Commissioner may deny a permit to any person who has habitually or wilfully violated any of the provisions of this chapter or who has failed to comply within the time specified with an order issued by the Commissioner and served by him to cause compliance with any provision of this chapter.

(d) Monument signs shall be subject to a footing inspection and all signs shall, when illuminated, be subject to a final electrical inspection by the Commissioner.
(Ord. 03-37. Passed 11-3-03.)

1145.13 RESIDENTIAL ONE- AND TWO- FAMILY DISTRICTS.

Accessory signs in residential one- and two-family districts shall be designed, erected, altered, moved and maintained in whole or in part, in accordance with these regulations. Only the following types of signs shall be permitted as to use, structure, size and number and shall be regulated as follows:

(a) Development Signs. One temporary development sign not to exceed twenty-four square feet in area, not to exceed five feet in height above finished grade and located not less than twenty feet from any lot line on the lot upon which a building is under construction and which shall be removed within fourteen days of the beginning of the intended use of the project.

(b) Integral Signs. One integral sign not to exceed two square feet in area.

(c) Nameplate. One nameplate not to exceed two square feet in total area and located not less than five feet from any lot line of the premises.

(d) Real Estate Signs.

(1) One temporary real estate sign not exceeding six square feet in area or three feet in height above finished grade shall be permitted for each dwelling or lot. Such sign shall be located not less than five feet from the front or any side lot line and shall be removed within seven days of the sale, provided, however, two such signs shall be permitted on a single parcel which abuts two streets subject to the regulations herein. "Open House" directional arrows not exceeding three square feet in area are permitted provided that the sign shall not exceed three feet in height above finished grade, any such sign shall be removed by sundown, and shall be placed not less than three feet from any lot line.

(2) One temporary subdivision sign which shall not exceed fifty square feet in area. No temporary subdivision sign shall be located within one hundred feet from any occupied residence and shall be on the premises within the subdivision being developed.

(3) A model house sign not exceeding six square feet in area shall be permitted on the same lot as the residence being displayed as a model. Permits for a subdivision sign shall be for a period not to exceed one year and may be renewed only if construction at the date of renewal is being pursued diligently.

(e) Security Signs. Security signs may only be of a type which is readily affixed to a window or door, such as a sticker or decal and may be no more than fifteen square inches in area.

(f) Street Address and Residential Name Signs. Two signs not exceeding three square feet in area each, bearing house (street) numbers, street name and name of the resident shall be permitted. Such signs may be allowed on mailboxes, but shall otherwise be located at least five feet from the nearest property line and shall not be over five feet above finished grade.

(g) Home Sale Signs. One sign indicating that a home sale is being conducted on the lot where the sale is taking place which shall not exceed three square feet in area and which remains erected only for the period of the sale, not to exceed three days. (Ord. 03-37. Passed 11-3-03.)

1145.14 RESIDENTIAL MULTI-FAMILY, GARDEN, TOWNHOUSE, HIGH-RISE, LOW-RISE PLANNED DEVELOPMENT AND SENIOR CITIZEN HOUSING DISTRICTS.

Accessory signs in Residential Multi-Family, Garden, Townhouse, High-Rise, Low-Rise Planned Development and Senior Citizen Housing Districts shall be designed, erected, altered, moved and maintained in whole or in part, with these regulations. The types of signs permitted as to use, structure, size and number for each building or lot shall be regulated as follows:

(a) Development Signs. One temporary development sign not to exceed twenty-four square feet in area and eight feet in height above finished grade shall be permitted upon the lot on which a building is under construction and located not less than twenty feet from any lot line. The sign shall be removed within fourteen days of the beginning of the intended use of the development.

(b) Directional Signs. Two directional signs of permanent construction each not exceeding four square feet in area or four feet in height above finished grade indicating traffic routes within parking areas or driveways shall be permitted at any entrance/exit to a building or lot, and provided that no part of the sign or the support thereof is located less than two feet from any lot line. Horizontal directional signs on and flush with paved areas are exempt from these standards. Illumination is permitted subject to the requirements of this chapter.

(c) Integral Signs. One integral sign not exceeding two square feet in area.

(d) Real Estate Signs.

(1) One temporary real estate sign not exceeding six square feet in area or three feet in height above finished grade shall be permitted. If the lot has multiple frontage, one additional sign not exceeding six square feet in area or three feet in height above finished grade shall be allowed on the property to be placed facing the additional frontage. All such signs shall be located not less than ten feet from any lot line.

(2) One sign of permanent construction, not exceeding six feet in height above finished grade or twenty-four square feet in total area per side, identifying any building or contiguous buildings under common ownership. The sign may be attached to the building or be placed in front of the building, but shall be located not less than ten feet from any lot line.

(e) Security Signs. Security signs may only be of a type which are readily affixed to a window, such as a sticker or decal, and may be no more than fifteen square inches in area.

(f) Street Number Signs. Two street number signs, each not exceeding two square feet in area shall be permitted for each building. Such signs shall be located not less than ten feet from the nearest property line and shall not exceed five feet above finished grade. For purposes of this section, one sign indicating the name of a building shall be permitted which shall not exceed four square feet in area and attached to the building.

(g) Canopy Signs. One canopy sign may be attached to the soffit or fascia of a canopy over an entrance/exit way, provided the total area of the face of the sign does not exceed six square feet, the vertical dimension of the sign does not exceed twelve inches, the horizontal dimension of the sign does not exceed seventy-two inches and the lowest structural member is not less than eight feet above finished grade. A canopy sign shall be centered at the symmetrical center of the canopy and shall be surface mounted to the underside of the canopy. Signs of a canopy type may be placed on the vertical faces of a marquee but shall not be permitted where the marquee projects over any public right of way. Signs displayed and applied on an awning or canopy shall not exceed twenty percent (20%) of the total area of the canopy or awning.

(Ord. 03-37. Passed 11-3-03.)

1145.15 OFFICE BUILDING AND GENERAL BUSINESS DISTRICTS.

Accessory signs in Office Building and General Business Districts shall be designed, erected, altered, moved and maintained, in whole or in part, in accordance with these regulations.

(a) Functional Types Permitted. Business signs, development signs of a temporary nature, directional signs, identification signs, nameplates, real estate signs, security signs and such other functional types as are specifically permitted by this chapter.

(b) Structural Types Permitted. Canopy, monument, wall, window and projection signs.

(c) Maximum Area and Number Permitted.

(1) Maximum sign face area. The maximum sign face area of all permanent signs permitted for each separate use occupying a building or unit of a building shall be related to the frontage of the building or unit thereof, as determined by the following formula:

Maximum sign face area = W x 2.0 square feet, except that the total in all cases shall not exceed 100 square feet.

The elements of such formula being defined as follows:

"Maximum sign face area" means the total area of one surface of a permanent sign as defined in Section 1145.04(a).

"W" means the frontage of a building as defined in Section 1145.04(b).

(2) Business signs. Within permanent business signs erected, placed, painted or located exterior to the facing of a building or use, the area devoted to the advertising of brand names of specific products or services shall be limited to fifty percent (50%) of the sign face area of wall signs and twenty-five percent (25%) of the sign face area of the other permitted types. Within permanent business signs erected, placed, painted or located exterior to the facing of a building or use, the area designed for the use of replaceable copy shall, except for those signs permitted by subsection (d)(4) hereof, be limited to fifty percent (50%) of the sign face area. Business signs shall be located on the same lot as the business or service to which it is directed.

(3) Canopy signs. One canopy sign may be attached to the soffit or fascia of a canopy over an entrance/exit way of each business or office use, provided the total area of the face of the sign does not exceed six square feet, the vertical dimension of the sign does not exceed twelve inches, the horizontal dimension of the sign does not exceed seventy-two inches and the lowest structural member is not less than eight feet above finished grade. Such a canopy sign suspended from a canopy shall be centered at the symmetrical center of the canopy and shall be surface mounted to the underside of the canopy. Signs of a canopy type may be placed on the vertical faces of a marquee but shall not be permitted where the marquee projects over any public right of way. Signs displayed and applied on an awning or canopy shall not exceed twenty percent (20%) of the total area of the canopy or awning.

(4) Development signs. One temporary development sign not to exceed twenty-four square feet in area, eight feet in height above finished grade and located not less than twenty feet from any lot line, announcing a proposed building or a building under construction shall be permitted on the lot to be occupied by the proposed building or building under construction. Such signs shall be removed within fourteen days of the beginning of the intended use of the development.

(5) Directional signs. Two directional signs of permanent construction, each not exceeding four square feet in area or four feet in height above finished grade indicating traffic routes within parking areas or driveways shall be permitted at any entrance/exit to any building or lot provided that no part of the sign or the support thereof is located less than two feet from any lot line. Horizontal directional signs on and flush with paved areas are exempt from these standards.

(6) Monument signs. One monument sign not to exceed twenty-four square feet in total area per side and six feet in height above finished grade shall be permitted subject to the requirements herein. Any permitted monument sign shall be located no closer than five feet from any lot line or access drive or twenty-five feet from a residential district. Such signs shall be located on the same lot as the business or service to which it directs attention. Supporting columns and structural trim of round or square-shaped configurations may be used, but in the event the cross-section area of such supports or trim exceed twenty-five percent (25%) of the sign face area, the sign face area shall be reduced in size by the amount of excess.

(7) Integral signs. One integral sign not to exceed two square feet in area.

(8) Nameplates. One nameplate, not exceeding one square foot in area for each store or office unit in the building, but not exceeding a total of ten nameplates per building, shall be permitted.

(9) Projection signs. One projection sign for each establishment or store unit not exceeding twelve square feet in area for each face may be permitted subject to the regulations herein. Such signs shall be attached to the wall and shall project no more than three feet therefrom at an angle of not less than ninety degrees. No projection sign shall project any closer than twenty-four inches from a vertical line projected from the public sidewalk. No projection sign shall swing from any bar, crane, awning or other sign; project over or obstruct the windows or doors of any building; be attached to or obstruct a fire escape or otherwise be in conflict with any safety provisions of the building code. A projection sign shall project from the building occupied by the business or service to which it directs attention and may extend above the top of the wall, provided that no more than thirty-five percent (35%) of the total height of the sign extends above the wall. Any face of a projection sign shall be not less than five feet from a side lot line or party wall of another store or unit and no projection sign shall be closer than twenty-five feet to any other projection sign. Use of projection signs shall be limited to applications which clearly complement a building's architectural style.

(10) Real estate signs. One temporary double-face, free standing or wall sign advertising the sale, lease or rental of the premises or part of the premises on which the sign is displayed, not exceeding six feet in height above finished grade or twenty-four square feet in area shall be allowed.

(11) Security signs. Security signs may only be of a type which is readily affixed to a window such as a sticker or decal and may be no more than fifteen square inches in area.

(12) Street number signs. Two street number signs not exceeding two square feet in area shall be allowed. Such signs shall be permitted on mailboxes and over doorways but shall otherwise be set back at least six feet from the nearest property line and shall not be over five feet above ground.

(13) Wall signs. Wall signs shall not project more than twelve inches from the building wall to which it is attached and shall be set back from the end of the building and party wall lines for a distance of at least three feet and shall not project beyond any corner or above the coping or eaves of any building. No wall sign shall be situated within a window or part of a window nor shall its supporting structure cover any window or part of any window. Wall signs placed in the vertical space between windows shall not exceed in height two-thirds of the distance between the top of the window and the sill of the window above or the major architectural details related thereto. No wall sign shall extend above the roof line or top of the parapet wall. No wall sign shall wholly or partially cover any wall opening or prevent free egress or ingress from any door, window or fire escape. Wall signs shall be attached to or integral with a wall occupied by a permitted business or activity. No wall sign shall be painted directly on the wall. Wall signs shall be designed to fit within any given frame of the architectural space intended for signage.

(14) Window signs. Permanent window signs shall not exceed twenty percent (20%) of the glass area to be calculated separately for each side of a building or business. Ten percent (10%) of the glass area may be used on a temporary basis (not to exceed thirty days) to advertise nonprofit activities. Twenty-five percent (25%) of glass area may be used for temporary signs - commercial. No window signs shall be painted directly on the window. Notwithstanding the foregoing, no more than fifty percent (50%) of the glass area may be covered by any combination of window signs at any one time. For purposes of this section, those signs displaying the credit cards accepted by a business enterprise and security signs shall be considered permanent window signs, and may only be of a type which is readily affixed such as a sticker or decal. Only one sign for each credit card accepted shall be permitted at each entrance.

(d) Supplementary Regulations.

(1) Additional signs. In addition to the sign face area permitted by Section 1145.04(c), in cases where an office or business building has a back entrance from a parking area open to the public, additional sign area equal to twenty-five percent (25%) of that permitted along the main facade may be used; however any additional sign area allowed as a result hereof shall only be used on the building facade facing the back parking area.
(Ord. 90-27. Passed 7-2-90.)

(2) Regional shopping center identification signs; convenience shopping center identification signs.

A. Regional shopping center identification signs. In addition to sign face area permitted for each individual establishment, one shopping center identification sign identifying the name and/or logo of a unified shopping area comprised of a minimum of fifty acres and a minimum of fifty separate stores shall be permitted. Each sign face shall not exceed sixty square feet in area and shall be a monument sign, subject to the regulations governing such signs. A regional shopping center identification sign shall be part of a comprehensive sign format and designed for the unified shopping area and shall be subject to review and approval by the Planning and Design Commission.

B. Convenience shopping center identification signs. Where there are three or more separate and distinct occupant/tenants on the same zoning lot in a General Business "A" District or a General Business "B" District with separate exterior entrances to each occupant/tenant and which do not otherwise constitute a regional shopping center as defined in subsection (d)(2)A. hereof, one convenience shopping center identification sign identifying the name and/or logo of the unified shopping center and/or the individual establishments therein shall be permitted in addition to sign face area permitted for each establishment. Convenience shopping center identification signs shall be monument signs and the square feet in area of each sign face shall be in accordance with the following:

	Square footage of Multi-Tenant Building			
	4000	5500	7000	8500+
Sign Sq. Footage	28	32	36	40
Sign Height	6 ft.	7 ft.	8 ft.	8 ft.

A convenience shopping center identification sign shall be in lieu of any other monument sign on the same zoning lot and shall be subject to the regulations governing such signs. A convenience shopping center identification sign shall be part of a comprehensive sign format and design for the zoning lot and shall be subject to review and approval by the Planning and Design Commission.

(3) Special signs. Where innovative design is demonstrated, a sign utilizing the building design itself as a means to identify or advertise a product or service my be permitted. The design and area of the signage elements shall be subject to review and approval by the Planning and Design Commission.

(4) Drive-in menu signs. Menus, price lists and similar type graphics which are intended for communication to on-premises customers and are not intended or utilized as a means of communication to passing traffic or the public are permitted provided that one such sign not in excess of forty square feet or seven feet above finished grade only shall be allowed.

(5) Gasoline service stations. Signs for gasoline service stations shall conform with all regulations of this chapter except for those which directly conflict with the regulations stated below.

A. Monument signs. Such signs may display only sign panels which: (1) identify the company name; (2) identify the station ownership or management; and/or (3) advertise the price of fuel by type, grade or form of service. The sign panels indicating the price of fuel shall not exceed fifty percent (50%) of the total of any sign face area, and the numerals and letters on such signs shall not exceed two feet in height.

B. Signs at fuel pumps/service islands. These signs shall be limited to those which display information regarding type of service provided or other information essential in directing or instructing the motorist who has entered the station area. The number, area and height of such signs shall be as determined by the Planning and Design Commission.

C. Canopies. For canopy structures which shelter service islands, no signs shall be displayed on the canopy fascia area. Furthermore, the canopy fascia area shall be nonilluminated and shall be designed in a manner which does not call attention to the canopy structure.

(6) The Building Commissioner is directed to allocate the total allowable sign space for a building with more than one unit to the individual units as follows: maximum square footage allowed divided by total building frontage resulting in the square footage allowed per frontage foot of each building tenant.

(7) Any zoning lot may have, subject to the regulations applicable thereto, only one of the following structural types of signs; a monument sign or a projection sign provided however that any such sign on the premises of any zoning lot which offers or provides adult entertainment as defined in Section 1137.03(a)(12) shall be behind the building line notwithstanding the regulations hereinbefore set forth relating to the permitted location of such signs. (Ord. 03-37. Passed 11-3-03.)

1145.16 RESERVED.

(EDITOR'S NOTE: This section is reserved for future legislation.)

1145.17 SIGNS PERMITTED IN ALL DISTRICTS, STANDARDS.

Notwithstanding any other provision of this chapter, the following types of signs shall be permitted in any district:

(a) Informational Signs. One informational sign not exceeding six square feet in area or four feet in height above natural grade, and located not less than five feet from any lot line. Such signs shall be uniform under standards set by the Director of Public Service and Development.

(b) Memorial Sign. One memorial sign not to exceed four square feet in area, provided same are placed flat against a wall or other object.

c) Temporary Signs - Civic. Such temporary signs shall be located no closer than five feet from any lot line, shall not exceed twenty-four square feet in area and shall not exceed six feet in height above natural grade. Illumination is permitted subject to the requirements of this chapter.
(Ord. 03-37. Passed 11-3-03.)

1145.18 TEMPORARY SIGNS - POLITICAL.

No person shall display a political sign in any zoning district which is not in accordance with the following regulations:

(a) Such signs may be displayed within the interior of windows on the premises; or

(b) Such signs may be displayed in a yard provided such signs are located not less than five feet from any lot line and the height of such signs measured from grade shall not exceed four feet; and

(c) No single sign exceeds six square feet per side in size; and

(d) Such signs are not illuminated; and

(e) Equal access is provided to any person promoting or opposing any ballot measure to be voted upon by the voters of the City on any publicly or semi-publicly owned, leased or controlled premises;

(f) No sign shall be displayed on any utility pole, tree lawn, or any public right of way;

(g) This section does not apply to flags.

(h) When the subject of a political sign relates to a candidate or issue in an election, such signs are displayed no sooner than thirty days prior to the election to which such signs pertain, and removed from view no later than two days following such election.

(i) The Director of Public Service and Development may remove any sign posted in a public right of way, tree lawn, or utility pole. The Director of Public Service and Development may determine the cost of removal and assess such costs to the person, business, organization or entity who posted the sign(s).

(j) If, within two years of the violation the offender has not been convicted of or plead guilty to a violation of this section, whoever violates any provision of this section is guilty of a minor misdemeanor. If within two years of the violation the offender has previously been convicted of or plead guilty to a violation of this section, a violation of this section is a misdemeanor of the fourth degree. Each day that a sign not in compliance with this section is displayed constitutes a separate violation.

(k) Notwithstanding any other provision of this Code or the Codified Ordinances, any person accused of violating any provision of this section may be issued a compliance ticket by the Building Commissioner as a courtesy to the accused in lieu of instituting prosecution for the alleged violation as provided in this section.

(1) A person issued a compliance ticket:

A. May pay the City an administrative fee of seventy-five dollars ($75.00) within ten days of the issuance of the compliance ticket as a settlement and compromise of the claim against the accused; and

B. Shall correct or rectify the condition resulting in issuance of the compliance ticket within ten days.

(2) If the accused fails to comply with the provisions of subsection (k)(1) of this subsection:

A. The compliance ticket may be converted to a complaint or notice to appear which shall be filed with the Municipal Court and the accused shall be subject to prosecution and the fines and penalties authorized by law, or

B. Additional compliance tickets may be issued.

(Ord. 03-37. Passed 11-3-03.)

1145.19 CIVIC AND RECREATIONAL DISTRICTS.

Accessory signs in civic and recreational districts shall be designed, erected, altered, moved and maintained, in whole or in part, in accordance with these regulations. The types of signs permitted as to use, structure, size and number for each building or lot shall be regulated as follows:

(a) Bulletin Board. One sign of a permanent nature setting forth the name of a church or community, development center, or other like projects and its activities or services not to exceed twenty-four square feet in total area per side or six feet in height above natural grade shall be permitted if set back at least ten feet from any lot line. Illumination is permitted subject to the requirements of this chapter.

(b) Directional Signs. Two directional signs of permanent construction not exceeding four square feet in area or four feet above natural grade indicating traffic routes within parking areas or driveways shall be permitted at any entrance/exit to any building or lot, provided that no part of the sign or the support thereof is located less than two feet from any lot line. Horizontal directional signs on and flush with paved areas are exempt from these standards. Illumination is permitted subject to the requirements of this chapter.

(c) Integral Sign. One integral sign not exceeding six square feet in area.

(d) Street Address Signs. Two street number signs not to exceed two square feet in area. (Ord. 03-37. Passed 11-3-03.)

1145.20 MURAL OR PICTORIAL SIGNS.

Mural or pictorial signs shall be permitted only in office and general business districts.

The painting of mural or pictorial signs shall be in accordance with the regulations set forth below:

(a) Mural or pictorial signs shall not depict any scene or picture containing advertising or commercial aspects, and such signs shall not contain words, slogans, script, text, letters, numbers or diagrams.

(b) Mural or pictorial signs shall be congruous to the total area of the structure. Such signs shall be aesthetically compatible with respect to the front street line, and compliment the building where displayed in terms of scale, color and pattern. Mural or pictorial signs shall be harmonious with and relevant to, the surrounding environment. No such sign shall be intended, used or have the effect of shocking the visual coherence of the streetscape.

(c) No mural or pictorial sign shall be painted without first obtaining a permit from the Building Commissioner and being approved by the Planning and Design Commission. The fee for the issuance of a permit for the painting of a mural or pictorial sign shall be waived if the permittee is a civic, religious or charitable organization.

(d) In addition to the regulations set forth in this section, the painting and maintenance of mural or pictorial signs shall be in accordance with Section 1145.08. Mural or pictorial signs which are painted or maintained in violation of the provisions of this section shall be removed as provided in Section 1145.08.

(Ord. 03-37. Passed 11-3-03.)

1145.21 AREAS OF SPECIAL CONTROL.

It is recognized that the regulations provided in this chapter cannot sensitively handle all of the sign situations in an area as diverse as that covered by the City. Therefore, Council by ordinance and following notice and public hearing, may designate any of the following areas as areas of special control and authorize special provisions by ordinance:

Architecture, historic or scenic areas whose special and unique visual characteristics, or whose visual beauty, require special sign regulations to insure that all signs used within the area are compatible with each other. Generally, it is expected that sign regulations in these areas shall be more restrictive than those which would otherwise be applicable under this chapter. (Ord. 03-37. Passed 11-3-03.)

1145.22 PROHIBITED SIGNS IN ALL DISTRICTS.

The following signs are prohibited in all districts within the City:

(a) Signs which bear or contain statements, words or pictures of an obscene, pornographic or immoral character, or which contain advertising matter which is deceptive or untruthful;

(b) Flashing signs;

(c) Signs which are placed on utility poles, trees, fences, yard structures or other signs;

(d) Attraction devices; See Section 1145.03(c)(10).

(e) Billboards, pole signs, portable signs, roof signs and all other similar signs;

(f) Abandoned signs; and

(g) Signs which are placed on or over a Municipal, County or State right of way except as may otherwise be provided in this chapter.

(Ord. 03-37. Passed 11-3-03.)

1145.23 SEVERABILITY.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and neither the remainder of this chapter nor the application of such provision to other persons or circumstances shall be affected thereby. (Ord. 03-37. Passed 11-3-03.)

1145.24 REVIEW.

This chapter shall be reviewed by the Planning and Design Commission and Council every three years in order to modify, alter or update its provisions or application if necessary or desired. (Ord. 03-37. Passed 11-3-03.)

1145.99 PENALTY.

The penalty for a violation of this chapter shall be as set forth in Section 1149.99. Each day that a sign is erected or maintained in violation of this chapter shall constitute a separate offense. (Ord. 03-37. Passed 11-3-03.)

CHAPTER 1147
Wireless Telecommunications Facilities

1147.01 Intent.
1147.02 Definitions.
1147.03 Use regulations.
1147.04 Information to be submitted to Planning and Design Commission relative to need.
1147.05 Sharing of facilities.
1147.06 Discontinuance of use.
1147.07 Permitted locations.
1147.08 Denial of request.

1147.01 INTENT.

Wireless telecommunications facilities are permitted in only General Business "A", General Business "B", Office Building -"1", Office Building - "2", Office Building -"3" and Civic and Recreational zoning districts contingent upon the requirements of this chapter being met. Wireless telecommunications antennas are permitted in multi-family-high rise districts as permitted by Section 1147.02(c) and contingent upon the applicable requirements of this chapter being met. The criteria and requirements of this chapter are intended to minimize adverse health, safety, public welfare and visual impact through buffering, siting, design and construction criteria and requirements and to reduce the need for such facilities and wireless telecommunication towers.
(Ord. 97-3. Passed 5-5-97.)

1147.02 DEFINITIONS.

As used in this chapter:

(a) "Collocation" means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

(b) "Lattice tower" means a support structure constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.

(c) "Monopole" means a support structure constructed of a single, self supporting hollow metal tube securely anchored to a foundation.

(d) "Telecommunications" means the technology which enables information to be exchanged through the transmission of voice, video, or data signals by means of electrical or electromagnetic systems.

(e) "Wireless telecommunications antenna" means the physical device through which electromagnetic, wireless telecommunications signals authorized by the Federal Communications Commission are transmitted or received. Antennas used by amateur radio operators are excluded from this definition.

(f) "Wireless telecommunications equipment shelter" means the structure in which electronic receiving and relay equipment for a wireless telecommunications facility is housed.

(g) "Wireless telecommunications facility" means a facility consisting of the equipment and structures involved in receiving telecommunications or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.

(h) "Wireless telecommunications tower" means a structure intended to support equipment used to transmit and/or receive telecommunications signals including monopoles and lattice construction steel structures.
(Ord. 97-3. Passed 5-5-97.)

1147.03 USE REGULATIONS.

The following requirements and regulations shall apply to all wireless telecommunications facilities located in the City:

(a) Wireless telecommunications facilities to be used to support antennae for use in the provision of cellular telephone, personal communication services, specialized mobile radio, AM and FM radio, microwave and television systems, common carriers and other like distribution systems may be erected above the height limit specified in the Zoning District in which the facility is to be located provided:

(1) The wireless telecommunications tower shall be of monopole or lattice construction;

(2) The wireless telecommunications tower shall not require any guy wires;

(3) The wireless telecommunications tower shall not exceed two hundred feet in height from finished grade to the uppermost point of the tower or of any antennae or lightning rod attached thereto;
(Ord. 97-3. Passed 5-5-97.)

(4) The minimum setback of the wireless telecommunications tower from the nearest residential use or district and from nearest use set forth in Section 1113.02(a)(4) or those accessory uses set forth in Section 1113.02(b)(4) shall be a distance equal to the height of the tower. As used herein, "setback" means the distance from the property line to the nearest part of the tower; (Ord. 99-114. Passed 4-16-01.)

(5) The minimum setback of the wireless telecommunications tower from any use or district other than as set forth in subsection (a)(4) hereof shall be a distance equal to the height of the tower provided that the planning and design commission may modify the setback required herein under such terms and conditions as it determines will protect the public interest where it finds based upon the factual evidence presented that such modification will maintain an appropriate balance between the aesthetics of the City and the need for wireless telecommunications facilities and applicable united states law with due consideration to the population density of the City, the topography of the proposed location and, when possible, will increase the setback set forth in subsection (a)(4) hereof. As used herein, "setback" means the distance from the property line to the nearest part of the tower;

(6) Security fencing eight feet in height shall surround the wireless telecommunications tower and the wireless telecommunications equipment shelter either completely or individually as determined by the Planning and Design Commission;

(7) A comprehensive landscape plan of evergreen hedges or evergreen shrubs to be planted around the security fencing as approved by the Planning and Design Commission is provided to minimize the visual impact at base elevation with existing trees and shrubs to be preserved to the maximum extent possible;

(8) The wireless telecommunications tower shall be painted a non-contrasting gray or similar color approved by the Planning and Design Commission, unless otherwise specifically required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA);

(9) No advertising is permitted on or at the facility; and
(Ord. 97-3. Passed 5-5-97.)

(10) No wireless telecommunication tower under one hundred feet from finished grade shall be lighted except when required by the Chief of Police to assure safety or as required by the FAA. Any such tower between one hundred feet and two hundred feet from finished grade shall have such safety marking and obstruction lighting as prescribed by the FAA or the Chief of Police. Security lighting around the wireless telecommunications equipment shelter is permitted.
(Ord. 98-44. Passed 10-5-98.)

(b) Equipment, mobile or immobile, shall not be stored or parked on or at the site except in connection with the repair or maintenance of the wireless telecommunications facility.

(c) No employees shall be employed on a regular basis at the wireless telecommunications facility installation site; shall visit the facility only for periodic and necessary maintenance or during an emergency, and such facility shall be fully automated and unattended on a daily basis.

(d) All applicable FAA and FCC requirements and regulations are met and written evidence of such is provided to the Planning and Design Commission prior to its approval.

Written evidence of legal access to the wireless telecommunications facility site facility shall be provided by the applicant to the Planning and Design Commission which legal access shall be maintained in perpetuity regardless of any other development that may take place on the site.

(e) A telephone number shall be prominently displayed and maintained at the wireless telecommunication facility of whom is to be contacted in the event of an emergency and shall also be provided to the Mayor, the Building Commissioner, and the Police and Fire Departments of the City.

(f) Any wireless telecommunications equipment shelter shall not exceed two hundred fifty square feet in area and the total square feet of area of all such shelters for any wireless telecommunications facility shall not exceed seven hundred fifty square feet in area. Any such shelter shall not exceed twelve feet in height above finished grade and shall in every instance comply with the yard regulations applicable to the specific zoning district in which the wireless telecommunications equipment shelter is to be located.
(Ord. 97-3. Passed 5-5-97.)

1147.04 INFORMATION TO BE SUBMITTED TO PLANNING AND DESIGN COMMISSION RELATIVE TO NEED.

Any applicant requesting permission to install a new wireless telecommunications tower shall provide evidence of all wireless telecommunications service providers who supply service within one mile of the proposed wireless telecommunications facility. The applicant shall inquire about potential collocation opportunities at all technically feasible locations. Providers who have been contacted shall be requested to respond in writing to the applicant's inquiry within thirty days. The applicant's letter(s) as well as the responses shall be presented to the Planning and Design Commission prior to its approval as a means of demonstrating the need for the tower. (Ord. 97-3. Passed 5-5-97.)

1147.05 SHARING OF FACILITIES.

Towers shall be shared with other wireless service providers to the maximum extent possible so as to minimize the proliferation of towers within the City. Therefore, in addition to the requirements of subsection (a) hereof, the applicant shall document that both existing and approved towers within the range of the proposed equipment have been surveyed, and shall demonstrate that one or more of the following conditions exists prior to approval by the Planning and Design Commission:

(a) Planned equipment would exceed the structural capacity of existing and of approved towers; (Ord. 99-114. Passed 4-16-01.)

(b) Planned equipment would cause RF interference with either existing or proposed equipment for the existing or the approved tower;

(c) Existing or approved towers do not have space on which to function in parity with similar equipment in the area;

(d) The fees and/or costs for shared use are unreasonable in comparison to the erection of a new tower.

(Ord. 97-3. Passed 5-5-97.)

1147.06 DISCONTINUANCE OF USE.

All providers utilizing towers shall present a written report to the Building Commissioner notifying the Building Commissioner of any tower located in the City whose use will be discontinued and the specific date the use will cease. If at any time from the initial use of the tower the use thereof has been discontinued for one hundred eighty days, the Building Commissioner shall declare the tower abandoned and shall give written notice by certified mail to the last known address of the tower's owner/operator instructing the owner/operator to either reactivate the tower's use within ninety days, or to dismantle and remove the facility. If reactivation or dismantling does not occur within such ninety days, the City shall either remove or contract to have removed such tower and shall assess the owner/operator all costs of such removal.

(Ord. 97-3. Passed 5-5-97.)

1147.07 PERMITTED LOCATIONS.

(a) Wireless telecommunications facilities that include wireless telecommunications towers, are permitted as a sole main use on a zoning lot in a General Business"A", General Business "B", Office Building - "1", Office Building-"2"; and Office Building - "3" Zoning districts subject to the provisions of this chapter and when not in conflict with the provisions of this chapter, Chapter 1137 when the zoning district of the zoning lot is General Business "A" or General Business "B", or of Chapter 1129 when the zoning district of the zoning lot is Office Building - "1", Office Building - "2" or Office Building "3".

(b) A wireless communication facility that includes a wireless telecommunications tower shall be permitted on a zoning lot with an existing main use in a Civic and Recreational District other than those main uses set forth in Section 1113.02(a)(4), or on a zoning lot in a Civic and Recreational District with any accessory use set forth in Section 1113.02(b)(4) and shall be permitted on a zoning lot with an existing main use in a General Business "A" and General Business "B" District other than those main uses permitted pursuant to Section 1137.015, and in Office Building - "1", Office Building - "2" and Office Building -"3" District subject to the provisions of this chapter, and of Chapter 1113 when the zoning district of the zoning lot is Civic and Recreational and of Chapter 1137 when the zoning district of the zoning lot is General Business "A" or General Business "B", and of Chapter 1129 when the zoning district is Office Building - "1", Office Building "2" or Office Building - "3", and in every instance the following conditions:

(1) The existing use on the property is a permitted main use in the zoning district or is a lawful, nonconforming use and, further the main use need not be affiliated, directly or indirectly, with the wireless telecommunications provider. The wireless telecommunications facility shall not be considered an addition to the structure or value of a lawful nonconforming use.

(2) The service access to the wireless telecommunications equipment shelter shall, whenever feasible, be provided along the circulation driveways of the existing main use. The applicant shall present written documentation that the owner of the property upon which the main use is located had granted an easement or entered into a lease for the proposed wireless telecommunications facility and that vehicular access is provided to the wireless telecommunications facility.

(c) Wireless telecommunications antennas shall be permitted on a zoning lot with an existing main use in a Civic and Recreational District other than those main uses set forth in Section 1113.02(a)(4), or on a zoning lot in a Civic and Recreational District with any accessory use set forth in Section 1113.02(b)(4) and shall be permitted on a zoning lot with an existing main use in a General Business "A" and General Business "B" District other than those main uses permitted pursuant to Section 1137.015, in Office Building - "1", Office Building - "2 ", and Office Building - "3 " Districts, and in Multi-Family-High-Rise Districts provided that at any such wireless telecommunications antenna attached to an existing structure or building may be erected to a height not to exceed that permitted by the specific height regulations of the district in which the antenna is to be located. If the wireless telecommunications equipment shelter is to be located other than on or attached to a building, vehicular access to the shelter shall not interfere with parking or vehicular circulation on the site for the existing main use and shall otherwise comply with the provisions of this chapter and of the zoning regulations applicable to the zoning district in which the shelter is located which are not in conflict with the provisions of this chapter.
(Ord. 99-114. Passed 4-16-01.)

1147.08 DENIAL OF REQUEST.

Any decision to deny a request to place, construct or modify a wireless telecommunications antennae and/or wireless telecommunications tower shall be in writing and supported by evidence contained in a written record of the proceedings of the Planning and Design Commission.
(Ord. 97-3. Passed 5-5-97.)

2004 Replacement

CHAPTER 1149
Administrative Provisions

1149.01 General procedure.
1149.02 Building permit required.
1149.03 Permit withheld.
1149.04 Required drawings.
1149.05 Review of applications.
1149.055 Wetlands regulations.
1149.06 Certificate of occupancy.
1149.07 Enforcement; stop work order.
1149.08 Conversion condominium review.
1149.09 Business Area Concept Plan.
1149.10 Building and environmental design criteria.
1149.11 Conditional use permits.
1149.12 Revocation of conditional use permit.
1149.13 Child day care service in residential districts.
1149.14 Family and group homes.
1149.15 Adult care facilities.
1149.99 Penalty.

CROSS REFERENCES

Planning and Design Commission - see CHTR. Art. VII §2; ADM. Ch. 137
Permit for a sign - see P. & Z. 1145.07
Building permit fees - see BLDG. Ch. 1307
Planning and Design Commission appearance fee - see BLDG. 1307.02(c)(4)

1149.01 GENERAL PROCEDURE.

(a) Compliance with the provisions of this Zoning Code shall be obtained by:
  (1) Building permit and zoning clearance.
  (2) Certificate of occupancy upon completion.

(b) Enforcement of the provisions of this Zoning Code shall be obtained by:
  (1) Inspection and order for removal of violations.
  (2) Liability for failure to comply.
  (3) An injunction or other appropriate legal remedy.

(Ord. 67-17. Passed 5-15-67.)

1149.02 BUILDING PERMIT REQUIRED.

No excavation or site improvement shall be started, or no buildings or structure erected, altered or moved until a building permit has been applied for and issued by the Building Commissioner.

Building permits shall be issued only if the work described in the application clearly complies with all provisions of the Building Code, the Zoning Code and all other applicable codes Where such work does not comply, the Building Commissioner shall not have the power or authority to grant variances or make exceptions.

After the Building Commissioner has determined that an application for a building permit meets the requirements of the Building Code, the Zoning Code and all other applicable codes, the permits shall not be issued until:

(a) If applicable, the provisions of Article VII, Section l.(c) have been complied with;

(b) The applicant has erected or posted the sign required by Section 1307.01(e); and

(c) The Building Commissioner has fixed the reasonable time necessary to complete the building work after taking into consideration the time for completion estimated by the applicant, the nature of the work and the effect, if any, of seasonal and weather conditions.

Should any person have an objection to the issuance of a building permit, such person shall file a written protest with the Building Commissioner prior to the issuance of the permit.

Any permit which has been issued on a misstatement of fact or a misrepresentation of the plans and specifications by the applicant, or issued contrary to the provisions of the Charter, of the Building Code, or of the Zoning Code, shall be null and void.

(Ord. 93-4. Passed 4-5-93.)

1149.03 PERMIT WITHHELD.

A building permit shall not be issued for a residential building on a lot unless the lot complies with all other City ordinances.

(Ord. 67-17. Passed 5-15-67.)

1149.04 REQUIRED DRAWINGS.

Applications for a building permit shall be accompanied by:

(a) A plat showing dimensions of lot to be developed, lot number, information as to any unusual natural or topographic features and evidence that the lot has been surveyed and properly located;

(b) A site plan drawn to scale, showing the location by dimension of proposed and existing buildings, driveways, walks and proposed finished grades, the location, distance to and use of adjacent buildings on adjoining lots, the location and size of the garage for each residential building, whether the garage is included in the application or to be built at a future date;
(Ord. 67-17. Passed 5-15-67.)

(c) Such other drawings, colored renderings, data exterior material samples and other information as may be required by the Planning and Design Commission in accordance with the provisions of the Charter, this chapter and as may be required by the rules of the Commission; and
(Ord. 95-74. Passed 10-16-95.)

(d) Each application shall be accompanied by a fee as established by ordinance.
(Ord. 67-17. Passed 5-15-67.)

1149.05 REVIEW OF APPLICATIONS.

(a) Development Plans Required. Development plan approval shall be required for all new development, site improvements or building additions in the zoning districts or uses listed herein. Any alteration or change in use, construction, landscaping, lighting, change in exterior finish, or color shall be submitted in the zoning districts or uses listed herein. All development plans and changes shall be submitted to the Division of Building for review and for approval by the Planning and Design Commission for the following zoning district: Civic and Recreational, Multi-Family Garden, Multi-Family Hi-Rise, Multi-Family Townhouse, Low-Rise Planned Development, Senior Citizens Housing District, General Business "A", General Business "B", Office Building "1", Office Building "2", Office Building "3", Conditional Uses and Condominium Conversion.
(Ord. 03-04. Passed 1-21-03.)

(b) Submittal of Preliminary Plans. Prior to the submission of final development plans the applicant may submit preliminary development plans to the Planning and Design Commission for initial review. The Commission may make, as it deems appropriated suggested corrections, amendments and revisions to the preliminary development plans. The preliminary development plans shall include at least the following items as more fully described in subsection (c) hereof:

(1) Buildings and structures.
(2) Floor plans.
(3) Streets and sidewalks.
(4) Parking and loading areas.
(5) Outdoor storage.

(c) Final Development Plan Requirements. All development plans or parts thereof shall be prepared and submitted by a State licensed/registered professional such as an engineer, or an architect. Development plans shall be drawn at a scale of not less than fifty feet to the inch. The final development plans shall include all of the following items:

(1) Survey. A survey of the property including permanent parcel number(s), land ownership and existing and proposed topography. Final development plans shall also include a plat for the entire development area showing the street right of way, easements, watercourses, retention basins, property line dimensions and bearings; surrounding streets and adjoining lots.
(2) Buildings and Structures. The location, size, height, entrances and access, use or proposed use, general design, color and exterior facade material samples of all main and accessory buildings or structures, proposed and existing, and proposed and existing fences or walls. The plan shall also indicate the location and outline of buildings on adjoining lots.
(3) Floor Plans. Floor plans drawn to scale, dimensioned and labeled indicating the proposed uses of all building areas.
(4) Streets and Sidewalks. The proposed public and private system of circulation including automobiles, delivery vehicles, emergency vehicles and pedestrian details, including pedestrian plazas, connection to existing streets and rights of way; curbs; proposed or existing methods of traffic control, size and type of pavement, estimate of traffic volume and, when applicable, proposed names of any street.
(5) Parking and Loading Areas. The layout, location, dimensions and estimate of number of spaces, type of pavement, curbing, design features and landscaping in parking and loading areas.

(6) Utilities. Preliminary on-site utilities including water lines, fire hydrants, sanitary sewers and storm sewers, including easements and connection to existing or proposed utility service to the project.

(7) Outdoor Storage. The location and layout for all areas of all permitted storage or display of any material, vehicle, waste material, products or container for storage including storage enclosures.

(8) Signs. The location, size, height, design and material for all signs to be placed on the property or the outside surfaces of all structures.

(9) Landscaping and Lighting. The design and location of all existing and proposed landscaping areas, open spaces, retention areas, yards including names and sizes of all proposed and existing plant material; the location, height, design and specifications of exterior lighting.

(10) Buffering. The location, size, height and types of plantings and/or screening to be used in compliance with the requirements of the Zoning Code and/or plantings as may be required by the Planning and Design Commission to separate, screen and/or protect adjoining property.

(11) Grading; Drainage. A topographic plan indicating existing and proposed grading, catch basins, drainage, drainage structures, retention systems, ditches, drain sizes, easements and, if required, engineering documents and drainage calculations.

(d) Submission of Final Development Plans. After the preparation of the final development plans pursuant to subsection (c) hereof, a sufficient number of sets as required by the Division of Building shall be submitted to the Division accompanied by an application form, the applicable application fee and a letter describing the proposal. The Building Commissioner or his assignee shall review the plans for completeness to the applicable Zoning Code requirements. Within thirty days of submittal the Commissioner shall notify the applicant if the submitted plans are complete and accepted by the Division for Planning and Design Commission review and action. Acceptance of the plan by the Building Commissioner shall not be deemed as an approval of the plan by or on behalf of the City nor does such acceptance of the plan waive the right of the Division of Building or the Planning and Design Commission to request additional documentation, information or detail during their review. Development plans shall be distributed to applicable departments as deemed appropriate by the Commissioner or as required by the rules of the Commission for review and comment. The Commissioner shall notify the applicant of deficiencies in the submitted plan, compliance or noncompliance to the Zoning Code or other codes of the City, other department concerns and make recommendations which would improve the development plan. Any recommendation made by the Building Commissioner is not exclusive or final. The Planning and Design Commission may make additional recommendations as provided in this section. After review by the Building Commissioner, the applicant may submit revised or amended plans for submission to the Commission.

(e) Planning and Design Commission Review. After submittal of complete plans and review by the Division of Building for compliance to the Zoning Code pursuant to subsection (d) hereof, the development plan application shall be placed on the Commission agenda as soon as is practicable. The Commission shall review the plans taking into account the spirit and intent of the Zoning Code, the location of the proposal, the effect on the surrounding properties and the relationship of the proposal to any adopted plan or concept of the City.

Within ninety days from the date of the Commission meeting at which all required plans and data were first considered by the Commission, the Commission shall either approve the submitted plan, approve a modified development plan or disapprove the development plan, unless the applicant shall consent to an extension of the time limitation set forth herein. In the event the applicant chooses to withdraw the application, the time limitation of this section shall only apply and commence to run if such application is again presented to the Commission as required herein. If the Commission disapproves the development plans the Commission shall indicate in its minutes the reason for disapproval. Action by the Commission shall be deemed to be final from which an appeal may be taken by the applicant, any elected official of the City or by any aggrieved or affected person in accordance with the provisions of Chapter 1153.

Building plans, engineering plans and all drawings shall comply with the approved development plans and other applicable regulations of the City.

Any deviation or change in a development plan approved by the Planning and Design Commission shall be subject to approval by the Commission.

The Commission may adopt procedures for the filing and processing of applications as are not in conflict with this section or any other ordinance or resolution of the City. No provision of this section shall be interpreted or applied in any manner which limits the authority or the ability of the Commission to obtain any review or recommendation regarding any development proposal before it from any person it deems necessary or appropriate.

(f) Modifications by the Planning and Design Commission. Where the Planning and Design Commission is authorized under the provisions of the Zoning Code to effectuate modifications thereof, the Commission shall apply all of the following in addition to such specific provisions as may be set forth in other provisions of the Zoning Code:

(1) Modifications for dimensional standards in the Zoning Code shall be designed to provide better utilization of the land and may be offset by the imposition of greater standards in other areas of the Zoning Code.

(2) Modifications shall be designed to protect the desirable characteristics of both existing and planned development of adjacent properties.

(3) Modifications shall promote the desirable and beneficial use of the land and promote the beneficial economic development of the City.

(4) Modification shall maintain convenient and safe access to properties and buildings.

(5) Modification shall promote effective open space buffering and landscaping by location of buildings relative to adjacent buildings or site features.

Where the applicant requests modifications to one or more standards of the Zoning Code, the Planning and Design Commission may recommend and request modifications to increase other standards to offset the request of the applicant. If modifications made by either the Commission and those requested by the applicant which are subsequently approved by the Commission, the modifications shall be made a part of the development plans and indicated on the revised plans. The applicant and/or his assigns shall be bound by such modifications.

(g) Legal Interpretation Required. Whenever a development proposal requires a legal interpretation, all necessary documents shall be submitted to the Law Department of the City for its review. Such submission shall be made by the secretary of the boards and commissions of the City, the Building Commissioner or by the board or commission requesting such legal interpretation. Such interpretation shall be furnished in a timely manner and shall be considered by the board or commission requesting such interpretation but shall not be considered as binding upon the requesting board or commission.

(h) Issuance of Building Permit. Upon receipt or all required recommendations and approvals as required by all applicable codes of the City and upon a determination that all drawings, specifications, and required documents are in accordance and compliance with the final action of the Planning and Design Commission, the Building Code, the Fire Prevention Code, the Charter of the City, and all other applicable laws, ordinances and resolutions of the City, and that the fee(s) required by Chapter 1307 have been paid, the Building Commissioner shall issue a building permit as provided herein.

(i) Application of Zoning Code Provisions. The provisions to the Planning and Zoning Code in both its interpretation and its application shall be held to be the minimum requirements necessary for the protection and promotion of the public health, safety, peace and welfare and shall be liberally construed in such manner so as to further and ensure the underlying purposes, objectives and intent of the Zoning Code.

(j) Lapse of Approval. An approval or an approval with modifications of a development proposal by the Planning and Design Commission shall not be withdrawn or changed unless there is a change of circumstances, or unless such withdrawal or change is made pursuant to the rules of the Commission, or if after the expiration of one year, no substantial construction is done in accordance with the plans for which such approval or approval with modifications was given. Should any of the foregoing be the case, the approval or approval with modifications of the development proposal shall be deemed null and void and review and approval of the development pursuant to each and every applicable provision of this section and the applicable provisions of the Zoning Code shall be required prior to the commencement of construction.
(Ord. 95-74. Passed 10-16-95.)

1149.055 WETLANDS REGULATIONS.

For any property proposed to be developed in excess of one acre, if the property to be developed contains "wetlands" as defined in 33 C.F.R. Part 328(B) of the Code of Federal Regulations and as further shown on the then current wetland map of the City on file in the Division of Building, then, in addition to the other requirements set forth in Section 1149.05, the applicant shall submit to the Division of Building an individual permit or letter of no jurisdiction from the U.S. Army Corps of Engineers before the application is reviewed by the Planning and Design Commission.
(Ord. 95-74. Passed 10-16-95.)

1149.06 CERTIFICATE OF OCCUPANCY.

(a) Certificate of Occupancy Application. A certificate of occupancy shall be applied for by the owner or his agent and shall be issued by the Building Commissioner as a condition precedent to the occupancy of the following types of building and land use:

(1) Use of building erected or altered. A certificate of occupancy for the erection of a new building or for the alteration of an existing building shall be applied for at the same time as the application for a building permit, and such certificate shall be issued only after the erection or alteration of such building or a component thereof, has been completed and found, by inspection, to be in conformity with the provisions of this Zoning Code. The applicant for building permit, owner and/or agent shall be held responsible for completing the work until the certificate of occupancy is issued. Pending the issuance of a regular certificate, a temporary certificate for partial occupancy of a building may be issued for a period not exceeding 120 days, during which time alterations are being made or a dwelling completed.

(2) Change in use of conforming building or land. A certificate of occupancy shall be required for the use of vacant land or for a change in the use of a conforming building or land, and shall be issued, when found by inspection to be in conformity with provisions of this Zoning Code.

(3) Change in use of nonconforming building or land. A certificate of occupancy shall be required and issued whenever a nonconforming use of building or land is changed to either a conforming use or a more restrictive nonconforming use.

(b) Certificate for Existing Building or Land Use. Upon application by the owner, the Building Commissioner shall inspect a building or tract of land and shall issue a certificate of occupancy therefor certifying:

(1) The use of the building or land; and

(2) Whether such use conforms to all the provisions of this Zoning Code.

(c) Application.

(1) When not accompanying an application for a building permit, applications for a certificate of occupancy shall be submitted separately, accurate information given by the owner, or his agent, as to size and location of the lot, buildings or structures occupying the lot, the dimensions of all yards and open spaces, the use of land or buildings, and all such information as may be included on a printed form approved by the Planning and Design Commission to be furnished by the City.

(2) A record of all applications and certificates issued shall be kept on file in the office of the Building Commissioner and copies shall be furnished, upon request, to any person having a proprietary or tenancy interest in the building or land affected.

(Ord. 67-17. Passed 5-15-67.)

1149.07 ENFORCEMENT; STOP WORK ORDER.

The duty of enforcing the provisions of the Zoning Code is hereby conferred upon the Building Commissioner, and the Building Commissioner may promulgate such rules and regulations to supplement the Zoning Code provided such rules and regulations are consistent with the Zoning Code.

(a) The Building Commissioner is hereby empowered to inspect, examine and to order, in writing, the remedying of any condition found to exist in violation of any provisions of this Zoning Code. After such order is served or posted on the premises; no work, except to correct or comply with such violation, shall proceed on any building or tract of land included in the violation.

(b) A failure to obtain a building permit or a failure to obtain a certificate of occupancy as required by Section 1149.06 shall constitute a violation of this Zoning Code.

(c) Building permits or certificates of occupancy issued on the basis of plans and applications approved as required by any applicable law, ordinance, resolution, rule or regulation applicable to such plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications or approved amendments thereto, and no other use, arrangement or construction at variance with that authorized and approved shall be deemed a violation of this Zoning Code.

(d) For any permit issued pursuant to and in accordance with Section 1149.02, all work shall be completed within the time fixed by the Building Commissioner at the time such permit is issued. Upon written application, the Building Commissioner may extend the completion date for delays caused by conditions beyond the control of the owner or contractor or for other good and sufficient cause. Failure to complete the work within the time initially fixed by the Building Commissioner, or within the time extended by the Building Commissioner shall constitute a violation of this Zoning Code.

(e) Whenever a violation of this Zoning Code occurs, or is alleged to have occurred, any person may file a written complaint with the Building Commissioner. Such complaint shall state fully the causes and basis thereof. The Building Commissioner shall promptly record such complaint, immediately investigate same, and take such action thereon as provided by this Zoning Code, if appropriate.
(Ord. 93-4. Passed 4-5-93.)

1149.08 CONVERSION CONDOMINIUM REVIEW.

(a) At the next regular meeting following twenty days after submission of the filings required by Section 1361.05(a), the Planning and Design Commission shall hold a public meeting on the issue of whether or not conversion shall be permitted to proceed. Notice of the public meeting shall be given in accordance with Section 137.02 including to all tenants of the proposed conversion condominium development. The Commission shall determine from evidence adduced by all interested persons at the meeting if the proposed conversion condominium development meets all of the following standards:

(1) That the conversion if permitted to proceed shall not reduce the then current vacancy rate to less than four percent (4%) for remaining rental units within the City;

(2) That the conversion shall not substantially reduce the availability of rental housing within the City for the elderly, the handicapped and low or moderate income families;

(3) That the public offering statement meets the requirements of Section 1361.06;

(4) That the notices required by Section 1361.08 of the Codified Ordinances have been given; and

(5) That the purposes of Chapter 1361 have been fulfilled.

(b) The Commission shall make its determination within forty-five days of the meeting. The Commission shall in its determination state separate findings as to each of the standards in subsection (a) (1) through (5) hereof.

(c) For purposes of the determination required by this section a unit in a condominium development shall not be deemed rental housing unless such unit is held and available for immediate lease or rental and occupancy.

(d) For purposes of this section it shall be prima facie evidence of the vacancy rate that rate established by the Building Commissioner within six months prior to the submission of the filings required by Section 1361.05(a).

(e) Should the determination of the Commission disapprove the proposed conversion condominium development, all filings required by Section 1361.05(a) shall be returned to the developer within seven days.
(Ord. 95-74. Passed 10-16-95.)

1149.09 BUSINESS AREA CONCEPT PLAN.

(a) In order to supplement the regulations, standards and criteria of the Zoning Code, the Planning and Design Commission may prepare Concept Plans for the design, development and redevelopment of business, commercial, office building and industrial areas, and for coordinating the proposed development/redevelopment with the surrounding neighborhood.

(b) Such Concept Plans shall be developed in accordance with the objectives, intent and any applicable provisions of the Zoning Code. After such plans are duly adopted, after public hearing, by the Planning and Design Commission, and approved by Council, any new construction, additions to or alterations of, or rebuilding of such a business, commercial, office building and industrial area, or part thereof, and the proposed design shall be in compliance with the Concept Plan for the area. Such plans may be modified subject to the same requirements and procedure as initial adoption should circumstance or condition so warrant.

(c) Such Plans when adopted or modified shall not adversely affect to any substantial extent the use, enjoyment and value of nearby property, particularly property in a residential district, whether developed or not; shall result in the least possible burden of City services and facilities and the highest possible return to the City from tax revenues; shall provide for the economic and other advantages that result from planned and coordinated development; and shall be consistent with the improvement and enhancement of the predominantly residential character of the City; all of which are essential to the protection and enhancement of the health, safety, property and welfare of the City, its residents and its commerce.
(Ord. 84-61. Passed 1-7-85; Ord. 95-74. Passed 10-16-95.)

1149.10 BUILDING AND ENVIRONMENTAL DESIGN CRITERIA.

In addition to the provisions of Section 1149.05, the Planning and Design Commission shall review proposed developments in accordance with the following provisions so as to encourage the benefits of good community appearance:
(Ord. 95-74. Passed 10-16-95.)

(a) Basis for Review.

(1) The quality of the design of buildings and the relation of buildings to each other and to open space interact and affect both the environment and neighborhood values. The value and usefulness of each parcel of land is vitally affected by the use and design of buildings and land and generally affects the values of the entire community.

(2) New developments, if not properly related, may impair the appearance and value of both improved and unimproved real property and may prevent the most appropriate development of land and may cause attendant depreciation of community values. A degree of conformity of use and appearance stabilizes and assures the value of land and the welfare of the entire community. Each new development, therefore, should be designed to be beneficial and enhance the use of each development.

(b) Building Design Criteria.

(1) An underlying architectural character should prevail throughout each neighborhood and area. There should be some repetition of basic elements through harmony of color, materials and a common scale. Each individual building should express its function; moreover, it should have an identity, individual character and variety in the overall design.

(2) It may be found that the proposed design is incompatible and inappropriate in relation to other existing buildings or buildings for which a permit has been applied for or issued in respect to significant design features such as disharmonious compositions, color or texture of exterior wall and roof materials or quality of architectural design. While there should always be creative variety in the placement, size or bulk of buildings in each neighborhood, there should, however, also be an underlying unity or design.

(c) Environment Design Criteria.

(1) All new buildings and developments shall be brought together into an orderly arrangement with the landscape and nature, other buildings, open areas and surroundings. This should not result in uniformity of style or subordination to existing buildings, except where the overall composition needs a dominant feature. There should be a harmonious transition from the proposed building to adjacent buildings and open space; also a transition in scale between diverse uses at the boundaries.

(2) Not only the present, but also desirable future designs and surroundings should be considered in the composition of new buildings. Possibilities of making gradual improvements to the appearance of existing parts of the community should always be considered.

(Ord. 84-62. Passed 1-7-85.)

1149.11 CONDITIONAL USE PERMITS.

The Planning and Design Commission, with approval of Council, may grant conditional use permits only for specific uses established in this Zoning Code. In granting a conditional use permit, the Commission shall make a determination based on information presented that the conditional use shall conform to the intent of the Code, and meet the conditions and safeguards established in this Code. To approve a conditional use permit, the Commission shall find:

(a) The proposed use is specifically listed in the zoning district regulations;

(b) The proposed use shall be properly located in relation to land use, pedestrian circulation and street plans of the City;

(c) The location, extent, intensity and layout of the proposed use shall be such that its operations are not objectionable to adjoining and abutting residences by reason of the emission of dust, gas, smoke, noise, fumes, odors, vibrations, glare or other objectionable features greater than normal or as permitted in the applicable zoning district;

(d) The location, design and operation of the proposed use at the specific location would not discourage or interfere with appropriate development or impair the full utilization of the surrounding uses and properties;

(e) The proposed use meets the specific development conditions as specified in the district regulations which permit such use; and

(f) The proposed use shall form a harmonious part of the district in which it is to be located, taking into account, among other considerations, convenience of access, relationship of use, and hours of operation and concentration of vehicles which shall not be more hazardous or dangerous than the normal traffic of the district. (Ord. 86-22. Passed 4-4-88.)

1149.12 REVOCATION OF CONDITIONAL USE PERMIT.

A conditional use permit shall become null and void if construction of the proposed use has not begun within one year after approval by the Planning and Design Commission and Council. The Commission with approval of Council may revoke a conditional use permit upon finding that the use does not comply with the Zoning Code or the conditions specified therein. Upon revocation of a conditional use permit, all buildings and uses shall conform to the standards and requirements of permitted main and accessory uses established for the zoning district.
(Ord. 86-22. Passed 4-4-88.)

1149.13 CHILD DAY CARE SERVICE IN RESIDENTIAL DISTRICTS.

(a) As used in this section:

(1) "Child day care service" means the service of a provider in administering to the needs of infants, toddlers, preschool children and school children outside of school hours, by persons other than their parents or guardians, custodians, or relatives by blood, marriage or adoption for any part of a twenty-four hour day in the permanent residence of the provider, which service is provided for a remuneration or other consideration for infants, toddlers and children who are unrelated to the provider.

(2) "Provider" means an adult person or persons who provides child day care service, and who owns or is the lessee or tenant of the premises.

(3) "Unrelated" means a relationship with the child other than natural parent, natural guardian, legal guardian, legal custodian, legal adoption or a relationship by blood or by marriage.

(b) Child day care service shall be limited to six children at one time, no more than three of whom may be under two years of age at one time. In counting children for the purposes of this subsection, any children who are unrelated to the provider and any children under six years of age related to the provider who are on the premises shall be counted.

(c) Child day care service shall be limited to the hours of 7:00 a.m. to 7:00 p.m.

(d) The Building Commissioner and the Chief of the Fire Prevention Bureau or their respective designees shall inspect and approve that the area of the premises to be used for child day care service is in accordance with the applicable standards of the Housing Code and Fire Prevention Code as to the use of the area for child day care service. Inspections shall be conducted semi-annually and at such other times as may be appropriate. The child day care service shall occupy and be limited to the area of the premises approved by the Building Commissioner and Chief of the Fire Prevention Bureau. The provider of the child day care service shall apply to the Building Commissioner and the Chief of the Fire Prevention Bureau for an inspection no later than sixty days after commencement of the service. It shall be the duty of the provider to cause the area of the premises to be used for child day care service to be accessible for inspection during regular business hours of the City.

(e) Any outdoor play area shall be enclosed on all sides by a fence, building wall or other structure, or landscaping so as to provide for safe outdoor play.

(f) The child day care service provider shall be responsible for compliance with all applicable City ordinances and State and federal statutes and regulations.

(g) The provisions of this section shall apply to any residential premises used, maintained or arranged for child day care service. In addition to the provisions of this section, any child day care service shall be subject to all other provisions of the Zoning Code applicable to the specific premises.

(h) Except as otherwise permitted by Chapter 1145, the operation of such service shall not be advertised by any sign on the dwelling or lot.
(Ord. 89-99. Passed 4-2-90.)

1149.14 FAMILY AND GROUP HOMES.

(a) A family home for the mentally retarded or developmentally disabled is a permitted use in one- and two-family districts provided that all of the requirements set forth in this section are met. A family home or group home for the mentally retarded or developmentally disabled is a permitted use in multi-family districts provided that all of the requirements set forth in this section are met.

(b) The terms "developmental disability", "developmentally disabled person", and "mentally retarded person" shall have the same meanings as provided in Ohio R.C. 5123.01. The terms "family home" and "group home" shall have the same meanings as provided in Ohio R.C. 5123.19. The term "family home" shall include "foster family home" as the latter term is defined in Ohio R.C. 5123.19.

(c) Every person desiring to operate a family home or a group home shall apply for licensing of the facility to the Director of Mental Retardation and Developmental Disabilities of the State of Ohio.

(d) Each individual, group or agency operating a family home or group home, approved as provided in this section, shall inform the Building Commissioner and the Clerk of Council of the renewal, expiration, termination or revocation of any license, approval or certification issued by any county, state or federal agency and shall inform the Building Commissioner and the Clerk of Council of any change in the identity of the individual, group or agency operating such a family home or group home not less than thirty days prior to such change. The Building Commissioner shall verify not less than annually that any license, approval or certification issued by any county, state or federal agency remains in full force and effect.

(e) Persons in the following categories shall not be admitted to or remain in a family or group home as residents or employed whether for compensation or otherwise in the home:

(1) A non-developmentally disabled person with a felony criminal record.
(2) Persons with communicable diseases.
(3) Persons found incompetent to stand trial or not guilty by reason of insanity of a felony criminal offense.
(4) Persons who constitute a reasonably foreseeable danger to the community or themselves.
(5) Persons who use or who are addicted to a controlled substance, or a drug of abuse or who abuse alcohol.

(f) The following conditions for occupancy shall apply to family and group homes in the City:

(1) A family home or group home shall conform to and shall be maintained in accordance with all applicable City, County and State Codes, including, but not limited to, health, safety and fire prevention regulations. The family home or group home shall provide not less than the minimum floor area per person as required by the Housing and Building Codes of the City.
(2) Space and equipment requirements shall strictly adhere to and comply with the State of Ohio's Department of Mental Retardation and Developmental Disabilities standards as set forth in the Ohio Administrative Code.
(3) Such homes shall contain smoke detectors and fire extinguishers on each floor, to be placed as prescribed by the Chief of the Fire Prevention Bureau of the City.
(4) Signs or other means of identification as a family or a group home shall not be permitted.
(5) Central kitchen and dining facilities shall be provided.
(6) Except as otherwise provided in this section, any family or group home shall conform to and shall be maintained in accordance with the area, height, yard, fence, sign and off-street parking requirements and regulations of the Zoning District in which the family or group home is located.
(7) No family or group home shall be located within 1,000 feet of any other family or group home.

(g) Each family and group home shall be inspected semi-annually by the Division of Building and the Fire Department of the City.

(h) Upon notice from the State of Ohio of the proposed issuance of license for a family home or group home, an information application shall be filed with the Division of Building and the Clerk of Council by the individual, group or agency intending to operate the family home or group home. Such application shall include the following information:

(1) The name, address and telephone number of the operator;
(2) The name, address and telephone number of the operator's sponsoring individual, group or agency;
(3) The address of the home;
(4) The projected capacity of the home; classification of disability, and types of clients served;
(5) The timing of any certificate or license renewal process and dates;
(6) The experience of the sponsoring individual, group or agency of the applicant, and of the supervisory personnel, including references;
(7) The number and type of personnel to be employed at the home;
(8) A description of the admissions policy, procedures and committee membership to be utilized for persons desiring to reside in the home; and
(9) Any other information required by the Building Commissioner or the Fire Chief necessary to assure public health, safety and welfare or the health, safety and welfare of the residents of the home.

(i) Occupancy as a family home or a group home shall not be considered as a change of use of a building which had been used for residential purposes immediately prior to its use as a family or group home. The owner, lessee, licensing agency, or operator may not change the use permitted by this section without review and approval by the appropriate Boards and Commissions as otherwise required by law. (Ord. 91-49. Passed 10-7-91.)

1149.15 ADULT CARE FACILITIES.

(a) An adult family home is a permitted use in one- and two-family districts provided that all of the requirements set forth in this section are met. An adult family home or an adult group home is a permitted use in multi-family districts provided that all of the requirements set forth in this section are met.

(b) The terms "adult family home", "adult group home", "adult care facility", "personal care services", "unrelated", "owner", and "manager" shall have the same meanings as provided in Ohio R.C. 3722.01. The term "adult" means an individual fifty-five years of age or older.

(c) Every person desiring to operate an adult family home or an adult group home shall apply for licensing of the facility to the Director of Health of the State of Ohio.

(d) Each individual, group or agency operating an adult family home or an adult group home, approved as provided in this section, shall inform the Building Commissioner and the Clerk of Council of the renewal, expiration, termination or revocation of any license, approval or certification issued by any county, state or Federal agency and shall inform the Building Commissioner and the Clerk of Council of any change in the identity of the individual, group or agency operating such adult family home or adult group home, of the manager of such adult family home or adult group home, of the owner of such adult family home or adult group home, and of the sponsor, if any, of such adult family home or adult group home not less than thirty days prior to such change. The Building Commissioner shall verify not less than annually that any license, approval or certification issued by any county, state or Federal agency remains in full force and effect.

(e) No caregiver, family member of a caregiver residing in the home, or any person employed by the caregiver in the home whether for compensation or otherwise shall:

(1) Have a felony criminal record.
(2) Have a communicable disease.
(3) Have been found incompetent to stand trial or not guilty by reason of insanity of a felony criminal offense.
(4) Constitute a reasonably foreseeable danger to the community or themselves.
(5) Be addicted to a controlled substance or a drug of abuse or abuse alcohol.

(f) No person unrelated to the caregiver shall be admitted or remain as a resident of an adult family home or an adult group home if:

(1) Such person is not capable of self-administering all medication as required by Ohio R.C. 3722.011.
(2) The mental, emotional or physical condition of the person requires a level of care that the facility is unable to provide.
(3) The person has a communicable disease.
(4) The person has been found incompetent to stand trial or not guilty by reason of insanity of a felony criminal offense.
(5) The person is addicted to a controlled substance or drug of abuse, or abuses alcohol.

(g) The following conditions shall apply to adult family homes and adult group homes in the City:

(1) Such home shall conform to and shall be maintained in accordance with all applicable City, County and State codes, including, but not limited to, health, safety and fire prevention regulations. The adult family home or adult group home shall provide not less than the minimum floor area per person as required by the Housing and Building Codes of the City.

(2) Such homes shall strictly adhere to and comply with the basic requirements, the bedroom requirements, bath and shower requirements, homemaker services, personal care and medical requirements, and the social, recreational and religious activities as set forth in the Ohio Administrative Code regardless of whether such homes receive State or County assistance and which are not otherwise in conflict with another provision of this section.

(3) In addition to the automatic sprinkler system required by Ohio R.C. 3722.041, such homes shall contain smoke detectors and fire extinguishers on each floor, to be placed as prescribed by the Chief of the Fire Prevention Bureau of the City.

(4) Signs or other means of identification as an adult family home or an adult group home shall not be permitted.

(5) Central kitchen and dining facilities shall be provided.

(6) Except as otherwise provided in this section, any adult family home or adult group home shall conform to and shall be maintained in accordance with the area, height, yard, fence, sign and off-street parking requirements and regulations of the Zoning District in which the adult family home or adult group home is located.

(7) No adult family home or adult group home shall be located within one thousand feet of any other adult family home or adult group home.

(8) Any person designated in Ohio R.C. 3722.15 may enter any adult care facility during reasonable hours.

(h) Each adult family home and adult group home shall be inspected semiannually by the Division of Building and the Fire Department of the City.

(i) Upon notice from the State of Ohio or Cuyahoga County of the proposed issuance of a license for an adult family home or an adult group home, an information application shall be filed with the Division of Building and the Clerk of Council by the individual, group or agency intending to operate the home. Such application shall include the following information:

(1) A copy of the statement of ownership submitted to the Director of Health pursuant to Ohio R.C. 3722.02;

(2) The name, address and telephone number of the manager;

(3) The name, address and telephone number of the manager's sponsoring individual, group or agency;

(4) The address of the home;

(5) The projected capacity of the home;

(6) The timing of any certificate or license renewal process and dates;

(7) The experience of the manager, of the sponsoring individual, group or agency of the manager, and of the supervisory personnel, including references;

(8) The number and type of personnel to be employed at the home;
(9) A description of the admissions policy, procedures, and committee membership to be utilized for persons desiring to reside in the home; and
(10) Any other information required by the Building Commissioner or the Fire Chief necessary to assure public health, safety and welfare or the health, safety and welfare of the residents of the home.

(j) Occupancy as an adult family home or an adult group home shall not be considered a change of use of a building which had been used for residential purposes immediately prior to its use as an adult family home or an adult group home. The owner, lessee, licensing agency or manager may not change the use permitted by this section without review and approval by the appropriate boards and commissions as otherwise required by law.
(Ord. 91-99. Passed 11-4-91.)

1149.99 PENALTY.

Except as otherwise specifically provided for, whoever violates any of the provisions of this Zoning Code, or fails to comply therewith, or with any requirements thereof, or fails, neglects or refuses to comply with any order of the Building Commissioner or authorized representative issued under the powers of such office as stated in Section 133.01(a) shall, for each and every such violation or noncompliance, be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than sixty days or both, for each offense. Each day's continued violation or noncompliance shall constitute a separate offense.
(Ord. 92-70. Passed 10-19-92.)

CHAPTER 1153
Board of Zoning and Building Appeals

1153.01 Composition, powers and duties.
1153.02 Procedure for filing appeals.
1153.03 Meetings.
1153.04 Quorum and vote.
1153.05 Record of decisions.
1153.06 Standards for granting variances.
1153.07 Lapse of variances.
1153.08 Application and standards for variances and exceptions.

CROSS REFERENCES
Charter provisions - see CHTR. Art. VII §1
Appeals from zoning decisions - see Ohio R.C. 713.11, Ch. 2506
Appeals fee - see BLDG. 1307.02(c)(4)

1153.01 COMPOSITION, POWERS AND DUTIES.

(a) The composition, powers and duties of the Board of Zoning and Building Appeals are set forth in Article VII, Subsection 1 of the City Charter.

(b) The purpose of the Board of Zoning and Building Appeals, herein referred to as the Board, shall be to decide any judicial question involving the interpretation of provisions of this Zoning Code, and to grant variances from the strict letter of this Zoning Code in instances of unnecessary hardship, but not to alter provisions of this Code or change the district boundaries of the Zone Map, which shall be the function of Council only.
(Ord. 67-17. Passed 5-15-67.)

(c) Pursuant to Article VII, Section 1 of the Charter, under no circumstances shall the Board of Zoning and Building Appeals grant a variance, appeal or exception so as to permit or allow a main or accessory use not permitted under the terms of the Zoning Code in the district involved, or a main or accessory use expressly or by implication prohibited by the terms of the Zoning Code in such a district.
(Ord. 84-22. Passed 6-18-84.)

1153.02 PROCEDURE FOR FILING APPEALS.

No appeal shall be entertained by the Board of Zoning and Building Appeals unless:

(a) There is a request for an exception to or variance in the application of the Zoning or Building Codes or in the application of ordinances, resolutions or orders, requirements, rules, regulations, decisions or determinations of administrative officials or agencies in regard to the Zoning or Building Codes; or

(b) It is alleged there is an error in:

(1) Any final order, adjudication, requirement, decision or determination of the Building Commissioner or other administrative official relating to the enforcement, interpretation or administration of the Building or Zoning Codes; or

(2) Any final order, adjudication, requirement, decision or determination of the Planning and Design Commission in the application or interpretation of the provisions of the Zoning Code, to any matter before it; or

(c) Within fifteen days of the mailing of, or in the absence of mailing, the delivery in writing of, the final order, adjudication, requirement, decision or determination from which the appeal is taken or request for exception or variance is sought, an application for appeal or request for exception or variance has been filed with the Secretary of Boards and Commission; and

(d) The application for appeal or request for exception or for variance shall include, where applicable, reference to the final order, adjudication, requirement, decision, determination or ordinance, resolution, rule or regulation, or the applicable provision or provisions of the Zoning or Building Code from which the appeal is made, or request for exception or variance sought, and all necessary supporting data in accordance with the form provided and this chapter; and

(e) The payment of the fee established by Chapter 1307 of the Codified Ordinances, shall accompany the application.

(f) Where an appeal to another body is not otherwise specifically provided for, appeals to the Board may also be entertained from any final order, adjudication, requirement, decision or determination of the Director of Public Service and Development or any other administrative official relating to the enforcement, interpretation or administration of the Business Regulation Code, Title One of the Streets, Utilities and Public Services Code, and the Fire Prevention Code committed specifically or implicitly to the charge, direction or supervision of the Director or other administrative official. Such appeals shall be governed by the provisions of subsection (c) and (e) hereof and shall also include the final order, adjudication, requirement, decision or determination from which the appeal is taken and a narrative statement that explains and supports the appeal.

(Ord. 87-47. Passed 4-4-88.)

(g) The Board of Zoning and Building Appeals, after notice and hearing, may reverse or affirm, in whole or in part, or modify, any such order, adjudication, requirement, decision or determination and make such judgment as in its opinion ought to be made in accordance with law.

(Ord. 91-92. Passed 12-16-91.)

1153.03 MEETINGS.

(a) If an appeal is received, the Board of Zoning and Building Appeals shall act within ninety days after such receipt; failure to act within such period shall be considered approval. Before making any decision on an appeal, the Board shall hold a public meeting or meetings at such times as shall be determined by the Board itself. Special meetings can be arranged at the call of the Chair and as may be provided in the rules of the Board.
(Ord. 94-88. Passed 12-5-94.)

(b) The Secretary of the Board is hereby directed to send notification, of the date, time, place and subject matter of Board meetings and of the fact that the detailed plan or amendment thereto to be considered is on file in the Division of Building and available for inspection, by regular U.S. mail to any person, firm or corporation owning premises located within 200 feet of the lot line of the premises which are the subject matter of any meetings, or 300 feet if the subject matter pertains to a development application requiring Planning and Design Commission approval, as well as to the appellant at least seven days but not more than fourteen days before the date of such meeting and to publish such notification at least three days prior thereto in a newspaper of general circulation in the City. Such 200 or 300 feet distance shall be measured from the lot line nearest the affected person, firm or corporation as their interest appears in the current real estate records located in the Division of Building.

(c) The Board shall have the power to subpoena and require the attendance of witnesses, to administer oaths, to compel testimony and to produce reports, findings and other evidence pertinent to any issue referred to it for decision.
(Ord. 84-63. Passed 12-3-84.)

1153.04 QUORUM AND VOTE.

(a) A quorum shall consist of three members, and the concurring vote of three members of the Board of Zoning and Building Appeals shall be necessary to affirm or reverse any order, requirement, decision or determination of any duly authorized administrative officer.

(b) A member of the Board shall not be qualified to vote if he has not attended the public hearing or if he has a direct or indirect interest in the issue appealed.
(Ord. 67-17. Passed 5-15-67.)

1153.05 RECORD OF DECISIONS.

(a) The Board of Zoning and Building Appeals shall provide a detailed report of all its proceedings, setting forth its reasons for decisions, which shall include a specific finding on each of the standards set forth in Section 1153.06 as they apply in each specific case as a prerequisite for the granting of a variance, modification or exception; the vote of each member participating therein; and the absence of a member or his failure to vote. Such a record, immediately following the Board's decision, shall be filed in the office of the Building Commissioner and a copy thereof filed with the Clerk of Council. Such a record is a public record and shall be available for inspection during the normal business hours of the Division of Building.

(b) Special conditions that may be prescribed by the Board in its decisions shall be incorporated by the Building Commissioner on any building permit issued subsequently in accordance with such decisions.
(Ord. 80-77. Passed 12-1-80.)

1153.06 STANDARDS FOR GRANTING VARIANCES.

The Board of Zoning and Building Appeals shall have the power to vary the application of any provisions of this Zoning Code in terms of the following standards so that public health, safety, morals and general welfare may be safeguarded and substantial justice done:

(a) Where the literal application of the provisions of the Zoning Code would result in unnecessary hardships. Hardships which are unavoidable if the purpose and intent of the Zoning Code are to be realized, such as a theoretical loss or limiting possibilities of economic advantage, are general hardships, not unnecessary hardships. Likewise, an unnecessary hardship cannot be based on conditions created by the owner. It shall be found that there are peculiar and special hardships applicable to the property involved which are separate and distinct from any general hardship prevailing in the use district; or

(b) Where unusual or exceptional circumstances or conditions (practical difficulty) inhere in and apply only to the property involved or sought to be built upon or used, and do not apply to other property within the same use district. The mere fact that the owner of one parcel might apply prior to the owners of other parcels in the same area would not give the owner a right to a variance and thus grant a special privilege to an individual, when such variance would be necessarily denied to others. It must be found, on the other hand, that there are unusual or exceptional circumstances or conditions (practical difficulty) justifying a variance on one lot, such as topographical or geological conditions, and that a variance would be justified on any lot where the same circumstances prevail; and

(c) Where granting of a variance will not be injurious to the property or improvements in the neighborhood in which the property is located or be detrimental to the public welfare. The mere existence of an unnecessary hardship or of an unusual or exceptional circumstance or condition (practical difficulty) is not ipso facto a basis for granting a variance. The existence of such hardships or of unusual or exceptional circumstances or conditions (practical difficulty) shall be balanced against the present conditions and extent to which such a variance would interfere with the proper development and rights of nearby property; and

(d) The granting of a variance will not be contrary to the purpose, intent and objectives of the Zoning Code and the Plan of the City. A variance merely permits that which is contemplated in the Zoning Code, and particularly in this chapter, for unnecessary hardships and for unusual or exceptional circumstances or conditions (practical difficulty). On the other hand, that which was not contemplated in the Zoning Code, and particularly this chapter, although deemed desirable, shall be effected by ordinance amendments or Zone Map changes.
(Ord. 94-88. Passed 12-5-94.)

1153.07 LAPSE OF VARIANCES.

A variance once granted shall not be withdrawn or changed unless there is a change of circumstances, or if, after the expiration of one year, no substantial construction is done in accordance with the plans for which such variance was granted. Should the latter be the case, the variance shall be deemed null and void, and all regulations governing such premises in question shall revert to those in effect before the variance was granted.
(Ord. 67-17. Passed 5-15-67.)

1153.08 APPLICATION AND STANDARDS FOR VARIANCES AND EXCEPTIONS.

A variance or exception from the terms of the Zoning or Building Code shall not be granted by the Board of Zoning and Building Appeals unless and until a written application for a variance or for an exception is submitted to the Board. Such application shall be on a form adopted by the Board and shall contain:

(a) Name, address and phone number of the applicant(s).
(b) Owner of the land, property or building in question. Written consent of the owner shall be provided if the applicant(s) is not the owner.
(c) Description of the property.
(d) Description of the nature of the variance or exception requested.
(e) A written narrative statement submitted by the applicant demonstrating and substantiating that the applicable conditions for the granting of variances as set forth in Section 1153.06 exist or that the standards for the granting of exceptions exist.
(f) Such other information as may be required by the rules of the Board.

The Board shall make a finding on the applicable standards for the granting of variances as set forth in Section 1153.06 or on the applicable standards for the granting of exceptions as they apply in each specific case as a prerequisite for the granting of the variance or exception.
(Ord. 94-88. Passed 12-5-94.)

2004 Replacement

CHAPTER 1155
Designation of Landmarks

1155.01 Declaration of public policy; purpose.
1155.02 Designation of landmarks and landmark districts; criteria and procedure.
1155.03 Records; designation on property.
1155.04 Regulation of building or environmental change.
1155.05 Additional powers and duties of Commission.
1155.06 Changes not prohibited.
1155.07 New construction in landmark districts.

CROSS REFERENCES
Fairview Park Cemetery declared landmark - see ADM. 103.01
Planning and Design Commission - see ADM. Ch. 137

1155.01 DECLARATION OF PUBLIC POLICY; PURPOSE.

(a) Council hereby declares as a matter of public policy that the preservation, protection, perpetuation and use of areas, sites, places, buildings, districts, structures, works of art and other objects having a special historical, educational, community or aesthetic interest is a public necessity and is in the interest of the prosperity, safety and welfare of the people.

(b) The purpose of this chapter is to provide the procedure by which the Planning and Design Commission is to designate landmarks in the City pursuant to the procedures hereinafter described, in order to preserve, protect and perpetuate areas, sites, places, buildings, structures, works of art and other objects having a special historical, educational, community or aesthetic interest or value, all for the reasons described in the remainder of this section:

(1) To safeguard the heritage of the City by preserving sites and structures which reflect elements of the City's cultural, social, economic, political, educational or architectural history;

(2) To stabilize and improve property values;

(3) To conduct a continuing survey of all areas, sites, places, buildings, structures, works overt or similar objects in the City that are culturally, socially, economically, politically, architecturally, educationally or historically significant which the Commission, on the basis of information available or presented to it, has reason to believe are or shall be eligible for designation as landmarks.

(4) To protect and enhance the City's attractions to residents, tourists and visitors, and serve as a support and stimulus to business by encouraging the location of business enterprises within the City in co-ordination with County and State agencies, and make such recommendations as are deemed necessary to accomplish this purpose;

(5) To enhance the visual and aesthetic character, diversity and interest of the City by working with private groups, civic organizations and individuals and to accept therefrom donations for the purposes of this chapter;

(6) To foster civic pride in the beauty and notable accomplishments of the area now known as the City of Fairview Park;

(7) To promote the use, preservation, protection, restoration, reconstruction and rehabilitation of historic sites and structures for the education and general welfare of the people of the City;

(8) To strengthen the economy of the City; and

(9) To take whatever steps as may be necessary to safeguard the property rights of the owners whose property is declared to be a "landmark" or is located in an area designated as a "Landmark District".

(Ord. 80-62. Passed 11-3-80.)

1155.02 DESIGNATION OF LANDMARKS AND LANDMARK DISTRICTS; CRITERIA AND PROCEDURE.

(a) The Planning and Design Commission may designate an area, site, place, building, structure, work of art or similar object in the City as a landmark. In determining whether or not to designate such area, site, place, building, structure, work of art or object as a landmark, the Commission shall consider the following criteria with respect to such property:

(1) Its character, interest or value as part of the development, heritage or cultural characteristics of the City, State of Ohio or the United States;

(2) Its location as a site of a significant historic event;

(3) Its identification with a person or persons or family who significantly contributed to the culture and development of the City;

(4) Its exemplification of the cultural, economic, social, architectural or environmental heritage of the City;

(5) Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;

(6) Its embodiment of a distinguishing characteristic of an architectural type or specimen;

(7) Its identification as the work of an architect or master builder whose individual work has influenced the development of the City;

(8) Its embodiment of elements of architectural design, detail, materials or craftsmanship which represent a significant architectural innovation;

(9) Its relationship to other distinctive areas which are eligible for preservation according to a plan based on an historic, cultural or architectural motif;

(10) Its unique location or singular physical characteristic representing an established and familiar visual feature of a neighborhood, community or the City; and

(11) Such other individual characteristics as shall be deemed relevant by the Commission to its designation as a landmark.

(b) The Commission shall designate official landmarks using the following procedure:

(1) A nomination for landmark designation may be made by the Commission member(s), the owner or any resident of the City. The nomination shall include a photograph, rationale and historical data.

(2) The Commission shall accept the nomination and vote to accept or reject the nomination for study and evaluation.
(Ord. 80-62. Passed 11-3-80.)

(3) The Chairman shall appoint member(s) of the Commission who together with the advisory committee, if established pursuant to Section 1155.05 and/or with other residents of the City to prepare a documented report on the nominated site, including a history, property description, site map, photograph(s) and eventual placement of the plaque.
(Ord. 86-23. Passed 9-2-86.)

(4) The complete report shall be presented to the Commission.

(5) The Commission shall inform the owner of the site of the status of the nomination prior to Commission review.

(6) The Commission shall secure the owner's written consent for:

A. Submittal of the nomination to the Commission and to Council;

B. Acceptance if designated a landmark; and

C. The placement of a plaque if designated a landmark.

(7) Upon acceptance by the owner of the site, the Commission shall render its recommendation with respect to the proposed designation, its opinion as to the effect of the proposed designation upon the surrounding neighborhood, and its opinion and recommendation as to any other planning consideration which may be relevant to the proposed designation, together with its recommendation of approval, rejection or modification of the proposed designation. Such recommendation shall become part of the official record concerning the proposed designation and shall be submitted by the Commission along with its recommendation concerning the proposed designation to Council. The Commission may make such modifications, changes and alterations concerning the proposed designation as it deems necessary.

(8) The Commission shall submit to Council the complete report including its recommendation and the owner's consent.

(9) Council shall give due notice consideration to the findings and recommendations of the Commission in making its determination with respect to the proposed designation of any area, site, place, building, structure, work of art and other similar objects as landmarks or Landmark Districts. After review, Council may designate by ordinance such area, site, place, building, structure, work of art and other similar objects as a landmark or Landmark District.
(Ord. 80-62. Passed 11-3-80.)

(10) As soon as reasonably possible after approval by Council, the Clerk of Council shall notify the Division of Building of the official designation. The Clerk shall also file with the Recorder of Deeds of Cuyahoga County a certified copy of the designation ordinance together with a notice briefly stating the fact of such designation and a summary of the effects such designation shall have. The Clerk, further, shall send by registered mail a certified copy of such ordinance and a copy of the notice hereinabove described to the owner and any person having a legal or equitable interest in such property. (Ord. 95-75. Passed 10-16-95.)

(11) The Commission shall present to the owner the official Landmark Plaque, which shall remain the property of the City.

(12) Notwithstanding any provision of this chapter, Council may rescind the designation of any area, site, building, structure, work of art or similar object as a landmark or Landmark District by ordinance. Passage of such an ordinance shall relieve the owner of such area, site, place, building, structure, work of art or similar object from any duties or penalties contained in this chapter.
(Ord. 80-62. Passed 11-3-80.)

1155.03 RECORDS; DESIGNATION ON PROPERTY.

(a) The Planning and Design Commission shall maintain and keep current and public a complete register of all properties designated as landmarks in a book kept for such records in the office of the Clerk of Council. This designation shall also be noted in the Division of Building records of the City. (Ord. 95-75. Passed 10-16-95.)

(b) The Commission shall cause to be placed with the consent of the owner on such landmark properties a designation that such property or part thereof has been designated a landmark in the City. (Ord. 80-62. Passed 11-3-80.)

1155.04 REGULATION OF BUILDING OR ENVIRONMENTAL CHANGE.

No person owning, renting or occupying property which has been designated a landmark or which is situated in a designated Landmark District shall make any environmental or building change in such property without notification to the Planning and Design Commission with respect to such building or environmental change. The following procedure shall apply to all alterations, demolitions, removals or constructions of such property in the City:
(Ord. 80-62. Passed 11-3-80.)

(a) Any application to the Division of Building for a building permit for an environmental or building change shall be forwarded to the Commission together with copies of all detailed plans, designs, elevations, specifications and documents relating thereto, within seven days after receipt thereof. Any application may be filed by the applicant directly with the Commission at the same time that an application for a building permit is filed or in lieu of filing for a building permit, if no building permit is required for the proposed building or environmental change. (Ord. 95-75. Passed 10-16-95.)

(b) If the Commission finds that the building or environmental change proposed by the applicant:

(1) Shall not adversely affect any significant historical or aesthetic feature of the property and is appropriate and consistent with the spirit and purposes of this chapter; or

(2) Shall remedy conditions imminently dangerous to life, health or property, as determined in writing by the Building Commissioner and the Fire Chief; then the Commission shall render its opinion consistent with other applicable ordinances of the Planning and Zoning Code of the City. (Ord. 80-62. Passed 11-3-80.)

(c) If the Commission finds that the building or environmental change proposed by the applicant shall adversely affect any significant historical or aesthetic feature of the property or is inappropriate or inconsistent with the spirit and purposes of this chapter, the Commission shall advise the applicant and the Division of Building in writing within sixty days after receiving the application. (Ord. 95-75. Passed 10-16-95.)

(d) If the Commission notifies the applicant in accordance with subsection (c) hereof, the Commission shall conduct negotiations with the applicant and any other party in an effort to find a means of preserving the property as follows:

(1) With respect to an application involving an alteration, the Commission and the applicant shall work together during such period to find a mutually agreeable method of completing the proposed building or environmental change. (Ord. 80-62. Passed 11-3-80.)

(2) With respect to an application involving a demolition, removal or construction, the Commission and the applicant shall undertake meaningful and continuing discussions for the purpose of finding a method of saving such landmark. The Commission shall also investigate the feasibility of all available ways and means of preserving the landmark, including without limitation, inducing by contract or other consideration, the creation of covenants restricting the use of property, leasing and subleasing the property for the purpose of preservation and acquiring by eminent domain or contract or conveyance all or any part of or interest in the property. If the Commission and the applicant do not agree on a means of preserving the landmark, the Commission shall render its opinion consistent with other applicable ordinances of the Planning and Zoning Code with respect to the proposed environmental or building change and give written notice of same to the applicant and the Division of Building.
(Ord. 95-75. Passed 10-16-95.)

(e) The time period and any extensions thereof for negotiations in accordance with subsection (d) hereof shall be established by and between the Commission and the applicant.

(f) If no action has been taken by the Commission on an application within sixty days after such application has been received by the Commission, the application shall be deemed granted.

(g) The intent of this section is that the Commission shall attempt to assist in providing information for architectural changes that are in keeping with the intent of this chapter.

(h) Nothing herein contained shall obviate compliance by the owner of such property with all other applicable ordinances, rules, and regulations of the City.
(Ord. 80-62. Passed 11-3-80.)

1155.05 ADDITIONAL POWERS AND DUTIES OF COMMISSION.

The Planning and Design Commission shall have the following powers and duties in addition to those otherwise specified in this chapter.

(a) The Commission shall work for the continuing education of the residents of the City with respect to the historical and architectural heritage of the City and the landmarks designated under the provisions of this chapter.

(b) The Commission shall have authority to establish rules and regulations consistent with the provisions of this chapter and the spirit of its purpose to assist the Commission in evaluating applications for landmark designation submitted to it, the manner in which such applications are processed and the proper and orderly conduct of its business.

(c) The Commission may accept the services on a permanent or part-time basis of technical experts and such other persons as may be required to perform its duties pursuant to this chapter, provided that no General Fund moneys are used for such services. (Ord. 80-62. Passed 11-3-80.)

(d) The Commission may appoint an advisory committee of three residents of the City, who shall have to the highest extent practicable a known interest in landmarks preservation, to assist it in the designation, preservation, protection and perpetuation of landmarks and landmark districts for such term as may be provided by the Commission. Vacancies in the advisory committee shall be filled in the same manner as original appointment.
(Ord. 86-23. Passed 9-2-86.)

1155.06 CHANGES NOT PROHIBITED.

Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of any property which has been designated a landmark or which is situated in a designated Landmark District that does not involve a change in design, material, color or outer appearance thereof, nor to prevent any environmental or building change that the Division of Building, Fire or Health Departments shall certify in writing is required by the public health, safety and welfare because of unsafe or dangerous conditions.
(Ord. 80-62. Passed 11-3-80.)

1155.07 NEW CONSTRUCTION IN LANDMARK DISTRICTS.

Notwithstanding any other provisions of this chapter, only architectural design compatible with other historical buildings in approved Landmark Districts in the City shall be approved for any new construction by the Planning and Design Commission in a Landmark District.
(Ord. 95-75. Passed 10-16-95.)

2004 Replacement

CHAPTER 1157
Amendments

1157.01 Initiation of change in zoning.
1157.02 Action by the Commission.
1157.03 Action by Council.
1157.04 Amendment to Zone Map application; required information and review.

CROSS REFERENCES
Enactment of zoning ordinances - see CHTR. Art. IV §14
Voter approval of zoning changes - see CHTR. Art. IV §16

1157.01 INITIATION OF CHANGE IN ZONING.

A proposed change or amendment of the Zoning Code or Zone Map may be initiated in the following manner, to wit: any member of Council or any member of the Planning and Design Commission or the Planning and Design Commission itself may propose a change or amendment of the Zoning Code or Zone Map to the Planning, Zoning and Development Committee of Council by forwarding such proposed change or amendment to the Chair of such Planning, Zoning and Development Committee of Council or by forwarding such change or amendment to the Clerk of Council for delivery to such Chair. The Planning, Zoning and Development Committee of Council shall within ninety days of receipt of such proposed change or amendment refer such change or amendment to the Planning and Design Commission for report and recommendation. The Planning and Design Commission shall then refer the proposed change or amendment to Council pursuant to the provisions of Article VII, Subsection 2(d) of the City Charter.
(Ord. 95-76. Passed 10-16-95.)

1157.02 ACTION BY THE COMMISSION.

When a proposed change or amendment is referred to the Planning and Design Commission by the Planning, Zoning and Development Committee of Council, the Commission shall be allowed for consideration thereof, not less than sixty days after receipt of same by the Commission, unless a longer period of time is allowed by Council. The Commission may hold a public hearing thereon, and notice of the time, place and purpose of such hearing shall be given by publication at least once in a newspaper of general circulation in the City, with the first publication not to appear less than fifteen days prior to the date of such hearing. The qualifications of such newspaper shall be determined by ordinance of Council.

The Commission may approve or disapprove the proposed change or amendment, either in whole or in part, and shall submit its recommendation to Council.
(Ord. 95-76. Passed 10-16-95.)

1157.03 ACTION BY COUNCIL.

After receiving the proposed change or amendment from the Planning and Design Commission, or after the sixty-day period of inaction by the Commission as set forth in Article VII, Subsection 2(d) of the City Charter, Council shall hold a public hearing thereon.

Thirty days' notice of the time and place of such public hearing shall be published once a week for two consecutive weeks in a newspaper of general circulation in the City. During such thirty days the text or copy of the text of such ordinance, measure or regulation and the maps, plans and reports submitted by the Commission shall be on file, for public examination, in the office of the Clerk of Council. Further notice of a hearing on such proposed change or amendment shall be given pursuant to Article IV, Section 14 of the City Charter.

After the hearing, Council may approve in whole or in part, modify, disapprove or reject, by a majority vote of the members of Council eligible to vote. Any provision of any ordinance, resolution or order disapproved by formal action of the Commission shall require a two-thirds vote of all members of Council eligible to vote for adoption or authorization.
(Ord. 67-17. Passed 5-15-67.)

1157.04 AMENDMENT TO ZONE MAP APPLICATION; REQUIRED INFORMATION AND REVIEW.

(a) Any application for an amendment to the Zone Map, including one initiated pursuant to Section 1157.01, shall contain the following:

(1) Name, address and phone number of the applicant;
(2) Legal description, size, dimensions and location of the parcel or parcels;
(3) Present use;
(4) Present zoning district;
(5) Proposed use;
(6) Proposed zoning district;
(7) A vicinity map at a scale approved by the Building Commissioner showing property lines, streets, existing and proposed zoning and such other information as the Building Commissioner may require;
(8) A listing of all owners of property within, abutting on and directly across the street from the parcel or parcels to be rezoned; and in addition, the owners of property which is contiguous to (touches upon) any of the aforesaid property, which abuts or is directly across the street from the parcel or parcels to be rezoned and the owners of parcels lying within a distance of five hundred feet from the outer boundaries of the parcel or parcels to be rezoned.
(9) A statement on how the proposed amendment to the Zone Map relates to the needs of the community and the area in which the parcel or parcels are located in conjunction with the existing zoning scheme, including any then current comprehensive plan and/or concept plan of the City on file with the Division of Building;

(10) Payment of a fee of one hundred dollars ($100.00) plus the payment of a deposit of five hundred dollars ($500.00) to cover all advertising costs and expenses, all costs and expenses related to all written notices required by any ordinance or by the Charter of the City, and the costs and expenses of the evaluation set forth in subsection (b) hereof. The balance, if any, of the deposit shall be refunded to the applicant after deducting therefrom all costs and expenses. The deficiency, if any, of the deposit shall be paid by the applicant within thirty days of written notification of such deficiency.
(Ord. 91-92. Passed 12-16-91.)

(b) EDITOR'S NOTE: Former subsection 1157.04(b) was repealed by Ordinance 11-24, passed June 21, 2011.

2004 Replacement

CHAPTER 1159
Design Review Guidelines

1159.01 Applicability.
1159.02 Explanation of terms.
1159.03 Design review guidelines.
1159.04 Interpretative illustrations for design standards.

1159.01 APPLICABILITY.

(a) The design guidelines set forth in subsection (a) through (d) of Section 1159.03 shall apply to exterior appearance and design of all new construction and building renovations in the respective zoning districts according to the following schedule:

Zoning District	Applicable Subsections
Civic and Recreational Districts Chapter 1113	(a), (b), and (c)
Residential One and Two Family Districts Chapter 1117	Not Applicable
Residential Multi-Family, Garden and High Rise Districts Chapter 1121	(a), (b), and (d)
Office Building Districts Chapter 1129	(a), (b), and (c)
Low Rise Planned Development District Chapter 1133	(a), (b), and (d)
General Business Districts Chapter 1137	(a), (b), and (c)
Senior Citizen Housing District Chapter 1139	(a), (b), and (d)

(b) All applicants subject to this Chapter 1159 shall comply with the following procedures:

(1) Applicants submitting development plans under Section 1149.05 and applications for sign permits under Section 1145.07 shall be subject to the requirements of this chapter and shall submit design plans at the time of the development plan submittal with such details as to illustrate design elements necessary for the Planning and Design Commission to review and approve plans as required by this chapter.

(Ord. 02-43. Passed 12-2-02.)

1159.02 EXPLANATION OF TERMS.

For the purpose of this section, certain terms and words shall be interpreted with regard to the following explanations:

(a) Appropriateness. A proposal is judged to be appropriate when it respects the proposed architectural style of a building prescribed by this chapter, and fits comfortably within its settings, neighborhood and overall community. This condition also applies to landscaping and accessory structures.

(b) Compatibility. A design or a material/color selection is compatible when it does not strongly deviate from its parent building, and the overall desired character of the neighborhood as defined in this chapter. To be compatible does not require look alike designs, but rather designs that reflect some aspects of its parent building or buildings in the general vicinity meeting the design guidelines, such as scale of windows, overhangs, building materials, patterns of siding, roof slope. Conversely, incompatibility occurs when an architectural design, landscape design or accessory building is aesthetically harsh or overwhelming relative to its neighbors or is not within the character of the neighborhood as defined in this section.

(c) Noncontributing. A factor in a proposal or part thereof that is taken from an existing building characteristic or site feature such as design, scale, fenestration, architectural feature, material or color that is determined by the Planning and Design Commission to be not appropriate for replication in new projects or modifications to existing projects when:

(1) It does not fall within the specific guidelines established by this chapter;

(2) It does not enhance or improve the character of the City and/or the surrounding environs of the project; or

(3) It is unrepresentative of the overall character of the City and/or the prevalent character of the surrounding environs of the project.

(d) Proportion. The relationship of parts of a building, landscape, structures, or buildings to each other and to the whole balance.

(e) Proximity. Proximity shall be considered in terms of the potential for one property, by virtue of its location, to materially affect other properties. In determining a property to be in proximity to another, the following factors shall be considered:

(1) The visibility of both properties from a common point; or

(2) The location of both properties within a relatively compact network of streets, walkways or spaces.

(f) Style. Style relates to a building's character and configuration in plan and elevation. It also relates to architectural conventions of a particular time period concerning details of windows and doors, eaves, corner boards, pitch of roofs and the material of the building's skin.

(g) Visibility or Visible. The ability for any item or element to be seen from an eye level of 70" above grade at any point on an adjacent public right of way or an immediately adjacent property.

(h) Prototype. A building design for a franchise or similar business venture which is intended for use or has been used at more than one location. Any building design which is intended to reflect the details and elements of a building or buildings typically used by a franchise or similar business venture.

(Ord. 02-43. Passed 12-2-02.)

1159.03 DESIGN REVIEW GUIDELINES.

The design review guidelines cover all aspects of the exterior of a project and include an examination of the surrounding context to ensure that new development and modifications to existing developments achieve the objectives of this chapter set forth herein. The following guidelines are in addition to the specific regulations and requirements set forth for each of the particular zoning districts.

(a) General Design Criteria.

(1) The proposal shall enhance and improve the character of the community and be appropriate and compatible with its surroundings in accordance with the intent, objectives and development criteria of this chapter. In assessing the characteristics of the surrounding area, noncontributing features will not be considered factors in determining compatibility.

(2) The proposal should minimize changes to the natural grade, and discourage the removal and destruction of trees, landscaping and other natural features.

(3) Buildings shall be oriented in relation to proposed grading, natural features and to existing structures on and adjacent to the site to maintain:

A. Satisfactory proportions and scale;

B. Reasonable light and air; and

C. Privacy, as appropriate.

(4) Buildings, structures and landscaping should be designed and located on the site and be of a scale to complement adjacent buildings and enhance the character of the surrounding area by having features that are appropriate and compatible with existing buildings and structures (where the existing buildings and structures meet the intent of this section). In making this determination the Planning and Design Commission shall consider:

A. Building height, width and general proportions;

B. Architectural features, including patterns of windows and doors, roof pitch, cornice lines, balconies, porches, shutters, dormers, eaves and other decorative detail;

C. General site characteristics which encourage well-landscaped and conveniently located parking areas, safe and comfortable pedestrian ways, and convenient pedestrian movement among adjacent and nearby buildings and parking areas; and

D. Color use which is not bright or brilliant.

E. Building setbacks located at or near the front sidewalk line.

(5) Each individual building should express its function, and have an individual character and identity created through functional variety in the overall design. When existing buildings are to be renovated, the distinguishing qualities or characters of a property that contributes to the overall character should not be destroyed. Removal or alteration of distinctive architectural features should be avoided, except for features that are determined to be noncontributing features.

(6) Unique and contemporary designs may be appropriate to the extent such design does not clearly detract from any architectural unity of an ensemble or group of architecturally significant buildings.

(7) Landscaping shall be designed to:

A. Maintain an adequate and appropriate proportion of deciduous and non-deciduous trees.

B. Be in such location, scale and amount to be integrated with the building design.

C. Clearly designate entrances/exits.

D. Reasonably screen paved areas from the street enough through the use of mounding, the land's natural topography, and/or adequate vegetation.

E. Include provisions for adequate irrigation and maintenance of areas over 200 square feet.

(8) Mechanical and electrical equipment, waste receptacles and other similar appurtenant or accessory structures shall be located to minimize the impact on the building and the community:

A. Air-conditioning units, condenser elements, antennas, other mechanical equipment, and waste receptacles should not be visible.

B. Ground mounted mechanical and electrical equipment and waste receptacles must be screened with a fence or plant material as approved by the Planning and Design Commission, or housed in a structure that is in harmony with the surroundings.

C. Mechanical equipment attached to the side or roof of a building and cannot be located on the roof or ground, including vents and intakes, should be kept as low as possible and screened, or be compatible with the background.

(b) Supplemental Design Criteria Applicable to Districts as Defined in Schedule 1159.01(a).

(1) Site design.

A. Park benches, ornamental planters and brick pavers should be encouraged when appropriate to create inviting, people-oriented spaces.

B. Other devices may be considered appropriate in the interest of adding attractive features to the district, such as a clock tower, flag poles, a raised roof on an otherwise flat-roofed structure, a turret or penthouse.

C. Sidewalks connecting building entrances with parking areas and to the public sidewalks shall be provided to permit and encourage pedestrian access to the buildings.

D. Parking areas, drives and approaches shall be of appropriate size and scale in relation to the appearance of the proposed development from the right-of-way, adjacent property and the internal portion of the site itself. Such appropriate scale shall be achieved by the width of approaches and drives, by having adequate but not excessive parking, and by using landscaping within parking areas of 6,000 square feet or more.

E. Accessory loading areas should be located in unobtrusive areas and be screened from public view.

F. Signs should be designed to reflect the scale of the building, site and surrounding characteristics. Buildings shall be designed for the appropriate placement of signage in a manner that complements the building.

1. Any building housing more than one business entity requiring signs shall be in compliance with an approved comprehensive sign scheme per Section 1145.07 (i).

G. Exterior security and ornamental lighting, when used, shall enhance the building design and the adjoining landscape. Lighting standards and features shall be of a design and size compatible with the building and adjacent areas. Lighting shall be designed so as not to shine directly onto adjoining properties and not be excessive. Provisions for architectural lighting that is spaced in coordination with the building bay spacing shall be encouraged.

1. Lighting shall be designed in such a manner as to not project more than 1-foot candle on any adjacent property, not including public right-of-ways.

H. Entryways should be designed to enhance the ability of the general public to find their way into and around buildings and open spaces.

(2) Building style and scale.

A. Architectural details and ornamentation shall be meaningful to the overall design and appropriate for the size and scale of proposed structures; harmonious with other architectural detail and ornamentation.

B. In areas which have a predominate architectural style, including historic styles, such character should be a significant consideration in determining compatibility. In such cases compatibility is partially achieved by some repetition of basic elements such as color, materials and common scale.

C. Variations in the height of structures are encouraged in order to impact some variety to the skyline of the area and to add some distinction to the streetscape.

D. All visible sides of new construction should achieve architectural interest and excellence.

E. The following details and characteristics shall be encouraged:

1. The use of pitched roofs, particularly with 5:12 or greater slope; mansard roofs or main roofs that extend over sidewalls below the highest window head shall be discouraged.
2. Dormers.
3. Decorative lintels over windows/doors constructed with sandstone, wood or similar material;
4. Multi-paneled windows with shutters (when the windows are an appropriate size suitable for such shutters) painted in contrasting colors.
5. Decorative cornices.

6. Elements to subdivide the facades into bays including building projections, columns, or pilasters.
7. Prominent main entrances to buildings with large doors and "framing" devices such as peaked roof forms, porches or recesses.
8. Decorative cupolas.
9. Decorative quoins.
10. Styles similar to Georgian, Federal, or Jeffersonian Classicism.

(3) Materials and colors.

A. New construction shall be guided by the existing work to which it is attached or is associated, and should not be in stark contrast to the materials used on adjacent structures.

B. The texture, color, and placement patterns of materials shall be appropriate for the size and scale of the proposed structures and be compatible with the character of the area.

C. The following colors and materials shall be acceptable. Examples of such contributing materials include:

1. Brick exterior.
2. Masonry units, split or ground face not exceeding 10% of the facade for trim.
3. Natural stone.
4. Horizontal wood clapboards for siding.
5. Painted trim woodwork.
6. Visible roofing material shall be shingles of dark colors rather than pale or near white colors. Materials should be asphalt, fiberglass and slate. Standing seam metal panels in traditional colors. Clay tile may have merit as a variation, but will be very carefully considered in contrast to adjacent materials.
7. Fencing and screening materials matching the building of brick or stone masonry, painted aluminum, vinyl coated aluminum or vinyl, wrought iron, or permanent evergreen landscape material.
8. Fabric awnings of colors as approved by the Planning and Design Commission.
9. Material colors as approved by the Planning and Design Commission.

D. Conversely, the following materials are not consistent with the City's desired architectural characteristics and would tend to hasten the creation of nuisances and/or blight; therefore, they are considered inappropriate:

1. Mirrored/reflective glass unless used as a small component of the building, designed and located within the context of the architectural style, usually not exceeding 10% of the facade.
2. Concrete block or painted concrete block.

3. Stucco (exterior insulation and finish systems) or similar large expanse of material unless it is utilized with belt courses, joints, contrasting materials, exposed structural elements, or similar design features not exceeding 10% of the facade.
4. Unfinished and industrial type materials such as concrete block, painted concrete block, exterior insulated finishes, and metal siding.
5. Bright or primary colors, and/or awnings that are in stark contrast to other structures in the surrounding area and/or design of the proposed structure.
6. Fencing or screening materials of painted or unfinished wood, chain link.
7. Metal awnings.

E. Authentic materials are preferred, however modern products that simulate wood and slate effectively may be considered.

(c) Supplemental Design Criteria Applicable to Districts as Defined in Schedule 1159.01(a).

(1) Site design.

A. Outside dining and areas of congregation shall be encouraged if nuisances such as noise and litter can be controlled.

1. Such areas within 20' of a right of way shall be fenced or screened with a fence or screen not less than 36" high, as well as landscaped in an appropriate manner. Such areas shall not project any noise into a residential area and shall be further screened and buffered as required to minimize nuisance.

(2) Building style and scale.

A. Building prototypes shall be discouraged unless specific modifications have been made to a prototype design to bring it into compliance with these design guidelines.

B. Building facades should have windows in order to insure a comfortable visual dialogue between occupant and pedestrian. Large portions of building facades without windows shall be discouraged.

C. The proportion of wall surface to openings should be consistent with adjacent structures.

D. The use of fabric awnings, mainly confined to the street level, in shopping areas is encouraged. Awnings are to be designed and mounted so as not to cover significant architectural design.

E. Buildings in excess of 4,000 and less than 10,000 square feet, especially retail and business uses, shall make exterior design provisions for reuse by subdividing the spaces into areas not to exceed 2,000 square feet. Buildings in excess of 10,000 square feet, especially retail and business uses, shall make exterior design provisions for reuse by subdividing the spaces into areas not to exceed 4,000 square feet. These shall include provisions for future front entrances and building services. This requirement shall not apply to a structure serving as an anchor store of a connected multi-tenant development.

(3) Materials and colors.

A. The following colors and materials shall be acceptable: Examples of such contributing materials include:

1. Red/rose brick exterior.
2. Horizontal wood clapboards for siding not exceeding 50% of the facade.

(d) Supplemental Design Criteria Applicable to Districts as Defined in Schedule 1159.01(a).

(1) Site design.

A. The design, scale and location on the site of residential structures, accessory buildings and landscaping should enhance the overall natural character of the City.

B. Accessory structures and features such as garages, parking areas, fences, walls, and landscaping should:

1. Ensure that the relationship to the dwelling reinforces the dwelling as the major focal point of the site.
2. Ensure that the size, location and design are appropriate for the size of the site and adjacent buildings.

C. Sidewalks should be enhanced with appropriate materials, landscaping, lighting and benches.

(2) Building style and scale.

A. Architectural forms and the open spaces around them should be integrated so as to enhance the quality of the outdoor public areas including such factors as sunlight, weather protection, noise and air quality, landscaping and benches.

B. All elevations of new construction are expected to feature some door or window openings or other architectural feature to avoid blank walls and such openings should have a pattern that is compatible with the character of the neighborhood.

C. Buildings should have varying rooflines and facade modulation to help reduce the apparent size of new buildings and give them more visual interest. The use of pitched roofs is favored in order to add height and body to the low level skyline.

(3) Materials and colors.

A. Within a contiguous development proposal there shall be a continuity of building materials among all buildings.

B. Conventional building materials including wood, shingle, stone and face brick, should be employed in new work, to the extent appropriate.

C. New products which simulate wood siding and slate roof tile or shingles may be acceptable, but only with the presentation of full scale samples in appropriate colors.

D. The following materials are discouraged: Mirrored/reflective glass.

(4) Garages.

A. Garages are to be located so as to not dominate the street elevation.

B. A garage should match the residence to which it is attached or related with similar materials, roof pitch, colors, window styles, eaves and trim.

(Ord. 02-43. Passed 12-2-02.)

1159.04 INTERPRETIVE ILLUSTRATIONS FOR DESIGN STANDARDS.

(a) Where not otherwise defined within this section, architectural styles and elements referred to within this section shall be as illustrated by American Shelter by Lester Walker.

(b) The Planning and Design Commission may prepare from time to time or authorize the preparation of illustrations which demonstrate the design review criteria in the Applicability Section. Such illustrations may include drawings, photographs of acceptable projects in Fairview Park and elsewhere, drawings or photographs of projects which have been approved pursuant to these regulations and photographs of existing building characteristics or site features which have been determined by the Planning and Design Commission to be noncontributing. Any such illustrations may be recommended by a majority vote of the Planning and Design Commission and approved by Council. When approved, such illustrations shall be considered administrative guidelines which assist in the utilization of these design review criteria.

(Ord. 02-43. Passed 12-2-02.)

TITLE THREE - Subdivision Regulations

Chap. 1183. General Provisions.
Chap. 1187. Minor Subdivisions.
Chap. 1191. Major Subdivisions.
Chap. 1195. Storm Drainage.

CHAPTER 1183
General Provisions

1183.01 Title.
1183.02 Relation to other laws.
1183.03 Rules and regulations.
1183.04 Definitions.
1183.99 Penalty.

CROSS REFERENCES
State law provisions - see Ohio R.C. Ch. 711
Zoning Code lot definitions - see P. & Z. 1105.12

1183.01 TITLE.
These regulations shall be known as the "Subdivision Regulations of the City of Fairview Park, Ohio". (Ord. 66-69. Passed 12-19-66.)

1183.02 RELATION TO OTHER LAWS.
The provisions hereof shall supplement and implement the City Charter, the laws of the State and the ordinances of this City.
(Ord. 66-69. Passed 12-19-66.)

1183.03 RULES AND REGULATIONS.
(a) Promulgation. The regulations, rules, standards, procedure and criteria herein set forth are adopted and promulgated to govern and control the platting, planning and development of land and the dedication of new streets and public lands to be shown on and included in such plats. (Ord. 66-69. Passed 12-19-66.)

(b) Establishment of Further Regulations. In addition to the provisions hereof, the Planning and Design Commission shall have the power and authority to establish such other and further regulations, rules and standards not inconsistent with the provisions of this chapter, the City Charter, other ordinances and regulations of the City and of the State of Ohio to the extent that such laws are not inconsistent with any of the foregoing, for the further regulations of platting, planning and street dedication as may, from time to time, be necessary.
(Ord. 95-77. Passed 10-16-95.)

(c) Complying With Regulations. The regulations, rules, standards, procedure and criteria as herein set forth shall be complied with by the Planing and Design Commission and Council when considering and acting upon such plats and subdivisions.
(Ord. 66-69. Passed 12-19-66.)

(d) Approval of Planning and Design Commission and Council Required. All major subdivisions or resubdivisions shall be approved by Council before the same shall be official and recordable. All minor subdivisions or resubdivisions shall be approved by the Planning and Design Commission before the same shall be official and recordable.
(Ord. 95-77. Passed 10-16-95.)

1183.04 DEFINITIONS.

(a) As used in these Subdivision Regulations:

(1) "Allotment" and "subdivision" are terms used synonymously and refer to the subdivision of land into either streets and lots or into lots.

(2) "Improvements" means street pavements, with or without curbs and/or gutters, sidewalks, crosswalks, water mains, sanitary and storm sewers, street trees and other appropriate items.

(3) "Lot" means a portion of a subdivision or other parcel of land intended as a unit for transfer of ownership or for building development.

(4) "Map" means a drawing showing geographic, topographic or other physical features of the land.

(5) "Major subdivision" means a subdivision which includes more than five lots, or a development involving any public improvement.

(6) "Minor subdivision" means a subdivision which includes not more than five lots on an existing street when the development does not involve any public improvements.

(7) "Plan" means a drawing of a proposed design or of work to be performed.

(8) "Plat" means a map of a lot, parcel or subdivision on which the lines of each element are shown by accurate distances and bearings.

(9) "Street" means a public way for the purposes of vehicular travel including the entire area within the rights of way.

(b) Words not herein specifically defined are to be construed in their customary sense, and definitions of such words contained in other City ordinances, may be used unless manifestly inapplicable, and the definitions herein contained may be used in their interpretation of other City ordinances. (Ord. 66-69. Passed 12-19-66.)

1183.99 PENALTY.

The penalty for violation of any of the provisions of these Subdivision Regulations shall be as set forth in Section 1149.99.
(Ord. 92-70. Passed 10-19-92.)

CHAPTER 1187
Minor Subdivisions

1187.01 Application filed.
1187.02 Information to be filed with application.
1187.03 Approval.
1187.04 Notation of Commission action.
1187.05 Deposit for preliminary investigation.

CROSS REFERENCES
Planning authority approval without plat - see Ohio R.C. 711.131
Subdividing by an instrument of conveyance - see Ohio R.C. 711.40
Minor subdivision defined - see P. & Z. 1183.04(a)(6)

1187.01 APPLICATION FILED.
An application for approval for each minor subdivision or resubdivision shall be filed by the developer or applicant with the Planning and Design Commission.
(Ord. 66-69. Passed 12-19-66.)

1187.02 INFORMATION TO BE FILED WITH APPLICATION.
The developer or applicant shall furnish with the application, the following information:
(a) City Map. A drawing or print of a City map, or a part thereof, showing the location thereof.
(b) Accessibility of Utilities. All information as to the accessibility of required utilities and public improvements.
(c) Name of Adjoining Owners. Name of the owner and of adjoining property owners, including designations of parcel according to official records.
(d) Sketch or Plat Required. An accurate sketch, plat or drawing showing by scale and dimensions the parcel which is to be subdivided and all contiguous land including locations of existing structures thereon.

(e) Metes and Bounds Description. A description of the resulting lots by metes and bounds.

(f) Deed Restrictions. A copy of any and all private deed restrictions and/or covenants running with the land as evidenced by a title guarantee policy provided by a qualified title insurance company or abstracter.

(g) Location of Abutting Streets. All lots shall abut on a dedicated street.

(h) Other Information. Such other pertinent information and documents as may be required by the Planning and Design Commission and Council.

(Ord. 91-79. Passed 10-7-91.)

1187.03 APPROVAL.

The Planning and Design Commission shall approve the proposed subdivision or resubdivision provided the Commission finds the following:

(a) Not Contrary to Ordinances and Laws. That such proposed subdivision or resubdivision is not contrary to the provisions of these Subdivision Regulations; or to the provisions of any applicable zoning ordinances or regulations of this City; or to the provisions of any other ordinances of this City or laws of the State;

(b) Number of Lots. That such proposed division will not create more than five lots;

(c) Coordination of Subdivision. That the sketch, plat or drawing thereof is properly coordinated with adjoining land;

(d) Public Improvements. That such proposed division does not involve the installation of any public improvements;

(e) Not Contrary to Existing Deed Restrictions. That such proposed division is not contrary to existing recorded deed restrictions and/or covenants running with the land;

(f) Abut On a Dedicated Street. All lots shall abut on a dedicated street.

(g) Approval by City Engineer. Prior to review or approval by the Commission, the developer or applicant shall submit the sketch, plat or drawing, the metes and bounds description and all information as to the accessibility of utilities and public improvements to the City Engineer for review. If found satisfactory, the City Engineer shall, within ten working days, certify approval on the sketch, plat or drawing submitted and forward the same to the Planning Commission.

(h) Surrounding Area. That the surrounding area is considered regarding the existing adjacent, contiguous and neighboring buildings and properties for the purpose of preserving the safe, harmonious and integrated development of related properties, and that the granting of this request will not be detrimental to the public welfare and safety, or injurious to other property in the area in which such property is situated. (Ord. 78-4. Passed 3-6-78.)

1187.04 NOTATION OF COMMISSION ACTION.

A notation of action of the Planning and Design Commission shall be endorsed on the sketch, plat or drawing by the secretary of the Commission. Such map, plat, sketch or other documents, after Commission approval has been noted thereon, shall be retained by the City until it is delivered to the County Recorder, and all fees in connection with the recording thereof shall be paid by the developer or applicant.
(Ord. 95-78. Passed 10-16-95.)

1187.05 DEPOSIT FOR PRELIMINARY INVESTIGATION.

A deposit by the developer shall be made with the Finance Director in the amount of one hundred fifty dollars ($150.00) to cover the cost and expense of such investigation as may be necessary to determine whether or not such proposed subdivision conforms to these Subdivision Regulations. The cost and expense of such preliminary investigation shall be paid by the City for such deposits. (Ord. 84-91. Passed 6-17-85.)

CHAPTER 1191
Major Subdivisions

1191.01 Application.
1191.02 Information to be filed with application.
1191.03 Approval.
1191.04 Referring to Council.
1191.05 Additional requirements.
1191.06 Acceptance and dedication for public purposes; prerequisite.

CROSS REFERENCES

Plat and contents - see Ohio R.C. 711.01 et seq.
Plat approval by planning authority; minimum lot area - see Ohio R.C. 711.09
Unlawful transfer of lots - see Ohio R.C. 711.13, 711.15
Major subdivision defined - see P. & Z. 1183. 04(a)(5)

1191.01 APPLICATION.

An application for approval for each major subdivision or resubdivision shall be filed by the developer or applicant with the Planning and Design Commission.
(Ord. 66-69. Passed 12-19-66.)

1191.02 INFORMATION TO BE FILED WITH APPLICATION.

The developer or applicant shall furnish with the application the following information:

(a) Vicinity Map. A vicinity map or print of the City map showing the proposed subdivision and its relationship to adjacent developments, streets and all community facilities servicing such proposed subdivision.

(b) Contents of Plat. A plat accurately drawn to scale on tracing cloth and including only that portion of the subdivision to be recorded and showing the following:

(1) Public lands. Lands to be allotted or dedicated to public use shall be accurately surveyed and monumented and shall show accurate dimensions and bearings of each lot in such subdivision.

(2) Accurate description. An accurate description of all proposed public highways or lands to be dedicated to public use.

(3) Control points. Control points to which all dimensions, angles and bearings are to be referred.

(4) Name and width of streets. The name and width of each street within such subdivision and those adjoining, and such streets shall be named so that there will be no duplication of any existing street names within the City. The minimum width of any public street shall be fifty feet.

(5) Area of lot. Square footage of area of each lot or parcel of land.

(6) Identification numbers. Lot or block identification numbers or letters shall be in progressive order conforming with the Recorder's procedure.

(7) Boundaries of dedicated streets. Boundaries of and purpose for the dedication and acceptance of any land, other than residential lots, to be dedicated and reserved for public use.

(8) Easements. Location, width and purpose any of easements.

(9) Monuments. Location and description of monuments to be found, set or to be set.

(10) Adjoining subdivisions. Reference to subdivision plats of adjoining land by name, volume and page of Recorder's maps.

(11) Certification by owner. Certification by owner of acceptance of plat and statement offering dedication of streets, rights of way, and any sites for public use or reserved by deed covenants for common use of all property owners.

(12) Registered surveyor. Certification and seal by a registered surveyor or engineer as to the preparation and details of survey and plat.

(13) Protective covenants. Protective covenants shall be referred to or included on plat.

(14) Title, date. Title of the subdivision, Municipality, County, State, original township section, tract or lot, scale, north arrow and date shall be set forth on such plat. (Ord. 66-69. Passed 12-19-66.)

(15) Approval statements of officials. Approval statements for the Planning and Design Commission, Council, and other officials, as may be required by law. (Ord. 95-79. Passed 10-16-95.)

(c) Protective Covenants. Any protective covenants, restrictions, by-laws, declarations and any other covenants which are to be recorded separately.

(d) Unpaid Taxes. A statement or other evidence that there are no unpaid taxes and assessments against the tract to be subdivided.

(e) Title. A statement and/or title disclosing that the developer owns such tract to be subdivided or that the developer has an interest therein such as an option to purchase or an agreement to purchase such tract.

(f) Other Data. The developer shall furnish other data, certificates, documents and/or affidavits as may be required by the Planning and Design Commission and/or Council. (Ord. 66-69. Passed 12-19-66.)

1191.03 APPROVAL.

The Planning and Design Commission shall approve the proposed subdivision or resubdivision provided the Planning and Design Commission finds the following:

(a) Not Contrary to Ordinances and Laws. That such proposed subdivision or resubdivision is not contrary to the provisions of the Subdivision Regulations; or to the provisions of any applicable zoning ordinances or regulations of the City; or to the provisions of any other ordinance of the City, the Charter of the City; or to the provisions of any laws of the State of Ohio to the extent that such laws are not inconsistent with any of the foregoing.

(b) Properly Coordinated. That such proposed subdivision or resubdivision is properly coordinated with adjoining land and with existing streets and that adequate measure have been taken to provide ingress and egress so as to minimize traffic congestion in or on public streets;

(c) Not Contrary to Existing Deed Restrictions. That such proposed subdivision or resubdivision is not contrary to existing recorded deed restrictions and/or covenants running with the land;

(d) City Engineer Approval. That the City Engineer has, in writing, given preliminary approval to such subdivision or resubdivision;

(e) All Documents Furnished. That all required material and documents have been furnished to the Planning Commission as provided herein; and

(f) Abut on a Dedicated Street. All lots shall abut on a proposed dedicated street or a dedicated street.

(g) That the proposed subdivision or resubdivision is in accordance with any duly adopted and applicable regulations of the Commission.

(Ord. 96-49. Passed 12-16-96.)

1191.04 REFERRING TO COUNCIL.

A notation of the Planning and Design Commission's action shall be endorsed on such plat by the Secretary of the Commission, and the plat and all supporting documents shall then be referred to Council for its consideration. In addition, the Secretary shall notify the applicant of the Planning and Design Commission's action by mailing written notice by first class mail to the last known address of the applicant. (Ord. 96-49. Passed 12-16-96.)

1191.05 ADDITIONAL REQUIREMENTS.

In addition to the requirements as hereinbefore set forth for consideration by the Planning Commission, and prior to final acceptance of any plat and any dedications by Council, and as a condition precedent thereto, the developer shall submit, furnish, obtain or perform to Council's satisfaction the following:

(a) Title. An abstract, certificate of title or policy of title insurance showing title to the lands dedicated to public use and/or streets to be free and clear from all liens and encumbrances and approved in writing by the Law Director.

(b) Drawings. Drawings and specifications showing cross-sections, profiles, grading plans, elevations, construction details and specifications for all required improvements, which shall be approved in writing by the City Engineer.

(c) Deposit For Preliminary Investigation. A deposit by the developer shall be made with the Finance Director in an amount of money sufficient, as determined by the City Engineer, to cover the cost and expense of such investigation as may be necessary to determine whether or not such proposed subdivision or resubdivision conforms to the regulations of these Subdivision Regulations, the Zoning Code and regulations of this City, and any other City or State laws applicable thereto. The cost and expense of such preliminary investigation shall be paid by the City from such deposit and, in the event such cost and expense exceed the amount so deposited the deficiency shall be paid to the City by the developer prior to the approval of the plat or the acceptance of any dedication thereon by Council. In the event the amount to be deposited exceeds such expenditure, the balance shall be refunded to the developer.

(d) Improvements To Be Installed. The following improvements shall be installed by the developer under the supervision of the City Engineer and in accordance with plans, specifications, profiles, drawings and other data as approved by the City Engineer:

(1) Pavements. Street pavements, in accordance with City-approved specifications, and the grades thereof shall conform to the grade established by the City Engineer.

(2) Sidewalks. Sidewalks of sawed stone or concrete shall be installed in accordance with Chapter 903.

(3) Trees and Tree Lawns. Trees shall be planted in accordance with Chapter 905 and tree lawns shall be graded and seeded.

(4) Culverts and bridges. All culverts and bridges necessary within the public right of way, all box culverts necessary to carry surface drains, all required drainage or outlets, all crosswalks, all work necessary at the intersections of proposed streets with existing streets in accordance with City-approved specifications.

(5) Water mains. Water mains in accordance with City-approved specifications.

(6) Sewers. Storm and sanitary sewers and facilities, in accordance with City-approved specifications.

(7) Curbs and gutters. Curbs and gutters in accordance with City-approved specifications.

(8) Street name signs. Street name signs in accordance with City-approved specifications.

(9) Surface drainage. Drainage facilities in accordance with Chapter 1317 and Chapter 1195.

(e) EDITOR'S NOTE: Former subsection (e) was repealed by Ordinance 96-49.

(f) Street Lighting and Telephone Service. The developer shall submit preliminary plans of proposed subdivisions to the utility companies which will service the subdivision for the preparation of a layout of their distribution system. The distribution system shall be designed to provide service from easements along lot lines, or easements for underground service. The system shall be designed and constructed and easements provided in accordance with the following standards:

(1) Underground electric service. In new subdivision it shall be required that all telephone, electric power and street lighting wires, conduits or cables to serve lots in such subdivision shall be constructed underground and upon easements provided for utilities, except that those wires, conduits or cables owned by or serving individual customers and located wholly on the customer's property, need not be located upon easements. All underground telephone, electric power and street lighting wires, conduits or cables and transformers shall be installed in accordance with the standards required in all orders and applicable regulations of the Ohio Public Utilities Commission. Transformers shall be located in underground vaults under the public walk or in an approved location in a nearby easement.

(2) Street lighting system. In subdivisions served by underground electric service, bases shall be provided for the ultimate installation of street lighting standards on minor streets by the electric utility serving the subdivision at a minimum mounting height for luminaries of fifteen feet and spaced no farther apart then every fourth lot. Bases shall also be provided for the ultimate installation of street lighting standards on major or collector streets by the electric utility serving the subdivision to provide lighting intensity meeting the minimum recommendations of the City Engineer. Until used, the wiring in such bases shall be safely insulated and/or de-energized.

(g) Insurance. The developer agrees to indemnify and save harmless the City against and from any and all loss, cost, damage, liability and expense on account of damage to property of, or injury to or death of, the City and any of its employees, agents or representatives or any third person, caused by, growing out of or in any way whatsoever attributable to the construction of such improvements and the use of any street including, but not limited to, the street delineated on the subdivision plat during construction. The developer further agrees, but without limiting its liability to indemnify the City, to carry liability insurance contracts with any insurance company or companies acceptable to the Law Director during the period of such construction in the sum of one hundred thousand dollars ($100,000) to three hundred thousand dollars ($300,000) for injury to or death of persons, and in the sum of fifty thousand dollars ($50,000) for damage to or destruction of property, which insurance contracts shall include the City as a named insured. The developer agrees to maintain on file with the City during the period of such construction, certificates or memoranda of insurance, evidencing that such insurance contracts are in force.

(h) Council May Assess Cost of Improvements. In the event Council deems it advisable to install sewer or water facilities or any other public improvement in accordance with the special assessment proceedings prescribed by State law, Council shall institute such assessment proceedings immediately upon the acceptance of the plat and dedication.

(i) Bond For Improvement Assessments. In any case where lands are offered for dedication to public use and Council deems it advisable to install therein public improvements by special assessment proceedings, the developer, upon the acceptance of such dedication, shall furnish a bond, in such form and amount and with such sureties as Council may approve, guaranteeing the payment of the assessments so to be levied upon such subdivision, when the same shall become due.

(j) City To Supervise; Payment of Costs and Expenses. All work herein required of the developer when installing any improvement shall be done under the supervision of the City. The cost of all necessary engineering, inspection and any other expense necessary to insure the proper performance of the things herein required shall be paid by the developer to the City. Such payment shall be secured in advance by deposit or otherwise, as Council may approve.

(k) Resubdivision and Vacation. An application for resubdividing, replatting or vacation of a subdivision or a part thereof, shall be made by the owner or owners to the Commission and Council, in the same form and in the same manner as for an original subdivision along with all required maps and other information. The original lots shall be shown by dotted lines, and lot numbers and other references made to previously recorded subdivisions.

(l) Approval of City Engineer. The approval of the City Engineer shall be endorsed on such plat and the City Engineer shall only approve the same after the developer has furnished all of the data, plans, drawings and other documents, and has complied with all of the conditions contained herein.

(m) Street Maintenance Deposit or Bond. The developer shall guarantee the construction and materials of the street pavement for a three year period upon completion of all improvements to the satisfaction of the City Engineer and all other improvements for a twelve-month period upon completion of all improvements to the satisfaction of the Engineer. In order to secure the guarantee, the developer shall deposit with the City an amount equal to two percent (2%) of the total cost of the construction of street improvements in a maintenance fund, or furnish a maintenance bond equal to two percent (2%) of the total cost of the construction of street improvements.
(Ord. 96-49. Passed 12-16-96.)

1191.06 ACCEPTANCE AND DEDICATION FOR PUBLIC PURPOSES; PREREQUISITE.

Prior to the acceptance of a final plat by Council and dedication for public purposes of public improvements, the applicant shall provide to the Building Commissioner and the Clerk of Council all of the following:

(a) Written notice from the City Engineer that all improvements required by this chapter and as designated in the approved improvement plans have been installed;

(b) Written notice by the City Engineer that the applicant has deposited the cash or bond for pavement guarantee required by Section 1191.05(m) and that a letter of credit has been established to secure the installation of sidewalks unless sidewalks have been installed;

(c) Written notice by the City Engineer that the applicant has submitted as-built improvement plans;

(d) Written notice by the City Engineer that the sanitary sewers and storm sewers have been satisfactorily tested and video-taped;

(e) Written notice by the City Engineer that street lights have been satisfactorily installed or that a letter of credit has been deposited with the Director of Finance in the amount of one thousand dollars ($1,000) for each street light to secure the installation of the required street lights; and

(f) Written notice by the City Engineer that the applicant has paid all required engineering and inspection fees and other expenses due;

(g) Written notice by the Fire Chief that the fire hydrants have been satisfactorily installed and tested; and

(h) Written certification by the applicant that all current real estate taxes and current installments of special assessments due on the property have been paid.

As used herein, "Written notice from the City Engineer" means that to the best of the knowledge and professional opinion of the City Engineer, the public improvements have been constructed in accordance with the improvement plans and specifications and that all improvements required by this chapter and as designated in the approved improvement plans have been installed. (Ord. 96-49. Passed 12-16-96.)

CHAPTER 1195
Storm Drainage

1195.01 Performance standards; charges.

1195.02 Applicability; exemption.

1195.01 PERFORMANCE STANDARDS; CHARGES.

No person, firm or corporation shall develop any real property as hereinafter described, or connect or cause to be connected any building or structure, either directly or indirectly, with a drain for the removal of surface, roof, ground or other water to be discharged into a ditch, swale, waterway, stream or an existing storm drainage system from any real property hereinafter described without complying with the following performance standards and paying the charges hereinafter set forth:

(a) For all developments to be improved within the City, a storm drainage system shall be designed and constructed by the developer using an on-site retardation basins and/or on-site underground storage facilities which shall reduce the developed storm water run-off from the development to seventy-five percent of the existing undeveloped storm water run-off using a ten-year design storm as set forth in the Uniform Standards for Sewage and Drainage Improvements as adopted by the Cuyahoga County Municipal Engineers most recent addition as embodied and codified as Appendix I.

(b) For all developments to be improved within the City a drainage charge per gross acre of area to be developed, prorated at the rate of one thousand one hundred dollars (1,100.00) per acre shall be charged by and paid to the City prior to the issuance of a building permit. The charges herein above provided shall be deposited into a special fund entitled "Storm Drainage Capital Improvement Fund" and shall be used only for the construction of storm drainage improvements within the City.

(c) Should the City require a developer, upon the recommendation of the City Engineer, to reduce the developed storm water run-off from the development to increase the minimum requirement set forth in subsection (a) hereof, in order to further reduce the peak storm water discharge to the City's drainage system, or to reduce the number of retardation basins to be constructed and maintained within the City, or to combine the storm water storage requirements for two or more developments in one retardation basin at a better site, the City may enter an agreement, through the Mayor, with the approval of Council, with the developer under the following conditions:

(1) On any on-site retardation basin and/or on-site underground storage facility, the City will set off the drainage charge set forth in subsection (a) hereof by an amount equal to the estimated construction costs, including the cost of extra land area, if any, to such developer for the construction of the enlarged retardation basin and/or underground storage facility which is over the estimated construction costs for the retardation basin and/or underground storage facility required under subsection (a) hereof. The estimated construction costs for both the retardation basin and/or underground storage facility required under subsection (a) hereof and the enlarged one(s) shall be determined by the City Engineer and the determination of the City Engineer shall be final.

(2) The maximum set-off in the drainage charge as set forth in subsection (a) shall not exceed one thousand one hundred dollars ($1,100.00) per acre of area to be developed.

(d) The owner of a parcel or lot of land, in excess of one acre, upon which is located a one-family residence and as long as used as a one-family residence thereafter, shall be required to pay the fee computed as provided herein for the erection thereto of an addition to the dwelling or the erection of a detached structure two times the square foot area plus any additional square foot area as determined by the City Engineer after a review of the site plan occasioned by more than average roof area, sidewalks, driveways or other improvements increasing run-off prorated on the basis of the present acreage charge at the time of the improvement.

(Ord. 95-94. Passed 1-16-96.)

1195.02 APPLICABILITY; EXEMPTION.

(a) This chapter shall be applicable to developers of land to be developed except where specifically exempted from the provisions of this chapter.

(b) Governmental agencies, in the development of land areas to be used for recreational purposes shall be exempt from the provisions of Section 1195.01(b).

(c) Any developer or owner of real property in the City having a tract of land consisting in area of five acres or more, may, with the approval of the Planning and Design Commission, develop the tract of land in phases provided that such developer or owner complies with the provisions and conditions of this chapter as they apply to the area of the real property to be developed in the phase approved for development by the Planning and Design Commission.

(d) All storm water drainage systems constructed and serving an area of real property to be developed within the City shall discharge into streams, ditches, or retardation basins or underground storage facilities as required by Section 1195.01.

(Ord. 95-94. Passed 1-16-96.)

CODIFIED ORDINANCES OF FAIRVIEW PARK

PART THIRTEEN - BUILDING CODE

TITLE ONE - Building Standards
Chap. 1303. Administration and Enforcement.
Chap. 1305. Registration of Contractors.
Chap. 1307. Permits and Fees.
Chap. 1309. Residential Code of Ohio.
Chap. 1313. Ohio Building Code.
Chap. 1315. National Electrical Code.
Chap. 1317. Surface Water and Grading.
Chap. 1319. Moving Buildings.
Chap. 1321. Swimming Pools.
Chap. 1323. Unsafe Structures.
Chap. 1325. Waste, Garbage and Junk.
Chap. 1329. Building Facings.
Chap. 1331. Smoke Detectors.
Chap. 1333. Flood Damage Prevention.
Chap. 1335. Portable Storage Units.
Chap. 1336. Soil Erosion and Sediment Control and Post Construction Water Quality Runoff.
Chap. 1337. Storm Water Quantity Management.
Chap. 1338. Illicit Discharge and Illegal Connection Control.
Chap. 1339. Riparian Setbacks and Wetland Setbacks.

TITLE THREE - Exterior Property Maintenance Code
Chap. 1341. Definitions.
Chap. 1343. General Provisions and Penalty.
Chap. 1345. Administration and Enforcement.
Chap. 1347. Owner and Operator Responsibilities.
Chap. 1349. International Property Maintenance Code.

TITLE FIVE - Housing Code
Chap. 1351. Definitions.
Chap. 1353. General Provisions.
Chap. 1355. Enforcement; Penalty.
Chap. 1357. Residential Occupancy Standards.
Chap. 1359. Certificate of Occupancy.
Chap. 1361. Condominiums.

CODIFIED ORDINANCES OF FAIRVIEW PARK

PART THIRTEEN - BUILDING CODE

TITLE ONE - Building Standards

Chap. 1303. Administration and Enforcement.
Chap. 1305. Registration of Contractors.
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Chap. 1309. Residential Code of Ohio.
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Chap. 1338. Illicit Discharge and Illegal Connection Control.
Chap. 1339. Riparian Setbacks and Wetland Setbacks.

CHAPTER 1303
Administration and Enforcement

1303.01 Enforcement.
1303.02 Stop orders.
1303.03 Revocation of permit.
1303.04 Civil action.
1303.05 Remedies cumulative.
1303.06 Building numbers.
1303.07 Workmanship.
1303.99 Failure to comply to an order; penalty.

CROSS REFERENCES

Board of Zoning and Building Appeals - see CHTR. Art. VII, §1
Power to regulate building erection - see Ohio R.C. 715.26, 715.29, 737.37
Division of Building, Building Commissioner, City Architect - see ADM. Ch. 133
Sidewalks and curbs - see S. U. & P. S. Ch. 903
Grading and excavating contractor's permit - see S. U. & P. S. Ch. 909

1303.01 ENFORCEMENT.

The provisions of this Building Code, including the codes herein adopted, shall be enforced by the Building Commissioner and/or Building Inspectors. No person shall interfere with the Building Commissioner or Building Inspectors while in the performance of their duties.

1303.02 STOP ORDERS.

Upon notice from the Building Commissioner that work on any building or structure is being done contrary to the provisions of this Building Code, or in a dangerous or unsafe manner, such work shall be immediately stopped. The notice shall be in writing and shall state the reason for stopping the work and the conditions under which the work may be resumed. Such notice shall be delivered to the owner of the property, his agent or the person in charge of the work at the site.

1303.03 REVOCATION OF PERMIT.

The Building Commissioner may revoke a permit or approval issued under the provisions of this Building Code when there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based.

1303.04 CIVIL ACTION.

Whenever any person, firm or corporation fails, neglects or refuses to comply with any order of the Building Commissioner under the provisions of this Building Code, or whenever any building or other structure is used or occupied so as to be in violation of or not in conformity with any provision of this Building Code, the Commissioner may, in his discretion, institute and maintain in the name of the City an appropriate action at law or in equity to restrain the execution in violation of this Building Code, to prevent the occupation or use of such building or other structure and to prevent or terminate any violation of this Building Code.

1303.05 REMEDIES CUMULATIVE.

The exercise of the rights and remedies granted in this Building Code shall in no way preclude or limit the City from exercising any other right or remedy now or hereafter granted to it under the laws of the State of Ohio or City ordinances.

1303.06 BUILDING NUMBERS.

(a) Assignment. The Building Commissioner is directed to assign all residences, apartments, stores, commercial buildings and all other buildings of the City a number. All numbers now in use upon a building within the City shall be deemed to be assigned in accordance with this section unless the occupant receives notice from the Commissioner that the number then in use is improper or incorrect, in which event the occupant shall thereafter use the corrected number assigned by the Commissioner in such notice.

(b) Display. Every owner, agent or occupant of any property to which a number has been assigned shall display prominently, so as to be capable of being seen from the opposite side of the abutting street, by legible digits, the number assigned or reassigned.

(c) Removal or Defacement. No person shall take down or deface any number put up in accordance with the provisions of this section or erect or retain any number other than that provided for under this section after due notice of such unlawful use.
(Ord. 73-52. Passed 6-18-73.)

1303.07 WORKMANSHIP.

(a) In addition to the provisions of the adopted Red Book Chapter 1309, and, further in addition to any amendments, additions or deletions to the adopted Red Book enacted by the City pursuant to Section 1309.04, all erection, construction, alteration and repair of one, two and three-family dwellings and appurtenant structures shall be performed in a workmanlike manner including but not limited to the following:

(1) All work shall be in compliance with those performance standards recognized by the applicable trade or industry.

(2) Walls shall be plumb, floors level and corners square within accepted standards and tolerances within the trade or industry, unless required by design to be otherwise.

(3) Plumbing lines shall be plumb, square and perpendicular within accepted standards and tolerances within the trade or industry, unless required by design to be otherwise.

(b) The mere fact that a particular erection, construction, alteration or repair is functional shall not give rise to a presumption that it has been performed in a workmanlike manner as discussed in subsection (a) hereof.

(c) Whoever violates any provision or fails to conform to any of the requirements of this section herein adopted or fails to comply with any order made thereunder or violates any detailed statement or specifications or plans submitted and approved thereunder, shall, severally for each and every such violation and noncompliance respectively, be fined not more than five hundred dollars ($500.00) or imprisoned not more than sixty days, or both. Each day's continued violation of this section shall constitute a separate offense.

(d) The application of the penalty provided in subsection (a) hereof shall not be held to prevent the enforced removal of prohibited conditions.
(Ord. 93-22. Passed 6-7-93.)

1303.99 FAILURE TO COMPLY TO AN ORDER; PENALTY.

Except as otherwise specifically provided for, whoever violates any provision of this Building Code or any provision of the Code herein adopted or fails, neglects or refuses to comply with any order of the Building Commissioner or authorized representative, issued under the powers of such office as stated in Section 133.01(a) of the Codified Ordinances, shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than six months, or both, for each offense. Each day's continued violation shall constitute a separate offense.
(Ord. 92-70. Passed 10-19-92.)

CHAPTER 1305
Registration of Contractors

1305.01 Registration requirement.
1305.02 Application for registration.
1305.03 Time and fee.
1305.04 Insurance.
1305.05 Bond.
1305.06 Registration by Building Commissioner.
1305.07 Revocation of registration.
1305.08 Notice of revocation/appeal.
1305.99 Penalty.

CROSS REFERENCES
Power to license electricians, plumbers, etc. - see Ohio R.C. 715.27
Grading and excavating contractors permit - see S. U. & P. S. Ch. 909

1305.01 REGISTRATION REQUIREMENT.

(a) No person, corporation, partnership, firm or other business association acting in the capacity of a contractor shall work at the trade or occupation of building, constructing, erecting, altering, repairing, painting, moving or demolishing any building or other structure, or do landscaping, tree surgery or tree forestry on the site thereof or any other site, or do any plaster work, mason work, brick laying, roofing work paving, fencing, unless such person, corporation, partnership, firm or other business association has been duly registered as a contractor with the Division of Building.

(b) No provision of this chapter shall be interpreted to require that a person, firm or corporation who is an owner or lessee of premises shall be registered to perform work upon such premises owned by such person, firm or corporation. Persons employed by the owner of the property in the capacity of a Building Custodian shall not be required to register or be otherwise subject to any provisions of this chapter. Such work shall be done in conformity with the provisions of the applicable building codes and no work shall be done unless all permits, inspections and approvals required by the applicable provision of the Building Code as secured.

(c) "Contractor", for the purpose of this chapter means any person, corporation, partnership, firm or other business association or any combination of the foregoing, who performs any work specified above for the consideration evidenced by an oral or written agreement. "Contractor", for purpose of this chapter, shall also mean any person, firm, corporation or other business association which negotiates a contract either written or oral for any work specified above, but does not perform physical labor to complete the work as set forth in the contract. No corporation, partnership, firm or other business associates shall engage in work for which a Certificate of Registration is required, unless at least one responsible member, officer or employee of such corporation, partnership, firm or other business association has been registered pursuant to this chapter. "Contractor" for the purpose of this chapter shall be limited to only those "contractors and sub-contractors" who by the nature of their work are required to obtain a permit for such work through the City of Fairview Park. All work performed by such corporation, partnership, firm or other business association shall be under the direct supervision of the registered person.

(d) A person, corporation, firm or other business association acting in the capacity of a contractor and performing more than one type of work as set forth in subsection (a) hereof, shall only be required to register once annually as a contractor regardless of the number and type of work performed.

(e) No permit required to be issued by the Division of Building, the Building Commissioner, any other person or by the provisions of any building code shall be issued for work undertaken except to a registered contractor, or as exempted pursuant to subsection (b) or (f) of this section.

(f) The provisions of this chapter shall not be interpreted or applied to require registration for officials or employees of Federal, State, County or Municipal governmental agencies or to employees of public utilities who engage in the installation, alteration, repair, maintenance or utilization of any device, appliance, installation or appurtenance forming part of the equipment for generation, transmission or distribution of any commodity or service which such public utility organization is authorized by law to furnish or provide, except that should work covered by the Building Code be contracted to outside concerns, then such contractors shall be registered, as provided herein. (Ord. 01-58. Passed 12-17-01.)

1305.02 APPLICATION FOR REGISTRATION.

(a) Applicants for registration shall make application for registration on a form provided by the Building Commissioner.

(b) If the application is for a firm, partnership, corporation or other business association, the application shall contain the names and addresses of all members or officers, as the case may be. The application shall also contain such other relevant information as the commissioner deems necessary.

(c) All applicants for registration and renewals thereof shall be kept on file in the Division of Building. (Ord. 01-58. Passed 12-17-01.)

1305.03 TIME AND FEE.

The registration shall be valid for one year after issuance. A fee of one hundred ten dollars ($110.00) shall be paid at the time of original issuance.

Ten dollars of the fee shall be allocated in an account for the Building Department use as deemed appropriate by the Building Commissioner.

(a) No person, corporation, partnership, firm or other business association required to be registered under the provisions of this chapter shall engage in the business of or act as a contractor except pursuant to a valid effective registration. (Ord. 09-51. Passed 10-5-09.)

1305.04 INSURANCE.

Every applicant for Certificate of Registration shall furnish evidence of insurance as approved by the Director of Law for bodily injury or death to persons in the amount of not less than the sum of three hundred thousand dollars ($300,000.00) to five hundred thousand dollars ($500,000.00), and in the amount of one hundred thousand dollars ($ l00,000.00) for property damage. The evidence of insurance shall name as an additional insured the City of Fairview Park and such insurance shall indemnify and save harmless the City against and from any and all loss, cost, damage, liability and expense on account of damage to property of the City or on account of injury or death of any of its employees, agents or representatives or of any third person. Certificates or memoranda of insurance shall be filed with the Building Commissioner evidencing that the insurance required by this section is in full force and effect.
(Ord. 01-58. Passed 12-17-01.)

1305.05 BOND.

When evidence discloses that the registrant has refused, failed or neglected to correct or abate violations of any applicable code or ordinance in performance of work done pursuant to a Certificate of Registration within a reasonable time after having been notified by the Building Commissioner, the Building Commissioner may require the registrant to furnish a performance bond in the amount of ten thousand dollars ($10,000.00) guaranteeing full and faithful compliance by the applicant with all provisions of any applicable code or ordinance of the City whenever the application for registration named as the principal on such bond refuses, neglects or fails to correct or abate such violation within a reasonable time set by the Building Commissioner.
(Ord. 01-58. Passed 12-17-01.)

1305.06 REGISTRATION BY BUILDING COMMISSIONER.

(a) Upon receipt of a properly completed application form, the Commissioner shall register the applicant in a journal kept for that purpose, and shall issue to the registrant a Certificate of Registration valid for 1 (one) year from the date of issuance.
(Ord. 09-51. Passed 10-5-09.)

(b) No person, corporation, partnership, firm or other business association shall, acting in the capacity of a contractor, engage in heating and/or refrigeration and/or air conditioning work, electrical work, plumbing work or sewer building, without first obtaining a registration for each trade from the Building Commissioner. For the purpose of this section "contractor and subcontractor" need not be an employer.

(c) Contractors registered pursuant to this section shall warrant and shall be presumed to have warranted that all work performed and all materials to be supplied by contractor are in compliance with all applicable ordinances of the City.

(d) Prior to the issuance of a registration the Building Commissioner shall require an applicant (subcontractor or general contractor) to furnish the following:

(1) Written evidence of insurance as required by Section 1305.04.

(2) Plumbing, sewer building, electrical and heating contractors shall be required to show proof that they are qualified to perform such work as required by their respective trade. Plumbers, electricians heating and/or air conditioning contractors (including hydronics) shall provide the Building Commissioner with copies of their license from an Ohio state agency.

(e) Federal I.D. number of social security number.

(f) Evidence of registration with R.I.T.A.

(g) The fee for registration shall be the same as set forth in Section 1305.03.

(h) Written evidence of the bond required by Section 1305.05.
(Ord. 01-58. Passed 12-17-01.)

1305.07 REVOCATION OF REGISTRATION.

The Building Commissioner may disapprove or revoke any Certificate of Registration or renewal thereof issued under provisions of this chapter for one or several following reasons:

(a) Misrepresentation of a material fact by the applicant in obtaining the Certificate of Registration or renewal thereof.

(b) The use of the Certificate of Registration by the registrant in obtaining a building permit for work to be performed by a contractor or builder other than the registrant.

(c) Violation of or noncompliance with any provision of any applicable code or ordinance of the City in the performance of any work done pursuant to the Certificate issued hereunder.

(d) Failure to abate a violation or noncompliance with any provision of any applicable code or ordinance of the City within the time specified in the written notice of such violation or noncompliance.

(e) Upon a determination by the Building Commissioner that the applicant or registrant has emerged in a course of conduct calculated to induce owners and/or tenants of property or their authorized agents, to enter into a contractual relationship for labor and/or materials through misrepresentation of labor costs or that the materials used complied with all applicable ordinances of the City in which such misrepresentation was made.

For the purpose of this section (e) "course of conduct" is defined as two or more separate instances of misrepresentation occurring during any twelve month period.
(Ord. 01-58. Passed 12-17-01.)

1305.08 NOTICE OF REVOCATION/APPEAL.

In the event the application for a certificate is not approved, or in the event any certificate issued under this chapter is revoked, the applicant shall be notified of the refusal or revocation in writing and such notice shall be sent by certified mail to the applicant at the address of the applicant as set forth in the application for a certificate. The applicant shall have thirty days after the receipt of such notice to appeal such refusal or revocation. Such appeal shall be perfected by filing a written notice of the appeal with the Board of Zoning and Building Appeals. Thereupon, the applicant shall have not less than ten (10) days written notice of the date and place of the hearing. The appeal shall be heard by the Board who shall have the power after such hearing to either affirm or overrule the decision of the commissioner. The Board shall cause notice of its decision to be sent by certified mail to the applicant as set forth in the application within thirty (30) days of the date of the hearing. (Ord. 01-58. Passed 12-17-01.)

1305.99 PENALTY.

(a) Whoever violates any provision of this chapter on a first offense shall be guilty of a misdemeanor of the third degree.

(1) Fines for misdemeanors of the third degree shall not be more than five hundred dollars ($500.00)

(2) Terms of imprisonment for misdemeanors of the third degree shall not be more than sixty days.

(b) If the offender has been previously convicted of any violation of this chapter, such second or subsequent offense shall constitute a misdemeanor of the second degree.

(1) Fines for misdemeanors of the second degree shall not be more than seven hundred and fifty dollars ($750.00).

(2) Terms of imprisonment for misdemeanors of the second degree shall not be more than ninety days.

(Ord. 01-58. Passed 12-17-01.)

(NOTE: The next printed page is page 15.)

CHAPTER 1307
Permits and Fees

1307.01 Plan examination.
1307.02 Plan examination fees.
1307.03 Permits.
1307.04 General building and construction permit fees.
1307.05 Plumbing permit; fees.
1307.06 Electrical permit fees.
1307.07 Heating and air conditioning permit fees.
1307.08 Miscellaneous permit fees.
1307.09 Review.

CROSS REFERENCES
Street cleaning permits - see S.U.& P.S. 909.02
Sign permits - see P.& Z. 1145.08
Zoning permit requirements - see P.& Z. 1149.02 et seq.
Building numbers - see BLDG. 1303.06
Building tradesman registration fee - see BLDG. 1305.03

1307.01 PLAN EXAMINATION.

(a) Before commencing with the erection, construction, building, alteration, addition or repair of any building or structure or any part thereof, appropriate applications for plan approval shall be made in writing on forms provided by the Building Commissioner by the owner, applicant, accompanied by plans, drawings, specifications, other pertinent data and complete information of work to be done together with a satisfactory estimate of the cost of the work for which the application is made and marked thereon. No unfigured or incomplete applications shall be accepted.

(b) The Building Commissioner shall review the application for compliance to the Building and Zoning Codes. Those plans requiring grading or improvements for residential (new home) and commercial (new construction or addition) shall be referred to the City Engineer for review and approval.

(c) The Building Commissioner may submit the application, with plans, drawings, specifications and other pertinent data to the Planning and Design Commission for their advice when, in the opinion of the Building Commissioner, such will aid the Commissioner in acting upon an application. The provisions hereof are in addition to any approval required by the Commission by any law or ordinance of the City.

(d) The applicant shall be required within twenty-four hours of submittal of the application to post a sign, furnished by the City, stating the nature of the work to be done, the date plans submitted and address where the permit is requested. The sign shall be located in a visible place so as to be legible from the front lot line for a period of ten days during which time the application shall remain on file in the Division of Building for public inspection. At the end of this ten-day period, the applicant shall obtain a building permit and permit posting card. The posting card is to be prominently displayed during construction.

(e) Plan examination fees are payable to the Building Commissioner at the time the application is submitted. If plans are withdrawn, they may be resubmitted within a six-month period without the payment of an additional fee. No plan examination fee is refundable.

(f) The 10-day posting period subject to review shall apply to new construction, structural alterations, accessory, and yard structures.

(g) If an application is not approved, the applicant shall be advised as to the reasons of the disapproval.
(Ord. 05-62. Passed 12-19-05.)

1307.02 PLAN EXAMINATION FEES.

(a) As used in this chapter, floor areas shall be calculated from outside dimensions and shall include basement floor, each finished floor, attached garage, accessory buildings, breezeways and any structure or portion thereof.

(b)	Residential Construction Plan Exam.		
	(1)	One and two family	$175.00
	(2)	State approved industrialized units	100.00
	(3)	Multi-family (up to three units)	300.00
		Deposit for grade approval (up to three units)	300.00
	(4)	Additions/remodeling/repair/alteration (per 100 square feet of floor area or fraction thereof)	10.00
	(5)	Fences	15.00
	(6)	Miscellaneous (all other items for which plans are submitted and not listed above)	15.00
(c)	Nonresidential Construction Plan Exam.		
	(1)	Per 100 square feet of floor area (per 100 square feet of floor area or fraction thereof)	10.00
	(2)	State approved industrial unit	100.00
	(3)	Multi-family (over three units)	300.00
		Plus: For each unit in excess of three per unit	75.00
	(4)	Fire Alarms	75.00

(5) Hood/Suppression $75.00
(6) Fire Sprinkler (Remodel) 100.00

(d) Nonresidential Procedures.

(1) Review of application. All applications for building permits with related documents and accompanying drawings, renderings, data and material samples to be used, shall be submitted to the Building Commissioner. After processing for conformance to the Building and Zoning Codes, the Commissioner shall submit to the secretary of respective Boards and Commissions. The secretary shall then refer the plans to:

A. City Engineer. The City Engineer shall examine the application and plans. A survey shall be made of the public sanitary and storm sewers along with grade elevations to be affected by the proposed building or use set forth in the application. The opinion of the City Engineer concerning the application shall be noted in writing and returned to the Building Commissioner.

Deposit for sewer evaluation $300.00
Deposit for grade approval 500.00

B. Fire Chief. The Fire Chief shall determine whether the application, specifications and plans conform to the Fire Prevention Code. If such conform, the opinion of the Fire Chief shall be noted on the application and return it to the secretary of the Boards and Commissions.

C. Police Chief. The Police Chief shall examine the application for ingress and egress to the property, site security and exterior lighting as such relate to police surveillance. Opinion shall be noted on the application and return it to the secretary of the Boards and Commissions.

(2) Secretary of the Boards and Commissions. After receiving the approvals and opinions of those persons enumerated in subsection (d)(l)A., B. and C. hereof, the secretary shall submit the application to the Planning and Design Commission as provided in Chapter 1149 of the Codified Ordinances. The secretary shall note the opinion of the Planning and Design Commission on the application and return same to the Building Commissioner.

A. Boards and Commissions Fees.

1. Board of Zoning and Building Appeals $75.00
2. Planning and Design Commission 110.00
3. Special meetings of Board of Zoning and Building Appeals or Planning and Design Commission 200.00

(3) City Architect. The City Architect shall examine the application, plans, specifications and other pertinent data. If in conformity with the applicable codes and ordinances of the City, approval shall be noted on the application and return same to the Building Commissioner. The fees of the City Architect are established and are to be paid according to contract.

(4) The Building Commissioner shall issue a building permit provided all of the provisions of Section 1149.05(f) and (g) have been met and all required fees paid.

(Ord. 05-62. Passed 12-19-05.)

1307.03 PERMITS.

(a) Permits. After application/plans have been approved by the Building Commissioner, the applicant, owner or agent shall secure all building permits by paying the required permit fees to the Building Commissioner prior to the issuance of permit(s).

(1) If homeowner is acting as a general contractor, all subcontractors shall be registered.

(2) In addition, any contractor or subcontractor shall be registered as required by Chapter 1305.

(b) Fees Doubled. When necessary permit(s), registration are not obtained before the start of work, the fee(s) shall be doubled.

(c) Re-Inspection Fees. If an inspection is requested and for any reason the work is found unsatisfactory or incomplete a fee shall be assessed as follows:

(1)	Non Residential/Multifamily	$50.00 (over 3 units)
(2)	Residential	35.00

Payment of reinspection fees does not relieve any person from fully complying with requirements of the Building and Housing Code. All reinspection fees shall be paid prior to issuance of a certificate of occupancy.

(d) Fee Refund. If the applicant does not proceed with plans, the applicant may, upon written request to the Building Commissioner, be refunded the building permit fee paid by such applicant.

(e) Permit Time Limitation. If after a permit has been issued, the building or structure, whether of a new construction or of an addition to an existing structure, is not completed within twelve months of the date of issuance of permit, or if the construction work is discontinued for any reason for a period of six months, the permit shall become void. Before work is resumed, a new permit shall be taken out by the owner or their agent and an additional fee(s) shall be paid. The additional fee(s) shall be of the same amount as previously paid under this chapter for the original permit. This section shall apply to all permits presently issued.

If after one year, no construction has begun on a piece of property and no new building permit has been secured, all building materials, supplies and utility boxes shall be removed immediately.

(f) Deposits and Refunds.

(1) Deposits, as required, are for the purpose of defraying various costs incurred by City employees in connection with the project.

(2) Deposit balances shall be reviewed quarterly by the Building Commissioner.

(3) Any unused portion of deposits made shall be refunded to the depositor upon approval of the Building Commissioner and the Director of Finance.

(g) Cash Deposit for Completion of Grading.

(1) In lieu of finished grade completion prior to occupancy, because of weather conditions, a two thousand dollar ($2,000) cash deposit/bond shall be required for guaranteeing the completion of the finished grade within six (6) months of granting temporary occupancy. If not graded within six (6) months, the City or owner has the authority to contract for the finish grade and to pay out of the above funds all necessary contracting and inspection fees. If any funds remain, they will be dispersed to the one who put up the deposit.

(2) Grading by City contract will be paid out of the deposit. If costs exceed the cash/bond, the overage will be charged to the owner of record. The owner shall have thirty (30) days which to pay such expense, and if it is not paid at the expiration of the thirty (30) day period, the cost shall there upon constitute a lien upon the lot and land so benefitted and a tax is levied therefor. The Finance Director shall certify such lien to the County Auditor.

(h) Fee Waived. Building permit fee shall be waived for all public buildings, schools, and libraries.

(Ord. 05-62. Passed 12-19-05.)

1307.04 GENERAL BUILDING AND CONSTRUCTION PERMIT FEES.

(a) Floor area shall be calculated from outside dimensions and shall include basement finished area, each finished floor, attached garages, accessory buildings, breezeways, patios, porches, decks and any enclosed structure or portion thereof.

(b) The permit fee for residential/non residential construction includes new, alterations, remodeling, additions and repair.

(c) In addition to the fee required by this section, the necessary permit fees for sewer, plumbing, electrical, heating and air conditioning, etc., as may be required to complete the construction shall be added.

(d) The permit fee for all new construction for residential or nonresidential additions remodeling, alterations and repairs shall be:

Base fee	$ 100.00
Plus: Per 100 square feet of floor area or fraction thereof	10.00
Or	
Per $1,000 valuation (whichever is greater)	4.00
(e) State approved Industrialized Unit (Residential or Commercial)	150.00
(f) Kitchen/Bath Remodel	25.00
(g) Occupancy Permits	
(1) Residential	25.00
(2) Non-Residential	75.00

(Ord. 05-62. Passed 12-19-05.)

1307.05 PLUMBING PERMIT; FEES.

A base fee for any new work, alteration or repairs shall be as follows with the additional fees specified herein to be added as required:

(a)	Base fee	$100.00
(b)	Each plumbing fixture or opening	3.00
(c)	Gas and water lines per 100 feet or fraction thereof	10.00
(d)	Drain, waste and vent pipe per 100 lineal feet or fraction thereof	10.00
(e)	Water heaters (base fee excluded for replacement)	25.00
(f)	Testable backflow	40.00
(g)	Misc. Plumbing (general repair)	40.00
	Plus: Each fixture or opening	3.00

(Ord. 10-17. Passed 6-8-10.)

1307.06 ELECTRICAL PERMIT FEES.

A base fee for any electrical work shall be as follows with the additional fees specified herein to be added as required:

(a)	Residential: base	$100.00
	Plus: For each lighting and receptacle outlet	3.00
(b)	Nonresidential: base	150.00
	Plus: For all motors and other electrically connected equipment per installation	15.00
	Plus: For each lighting and receptacle outlet	3.00
(c)	Temporary service	50.00
(d)	Fire Alarms	125.00
(e)	Misc. Electric (general repair)	40.00
	Plus: Each lighting and receptacle outlet	3.00
(f)	Panel change (base fee excluded for replacement)	40.00
(g)	Requested special inspections	75.00

(Ord. 10-17. Passed 6-8-10.)

1307.07 HEATING AND AIR CONDITIONING PERMIT FEES.

(a) A base fee for any heating or cooling work shall be as follows with the additional fees specified herein to be added as required:

(1)	Residential: base	$ 100.00
	Plus: For each additional unit	75.00
	For each Replacement or conversion	75.00
(2)	Nonresidential: base	150.00
	Plus: For each additional unit	75.00

(b) Air Conditioning.

(1)	Residential	$50.00
(2)	Nonresidential	75.00

(c) Heat Pump/Combination Units.

(1)	Residential	$75.00/unit
(2)	Nonresidential	75.00/unit

(d) Ventilation System. Each (nonresidential) 75.00/unit

(e) Refrigeration (nonresidential including walk-in coolers) 50.00/unit

(f) Hood.

(1)	Type I	75.00
(2)	Type II	50.00

(g) Suppression for Type I Hoods. 50.00

(Ord. 10-17. Passed 6-8-10.)

1307.08 MISCELLANEOUS PERMIT FEES.

(a) Demolition.

(1)	One, two or multi-family	$100.00
	Plus: Street cleaning deposit and fee	
(2)	Accessory building	25.00
(3)	Nonresidential one story building (Main Use)	500.00
	Plus: For each additional story	50.00
	Plus: Street cleaning deposit and fee	
(4)	Interior Residential	25.00
(5)	Interior Nonresidential	75.00

(b) Moving of Building or Structure.

(1)	Building on same lot or onto an adjacent lot	100.00
(2)	On or across a public thoroughfare	1,000.00
	Plus: Deposit of $ 10,000	
	Plus: Bond of $50,000	
	Plus: Insurance as required by Chapter 1319	

(c) Paving.

(1)	Nonresidential (Parking Lots)	100.00

(d) Swimming Pools.

(1)	Above ground (includes electrical)	75.00
(2)	In ground (includes electrical)	150.00

(e)	Sidewalks, Aprons, Driveways, Patios.			
	(1)	New (Residential and nonresidential)	$50.00	
	(2)	Repair (Residential and nonresidential)	25.00	
(f)	Fences.			
	(1)	Residential	35.00	
	(2)	Nonresidential	75.00	
(g)	Signs.			
	(1)	Base (Non Electric)	50.00	
		Plus: Per square foot	1.00	
	(2)	Base (Electric)	100.00	
		Plus: Per square foot	1.00	
(h)	Street Cleaning.			
	(1)	Permit	75.00	
		Plus: Deposit	250.00	
(i)	Street Openings.			
	(1)	Inspection fee	100.00	
		Plus: Deposit	250.00	
		(The deposit of $250.00 may be increased by the City Engineer in accordance with the provisions of Chapter 901 of the Codified Ordinances.)		
(j)	Curb Cuts.			
	(1)	New work, up to 15 feet	75.00	
		Plus: For each additional foot	5.00	
	(2)	Widening existing cuts, up to 5 feet	25.00	
		Plus: For each additional foot	5.00	
(k)	Grade Setting and Drainage.			
	(1)	Inspection of property grade and drainage	150.00	
		Plus: Deposit (Chapter 1317)	500.00	
(l)	Tanks (Other than Water)		100.00	
(m)	Sanitary Sewer: Readiness to Serve.			
	(1)	Residential		
		Single family		750.00
		Multi-family each family unit		
		1 bedroom	550.00	
		Each additional bedroom	100.00	
	(2)	Nonresidential		
		Fee determined by City Engineer (Chapter 911 of the Codified Ordinances.)		

(n)	Direct Broadcast Satellite Receiving Station (over Two Feet in Diameter).	50.00
(o)	Recreational Vehicle. Park and store in residential areas	50.00
(p)	Fire Places/Inserts/Woodstoves.	
	(1) Masonry construction	50.00
	(2) Manufactured type	35.00
(q)	Fire Sprinkler System (New).	150.00
	Plus: For each additional head	2.00
(r)	Fire Sprinkler System (Alteration/Repair).	100.00
	Plus: For each additional head	2.00
(s)	Any item not otherwise indicated herein for which a permit is required (decks, roofs, siding, aluminum/vinyl trim, sheds & windows, etc.).	40.00
(t)	Apartment license fees as set in Codified Ordinance Section 707.02.	
(u)	Waterproofing/Watercontrolling.	75.00
(v)	Lawn sprinkler systems (includes backflow)	75.00
(w)	Sanitary and storm sewers: (replacement or new)	75.00
(x)	Sheds	25.00

(Ord. 10-17. Passed 6-8-10.)

1307.09 REVIEW.

The provisions of this chapter shall be reviewed by the Building Commissioner and Council every three years in order to modify, alter or update its provisions or application if necessary or desired.

(Ord. 05-62. Passed 12-19-05.)

CHAPTER 1309
Residential Code of Ohio

1309.01 Adopted; purpose.
1309.02 File and distribution copies.
1309.03 Definitions.

1309.01 ADOPTED; PURPOSE.

(a) The Residential Code of Ohio as adopted and amended by the Ohio Board of Building Standards, Department of Commerce, published in Division 4101:8 et seq. of the Ohio Administrative Code (OAC) is hereby adopted and shall be in full force and effect within the City in its most recent edition.

(b) The Residential Code of Ohio is hereby adopted for the purpose of regulating the fabrication, erection, construction, enlargement, alteration, repair, location and use of detached one, two and three family dwellings, their appurtenances and accessory structures and providing for the issuance of plan approval theretofore and providing penalties for the violations thereof.
(Ord. 11-44. Passed 11-21-11.)

1309.02 FILE AND DISTRIBUTION COPIES.

One copy of the Residential Code of Ohio, as adopted herein, shall be on file with the Building Commissioner and the Clerk of Council for inspection by the public. In addition, the Clerk of Council shall have copies available for sale to the public, at cost.
(Ord. 05-08. Passed 3-21-05.)

1309.03 DEFINITIONS.

Wherever titles, words and phrases are used in the provisions of the adopted Residential Code of Ohio, such terms shall be construed to mean the equivalent officer, word or phrase applicable to the City.
(Ord. 05-08. Passed 3-21-05.)

(Editor's Note: The next printed page is page 31.)

CHAPTER 1313
Ohio Building Code

1313.01 Adoption.
1313.02 Purpose.
1313.03 Scope.
1313.04 Compliance.
1313.05 Existing structures.
1313.06 Orders and violations.
1313.07 Unsafe buildings.
1313.08 Conflict.
1313.09 Enforcement.
1313.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law
Removal of unsafe structures - see Ohio R.C. 715.26(B), 715.261
Power to enact further and additional regulations - see Ohio R.C. 3781.01
Authorization by Board of Building Standards - see Ohio R.C. 3781.12
Enforcement - see Ohio R.C. 3781.03, 3781.031, 3781.10(E), 3781.102, 3781.19
Final jurisdiction - see Ohio R.C. 3781.04
Application - see Ohio R.C. 3781.06, 3781.10(E), 3781.11(A)
Submission of plans - see Ohio R.C. 3791.04
Dead bolt locks in apartment buildings - see Ohio R.C. 3781.103
Smoke detection system for apartments and condominiums - see Ohio R.C. 3781.104
Automatic sprinkler systems - see Ohio R.C. 3781.105, 3791.041 et seq.
Fire suppression systems - see Ohio R.C. 3781.108
Use of public buildings by handicapped persons - see Ohio R.C. 3781.111
Abandoned service stations - see Ohio R.C. 3791.11 et seq.
Safety standards for refuse containers - see Ohio R.C. 3791.21

1313.01 ADOPTION.

There is hereby adopted by the Municipality, the Ohio Building Code (OBC) and related codes as adopted and amended by the Ohio Board of Building Standards, Department of Commerce, and as published in Division 4101:1 et seq. of the Ohio Administrative Code (OAC). (Ord. 11-44. Passed 11-21-11.)

1313.02 PURPOSE.

The purpose of the Ohio Building Code is to establish uniform minimum requirements for the erection, construction, repair, alteration, and maintenance of buildings, including construction of industrialized units. Such requirements shall relate to the conservation of energy, safety, and sanitation of buildings for their intended use and occupancy with consideration for the following:

(a) Performance. Establish such requirements, in terms of performance objectives for the use intended.

(b) Extent of Use. Permit to the fullest extent feasible, the use of materials and technical methods, devices, and improvements which tend to reduce the cost of construction without affecting minimum requirements for the health, safety, and security of the occupants of buildings without preferential treatment of types or classes of materials or products or methods of construction.

(c) Standardization. To encourage, so far as may be practicable, the standardization of construction practices, methods, equipment, material and techniques, including methods employed to produce industrialized units.

The rules of the Board of Building Standards and proceedings shall be liberally construed in order to promote its purpose. When the Building Official finds that the proposed design is a reasonable interpretation of the provisions of this Code, it shall be approved. Materials, equipment and devices approved by the Building Official pursuant to Section 114 of the Ohio Building Code shall be constructed and installed in accordance with such approval.
(OBC 101.3)

1313.03 SCOPE.

(a) Application and Compliance. The provisions of the Ohio Building Code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures. As provided in Section 3791.04(B) of the Ohio Revised Code, no plans or specifications shall be approved or inspection approval given unless the building represented by those plans or specifications would, if constructed, repaired, erected or equipped according to those plans or specifications, comply with Chapters 3781 and 3791 of the Ohio Revised Code and any rules adopted by the Board.

An owner may exceed the requirements of the Ohio Building Code in compliance with Section 102.9 of the Ohio Building Code.

(b) Exceptions.

(1) The Ohio Building Code applies to detached one-, two-, and three-family dwellings and structures accessory to those dwellings, only to the extent indicated in Section 310 of the Ohio Building Code;

(2) Buildings owned by and used for a function of the United States Government;

(3) Buildings or structures which are incident to the use for agricultural purposes of the land on which said buildings or structures are located, provided such buildings or structures are not used in the business of retail trade; for the purposes of this section, a building or structure is not considered used in the business of retail trade if fifty percent or more of the gross income received from sales of products in the building or structure by the owner or operator is from sales of products produced or raised in a normal crop year on farms owned or operated by the seller (see Ohio R.C. 3781.06 and 3781.061);

(4) Agricultural labor camps;
(5) Type A or Type B family day-care homes;
(6) Buildings or structures which are designed, constructed, and maintained in accordance with federal standards and regulations and are used primarily for federal and state military purposes where the U.S. Secretary of Defense, pursuant to 10 U.S.C. Sections 18233(A)(1) and 18237, has acquired by purchase, lease, or transfer, and constructs, expands, rehabilitates, or corrects and equips, such buildings or structures as he determines to be necessary to carry out the purposes of Chapter 1803 of the U.S.C.
(7) Manufactured homes constructed under "24 CFR Part 3280", "Manufactured Home Construction and Safety Standards", and within the scope of the rules adopted by the Ohio Manufactured Home Commission.
(8) Sewerage systems, treatment works, and disposal systems (including the tanks, piping and process equipment associated with these systems), regulated by the legislative authority of a municipal corporation or the governing board of a county or special district owning or operating a publicly owned treatment works or sewerage system as stated in division (A) of Ohio R.C. 6111.032.
(9) Building sewer piping.
(10) Portable electric generators and wiring supplying carnival and amusement park rides regulated by the Ohio Department of Agriculture.
(11) Structures directly related to the operation of a generating plant or major utility facilities regulated by the Power Siting Board.
(OBC 101.2)

1313.04 COMPLIANCE.

(a) No owner or any other person shall construct, erect, build or equip any building or structure to which the Ohio Building Code is applicable, or make any addition thereto or alteration thereof, except in case of repairs for maintenance without affecting the construction, sanitation, safety or other vital feature of such building or structure, without complying with this chapter, Ohio R.C. Chapters 3781 and 3791 or the Ohio Building Code, or fail to comply with any lawful order issued pursuant thereto.
(ORC 3791.01, 3791.02)

(b) No architect, builder, engineer, plumber, carpenter, mason, contractor, subcontractor, foreman or employee shall violate or assist in violating this chapter, Ohio R.C. Chapters 3781 and 3791 or the Ohio Building Code, or fail to comply with any lawful order issued pursuant thereto.
(ORC 3791.01, 3791.03)

(c) No owner shall proceed with the construction, erection, alteration or equipment of any building to which the Ohio Building Code is applicable until the plans or drawings, specifications, and data have been approved as Ohio R.C. 3791.04 requires, or the industrialized unit inspected at the point of origin. No plans or specifications shall be approved or inspection approval given unless the building represented would, if constructed, repaired, erected, or equipped comply with Chapters 3781 and 3791 of the Ohio Revised Code and any rule made under those chapters. (ORC 3791.04)

1313.05 EXISTING STRUCTURES.

The provisions of Chapter 34 of the Ohio Building Code shall control the alteration, repair, addition and change of occupancy of any existing structure.

The occupancy of any structure currently existing on the date of adoption of this Code shall be permitted to continue without change provided there are no orders of the Building Official pending, no evidence of fraud, or no serious safety or sanitation hazard. When requested, such approvals shall be in the form of a "Certificate of Occupancy for an Existing Building" in accordance with Section 111.2 of the Ohio Building Code.

Buildings constructed in accordance with plans which have been approved prior to the effective date of this Code are existing buildings.
(OBC 102.7)

1313.06 ORDERS AND VIOLATIONS.

(a) Adjudication Orders Required. When the Building Official denies any approval or takes action in response to findings of non-compliance, such action shall be initiated by issuing an adjudication order, prior to seeking any remedy, civil or criminal. Every adjudication order shall:

(1) Clearly identify the section of law or rules violated.

(2) Clearly identify, in a contrasting and obviously marked manner, all violations related to accessibility.

(3) Specifically indicate which detail, installation, site preparation, material, appliance, device, addition, alteration to structures, construction documents, assemblages or procedures are necessary to change to comply with the order.

(4) When issued to stop work, the order shall also clearly indicate the specific work that is required to cease, when the work must cease and the conditions under which the cited work will be permitted to resume. The order to stop work shall be given to the owner of the property involved, to the owner's agent and the person doing the work.

(5) Include notice of the procedure for appeal and right to a hearing if requested within thirty days of the mailing of the order. The order shall also indicate that, at the hearing, the owner may be represented by counsel, present arguments or contentions orally or in writing, and present evidence and examine witnesses appearing for or against the owner.

(6) Any hearing(s) scheduled for accessibility issues shall cause the Building Official or the appeals board to notify a local advocate organization for people with disabilities of the scheduled hearing. When a local advocate organization is not available, a state organization representing people with disabilities, such as the "Governor's Council on People with Disabilities" shall be notified.

(7) Specify a reasonable period of time in which to bring the item(s) on the order into compliance.

(8) Include the signature of the Building Official.

(9) The order shall be sent by certified mail, return receipt requested, to the owner and any individual designated as a representative or agent by the owner in such matters.

(b) Response to Orders. The person receiving an order shall exercise their right to appeal within 30 days of the mailing of the order, comply with the order, or otherwise be released from the order by the Building Official.

(c) Prosecution and Penalties. When an owner fails to comply with subsection (b) hereof, the owner may be prosecuted and is subject to the penalty provided in Section 1313.99.

(d) Unlawful Continuance. Failure to cease work after receipt of an order to stop work is hereby declared a public nuisance. (OBC 109)

1313.07 UNSAFE BUILDINGS.

(a) Unsafe Buildings Defined. Structures or existing equipment that are unsafe or unsanitary due to inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life, shall be deemed a serious hazard. Where a building is found to be a serious hazard, such hazard shall be eliminated or the building shall be vacated, and where such building, when vacated, remains a serious hazard, it shall be razed.

(b) Orders, Injunction Proceedings. Where the Building Official finds that a building is a serious hazard and the owner of such building fails, in the time specified in an order from the Building Official, to eliminate such hazard, or to vacate or raze the building, the building official shall proceed under Ohio R.C. 3781.15.

(c) Restoration. Where the structure or equipment is determined to be unsafe by the Building Official, it is permitted to be restored to a safe condition. To the extent that repairs, alterations or additions are intended to be made or a change of occupancy occurs during the restoration of the structure, such repairs, alterations, additions or change of occupancy shall comply with Chapter 1 and 34 of the Ohio Building Code and this chapter.
(OBC 109)

1313.08 CONFLICT.

(a) General. Where, in any specific case, different sections of the Ohio Building Code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

(b) Other Laws. The provisions of the Ohio Building Code shall not be deemed to nullify any provisions of state or federal law. The Municipality may make further and additional regulations, not in conflict with Ohio R.C. Chapters 3781 and 3791 or with the rules of the Board of Building Standards. However approval by the Board of Building Standards of any fixture, device, material, system, assembly or product of a manufacturing process, or method or manner of construction or installation shall constitute approval for their use anywhere in Ohio.

(c) Other Rules. As provided in division (B) of Ohio R.C. 3781.11, the rules of the Board of Building Standards shall supersede and govern any order, standard or rule of the Divisions of State Fire Marshal or Industrial Compliance in the Department of Commerce, and the Department of Health and of counties and townships, in all cases where such orders, standards or rules are in conflict with the rules of the Board of Building Standards, except that rules adopted and orders issued by the Fire Marshal pursuant to Ohio R.C. Chapter 3743 prevail in the event of a conflict.

The rules of the Board of Building Standards adopted pursuant to Ohio R.C. 3781.10 shall govern any rule or standard adopted by the Board pursuant to Ohio R.C. 4104.02 and 4105.011.
(OBC 102)

1313.09 ENFORCEMENT.

(a) Building Official. The Building Official is responsible for the enforcement of the rules of the Board and of Ohio R.C. Chapters 3781 and 3791 relating to the construction, arrangement, and the erection of buildings or parts thereof. All building officials shall conduct themselves in a professional, courteous, impartial, responsive, and cooperative manner. Building officials shall be responsible to assure that a system is in place to track and audit all projects, to assure that all Building Department personnel perform their duties in accordance with this section, and for the overall administration of a Building Department as follows:

(b) Applications and Plan Approvals. The Building Official shall receive applications, require or cause the submitted construction documents to be examined, ascertain by such examinations whether the construction indicated and described is in accordance with the requirements of this Ohio Building Code, and shall issue plan approvals for the construction, erection, alteration, demolition and moving of buildings and structures.

(c) Plan Examination by the Building Official. When the Building Department does not have in its full-time employ a certified master plans examiner, the certified Building Official shall examine construction documents to determine compliance with the rules of the Board if the registered design professional elects to submit construction documents that contain a written certification by the registered design professional indicating conformance with the requirements of the rules of the Board and Ohio R.C. Chapters 3781 and 3791.

(d) Orders. The Building Official shall issue all orders in accordance with Section 1313.06 to ensure compliance with the Ohio Building Code.

(e) Inspections.

(1) If the plans for the erection, construction, repair, alteration, relocating, or equipment of a building are subject to inspection by the Building Official, under Section 108 of the Ohio Building Code, the Building Official shall cause to be made such inspections, investigations, and determinations as are necessary to determine whether or not the work which has been performed and the installations which have been made are in conformity with the approved construction documents.

(2) Special inspections are as required under Section 1704 of the Ohio Building Code.

(f) Department Records. The Building Official shall keep official records of applications received, certificate of plan approvals issued, notices and orders issued, certificates of occupancy, and other such records required by the rules of the Board of Building Standards. Such information shall be retained in the official permanent record for each project. One set of approved construction documents shall be retained by the Building Official for a period of not less than one hundred eighty days from date of completion of the permitted work, or as required by document retention regulations.

(g) Liability. Liability of certified Building Department personnel for any tortious act will be determined by Ohio courts to the applicable provisions of Ohio R.C. Chapter 2744.

1313.99 PENALTY.

Whoever violates any provision of this chapter or any Code adopted herein or fails to comply with any lawful order issued pursuant thereto is guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than six months or both. Each day during which noncompliance or a violation continues shall constitute a separate offense. The Municipality may institute injunction proceedings in Common Pleas Court to abate the nuisance of failure to cease work after receipt of a stop work order.

CHAPTER 1315
National Electrical Code

1315.01 Adoption; purpose.

CROSS REFERENCES
Power to license electricians - see Ohio R.C. 715.27
Adoption by reference - see Ohio R.C . 731.231
Electrical permit fees - see BLDG. 1307.06
Housing electrical facilities - see BLDG. 1357.16

1315.01 ADOPTION; PURPOSE.

(a) Pursuant to the provisions of Ohio R.C. 731.231, there is hereby adopted by the City, for the purpose of governing and regulating electrical installations in dwelling units, multi-family dwelling units, and accessory structure, commercial and industrial buildings and uses, that certain code known as the National Electric Code published by the National Fire Protection Association, the most recent edition adopted by the Ohio Board of Building Standards and referenced in the Residential Code of Ohio and the Ohio Building Code.

(b) Such Code is on file in the Division of Building, the office of the Clerk of Council, and the County law library, and the same is hereby adopted and incorporated as if fully set out at length herein, and the provisions thereof shall be controlling within the limits of the City.
(Ord. 13-52. Passed 1-13-14.)

CHAPTER 1317
Surface Water and Grading

1317.01 Definitions.
1317.02 Established elevations to be grade.
1317.03 When retaining walls required.
1317.04 Hard-surfaced lot; catch basins.
1317.05 Depressions prohibited.
1317.06 Approval of grade and drainage required.
1317.07 Cash deposit required.
1317.08 Engineer to establish grade.
1317.09 Adherence to grade lines.
1317.10 Entry to remove obstructions, re-grade surface.
1317.11 Notice to comply; work done by City to be lien.
1317.12 Connection of downspouts.
1317.13 Safeguards for construction sites.
1317.14 Erosion plan.
1317.15 Performance standards for storm sewer runoff from realty development.

CROSS REFERENCES

Grading and excavating contractors - see S. U. & P. S. Ch. 909
Grade setting and drainage fee - see BLDG. 1307.08(k)
Roofs, gutters and downspouts - see BLDG. 1357.20
Exterior property areas - see BLDG. 1357.24

1317.01 DEFINITIONS.

For the purposes of this chapter certain terms are defined as follows:

(a) "Natural grade" means the elevation of the undisturbed natural surface of the ground.

(b) "Finished grade" means the elevation of the finished surface, in its slope in reference to the horizontal plane of the ground adjoining any structure, including rear yard grades.

(Ord. 64-24. Passed 3-2-64.)

1317.02 ESTABLISHED ELEVATIONS TO BE GRADE.

When a lot or plot is graded, the established elevations of the street, curb, sidewalk or alley, whichever prevails, shall become the finished grade at that line.
(Ord. 64-24. Passed 3-2-64.)

1317.03 WHEN RETAINING WALLS REQUIRED.

When a lot or plot is graded to a higher or lower finished grade level than the natural grade, which is surface of the ground prior to excavation, filling or grading, or after a lot or plot is graded, it is a higher or lower finished grade level than the natural grade or finished grade, on an adjoining property, the owners or developers of such lot or plot shall provide suitable retaining walls or other approved protection on his property to protect the adjacent property from caving of earth and as required to maintain the existing natural grade or finished grade of such adjacent property. (Ord. 81-31. Passed 5-4-81.)

1317.04 HARD-SURFACED LOT; CATCH BASINS.

Whenever the surface of a lot or plot is excavated, filled, graded or hard-surfaced with impervious material, positive drainage shall be provided so that a nuisance will not be created. Catch basins properly connected to storm sewers or other approved provisions, such as under-drains, shall be made where water may pocket, to preclude the accumulation of surface water. Surface water shall not be drained onto adjacent properties not in the same ownership without written permission from the owner of the adjacent property, and existing natural ground drainage of the ground area surrounding the lot or plot excavated, filled or graded shall not be impeded. (Ord. 64-24. Passed 3-2-64.)

1317.05 DEPRESSIONS PROHIBITED.

No condition shall be created, nor any existing condition maintained, whereby there will be upon any lot or plot excavations, depressions, pits, holes, gullies or similar depressions which may accumulate and retain surface water and which may become a public hazard or nuisance.

Any such condition shall be properly abated and protected by filling or by providing positive drainage and, where necessary, by the erection of barricades or fencing.
(Ord. 64-24. Passed 3-2-64.)

1317.06 APPROVAL OF GRADE AND DRAINAGE REQUIRED.

No building permit shall be issued until plans for grade lines and drainage for surface water from the entire lot have been submitted and approved by the City Engineer.
(Ord. 64-24. Passed 3-2-64.)

1317.07 CASH DEPOSIT REQUIRED.

(a) No person shall be issued a building permit for the construction of any structure until a three hundred dollar ($300.00) cash deposit is paid to the Building Commissioner to cover administrative costs, costs of checking grades and drainage of surface water. With the exception of twenty-five dollars ($25.00) which shall be retained by the City as a fee, the balance of such cash deposit shall be refunded upon compliance with the terms of this chapter after deducting therefrom any costs and expenses incurred by the City as a result of work done by the City Engineer.

(b) For commercial or multi-family property only, the City may require a deposit greater than the three hundred dollars ($300.00), or a bond in such greater amount to guarantee such compliance. The amount thereof shall be determined by the City Engineer, which determination shall be based upon the estimated cost of performing such drainage work.

(c) If the aforesaid work is not done within a reasonable time, taking into consideration the weather conditions and other circumstances, then the City may do the work and the cash deposit shall be forfeited to the City to cover the cost thereof.
(Ord. 64-24. Passed 3-2-64.)

1317.08 ENGINEER TO ESTABLISH GRADE.
The City Engineer shall be charged with the duty and final determination of all natural and finished grade lines of all property, lots or lands located within the City, and shall also establish grade lines for all streets, sidewalks, boulevards, sanitary and storm sewers, and structures of every kind and description.
(Ord. 64-24. Passed 3-2-64.)

1317.09 ADHERENCE TO GRADE LINES.
As soon as the City Engineer has set and finally determined and established the finished grade line of any parcel of real estate, lot or land within the City, thus providing for the drainage of surface water therefrom, the owner, occupant or any other person in charge of such premises shall continue to maintain and/or adhere to such finished grade line of such premises and shall further keep all drains, ditches, swales or other surface water conductors open and free and clear of any and all obstructions. (Ord. 64-24. Passed 3-2-64.)

1317.10 ENTRY TO REMOVE OBSTRUCTIONS, RE-GRADE SURFACE.
If the owner, occupant or any other person in charge of such premises fails to comply with the requirements of this chapter, then the City may enter upon such premises and remove any and all obstructions from any drains, ditches, swales or other surface water conductors, and re-grade the surface of such premises to the finished grade line heretofore established, if necessary, and the City shall not be liable in damages of any kind or nature to such premises as a result of this work.
(Ord. 64-24. Passed 3-2-64.)

1317.11 NOTICE TO COMPLY; WORK DONE BY CITY TO BE LIEN.
If the City deems it necessary to enter such premises to perform the work described in Section 1317.10, then the City shall first give written notice to the owner, occupant or other person in charge of such premises, to comply with the requirements of this chapter within the time specified in such notice.

In case of the failure or refusal of such owner, occupant or other person in charge of such premises to comply with such notice and the requirements of this chapter, then the work required thereby may be done at the expense of the City. The City then shall determine the amount paid for such work and shall ascertain the description of the property on which such work was done. Such amount paid for such work and the description of such property shall be certified to the County Auditor, and shall be entered upon the tax duplicate, become a lien upon such lands from the date of entry, and shall be collected as other taxes and returned to the City with the General Fund.

In the alternative, the City may recover the amount of money so expended for such work from the owner, occupant or other person in charge of such premises, before any court of competent jurisdiction.
(Ord. 64-24. Passed 3-2-64.)

1317.12 CONNECTION OF DOWNSPOUTS.

(a) On any property presently occupied by a single-family structure where downspouts are connected to the sanitary sewer the downspout shall be disconnected from the sanitary sewer and may be splashed upon the ground surface if the City Engineer determines that the storm water flow from the disconnected downspout will not damage or create a nuisance to adjoining property, otherwise the downspout shall be connected to the storm sewer.

(b) On any property presently occupied by a single-family structure where downspouts are not connected to any sewer and are splashed upon the ground, the downspouts so splashed may continue to be splashed until a complaint is filed by an adjoining owner with the Building Division stating that the storm water flow from the splashed downspout is causing damage or a nuisance to the complainants property. The City Engineer shall view the property and if he determines that complainants property is being damaged by or a nuisance is being created by the splashed downspout, the direction of flow from the downspouts shall be redirected to avoid such damage or nuisance or be connected to the storm sewer.

(c) On all new construction of single-family dwellings downspouts may be splashed upon the ground if the storm water flow from the downspouts will not pass onto adjoining property, otherwise the downspouts shall be connected to the storm sewer.

(d) On any property presently occupied by a structure other than a single-family dwelling where the downspouts are connected to the sanitary sewer, or where the downspouts are not connected to any sewer and are splashed upon the ground, or on new construction the downspouts may be splashed providing the storm water flow does not pass upon adjoining property, across a public sidewalk or across a semi-public pedestrian way, otherwise the downspouts shall be connected to the storm sewer.
(Ord. 72-63. Passed 10-16-72.)

1317.13 SAFEGUARDS FOR CONSTRUCTION SITES.

(a) Whenever the grade of any property is changed the person, firm or corporation making the change shall comply with the following rules and regulations:

(1) When the terrain above the level of the sidewalk is raised, then the person, firm or corporation changing the grade or disturbing the former condition of the terrain shall take measures to protect the washing down of silt, mud or other deleterious matter onto the sidewalk or public thoroughfare.

(2) Measures taken to prevent such wash down shall include, but are not limited to, the digging of a trench of a depth of at least six inches and a width of at least eight inches at the place where the terrain has been changed; and providing masonry or wooden fencing; or any other safeguards required by the Building Commissioner.

(b) Except during periods of actual construction work relating to the excavation in question, all excavations, whether on private property or the public thoroughfare, shall be covered or surrounded by a fence that takes an axial thrust of at least forty pounds and in addition, shall be lighted by flares, lanterns or other illumination as may be required by the Building Commissioner.

(c) Fencing permitted in subsections (a) and (b) hereof shall be eight-inch gauge wire fencing and any other fencing approved by the Building Commissioner.

(d) It shall be the obligation of the person, firm or corporation performing the construction, building or excavation work, to clean all silt, mud and deleterious material from the sidewalks and streets after each work day. This obligation shall not be limited to sidewalks and public thoroughfares immediately adjacent to the construction area, but shall extend to the cleaning of all sidewalks and public thoroughfares where the construction, silt and mud have been conveyed. (Ord. 74-14. Passed 3-18-74.)

1317.14 EROSION PLAN.

(a) Every person, public or private, who proposes to:

(1) Improve land by the construction or erection of a building or by a structure of any kind, or by the construction, installation and maintenance of a sanitary and/or storm sewer, or by any other type of improvement to land; or

(2) Change the contours of land by grading, excavating or filling; or

(3) Remove or destroy the natural topsoil, (hereinafter these described purposes shall be referred to as "improvements");

shall submit to the Building Commissioner preliminary plans including maps generally describing the proposed improvements. Upon a finding by the City Engineer that erosion and sediment control measures are not necessary, the Commissioner shall issue the necessary permits. The issuance of such permits shall not be construed as obviating compliance with Section 1317.03.

(b) If the City Engineer finds that the proposed improvements may result in erosion and/or siltation of adjoining or nearby property, he shall within fourteen days of receipt of such plan and maps, inform the applicant of his findings, and then such applicant shall submit to the Commissioner for approval by the City Engineer a plan for erosion and sedimentation controls together with a report of the Cuyahoga Soil and Water Conservation District (hereinafter referred to as the Conservation District), provided such report is issued within thirty days. Any such improvements proposed by a person relative to sewers, streets, bridges, roadways, highways and/or associated areas shall also be submitted for determination as to whether erosion and sedimentation control measures are necessary. If erosion and sedimentation control measures are deemed necessary, the applicant shall comply with the steps set forth in this section.

(c) Any play for erosion and sedimentation control required under this section shall be set forth in accordance with guidelines and policies as established by the Ohio Soil and Water Conservation Commission, and shall include but not be restricted to the following matters:

(1) The areas of such described premises that may be exposed at any one time;

(2) The type of temporary vegetation and/or mulching that should be used to protect exposed areas of such described premises during the:

A. Construction of any type of improvements thereon; or

B. Changes being made in the contours thereof; or

C. In removal or destruction of topsoil;

(3) The locations, constructions and maintenance of sediment basins or other control measures that should be constructed and maintained on such described premises;

(4) The type of permanent and final vegetation and structures that should be planted and installed on the premises and the time within which such vegetation and structures are to be planted and installed; and

(5) Description of the type of soil comprising the premises and the physical properties of each type.

(d) The plans submitted to the City Engineer pursuant to subsection (b) hereof, shall incorporate the appropriate recommendations of the Conservation District. However, if any of the recommendations of the Conservation District are not incorporated into the submitted plans, the applicant shall set forth the reason for not incorporating any of the recommendations of the Conservation District.

(e) The City Engineer shall review these plans as submitted and after the approval shall take necessary steps to insure compliance by the developer with the plans as approved. The installation and maintenance of the specific erosion and sediment control measures shall be accomplished in accordance with the procedures set forth in the Standards and Specifications on file with the Ohio Soil and Water Conservation Commission and shall be part of the plan approval process by the Planning and Design Commission and the Council.
(Ord. 80-43. Passed 6-30-80.)

1317.15 PERFORMANCE STANDARDS FOR STORM SEWER RUNOFF FROM REALTY DEVELOPMENT.

(a) No person, firm, corporation, public agency, partnership or association shall develop any real property as hereinafter described so as to connect or cause to be connected any building, structure or parking facility, either directly or indirectly, with a drain for the removal of surface, roof, ground or other water to be discharged into a ditch, swale, waterway, stream, or an existing storm drainage system from any real property hereinafter described without complying with the performance standards set forth in subsection (b) hereof.

(b) Except as provided in Section 911.02(e) hereof, for all developments to be improved within the City, a storm drainage system shall be designed and constructed by the developer, using on-site or off-site underground storage facilities which will reduce the developed storm water run-off from the development to the existing undeveloped storm water run-off using ten-year storm as set forth in the Uniform Standards for Sewage and Drainage Improvements as adopted by the City.

(c) Excluded from application of this section is the alteration of or addition to an existing one or two-family residence, a structure located or to be located on such premises or of the parking facilities located thereon, or the construction of a one or two-family residence not part of a major subdivision as defined in Chapter 1183. Also excluded from the application of this section is the development of land areas by a governmental agency to be used for recreational purposes which does not increase impervious land surface area.

(d) The terms and provisions of this section are intended to supplement those ordinances pertaining to the same subject matter also adopted by the Council, except where there is an express conflict with the previous ordinances adopted by this Council in which event the provisions of this section shall control.
(Ord. 85-38. Passed 12-2-85.)

CHAPTER 1319
Moving Buildings

1319.01 Permit required.
1319.02 Insurance, bonds and other requirements.
1319.03 Movement through City.
1319.04 Movement not on public property.
1319.05 Time requirement for permit application; permit expiration; posting of bond and forfeiture.

CROSS REFERENCES
Power to license house movers - see Ohio R.C. 715.27
Fee for moving buildings - see BLDG. 1307.08(b)

1319.01 PERMIT REQUIRED.

No person shall move or cause to be moved a building or other structure within or through the City, without first having obtained a permit therefor from the Director of Public Service and Development. (Ord. 63-43. Passed 7-15-63.)

1319.02 INSURANCE, BONDS AND OTHER REQUIREMENTS.

The Director of Public Service and Development is authorized to issue such a permit for the movement of a building or other structure over the public streets of the City, provided that such person has complied with the following requirements as well as all other requirements contained in any provision of this Building Code or other City ordinances:

(a) Insurance. Submitted evidence of insurance as approved by the Director of Law, indemnifying the applicant and the City in the sum of at least fifty thousand dollars ($50,000) for property damage and one hundred thousand dollars/three hundred thousand dollars ($100,000/$300,000) for death or personal injury.

(b) Bond. Submitted a cash or surety bond in the sum of five thousand dollars ($5,000) satisfactory to the Director of Law, indemnifying the City for any loss or damage to City streets or other public property.

(c) Approval of Police Chief. Obtained the approval of the moving plan by the Chief of Police relative to any traffic control problems involved.

(d) Approval of Other Municipality. Submitted a letter signed by an official of any adjoining municipality where the building is to be moved and which shall approve such movement.

(e) Approval of Planning and Design Commission. Obtained the approval of the Planning and Design Commission and Council, as to the location or relocation of the building or other structure, and the Commission and Council shall consider the surrounding area in which it is to be located and shall consider and take cognizance of the development of adjacent, contiguous and neighboring buildings and properties for the purpose of achieving safe, harmonious and integrated development of related properties.

(f) Approval of Council. Obtained authorization in the form of an ordinance of Council approving the proposed location of the building, subject to such specific conditions and time limitations as may be determined by Council.

(g) Performance Bond. Posted a performance bond in an amount determined by the Director of Public Service and Development as necessary to complete the preparation for moving, relocation and restoration of the building so as to comply with the conditions of approval under subsection (e) hereof, the conditions of the ordinance under subsection (f) hereof, and all City codes and ordinances relating to the safety of buildings.

(h) Approval of Building Commissioner. Obtained from the Building Commissioner a written statement that the building proposed to be moved has been inspected, that it is considered by him to be in a structurally safe condition and may be moved in the manner proposed.

(Ord. 63-43. Passed 7-15-63.)

1319.03 MOVEMENT THROUGH CITY.

Where a building is to be moved through the City, compliance with only the provisions of Section 1319.02(a) through (d) shall be required.

(Ord. 63-43. Passed 7-15-63.)

1319.04 MOVEMENT NOT ON PUBLIC PROPERTY.

Where a building is to be moved without traversing public property, compliance with only the provisions of Section 1319.02(e) through (h) shall be required.

(Ord. 63-43. Passed 7-15-63.)

1319.05 TIME REQUIREMENT FOR PERMIT APPLICATION; PERMIT EXPIRATION; POSTING OF BOND AND FORFEITURE.

(a) Any person applying for a permit to move a building or other structure as required by Section 1325.01 shall apply for the permit within sixty days of the effective date of the ordinance of Council approving the same as set forth in Section 1319.02(f).

(b) The application for a permit shall be accompanied by a one thousand dollar ($1,000) cash deposit; such cash deposit being in addition to the bond required under 1307.13(b). The permit issued under this section shall provide for the completion of the moving of the building or structure onto its destination lot within thirty days of the issuance of the permit.

(c) Failure to complete the moving of the building or structure within the thirty days shall result in the forfeiture of one hundred dollars ($100.00) per day for each day required to complete the moving of the building or structure. The one hundred dollar ($100.00) per day penalty shall be deducted from the one thousand dollar ($1,000) cash deposit.

(d) Upon the completion of the moving of the building to the destination lot the Director of Public Service and Development and/or the Finance Director shall issue a refund check forthwith to the applicant for the sum of one thousand dollars ($1,000) less any penalties charged under this section.
(Ord. 69-76. Passed 9-2-69.)

CHAPTER 1321
Swimming Pools

1321.01 Permit required.
1321.02 Plans required; permit issuance.
1321.03 Building Commissioner to enforce.
1321.04 Location of outdoor pool.
1321.05 Height of dwelling or building.
1321.06 Fence required for outdoor pool.
1321.07 Location of fence.
1321.08 Outdoor pool unobstructed areaway required.
1321.09 Hours of lighting.
1321.10 Underwater lighting requirements.

CROSS REFERENCES
Swimming pools - see Ohio Administrative Code Ch. 3701-31
Residential swimming pools - see P. & Z. 1117.02(b)(6)
Permit fee - see BLDG. 1307.08(d)

1321.01 PERMIT REQUIRED.

No pool seventy-five square feet or more in area shall be constructed or established unless a permit is first obtained from the Building Commissioner. "Pool" means any structure or other device, either permanent or portable, designed or used for swimming or recreational bathing. (Ord. 90-5. Passed 4-2-90.)

1321.02 PLANS REQUIRED; PERMIT ISSUANCE.

Any person desiring to locate, construct or maintain any pool seventy-five square feet or more in area shall first submit to the Building Commissioner plans therefor showing the size, depth and type of construction, a drawing to scale showing the location of the barrier and gates, fence, if required, and location of the pool with reference to any structure or building situated on the lot or parcel of land. If the plans and location of such pool conform to the requirements of this chapter and all other City regulations, the Building Commissioner shall issue a permit upon the payment of the fee provided for in Chapter 1307. Every pool subject to the provisions of this chapter shall have a drainage device so that it can and shall be drained into a City storm sewer.
(Ord. 90-5. Passed 4-2-90.)

1321.03 BUILDING COMMISSIONER TO ENFORCE.

The Building Commissioner shall enforce the provisions of this chapter.
(Ord. 58-86. Passed 8-4-58.)

1321.04 LOCATION OF OUTDOOR POOL.

No permanent or temporary swimming or wading pool, seventy-five square feet or more in area and not enclosed in a permanent building or like structure, shall be located, constructed or maintained as follows:

(a) Closer than ninety feet from any street on which such lot or parcel fronts. The "street line" means the dividing line between the street and the lot or parcel and shall be the point of origin for measurement of this distance.

(b) In any front yard which includes the yard across the full width of the lot or parcel extending from the building or front yard line to the street line.

(c) Closer to any side line than ten feet.

(d) Closer to any rear lot or parcel line than eight feet.

(e) Closer to a perpendicular line extending from the ground to the outermost projection of the roof of any dwelling or building, detached garages excluded, than as follows:

Dwelling or Building Height (Ft.)	Minimum Distance (Ft.)
15 or less	13
Over 15 to 30	18
Over 30 to 45	28
Over 45 to 60	48

(Ord. 90-5. Passed 4-2-90.)

1321.05 HEIGHT OF DWELLING OR BUILDING.

The "height of the dwelling or building", for purposes of this chapter, means the vertical distance measured from the finished grade line of such dwelling or building to:

(a) The highest point of the coping or fascia of flat roofs; or

(b) The highest point of the eaves line on the side of the building facing the pool for gable, gambrel or hip roofs.

(Ord. 58-86. Passed 8-4-58.)

1321.06 FENCE REQUIRED FOR OUTDOOR POOL.

Every permanent or temporary swimming or wading pool, seventy-five square feet or more in area and which is not enclosed in a permanent building or like structure, shall have erected around it a fence of sufficient strength, of permanent and durable materials, of such design and construction so as to prevent access to such pool by small children, of a height not less than five feet, and which shall be fifty percent (50%) or more open to light and air so as to permit a person to see through into the pool. Access to such pool shall be through gates in such fence which gates shall be equipped in such manner as to be securely locked except when in use by the owner or occupant and under the immediate observation of the owner or occupant or when in use with the owner's or occupant's permission and under the immediate observation of a responsible person designated by the owner or occupant. The provisions of this section shall not apply to a pool with both a five foot or higher sidewall and a locking type ladder which is either removed from the pool when not in use or which is placed in such a position so as to render it incapable of being used.
(Ord. 90-5. Passed 4-2-90.)

1321.07 LOCATION OF FENCE.

The fence required in Section 1321.06 shall be subject to any other City ordinances and no fence shall be located, constructed or maintained as follows:

(a) Closer to the pool than three feet.

(b) Closer to any dwelling or building, detached garages excluded, than as follows:

(1) The rear wall of the dwelling or building may be incorporated as a portion of such fence.

(2) If the rear wall of the dwelling or building is not incorporated as a portion of such fence, then any fence located, constructed or maintained between the pool and any dwelling or building shall not be closer to a perpendicular line of such dwelling or building than as follows:

Dwelling or Building Height (Ft.)	Minimum Distance (Ft.)
15 or less	10
Over 15 to 30	15
Over 30 to 45	25
Over 45 to 60	45

(Ord. 58-86. Passed 8-4-58.)

1321.08 OUTDOOR POOL UNOBSTRUCTED AREAWAY REQUIRED.

Every permanent or temporary swimming or wading pool seventy-five square feet or more in area and which is not enclosed in a permanent building or like structure, shall have an unobstructed areaway around the entire pool of not less than three feet.
(Ord. 90-5. Passed 4-2-90.)

1321.09 HOURS OF LIGHTING.

If overhead flood or other artificial light is used to illuminate the pool at night, such lights shall not be used after 11:00 p.m., if the pool is located within 200 feet of any building used for dwelling purposes. Lights shall at all times be shielded to direct light on the pool only.
(Ord. 58-86. Passed 8-4-58.)

1321.10 UNDERWATER LIGHTING REQUIREMENTS.

Any person installing underwater lighting wiring, equipment and/or fixtures in all swimming pools located within the City shall conform to the standards, specifications and requirements of the National Electrical Code as adopted in Chapter 1315.

CHAPTER 1323
Unsafe Structures

1323.01 Certain buildings declared unsafe.
1323.02 Examination of buildings.
1323.03 Notice to owner.
1323.04 Vacating buildings; prohibiting use.
1323.05 Right to appeal.
1323.06 Failure to comply with notice.
1323.07 Procedure in emergency.
1323.08 Costs.

CROSS REFERENCES
Removal of unsafe structures - see Ohio R. C. 715.26(B), 715.261
Housing Code cases of emergency - see BLDG. 1355.05

1323.01 CERTAIN BUILDINGS DECLARED UNSAFE.

All buildings or structures which are structurally unsafe, unsanitary or not provided with adequate safe egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which, in relation to existing use, constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence or abandonment, are severally declared to be unsafe structures. All such unsafe structures are hereby declared to be illegal and shall be abated by repair and rehabilitation or by demolition in accordance with the following sections.
(Ord. 61-30. Passed 5-15-61.)

1323.02 EXAMINATION OF BUILDINGS.

The Building Commissioner shall examine or cause to be examined every building or other structure reported to be unsafe or damaged, and shall make a written record of such examination.
(Ord. 61-30. Passed 5-15-61.)

1323.03 NOTICE TO OWNER.

Whenever the Building Commissioner finds any building or structure, or portion thereof, to be an unsafe structure as defined in Section 1323.01, he shall, in accordance with established procedure for legal notices, give to the owner, agent or person in control of such building or structure written notice stating the defects thereof. This notice shall require the owner, within a stated time, either to complete specified repairs or improvements, or to demolish and remove the building or structure, or portion thereof.

If the person to whom such notice and order is addressed cannot be found within the City after diligent search, then such notice and order shall be sent by registered mail to the last known address of such person, and a copy of such notice shall be posted in a conspicuous place on the premises to which it relates. Such mailing and posting shall be deemed legal service of such notice. (Ord. 61-30. Passed 5-15-61.)

1323.04 VACATING BUILDINGS; PROHIBITING USE.

If necessary, such notice shall also require the building or structure, or portion thereof, to be vacated forthwith and not reoccupied or used until the specified repairs and improvements are completed, inspected and approved by the Building Commissioner. He shall cause to be posted at each entrance to such building or structure a notice:

"THIS STRUCTURE IS IN A DANGEROUS CONDITION AND HAS BEEN CONDEMNED AND ITS USE HAS BEEN PROHIBITED BY THE BUILDING COMMISSIONER."

Such notice shall remain posted until the required repairs are made or demolition is completed. No person, firm or corporation, or their agents or other servants, shall remove such notice without written permission of the Building Commissioner, and no person shall use or enter the building or structure except for the purpose of making the required repairs or of demolishing the building or structure. (Ord. 61-30. Passed 5-15-61.)

1323.05 RIGHT TO APPEAL.

The owner, agent or person in control shall have the right to appeal from the decision of the Building Commissioner as provided hereinafter, and to appear before the Board of Zoning and Building Appeals at a specified time and place to show cause why he should not comply with such notice. (Ord. 61-30. Passed 5-15-61.)

1323.06 FAILURE TO COMPLY WITH NOTICE.

In case the owner, agent or person in control cannot be found within the stated time limit, or if such owner, agent or person in control fails, neglects or refuses to comply with the notice to repair, rehabilitate or demolish and remove such building or structure or portions thereof, the Director of Law shall be advised of all the facts in the case, and shall institute an appropriate action in the courts to compel a compliance.
(Ord. 61-30. Passed 5-15-61.)

1323.07 PROCEDURE IN EMERGENCY.

In cases of emergency which, in the opinion of the Building Commissioner, involve immediate danger to human life or health, the Commissioner shall promptly cause such building, structure or portions thereof to be made safe or removed. For this purpose he may at once enter such structure or land on which it stands, or abutting land or structure, with such assistance and at such cost as he may deem necessary. He may order adjacent structures and premises to be vacated, and protect the public by an appropriate fence or such other means as may be necessary, and for this purpose may close a public or private way.
(Ord. 61-30. Passed 5-15-61.)

1323.08 COSTS.

Costs incurred under Sections 1323.06 and 1323.07 shall be paid out of the City Treasury on certificates of the Building Commissioner, and the Director of Law shall institute an appropriate action in the courts to recover such costs from the owner of the premises.
(Ord. 61-30. Passed 5-15-61.)

CHAPTER 1325
Waste, Garbage and Junk

1325.01 Definitions.
1325.02 Enforcement; right of entry for inspection.
1325.03 Deposits or accumulations; storage.
1325.04 Exceptions.
1325.05 Garbage receptacles.
1325.06 Violation a nuisance; abatement.
1325.99 Penalty.

CROSS REFERENCES

Junk motor vehicles - see TRAF. 307.09 et seq.
Littering and dumping - see GEN. OFF. 521.05
Locking commercial or industrial containers - see GEN. OFF. 521.08, 521.09
Refuse disposal - see S. U. & P. S. Ch. 929
Exterior Property Maintenance Code - see BLDG. Ch. 1341 et seq.
Exterior property areas - see BLDG. 1357.24

1325.01 DEFINITIONS.

As used in this chapter, certain terms are defined as follows:

(a) "Waste material" means any material or article which has been discarded or abandoned, or any material or article no longer in use. Without limiting the generality of the foregoing, waste material includes junk, waste boxes, cartons, plastic or wood scraps or shavings, waste paper and paper products, and other combustible materials or substances no longer in use or, if unused, those discarded or abandoned, metal or ceramic scraps or pieces of all types, glass and other noncombustible materials or substances no longer in use or, if unused, those discarded or abandoned; machinery, appliances or equipment, or parts or remains thereof, no longer in use or, if unused, those discarded or abandoned. "Waste material" also includes that which has been collected or stored for salvage or conversion to some other use.

(b) "Junk" includes abandoned, inoperable, disabled, partially dismantled, extensively damaged or wrecked vehicles of any kind, whether motor vehicle, automobile, motorcycle, emergency vehicle, school bus, bicycle, commercial tractor, agricultural tractor, house trailer, truck, bus, trailer, semitrailer, pole trailer, railroad train, railroad car, street car or trackless trolley, aircraft, lighter-than-aircraft, water craft or any other form of device for the transportation of persons or property. A vehicle shall be deemed inoperable when the lack or failure of the engine, transmission or other mechanical part results in the vehicle being not usable for the transportation of persons or property. "Junk" also includes a former vehicle which is so dismantled, destroyed or changed that it physically is no longer a vehicle or is not the vehicle described in the certificate of title. An extensively damaged vehicle shall be deemed to be a vehicle with such damage including, but not limited to any of the following: missing wheels, tires, motor or transmission.

(1) "Disabled" means a condition in which the vehicle cannot be operated in compliance with statutory or ordinance requirements.

(2) "Partially dismantled" means a vehicle which has some part or parts missing which is or are ordinarily an essential component thereof.

(Ord. 84-111. Passed 2-18-85.)

1325.02 ENFORCEMENT; RIGHT OF ENTRY FOR INSPECTION.

The Director of Public Service and Development, the Building Commissioner, the Fire Chief and any other officer or employee in the Fire or Police Departments or Public Service and Development Department who may from time to time be authorized, are hereby authorized to enter and inspect at all reasonable times any premises and building in the City in order to determine if such premises are in compliance with the requirements of Sections 1325.03 to 1325.05. The owner, occupant or person in possession of such premises or building shall permit any such director, officer or employee free access to any part of such premises or buildings at all reasonable times for the purpose of such inspection.
(Ord. 75-45. Passed 10-20-75.)

1325.03 DEPOSITS OR ACCUMULATIONS; STORAGE.

(a) No person shall, within the City, deposit or leave garbage, waste, waste paper, newspapers and paper products, putrid substances, junk, refuse, oil, sludge or other waste materials on any public property, or in any lake, pond, watercourse or storm sewer. No person, except as provided in Section 1325.04, who is the owner, occupant or person in possession of any property within the City, shall deposit or permit to remain, or permit any other person to deposit any of such materials on such property.

(b) No person shall place, maintain, store, or permit to be placed, maintained or stored on any lot or premises a junk vehicle as defined in Section 1325.01(b) or vehicle parts unless the same is kept or stored in a completely enclosed, authorized and permitted building or garage on such lot or premises.

(c) The Building Commissioner and any officer of the Police Department is authorized to serve written notice on any person in charge or control of any lot or premises, whether owner, tenant, lessee or occupant upon which a junk vehicle is stored contrary to the provisions of this section. No person who has been so notified shall allow any junk vehicle to be stored on such lot or premises contrary to the provisions of this section for longer than fifteen days after receipt of written notice. Upon the failure of the person to store junk vehicles in accordance with this section within fifteen days of notice, any officer of the Police Department is hereby authorized to remove or cause to be removed any junk vehicle from the lot or premises. Such junk vehicle shall be impounded until lawfully claimed or disposed of in accordance with the provisions of Sections 307.02 (c), (d) and (e) of the Codified Ordinances. Written notice shall be served personally or by registered or certified mail.
(Ord. 84-111. Passed 2-18-85.)

1325.04 EXCEPTIONS.

This chapter does not prohibit:

(a) The collection and disposition of garbage and refuse by the City. However, no such disposition shall be so conducted as to constitute a nuisance in violation of Ohio R.C. 3707.39.

(b) The conduct of the business of junk dealer pursuant to a license granted by the City. (Ord. 75-45. Passed 10-20-75.)

(c) The keeping, by any person who is the owner, occupant or person in possession of any property, of such garbage and refuse as accumulates on such property from the last Municipal garbage and rubbish collection available for such property, provided any such garbage is kept in receptacles meeting the requirements of Section 1325.05 and is kept behind the building setback building line established by the Planning and Zoning Code and Zoning Map of the City for such property, except as otherwise permitted by Section 521.05 of the Codified Ordinances.
(Ord. 83-72. Passed 2-6-84.)

(d) The keeping of waste material including garbage and putrid substances wholly within a weathertight, watertight and rodentproof structure which is subject to the provisions of and in conformity with the requirements of the Building Code.

(e) Building construction activities, including the construction, location and use of vehicles and other equipment on or in connection with any such temporary facilities, provided such building construction activities are in conformity with the provisions and requirements of the Zoning Code and Zoning Map of the City, and in conformity with any rules and regulations issued by the Board of Zoning Appeals. (Ord. 75-45. Passed 10-20-75.)

1325.05 GARBAGE RECEPTACLES.

(a) Receptacles for garbage shall be made of metal, rubber, plastic, authorized paper bags or other nonabsorbent material, and shall be of such maximum capacity as may be determined by the Director of Public Service and Development. (Ord. 88-12. Passed 6-20-88.)

(b) All garbage receptacles when not stored within a permanent building or structure shall not be visible from the front property line or side property line if on a corner lot, nor placed:

(1) Closer than ten feet from any side property line; and

(2) Closer than five feet from a rear property line unless the garbage receptacles are screened from view from the abutting property at the rear property line.

(Ord. 13-16. Passed 5-20-13.)

1325.06 VIOLATION A NUISANCE; ABATEMENT.

A violation of any provision of Sections 1325.03 through 1325.05, shall constitute a nuisance, and in addition to any penalty provided in Section 1325.99 for violation, the nuisance may be abated in the manner provided now or in the future by the statutes of Ohio or pursuant to the Codified Ordinances of the City.

(Ord. 75-45. Passed 10-20-75.)

1325.99 PENALTY.

Whoever violates any provision of this chapter or fails to comply therewith shall, for each violation or noncompliance be deemed guilty of a minor misdemeanor for a first offense and, for a second or subsequent offense within one year be deemed guilty of a misdemeanor of the fourth degree. Each day of any violation or failure to comply shall constitute a separate offense.

(Ord. 75-45. Passed 10-20-75.)

CHAPTER 1329
Building Facings

1329.01 Facing of concrete structure residences.

1329.02 Facing of industrial and commercial structures.

1329.01 FACING OF CONCRETE STRUCTURE RESIDENCES.

New residential structures constructed of mass concrete or concrete block, shall be faced above grade with a material approved by the Building Commissioner or the Planning and Design Commission in accordance with Section 1307.01(d). New additions or alterations to the facing of existing structures above grade shall match the existing materials when practical or shall be in a manner approved by the Commission.
(Ord. 79-4. Passed 3-5-79.)

1329.02 FACING OF INDUSTRIAL AND COMMERCIAL STRUCTURES.

New industrial and commercial structures of mass concrete or concrete block shall be faced above ground with material as approved by the Planning and Design Commission. Additions or alterations to existing buildings or any change to the facing of existing buildings shall be in a manner approved by the Commission in accordance with Section 1301.01(d) or Section 1149.05(a) of the Codified Ordinances, whichever is applicable.
(Ord. 79-61. Passed 11-5-79.)

CHAPTER 1331
Smoke Detectors

1331.01 Requirements.
1331.02 Location.
1331.03 Equipment.
1331.04 Installation.
1331.05 Certification.
1331.06 Electrical permit.
1331.07 Supplemental standards.
1331.08 Enforcement.
1331.99 Penalty.

CROSS REFERENCES
Required in high-rise apartments and condominiums - see
Ohio R.C. 3781.104; OAC Ch. 4101:2-89
Ohio Fire Code - see FIRE PREV. Ch. 1501

1331.01 REQUIREMENTS.

The installation of a minimum of one smoke and fire detector per dwelling unit is hereby required for all new single and multiple occupancy residential dwellings constructed subsequent to the effective date of this section. Such smoke and fire detectors shall be capable of sensing visible or invisible particles of combustion and providing a suitable audible alarm, thereof; further, they shall be installed in the manner hereinafter provided. As an alternative to a smoke and fire detector, an approved fire detection system may be installed. Each such fire detection system shall be individually approved and a permit issued therefor by the Fire Department.

All existing multiple occupancy residential structures with three or more dwelling units, within one year of the effective date of this section and/or when any structural change or repair is made in excess of one thousand dollars ($1000), whichever occurs first, shall have installed therein a minimum of one smoke and fire detector per dwelling unit or an acceptable alternative approved as provided above.
(Ord. 80-95. Passed 1-5-81.)

1331.02 LOCATION.

At least one smoke and fire detector shall be installed to protect each sleeping area. The smoke and fire detector shall be mounted on the ceiling or wall not more than twelve inches from the ceiling, at a point centrally located in a corridor or area giving access to rooms used for sleeping purposes. Where bedrooms or rooms ordinarily used for sleeping are separated by other used areas, such as kitchens or living rooms, but not bathrooms or closets, they shall be considered as separated sleeping areas for the purposes of this chapter. In an efficiency dwelling unit the detector shall be centrally located on the ceiling in the main room. Where sleeping rooms are on the upper level, the detector shall be placed at the head or top of each stairway leading up to an occupied area in such manner as to assure that rising smoke is not obstructed in reaching the detector and intercepts smoke before it reaches the sleeping area. Smoke and fire detectors or an approved fire detection system shall be installed in public areas in such number and location as approved by the Fire Prevention Bureau in accordance with Section 4101:2-89-05 of the Ohio Administrative Code. (Ord. 80-95. Passed 1-5-81.)

1331.03 EQUIPMENT.

All devices, combination of devices and equipment required herein are to be installed in conformance with the Building Code and this chapter and approved by the Chief of the Fire Department as listed by such Department for the purpose for which they are intended; such list may be subsequently amended by the Chief as necessary. Such approval shall be permanent unless the Chief subsequently finds that the equipment is hazardous or unreliable, in which case, the Chief may suspend or revoke approval. The Chief may in any such case determine whether replacement of existing installation shall be required. Transfer to the inactive list shall not affect equipment approval. (Ord. 80-95. Passed 1-5-91.)

1331.04 INSTALLATION.

The method of installation shall be approved by the Fire Prevention Bureau in accordance with National Fire Standards.
(Ord. 80-95. Passed 1-5-81.)

1331.05 CERTIFICATION.

The owner or his authorized agent shall certify to the Fire Prevention Bureau in writing annually from the day of installation that the units or systems are fully operational.
(Ord. 80-95. Passed 1-5-81.)

1331.06 ELECTRICAL PERMIT.

No smoke detector or alternative system shall be directly connected (permanently wired) to the electrical system of the structure unless an electrical permit shall have first been obtained from the Division of Building.
(Ord. 80-95. Passed 1-5-81.)

1331.07 SUPPLEMENTAL STANDARDS.

This chapter is intended to be used with and supplemented by the applicable provisions of the Fire Prevention Code of 1979; however, if there shall be any conflict between this chapter and the Fire Prevention Code, this chapter and any rules and regulations adopted pursuant thereto shall prevail. (Ord. 80-95. Passed 1-5-81.)

1331.08 ENFORCEMENT.

The Building Commissioner shall have concurrent jurisdiction with the Fire Chief to inspect the installation of any smoke and fire detectors required to be installed by this chapter. (Ord. 80-95. Passed 1-5-81.)

1331.99 PENALTY.

Unless otherwise provided in this chapter, whoever violates any provision of this chapter shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or be imprisoned for a term of not more than ten days or both for the first offense. For a second or subsequent offense, a violator shall be fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000) or be imprisoned for a term of thirty days or both, every day there after constituting a separate offense. Any contractor who is found in violation of this chapter may be subject to the revocation of the certified registration within the City for not more than one year.
(Ord. 80-95. Passed 1-5-81.)

CHAPTER 1333
Flood Damage Prevention

1333.01 General provisions.
1333.02 Definitions.
1333.03 Administration.
1333.04 Use and development standards for flood hazard reduction.
1333.05 Appeals and variances.
1333.06 Enforcement.

1333.01 GENERAL PROVISIONS.

(a) Statutory Authorization Article XVIII, Section 3, of the Ohio Constitution grants municipalities the legal authority to adopt land use and control measures for promoting the health, safety, and general welfare of its citizens. Therefore, the Council of the City of Fairview Park, State of Ohio, does ordain as follows:

(b) Findings of Fact. The City of Fairview Park has special flood hazard areas that are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.

(c) Statement of Purpose. It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

(1) Protect human life and health;
(2) Minimize expenditure of public money for costly flood control projects;
(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
(4) Minimize prolonged business interruptions;
(5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;

(6) Help maintain a stable tax base by providing for the proper use and development of areas of special flood hazard so as to protect property and minimize future flood blight areas;
(7) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;
(8) Minimize the impact of development on adjacent properties within and near flood prone areas;
(9) Ensure that the flood storage and conveyance functions of the floodplain are maintained;
(10) Minimize the impact of development on the natural, beneficial values of the floodplain;
(11) Prevent floodplain uses that are either hazardous or environmentally incompatible; and
(12) Meet community participation requirements of the National Flood Insurance Program.

(d) Methods of Reducing Flood Loss. In order to accomplish its purposes, these regulations include methods and provisions for:
(1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities;
(2) Requiring that uses vulnerable to floods, including facilities, which serve such uses, be protected against flood damage at the time of initial construction;
(3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
(4) Controlling filling, grading, dredging, excavating, and other development which may increase flood damage; and,
(5) Preventing or regulating the construction of flood barriers, which will unnaturally divert flood, waters or which may increase flood hazards in other areas.

(e) Lands to Which These Regulations Apply. These regulations shall apply to all areas of special flood hazard within the jurisdiction of the City of Fairview Park as identified in Section 1333.01(f), including any additional areas of special flood hazard annexed by City of Fairview Park.

(f) Basis for Establishing the Areas of Special Flood Hazard. For the purposes of these regulations, the following studies and / or maps are adopted:
(1) *Flood Insurance Study Cuyahoga County, Ohio and Incorporated Areas* and *Flood Insurance Rate Map Cuyahoga County, Ohio and Incorporated Areas* both effective December 3, 2010.
(2) Other studies and / or maps, which may be relied upon for establishment of the flood protection elevation, delineation of the 100-year floodplain, floodways or delineation of other areas of special flood hazard.
(3) Any hydrologic and hydraulic engineering analysis authored by a registered Professional Engineer in the State of Ohio which has been approved by the City of Fairview Park as required by Section 1333.04(c) Subdivisions and Large Scale Developments.

Any revisions to the aforementioned maps and / or studies are hereby adopted by reference and declared to be a part of these regulations. Such maps and/or studies are on file at the City Hall at 20777 Lorain Road, Fairview Park, Ohio.

(g) Abrogation and Greater Restrictions. These regulations are not intended to repeal any existing ordinances including subdivision regulations, zoning or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall be followed. These regulations shall not impair any deed restriction covenant or easement but the land subject to such interests shall also be governed by the regulations.

(h) Interpretation. In the interpretation and application of these regulations, all provisions shall be:

(1) Considered as minimum requirements;
(2) Liberally construed in favor of the governing body; and,
(3) Deemed neither to limit nor repeal any other powers granted under state statutes. Where a provision of these regulations may be in conflict with a state or Federal law, such state or Federal law shall take precedence over these regulations.

(i) Warning and Disclaimer of Liability. The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the City of Fairview Park, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.

(j) Severability. Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid. (Ord. 10-23. Passed 10-4-10.)

1333.02 DEFINITIONS.

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the meaning they have in common usage and to give these regulations the most reasonable application.

(a) **Accessory Structure**: A structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

(b) **Appeal:** A request for review of the floodplain administrator's interpretation of any provision of these regulations or a request for a variance.

(c) **Base Flood**: The flood having a one percent chance of being equaled or exceeded in any given year. The base flood may also be referred to as the 1% chance annual flood or one-hundred (100) year flood.

(d) **Base (100-Year) Flood Elevation (BFE):** The water surface elevation of the base flood in relation to a specified datum, usually the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988, and usually expressed in Feet Mean Sea Level (MSL). In Zone AO areas, the base flood elevation is the natural grade elevation plus the depth number (from 1 to 3 feet).

(e) **Basement**: Any area of the building having its floor subgrade (below ground level) on all sides.

(f) **Development**: Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

(g) **Enclosure Below the Lowest Floor**: See "Lowest Floor."

(h) **Executive Order 11988 (Floodplain Management)**: Issued by President Carter in 1977, this order requires that no federally assisted activities be conducted in or have the potential to affect identified special flood hazard areas, unless there is no practicable alternative.

(i) **Federal Emergency Management Agency (FEMA)**: The agency with the overall responsibility for administering the National Flood Insurance Program.

(j) **Fill**: A deposit of earth material placed by artificial means.

(k) **Flood** ***or*** **Flooding**: A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters, and/or

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(l) **Flood Hazard Boundary Map (FHBM):** Usually the initial map, produced by the Federal Emergency Management Agency, or U.S. Department of Housing and Urban Development, for a community depicting approximate special flood hazard areas.

(m) **Flood Insurance Rate Map (FIRM)**: An official map on which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has delineated the areas of special flood hazard.

(n) **Flood Insurance Risk Zones**: Zone designations on FHBMs and FIRMs that indicate the magnitude of the flood hazard in specific areas of a community. Following are the zone definitions:

(1) Zone A: Special flood hazard areas inundated by the 100-year flood; base flood elevations are not determined.

(2) Zones A1-30 and Zone AE: Special flood hazard areas inundated by the 100-year flood; base flood elevations are determined.

(3) Zone AO: Special flood hazard areas inundated by the 100-year flood; with flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths are determined.

(4) Zone AH: Special flood hazard areas inundated by the 100-year flood; flood depths of 1 to 3 feet (usually areas of ponding); base flood elevations are determined.

(5) Zone A99: Special flood hazard areas inundated by the 100-year flood to be protected from the 100-year flood by a Federal flood protection system under construction; no base flood elevations are determined.

(6) Zone B and Zone X (shaded): Areas of 500-year flood; areas subject to the 100-year flood with average depths of less than 1 foot or with contributing drainage area less than 1 square mile; and areas protected by levees from the base flood.

(7) Zone C and Zone X (unshaded): Areas determined to be outside the 500-year floodplain.

(o) **Flood Insurance Study (FIS)**: The official report in which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has provided flood profiles, floodway boundaries (sometimes shown on Flood Boundary and Floodway Maps), and the water surface elevations of the base flood.

(p) **Flood Protection Elevation**: The Flood Protection Elevation, or FPE, is the base flood elevation. In areas where no base flood elevations exist from any authoritative source, the flood protection elevation can be historical flood elevations, or base flood elevations determined and/or approved by the floodplain administrator.

(q) **Floodway**: A floodway is the channel of a river or other watercourse and the adjacent land areas that have been reserved in order to pass the base flood discharge. A floodway is typically determined through a hydraulic and hydrologic engineering analysis such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height. In no case shall the designated height be more than one foot at any point within the community.
The floodway is an extremely hazardous area, and is usually characterized by any of the following: Moderate to high velocity flood waters, high potential for debris and projectile impacts, and moderate to high erosion forces.

(r) **Freeboard**: A factor of safety usually expressed in feet above a flood level for the purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams, and the hydrologic effect of urbanization in a watershed.

(s) **Historic structure**: Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listings on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or

(3) Individually listed on the State of Ohio's inventory of historic places maintained by the Ohio Historic Preservation Office.

(t) **Hydrologic and hydraulic engineering analysis:** An analysis performed by a professional engineer, registered in the State of Ohio, in accordance with standard engineering practices as accepted by FEMA, used to determine flood elevations and/or floodway boundaries.

(u) **Letter of Map Change (LOMC)**: A Letter of Map Change is an official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, and Flood Insurance Studies. LOMCs are broken down into the following categories:

(1) Letter of Map Amendment (LOMA) A revision based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area.

(2) Letter of Map Revision (LOMR): A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the base flood elevation and is, therefore, excluded from the special flood hazard area.

(3) Conditional Letter of Map Revision (CLOMR): A formal review and comment by FEMA as to whether a proposed project complies with the minimum National Flood Insurance Program floodplain management criteria. A CLOMR does not amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

(v) **Lowest floor:** The lowest floor of the lowest enclosed area (including basement) of a structure. This definition excludes an "enclosure below the lowest floor" which is an unfinished or flood resistant enclosure usable solely for parking of vehicles, building access or storage, in an area other than a basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in these regulations for enclosures below the lowest floor.

(w) **Manufactured home**: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle". For the purposes of these regulations, a manufactured home includes manufactured homes and mobile homes as defined in Chapter 3733 of the Ohio Revised Code.

(x) **Manufactured home park**: As specified in the Ohio Administrative Code 3701-27-01, a manufactured home park means any tract of land upon which three or more manufactured homes, used for habitation are parked, either free of charge or for revenue purposes, and includes any roadway, building, structure, vehicle, or enclosure used or intended for use as part of the facilities of the park. A tract of land that is subdivided and the individual lots are not for rent or rented, but are for sale or sold for the purpose of installation of manufactured homes on the lots, is not a manufactured home park, even though three or more manufactured homes are parked thereon, if the roadways are dedicated to the local government authority.

(y) **National Flood Insurance Program (NFIP):** The NFIP is a Federal program enabling property owners in participating communities to purchase insurance protection against losses from flooding. This insurance is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods. Participation in the NFIP is based on an agreement between local communities and the Federal government that states if a community will adopt and enforce floodplain management regulations to reduce future flood risks to all development in special flood hazard areas, the Federal government will make flood insurance available within the community as a financial protection against flood loss.

(z) **New construction:** Structures for which the "start of construction" commenced on or after the initial effective date of the City of Fairview Park Flood Insurance Rate Map, February 4, 1993, and includes any subsequent improvements to such structures.

(aa) **Person**: Includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies. An agency is further defined in the Ohio Revised Code Section 111.15 as any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. "Agency" does not include the general assembly, the controlling board, the adjutant general's department, or any court.

(bb) **Recreational vehicle:** A vehicle which is (1) built on a single chassis, (2) 400 square feet or less when measured at the largest horizontal projection, (3) designed to be self- propelled or permanently towable by a light duty truck, and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

(cc) **Registered Professional Architect**: A person registered to engage in the practice of architecture under the provisions of sections 4703.01 to 4703.19 of the Revised Code.

(dd) **Registered Professional Engineer**: A person registered as a professional engineer under Chapter 4733 of the Revised Code.

(ee) **Registered Professional Surveyor**: A person registered as a professional surveyor under Chapter 4733 of the Revised Code.

(ff) **Special Flood Hazard Area:** Also known as "Areas of Special Flood Hazard", it is the land in the floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency on Flood Insurance Rate Maps, Flood Insurance Studies, Flood Boundary and Floodway Maps and Flood Hazard Boundary Maps as Zones A, AE, AH, AO, A1-30, and A99. Special flood hazard areas may also refer to areas that are flood prone and designated from other federal state or local sources of data including but not limited to historical flood information reflecting high water marks, previous flood inundation areas, and flood prone soils associated with a watercourse.

(gg) **Start of construction:** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of a building.

(hh) **Structure:** A walled and roofed building, manufactured home, or gas or liquid storage tank that is principally above ground.

(ii) **Substantial Damage:** Damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(jj) **Substantial Improvement**: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures, which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include:

(1) Any improvement to a structure that is considered "new construction,"
(2) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified prior to the application for a development permit by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
(3) Any alteration of a "historic structure," provided that the alteration would not preclude the structure's continued designation as a "historic structure".

(kk) **Variance:** A grant of relief from the standards of these regulations consistent with the variance conditions herein.

(ll) **Violation:** The failure of a structure or other development to be fully compliant with these regulations. (Ord. 10-23. Passed 10-4-10.)

1333.03 ADMINISTRATION.

(a) Designation of the Floodplain Administrator. The Building Commissioner is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator.

(b) Duties and Responsibilities of the Floodplain Administrator. The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

(1) Evaluate applications for permits to develop in special flood hazard areas.
(2) Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.
(3) Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met, or refuse to issue the same in the event of noncompliance.
(4) Inspect buildings and lands to determine whether any violations of these regulations have been committed.
(5) Make and permanently keep all records for public inspection necessary for the administration of these regulations including Flood Insurance Rate Maps, Letters of Map Amendment and Revision, records of issuance and denial of permits to develop in special flood hazard areas, determinations of whether development is in or out of special flood hazard areas for the purpose of issuing floodplain development permits, elevation certificates, variances, and records of enforcement actions taken for violations of these regulations.
(6) Enforce the provisions of these regulations.
(7) Provide information, testimony, or other evidence as needed during variance hearings.
(8) Coordinate map maintenance activities and FEMA follow-up.
(9) Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas identified by FEMA, must meet the development standards of these regulations.

(c) Floodplain Development Permits. It shall be unlawful for any person to begin construction or other development activity including but not limited to filling; grading; construction; alteration, remodeling, or expanding any structure; or alteration of any watercourse wholly within, partially within or in contact with any identified special flood hazard area, as established in Section 1333.01(f), until a floodplain development permit is obtained from the Floodplain Administrator. Such floodplain development permit shall show that the proposed development activity is in conformity with the provisions of these regulations. No such permit shall be issued by the Floodplain Administrator until the requirements of these regulations have been met.

(d) Application Required. An application for a floodplain development permit shall be required for all development activities located wholly within, partially within, or in contact with an identified special flood hazard area. Such application shall be made by the owner of the property or his/her authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished for that purpose. Where it is unclear whether a development site is in a special flood hazard area, the Floodplain Administrator may require an application for a floodplain development permit to determine the development's location. Such applications shall include, but not be limited to:

(1) Site plans drawn to scale showing the nature, location, dimensions, and topography of the area in question; the location of existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.

(2) Elevation of the existing, natural ground where structures are proposed.

(3) Elevation of the lowest floor, including basement, of all proposed structures.

(4) Such other material and information as may be requested by the Floodplain Administrator to determine conformance with, and provide enforcement of these regulations.

(5) Technical analyses conducted by the appropriate design professional registered in the State of Ohio and submitted with an application for a floodplain development permit when applicable:

A. Flood-proofing certification for non-residential floodproofed structure as required in Section 1333.04(e).

B. Certification that fully enclosed areas below the lowest floor of a structure not meeting the design requirements of Section 1333.04(d)(4) are designed to automatically equalize hydrostatic flood forces.

C. Description of any watercourse alteration or relocation that the flood carrying capacity of the watercourse will not be diminished, and maintenance assurances as required in Section 1333.04(i)(3).

D. A hydrologic and hydraulic analysis demonstrating that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot in special flood hazard areas where the Federal Emergency Management Agency has provided base flood elevations but no floodway as required by Section 1333.04(i)(2).

E. A hydrologic and hydraulic engineering analysis showing impact of any development on flood heights in an identified floodway as required by Section 1333.04(i)(1).

F. Generation of base flood elevation(s) for subdivision and large-scale developments as required by Section 1333.04(c).

(e) Review and Approval of a Floodplain Development Permit Application.

(1) Review.

A. After receipt of a complete application, the Floodplain Administrator shall review the application to ensure that the standards of these regulations have been met. No floodplain development permit application shall be reviewed until all information required in Section 1333.03(d) has been received by the Floodplain Administrator.

B. The Floodplain Administrator shall review all floodplain development permit applications to assure that all necessary permits have been received from those federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits as required including permits issued by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, and the Ohio Environmental Protection Agency under Section 401 of the Clean Water Act.

(2) Approval. Within thirty (30) days after the receipt of a complete application, the Floodplain Administrator shall either approve or disapprove the application. If an application is approved, a floodplain development permit shall be issued. All floodplain development permits shall be conditional upon the commencement of work within one (1) year. A floodplain development permit shall expire one (1) year after issuance unless the permitted activity has been substantially begun and is thereafter pursued to completion.

(f) Inspections. The Floodplain Administrator shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions.

(g) Post-Construction Certifications Required. The following as-built certifications are required after a floodplain development permit has been issued:

(1) For new or substantially improved residential structures, or nonresidential structures that have been elevated, the applicant shall have a *Federal Emergency Management Agency Elevation Certificate* completed by a registered surveyor to record as-built elevation data. For elevated structures in Zone A and Zone AO areas without a base flood elevation, the elevation certificate may be completed by the property owner or owner's representative.

(2) For all development activities subject to the standards of Section 1333.03(j)(1), a Letter of Map Revision.

(h) Revoking a Floodplain Development Permit. A floodplain development permit shall be revocable, if among other things, the actual development activity does not conform to the terms of the application and permit granted thereon. In the event of the revocation of a permit, an appeal may be taken to the Appeals Board in accordance with Section 1333.05 of these regulations.

(i) Exemption from Filing a Development Permit.
An application for a floodplain development permit shall not be required for:

(1) Maintenance work such as roofing, painting, and basement sealing, or for small nonstructural development activities (except for filling and grading) valued at less than $5,000.

(2) Development activities in an existing or proposed manufactured home park that are under the authority of the Ohio Department of Health and subject to the flood damage reduction provisions of the Ohio Administrative Code Section 3701.

(3) Major utility facilities permitted by the Ohio Power Siting Board under Section 4906 of the Ohio Revised Code.

(4) Hazardous waste disposal facilities permitted by the Hazardous Waste Siting Board under Section 3734 of the Ohio Revised Code.

(5) Development activities undertaken by a federal agency and which are subject to Federal Executive Order 11988 – Floodplain Management.

Any proposed action exempt from filing for a floodplain development permit is also exempt from the standards of these regulations.

(j) Map Maintenance Activities. To meet National Flood Insurance Program minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that City of Fairview Park flood maps, studies and other data identified in Section 1333.01(f) accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:

(1) Requirement to Submit New Technical Data.

A. For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development proposals include:

1. Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;
2. Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area;
3. Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and
4. Subdivision or large scale development proposals requiring the establishment of base flood elevations in accordance with Section 1333.04(c).

B. It is the responsibility of the applicant to have technical data, required in accordance with Section 1333.03(j)(1) prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision, and submitted to FEMA. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.

C. The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for:

1. Proposed floodway encroachments that increase the base flood elevation; and
2. Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.

D. Floodplain development permits issued by the Floodplain Administrator shall be conditioned upon the applicant obtaining a Letter of Map Revision from FEMA for any development proposal subject to Section 1333.03(j)(1)A.

(2) Right to Submit New Technical Data. The Floodplain Administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the Mayor of City of Fairview Park, and may be submitted at any time.

(3) Annexation/ Detachment. Upon occurrence, the Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the City of Fairview Park have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the City of Fairview Park Flood Insurance Rate Map accurately represent the City of Fairview Park boundaries, include within such notification a copy of a map of the City of Fairview Park suitable for reproduction, clearly showing the new corporate limits or the new area for which the City of Fairview Park has assumed or relinquished floodplain management regulatory authority.

(k) Data Use and Flood Map Interpretation. The following guidelines shall apply to the use and interpretation of maps and other data showing areas of special flood hazard:

(1) In areas where FEMA has not identified special flood hazard areas, or in FEMA identified special flood hazard areas where base flood elevation and floodway data have not been identified, the Floodplain Administrator shall review and reasonably utilize any other flood hazard data available from a federal, state, or other source.

(2) Base flood elevations and floodway boundaries produced on FEMA flood maps and studies shall take precedence over base flood elevations and floodway boundaries by any other source that reflect a reduced floodway width and/or lower base flood elevations. Other sources of data, showing increased base flood elevations and/or larger floodway areas than are shown on FEMA flood maps and studies, shall be reasonably used by the Floodplain Administrator.

(3) When Preliminary Flood Insurance Rate Maps and / or Flood Insurance Study have been provided by FEMA:

A. Upon the issuance of a Letter of Final Determination by the FEMA, the preliminary flood hazard data shall be used and replace all previously existing flood hazard data provided from FEMA for the purposes of administering these regulations.

B. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall only be required where no base flood elevations and /or floodway areas exist or where the preliminary base flood elevations or floodway area exceed the base flood elevations and/or floodway widths in existing flood hazard data provided from FEMA. Such preliminary data may be subject to change and / or appeal to FEMA.

(4) The Floodplain Administrator shall make interpretations, where needed, as to the exact location of the flood boundaries and areas of special flood hazard. A person contesting the determination of the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 1333.05, Appeals and Variances.

(5) Where a map boundary showing an area of special flood hazard and field elevations disagree, the base flood elevations or flood protection elevations (as found on an elevation profile, floodway data table, established high water marks, *etc.*) shall prevail.

(l) Substantial Damage Determinations.

(1) Damages to structures may result from a variety of causes including flood, tornado, wind, heavy snow, fire, *etc.* After such a damage event, the Floodplain Administrator shall:

A. Determine whether damaged structures are located in special flood hazard areas;

B. Conduct substantial damage determinations for damaged structures located in special flood hazard areas; and

C. Make reasonable attempt to notify owners of substantially damaged structures of the need to obtain a floodplain development permit prior to repair, rehabilitation, or reconstruction.

(2) Additionally, the Floodplain Administrator may implement other measures to assist with the substantial damage determination and subsequent repair process. These measures include issuing press releases, public service announcements, and other public information materials related to the floodplain development permits and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in special flood hazard areas; and assist owners of substantially damaged structures with Increased Cost of Compliance insurance claims. (Ord. 10-23. Passed 10-4-10.)

1333.04 USE AND DEVELOPMENT STANDARDS FOR FLOOD HAZARD REDUCTION.

The following use and development standards apply to development wholly within, partially within, or in contact with any special flood hazard area as established in Section 1333.01(f) or 1333.03(k)(1):

(a) Use Regulations.

(1) Permitted Uses. All uses not otherwise prohibited in this section or any other applicable land use regulation adopted by City of Fairview Park are allowed provided they meet the provisions of these regulations.

(2) Prohibited Uses.

A. Private water supply systems in all special flood hazard areas identified by FEMA, permitted under Section 3701 of the Ohio Revised Code.

B. Infectious waste treatment facilities in all special flood hazard areas, permitted under Section 3734 of the Ohio Revised Code.

(b) Water and Wastewater Systems. The following standards apply to all water supply, sanitary sewerage and waste disposal systems not otherwise regulated by the Ohio Revised Code:

(1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems;

(2) New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,

(3) On-site waste disposal systems shall be located to avoid impairment to or contamination from them during flooding.

(c) Subdivisions and Large Developments.

(1) All subdivision proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations;

(2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

(4) In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and other proposed developments containing at least 50 lots or 5 acres, whichever is less.

(5) The applicant shall meet the requirement to submit technical data to FEMA in Section 1333.03(j)(1)A.4. when a hydrologic and hydraulic analysis is completed that generates base flood elevations as required by Section 1333.04(c)(4).

(d) Residential Structures.

(1) New construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Where a structure, including its foundation members, is elevated on fill to or above the base flood elevation, the requirements for anchoring (Section 1333.04(d)(1)) and construction materials resistant to flood damage (Section 1333.04(d)(2)) are satisfied.

(2) New construction and substantial improvements shall be constructed with methods and materials resistant to flood damage.

(3) New construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.

(4) New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to or above the flood protection elevation. In Zone AO areas with no elevations specified, the structure shall have the lowest floor, including basement, elevated at least two feet above the highest adjacent natural grade.

(5) New construction and substantial improvements, including manufactured homes, that do not have basements and that are elevated to the flood protection elevation using pilings, columns, posts, or solid foundation perimeter walls with openings sufficient to allow unimpeded movement of flood waters may have an enclosure below the lowest floor provided the enclosure meets the following standards:

A. Be used only for the parking of vehicles, building access, or storage; and

B. Be designed and certified by a registered professional engineer or architect to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters; or

C. Have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(6) Manufactured homes shall be affixed to a permanent foundation and anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

(7) Repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure, shall be exempt from the development standards of Section 1333.04(d).

(8) In AO Zones, new construction and substantial improvement shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.

(e) Nonresidential Structures.

(1) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements of Section 1333.04(d) (1-3) and (4-8).

(2) New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated to or above the level of the flood protection elevation; or, together with attendant utility and sanitary facilities, shall meet all of the following standards:

A. Be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water to the level of the flood protection elevation;

B. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,

C. Be certified by a registered professional engineer or architect, through the use of a *Federal Emergency Management Agency Floodproofing Certificate,* that the design and methods of construction are in accordance with Section 1333.04(e)A. and B.

(3) In Zone AO areas with no elevations specified, the structure shall have the lowest floor, including basement, elevated at least two feet above the highest adjacent natural grade.

(f) Accessory Structures. Relief to the elevation or dry floodproofing standards may be granted for accessory structures containing no more than 600 square feet. Such structures must meet the following standards:

(1) They shall not be used for human habitation;
(2) They shall be constructed of flood resistant materials;
(3) They shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters;
(4) They shall be firmly anchored to prevent flotation;
(5) Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the level of the flood protection elevation; and
(6) They shall meet the opening requirements of Section 1333.04(d) (5)C.;

(g) Recreational Vehicles. Recreational vehicles must meet at least one of the following standards:

(1) They shall not be located on sites in special flood hazard areas for more than 180 days, or
(2) They must be fully licensed and ready for highway use, or
(3) They must meet all standards of Section 1333.04.

(h) Above Ground Gas or Liquid Storage Tanks. All above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement resulting from hydrodynamic and hydrostatic loads.

(i) Assurance of Flood Carrying Capacity. Pursuant to the purpose and methods of reducing flood damage stated in these regulations, the following additional standards are adopted to assure that the reduction of the flood carrying capacity of watercourses is minimized:

(1) Development in Floodways.

A. In floodway areas, development shall cause no increase in flood levels during the occurrence of the base flood discharge. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that the proposed development would not result in any increase in the base flood elevation; or

B. Development in floodway areas causing increases in the base flood elevation may be permitted provided all of the following are completed by the applicant:

1. Meet the requirements to submit technical data in Section 1333.03(j)(1);
2. An evaluation of alternatives, which would not result in increased base flood elevations and an explanation why these alternatives are not feasible;

3. Certification that no structures are located in areas that would be impacted by the increased base flood elevation;
4. Documentation of individual legal notices to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property; and
5. Concurrence of the Mayor of the City of Fairview Park and the Chief Executive Officer of any other communities impacted by the proposed actions.

(2) Development in Riverine Areas with Base Flood Elevations but No Floodways.

A. In riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the base flood elevation more than 1.0 (one) foot at any point. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that this standard has been met; or,

B. Development in riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated causing more than one foot increase in the base flood elevation may be permitted provided all of the following are completed by the applicant:

1. An evaluation of alternatives which would result in an increase of one foot or less of the base flood elevation and an explanation why these alternatives are not feasible;
2. Section 1333.04(i)(1)B. items 1. and 3.-5.

(3) Alterations of a Watercourse. For the purpose of these regulations, a watercourse is altered when any change occurs within its banks. The extent of the banks shall be established by a field determination of the "bankfull stage." The field determination of "bankfull stage" shall be based on methods presented in Chapter 7 of the *USDA Forest Service General Technical Report RM-245, Stream Channel Reference Sites: An Illustrated Guide to Field Technique* or other applicable publication available from a Federal, State, or other authoritative source. For all proposed developments that alter a watercourse, the following standards apply:

A. The bank-full flood carrying capacity of the altered or relocated portion of the watercourse shall not be diminished. Prior to the issuance of a floodplain development permit, the applicant must submit a description of the extent to which any watercourse will be altered or relocated as a result of the proposed development, and certification by a registered professional engineer that the bankfull flood carrying capacity of the watercourse will not be diminished.

B. Adjacent communities, the U.S. Army Corps of Engineers, and the Ohio Department of Natural Resources, Division of Water, must be notified prior to any alteration or relocation of a watercourse. Evidence of such notification must be submitted to the Federal Emergency Management Agency.

C. The applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of said watercourse so that the flood carrying capacity will not be diminished. The Floodplain Administrator may require the permit holder to enter into an agreement with City of Fairview Park specifying the maintenance responsibilities. If an agreement is required, it shall be made a condition of the floodplain development permit.

D. The applicant shall meet the requirements to submit technical data in Section 1333.03(j)(1)A.3. when an alteration of a watercourse results in the relocation or elimination of the special flood hazard area, including the placement of culverts.

(Ord. 10-23. Passed 10-4-10.)

1333.05 APPEALS AND VARIANCES.

(a) Appeals Board Established.

(1) The City of Fairview Park Board of Zoning and Building Appeals is hereby appointed to serve as the Appeals Board for these regulations as established by City Code.

(2) Records of the Appeals Board shall be kept and filed in City Hall at 20777 Lorain Road, Fairview Park, Ohio.

(b) Powers and Duties.

(1) The Appeals Board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Floodplain Administrator in the administration or enforcement of these regulations.

(2) Authorize variances in accordance with Section 1333.05(d) of these regulations.

(c) Appeals.

(1) Any person affected by any notice and order, or other official action of the Floodplain Administrator may request and shall be granted a hearing on the matter before the Appeals Board provided that such person shall file, within 15 days of the date of such notice and order, or other official action, a brief statement of the grounds for such hearing or for the mitigation of any item appearing on any order of the Floodplain Administrator's decision. Such appeal shall be in writing, signed by the applicant, and be filed with the Floodplain Administrator. Upon receipt of the appeal, the Floodplain Administrator shall transmit said notice and all pertinent information on which the Floodplain Administrator's decision was made to the Appeals Board.

(2) Upon receipt of the notice of appeal, the Appeals Board shall fix a reasonable time for the appeal, give notice in writing to parties in interest, and decide the appeal within a reasonable time after it is submitted.

(d) Variances. Any person believing that the use and development standards of these regulations would result in unnecessary hardship may file an application for a variance. The Appeals Board shall have the power to authorize, in specific cases, such variances from the standards of these regulations, not inconsistent with Federal regulations, as will not be contrary to the public interest where, owning to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.

(1) Application for a Variance.

A. Any owner, or agent thereof, of property for which a variance is sought shall make an application for a variance by filing it with the Floodplain Administrator, who upon receipt of the variance shall transmit it to the Appeals Board.

B. Such application at a minimum shall contain the following information: Name, address, and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; and reason for the variance request.

(2) Public Hearing. At such hearing the applicant shall present such statements and evidence as the Appeals Board requires. In considering such variance applications, the Appeals Board shall consider and make findings of fact on all evaluations, all relevant factors, standards specified in other sections of these regulations and the following factors:

A. The danger that materials may be swept onto other lands to the injury of others.

B. The danger to life and property due to flooding or erosion damage.

C. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

D. The importance of the services provided by the proposed facility to the community.

E. The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage.

F. The necessity to the facility of a waterfront location, where applicable.

G. The compatibility of the proposed use with existing and anticipated development.

H. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.

I. The safety of access to the property in times of flood for ordinary and emergency vehicles.

J. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

K. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(3) Variances shall only be issued upon:

A. A showing of good and sufficient cause.

B. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.

C. A determination that the granting of a variance will not result in increased flood heights beyond that which is allowed in these regulations; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.

D. A determination that the structure or other development is protected by methods to minimize flood damages.

E. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Upon consideration of the above factors and the purposes of these regulations, the Appeals Board may attach such conditions to the granting of variances, as it deems necessary to further the purposes of these regulations.

(4) Other Conditions for Variances.

A. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

B. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in Section 1333.05(d)(2) items A.-K. have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

C. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(e) Procedure at Hearings.

(1) All testimony shall be given under oath.

(2) A complete record of the proceedings shall be kept, except confidential deliberations of the Board, but including all documents presented and a verbatim record of the testimony of all witnesses.

(3) The applicant shall proceed first to present evidence and testimony in support of the appeal or variance.

(4) The administrator may present evidence or testimony in opposition to the appeal or variance.

(5) All witnesses shall be subject to cross-examination by the adverse party or their counsel.

(6) Evidence that is not admitted may be proffered and shall become part of the record for appeal.

(7) The Board shall issue subpoenas upon written request for the attendance of witnesses. A reasonable deposit to cover the cost of issuance and service shall be collected in advance.

(8) The Board shall prepare conclusions of fact supporting its decision. The decision may be announced at the conclusion of the hearing and thereafter issued in writing or the decision may be issued in writing within a reasonable time after the hearing.

(f) Appeal to the Court. Those aggrieved by the decision of the Appeals Board may appeal such decision to the Cuyahoga County Court of Common Pleas, as provided in Chapter 2506 of the Ohio Revised Code. (Ord. 10-23. Passed 10-4-10.)

1333.06 ENFORCEMENT.

(a) Compliance Required.

(1) No structure or land shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with the terms of these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations, unless specifically exempted from filing for a development permit as stated in Section 1333.02(i).

(2) Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with Section 1333.06(c).

(3) Floodplain development permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the use, and arrangement, set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations and punishable in accordance with Section 1333.06(c).

(b) Notice of Violation. Whenever the Floodplain Administrator determines that there has been a violation of any provision of these regulations, he shall give notice of such violation to the person responsible therefore and order compliance with these regulations as hereinafter provided. Such notice and order shall:

(1) Be put in writing on an appropriate form;

(2) Include a list of violations, referring to the section or sections of these regulations that have been violated, and order remedial action, which, if taken, will effect compliance with the provisions of these regulations;

(3) Specify a reasonable time for performance;

(4) Advise the owner, operator, or occupant of the right to appeal;

(5) Be served on the owner, occupant, or agent in person. However, this notice and order shall be deemed to be properly served upon the owner, occupant, or agent if a copy thereof is sent by registered or certified mail to the person's last known mailing address, residence, or place of business, and/or a copy is posted in a conspicuous place in or on the dwelling affected.

(c) Violations and Penalties. Violation of the provisions of these regulations or failure to comply with any of its requirements shall be deemed to be a strict liability offense, and shall constitute a second degree misdemeanor. Any person who violates these regulations or fails to comply with any of its requirements shall upon conviction thereof be fined or imprisoned as provided by the laws of the City of Fairview Park. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Fairview Park from taking such other lawful action as is necessary to prevent or remedy any violation. The City of Fairview Park shall prosecute any violation of these regulations in accordance with the penalties stated herein. (Ord. 10-23. Passed 10-4-10.)

CHAPTER 1335
Portable Storage Units

1335.01 Definitions.
1335.02 Permit required.
1335.03 Duration.
1335.04 Requirements for placement of portable storage units.
1335.05 Number of units.
1335.99 Penalty.

1335.01 DEFINITIONS.

"Portable Storage Units" means a transportable unit designed and used primarily for temporary storage of building materials, household goods, and other such materials for use on a limited temporary basis. This definition does not include dumpsters designed for the storage and removal of refuse. Such unit shall not be considered a temporary accessory storage building as defined in Chapter 1117.03.
(Ord. 07-11. Passed 3-19-07.)

1335.02 PERMIT REQUIRED.

No person shall place a portable storage unit any parcel in the City of Fairview Park without first obtaining a permit to do so from the Building Commissioner. The permit must be posted in the front window of the property or attached to the portable storage unit in a waterproof pocket if there are no windows on the property within which to post the permit. A nonrefundable fee of ten dollars ($10.00) for a thirty-day permit must be paid by the applicant. The application shall contain the name of the applicant to whom the temporary storage unit is supplied, the name of the person who owns, rents, occupies or controls the property, the address at which the portable storage unit shall be placed, the delivery and removal date, active building permit number (if applicable), a sketch depicting the location and placement of the temporary storage unit and the purpose of its use. Should the permit for a portable storage unit be requested at the same time as a building permit is issued for improvements to the property, the ten dollar ($10.00) permit fee for the portable storage unit shall be waived.
(Ord. 07-11. Passed 3-19-07.)

1335.03 DURATION.

Permits will be granted for an initial period of thirty days including the days of delivery and removal. Prior to the expiration of the initial thirty-day period, applicants may seek to extend their permits for an additional thirty-day period by filing an application for extension with the Building Commissioner. The fee for extension of such a permit will be ten dollars ($10.00) for each additional thirty days granted. Each property is limited to have a portable storage unit on it for a maximum of ninety (90 days) per calendar year.
(Ord. 07-11. Passed 3-19-07.)

1335.04 REQUIREMENTS FOR PLACEMENT OF PORTABLE STORAGE UNITS.

(a) Portable storage units are prohibited from being placed in streets or the front yard of a property, and they must be kept in the driveway of the property at the furthest accessible point from the street. The portable storage unit may not block the site line from the property to the street for the entrance or exit of vehicles to or from the property. The applicant must obtain preapproval of the location by the Building Commission in the following situations:

(1) If the property does not have a driveway.
(2) If the property is a corner lot.
(3) If the location of the unit in the driveway is in the front yard of the property due to a shorter driveway area.

(b) No portable storage unit shall be used to store solid waste, construction debris, demolition debris, recyclable materials, business inventory, commercial goods, or any illegal or hazardous materials. Upon reasonable notice to the applicant, the City of Fairview Park Building Commissioner may inspect the contents of any temporary storage unit at any reasonable time to ensure that it is not being used to store prohibited materials.
(Ord. 07-11. Passed 3-19-07.)

1335.05 NUMBER OF UNITS.

Only one (1) portable storage unit may be placed on any property at one time.
(Ord. 07-11. Passed 3-19-07.)

1335.99 PENALTY.

Whoever violates any provision of Chapter 1335 shall be guilty of a misdemeanor of the fourth degree in addition to the revocation or denial of a permit or extension of a permit.
(Ord. 07-11. Passed 3-19-07.)

CHAPTER 1336
Soil Erosion and Sediment Control and Post Construction Water Quality Runoff

1336.01 Purpose and scope.
1336.02 Words and terms defined.
1336.03 Disclaimer of liability.
1336.04 Conflicts, severability, nuisances and responsibility.
1336.05 Requirements for Storm Water Pollution Prevention Plan.
1336.06 Application procedures for SWP3.
1336.07 Compliance with State and Federal regulations.
1336.08 Storm Water Pollution Prevention Plan.
1336.09 Performance standards.
1336.10 Inspections and maintenance.
1336.11 Easements.
1336.12 Approval and permit.
1336.13 Violations.
1336.99 Penalty.

1336.01 PURPOSE AND SCOPE.

(a) The intent of this regulation is to establish technically feasible, operationally practical, and economically reasonable requirements and controls to achieve a level of erosion and sediment control and water quality control that will minimize damage to public and private property and degradation of water resources, and will promote and maintain the health and safety and welfare of the residents of the City of Fairview Park.

(b) This regulation will require owners who develop or re-develop their property with the City to:

(1) Allow development while minimizing increases in erosion and sedimentation.

(2) Reduce damage to receiving water resources and drainage systems that may be caused by new development activities or redevelopment activities.

(3) Reduce deterioration of the receiving waters.

(c) This regulation shall apply to all parcels used or being developed, either wholly or partially, for new or relocated projects involving highways and roads; subdivisions or larger common plans of development; commercial, institutional, or residential projects; building activities on farms; redevelopment activities; grading and all other uses that are not specifically exempted. The regulation shall apply to roadway construction projects initiated after the effective date of this regulation. Uses specifically exempted include:

(1) This regulation does not apply to activities regulated by the Ohio Agricultural Sediment Pollution Abatement Rules.

(2) This regulation does not apply to linear construction projects, (e.g. pipeline or utility line installation), which do not result in the installation of impervious surface and are independent of other construction projects (not part of a larger common plan of development or sale). However, linear construction projects must be designed to minimize the number of stream crossings and the width of disturbance.

(Ord. 08-13. Passed 3-3-08.)

1336.02 WORDS AND TERMS DEFINED.

For the purpose of this regulation, the following terms shall have the meaning herein indicated:

(a) ACRE: A unit of measure equaling 43,560 square feet.

(b) AS-BUILT CERTIFICATION: A survey shown on a plan or drawing prepared by a registered surveyor or a Professional Engineer indicated the actual dimensions, elevations, and locations of any structures, underground utilities, swales detention facilities, and sewage treatment facilities after construction has been completed.

(c) BEST MANAGEMENT PRACTICES: Structural or nonstructural facilities or activities that control soil erosion and/or storm water runoff at a development site. Includes treatment requirements, operating and maintenance procedures, or other practices to control site runoff, leaks, or waste disposal.

(d) CHANNEL: A natural stream that conveys water, or a ditch or channel excavated for the natural flow of water.

(e) CLEAN WATER ACT: Pub. L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4, 33 U.S.C. 1251 et. seq. formally referred to as the Federal Water Pollution Control Act or the Federal Water Pollution Control Act Amendments of 1972.

(f) COMMUNITY: Throughout this regulation, this shall refer to the City of Fairview Park or its designated representatives.

(g) CONSERVATION: The wise use of management of natural resources

(h) CPESC: a person who is a Certified Professional in Erosion and Sediment Control as certified by CPESC, Inc., subscribes to the Code of Ethics and has met the requirements established by the CPESC Council as a Certified Professional in Erosion and Sediment Control.

(i) CUT: An excavation that reduces an existing elevation, as in road or foundation construction.

(j) DEVELOPMENT AREA: A contiguous area owned by one person or persons or operated as one development unit, and used or being developed for non-farm commercial, residential, or other institutional construction or alteration which changes the runoff characteristics of a parcel of land.

(k) DISTURBED AREAS: An area of land subject to erosion due to the removal of vegetative cover and/or soil disturbing activities.

(l) DRAINAGE: The removal of surface water or groundwater from land by surface or subsurface drains.

(m) EROSION: The process by which the land surface is worn away by the action of wind, water, ice, gravity, or any combination of those forces.

(n) EROSION AND SEDIMENT CONTROL: The control of soil material, both mineral and organic, during soil disturbing activities so as to minimize the removal of soil material from the land surface and to prevent its transport out of the disturbed area by means of wind, water, ice, gravity or any combination of those forces.

(o) FINAL STABILIZATION: All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of at least 70% cover for the area has been established or equivalent permanent stabilization measures have been employed.

(p) GRADING: Earth disturbing activity such as excavation, stripping, cutting, filling, stockpiling, or any combination thereof.

(q) GRUBBING: Removing, clearing or scalping material such as roots, stumps or sod.

(r) LANDSCAPE ARCHITECT: A Professional Landscape Architect registered in the State of Ohio.

(s) LARGER COMMON PLAN OF DEVELOPMENT OR SALE: A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.

(t) MAXIMUM EXTENT PRACTICABLE: The level of pollutant reduction that operators of small municipal separate storm sewer systems regulated under 40 C.F.R. Parts 9, 122, 123, and 124, referred to as NPDES Storm Water Phase II, must meet.

(u) NPDES: National Pollutant Discharge Elimination System; a regulatory program in the Federal Clean Water Act that prohibits the discharge of pollutants into surface waters of the United States without a permit.

(v) OHIO EPA: The Ohio Environmental Protection Agency.

(w) OWNER: Any person, as defined herein, holding fee simple title to the property or option to purchase the property proposed for development.

(x) PERSON: Any individual, corporation, firm, trust, commission, board, public or private partnership, joint venture, agency, unincorporated association, municipal corporation, county or state agency, the federal government, other legal entity, or an agent thereof.

(y) PHASING: Clearing a parcel of land in distinct sections, with the stabilization of each section before clearing the next.

(z) PROFESSIONAL ENGINEER: A Professional Engineer registered in the State of Ohio acting in strict conformance with the code of ethics of the Ohio State Board of Registration for Engineers and Surveyors.

(aa) PROFESSIONAL SOIL SCIENTIST: An individual certified by American Registry of Certified Professionals in Agronomy, Crops and Soils or affiliated registries such as the Association of Ohio Pedologists that meet the educational and practical experience standards, subscribe to the code of ethics, and qualify for identification as professionals.

(bb) PROFESSIONAL WETLAND CONSULTANT: Individuals competent in the areas of botany, hydric soils and wetland hydrology that provide professional services or advice, and meet the education and professional experience requirements as required by the Society of Professional Wetland Scientists.

(cc) RAINWATER AND LAND DEVELOPMENT MANUAL: The publication of Ohio's standards for storm water management, land development, and urban stream protection developed by the Ohio Department of Natural Resources, the U.S. Department of Agriculture Natural Resource Conservation Service, and the Ohio Environmental Protection Agency. The most recent version of these standards shall be used with this regulation.

(dd) RIPARIAN AREA: means the transition area between flowing water and terrestrial (land) ecosystems composed of trees, shrubs and surrounding vegetation which serve to stabilize erodible soil, improve both surface and ground water quality, increase stream shading and enhance wildlife habitat.

(ee) RIPARIAN SETBACK: Those lands within the City of Fairview Park which are alongside streams, and which fall within the area that the City of Fairview Park prohibits or restricts changes in land use and the building of structures.

(ff) RUNOFF: The portion of rainfall, melted snow, or irrigation water that flows across the ground surface and is eventually returned to water resources.

(gg) SEDIMENT: The soils or other surface materials that can be transported or deposited by the action of wind, water, ice, or gravity as a product of erosion.

(hh) SEDIMENT BASIN: A temporary sediment pond that releases runoff at a controlled rate. It is designed to slowly release runoff, detaining it long enough to allow most of the sediment to settle out of the water. The outlet structure is usually a designed pipe riser and barrel. The entire structure is removed after construction. Permanent storm water detention structures can be modified to function as temporary Sediment Basins.

(ii) SEDIMENT CONTROL: The limiting of sediment being transported by controlling erosion or detaining sediment-laden water, allowing the sediment to settle out.

(jj) SEDIMENT POLLUTION: A failure to use management or conservation practices to control wind or water erosion of the soil and to minimize the degradation of water resources by soil sediment in conjunction with land grading, excavating, filling, or other soil-disturbing activities on land used or being developed for commercial, residential, or other purposes.

(kk) SEDIMENT TRAP: A temporary sediment-settling pond having a simple spillway outlet structure stabilized with geotextile and rip rap.

(ll) SEDIMENTATION: The deposition of sediment in water resources.

(mm) SETTLING POND: A runoff detention structure, such as a Sediment Basin or Sediment Trap, which detains sediment-laden runoff, allowing sediment to settle out.

(nn) SOIL DISTURBING ACTIVITY: Clearing, grading, excavating, filling or other alteration of the earth's surface where natural or human made ground cover is altered or destroyed and which may result in, or contribute to, erosion and sediment pollution.

(oo) SOIL & WATER CONSERVATION DISTRICT: An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Soil and Water Conservation District Board or its designated employee(s).

(pp) STABILIZATION: The use of Best Management Practices that reduces or prevent soil erosion by storm erosion by storm water runoff, wind, ice, gravity, or a combination thereof.

(qq) STORM WATER POLLUTION PREVENTION PLAN (SWP3): The written document meeting the requirements of this regulation that sets forth the plans and practices to be used to minimize soil erosion, prevent off-site disposal of soil sediment by minimizing soil disturbance, by containing sediment and non-sediment materials on-site, and/or by passing sediment-laden runoff through sediment control measures during and after development, and increase water quality. Referred to as the "SWP3".

(rr) UNSTABLE SOILS: A portion of land surface or area which is identified by the Community Engineer as prone to slipping, sloughing, or landslides, or is identified by the U. S. Department of Agriculture Natural Resource Conservation Service methodology as having a low soil strength.

(ss) WATER RESOURCES: Any public or private body of water including lakes or ponds, and streams, gullies, swales, or ravines having banks, a defined bed, and a definite direction of course, either continuously or intermittently flowing.

(tt) WATERSHED: The total drainage area contributing storm water runoff to a single point.

(uu) WETLAND: Those areas as determined to be jurisdictional wetlands by the U.S. Army Corps. Of Engineers or the Ohio EPA that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, include swamps, marshes, bogs, and similar areas. (40 CFR 232, as amended)

(vv) WETLAND SETBACK: Those lands within the City of Fairview Park that fall within the area defined by the criteria set forth in other sections of the Codified Ordinances of the City of Fairview Park.

(Ord. 08-13. Passed 3-3-08.)

1336.03 DISCLAIMER OF LIABILITY.

Neither submission of an SWP3 under provisions herein, nor compliance with the provisions of this regulation, shall relieve any person from responsibility from damage to any person otherwise imposed by law; nor shall it create a duty by the Community to those damaged by soil sediment pollution or erosion. The provisions of this regulation are promulgated to promote the health and safety of the public and are not designed for the benefit of any individual or for the benefit of any particular parcel of property.

(Ord. 08-13. Passed 3-3-08.)

1336.04 CONFLICTS, SEVERABILITY, NUISANCES AND RESPONSIBILITY.

(a) Where this regulation is in conflict with other provisions of law, ordinance, contract, or deed, whichever imposes the more stringent restriction shall prevail.

(b) If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, validity of the remainder shall not be affected thereby.

(c) This regulation shall not be construed as authorizing any person to maintain a private or public nuisance on their property, and compliance with the provisions of this regulation shall not be a defense in any action to abate such a nuisance.

(d) Failure of the Community to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the owners from the responsibility for the condition or damage resulting there from, and shall not result in the Community, its officers, employees, or agents being responsible for any condition or damage resulting there from.

(e) Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law.
(Ord. 08-13. Passed 3-3-08.)

1336.05 REQUIREMENT FOR STORM WATER POLLUTION PREVENTION PLAN.

(a) This regulation requires that a SWP3 be developed and implemented for soil disturbing activities which disturb one (1) or more acres of total land, or less than one (1) acre if part of a larger plan of development or sale disturbing one (1) or more acres of total land, and on which any regulated activity of Section 1336.01 is proposed.

(b) The City shall administer this regulation, shall be responsible for determination of compliance with this regulation, and shall issue notices and orders as may be necessary. The City may consult with any technical or legal experts in reviewing the SWP3. The site owner or applicant will pay any costs associated with these consultations.
(Ord. 08-13. Passed 3-3-08.)

1336.06 APPLICATION PROCEDURES FOR SWP3.

(a) The SWP3 and necessary data required by this regulation shall be submitted to the Community Engineer as follows:

(1) For subdivisions: After the approval of the preliminary plans and prior to the approval of improvement plans or drawings by the Community Planning Commission or as required by the Community.

(2) For other construction projects: concurrently with the submittal of construction drawings to the Community approval authority.

(3) For soil disturbing activities for which a permit is required; thirty (30) working days prior to any soil disturbing activities.

(b) The Community Engineer shall review the SWP3 for conformance with the provisions of this regulation and approve, or return for revisions with comments and recommendations for revisions, within twenty-one (21) working days after receipt of the SWP3 as described above. A SWP3 rejected because of deficiencies shall receive a narrative report stating specific problems and the procedure for filing a revised SWP3. At the time of receipt of a revised SWP3, another twenty-one (21) day review period shall begin. The Community may consult with technical experts as necessary in reviewing the SWP3 required by this regulation.

(c) Approved SWP3's shall remain valid for the duration of the related permit.
(Ord. 08-13. Passed 3-3-08.)

1336.07 COMPLIANCE WITH STATE AND FEDERAL REGULATIONS.

(a) SWP3's issued in accordance with this regulation do not relieve the site owner of responsibility for obtaining all other necessary permits and/or approvals from federal, state, and/or county agencies. If requirements vary, the most stringent shall be followed.

(b) SWP3's shall be accompanied by other permits and documentation relevant to the project, including, but not limited to, those listed below. No soil-disturbing activity shall begin before all necessary state and federal permits have been granted to the owner.

(1) Proof of compliance with the Ohio EPA General Storm Water NPDES Permit. Proof of compliance shall be, but is not limited to, a copy of the NPDES General Storm Water Permit Notice of Intent; the NPDES General Storm Water Permit Number; and/or the Ohio EPA Director's Acceptance Letter for the NPDES General Storm Water Permit.

(2) Proof of compliance with Section 404 of the Clean Water Act administered by the U. S. Army Corps of Engineers relating to waters of the United States under its jurisdiction. Proof of compliance shall be, but is not limited to, a copy of the U.S. Army Corps of Engineers permit, showing project approval and any restrictions that apply to site activities, if an Individual Permit is required for the development project. If an Individual Permit is not required, the site owner shall submit proof of compliance with the U.S. Army Corps of Engineer's Nationwide Permit Program. This shall include, but is not limited to, one of the following:

A. A letter from a Professional Wetland Consultant stating whether or not jurisdictional waters in the United States or a water resource regulated by the State of Ohio exist on the site or isolated wetlands as regulated by the Ohio EPA.

B. A site plan showing that any proposal fill of jurisdictional waters of the United States conforms to the general and specific conditions specified in the applicable Nationwide Permit or Ohio EPA requirements. Wetlands, and other waters of the United States or the State of Ohio, shall be delineated by protocols accepted by the U.S. Army Corps of Engineers or the Ohio EPA at the time of application of these regulations.

(c) Proof of compliance with the Ohio Dam Safety Law administered by ODNR Division of Water. Proof of compliance shall be, but is not limited to, a copy of the ODNR Division of Water permit number, a copy of the project approval letter from the ODNR Division of Water, or a letter from the site owner explaining why the Ohio Dam Safety Law is not applicable. (Ord. 08-13. Passed 3-3-08.)

1336.08 STORM WATER POLLUTION PREVENTION PLAN.

A Storm Water Pollution Prevention Plan required by this regulation shall contain the following information:

(a) In order to control sediment pollution of water resources, the owner shall be responsible for developing a SWP3 in accordance with Construction General Permit #OHC000002. The owner or operator shall also obtain an Ohio EPA NPDES Storm Water General Permit and shall abide by its requirements in addition to an approved SWP3 from the Community. In situations of conflict between Ohio EPA requirements and Community requirements, the most stringent shall apply.

(b) If the construction site is subject to Ohio's EPA NPDES General Permits, a copy of all the required inspection sheets shall be submitted to the Community within two (2) working days of the request by the Community.

(c) A professional engineer, registered in the State of Ohio, or a certified professional in erosion and sediment control, certified by the CPESC Council, shall certify the SWP3.

(d) The SWP3 shall incorporate measures as recommended by the most current edition of *Rainwater and Land Development Manual* and shall include the following information:

(1) A project description including the type and purpose of soil disturbing activities and a description of the larger common plan of development if applicable.

(2) A vicinity sketch locating the site, and the larger common plan of development if applicable, and all pertinent surrounding features within 200 feet of the site including, wetlands, streams, steep slopes, and other sensitive areas receiving runoff from the development area.

(3) The name and location of the immediate receiving water resource and the first subsequent named receiving water resources and the major watershed(s) in which the project is located.

(4) The existing and proposed topography shown is 1' contour intervals for flat areas and 2' contour intervals in steeper areas.

(5) The location and description of existing and proposed drainage patterns and storm water management practices, including any related storm water management practices beyond the development area and the larger common development area. Drainage patterns during major phases of construction shall also be shown as appropriate.

(6) Existing and proposed watershed boundary lines, directions of flow, and watershed acreage.

(7) The types and locations of soils with or affected by the development area, including unstable soils as determined by the most recent edition of the Cuyahoga County Soil Survey and/or field investigations performed by NRCS/SWCD personnel, a professional engineer, or a professional soil scientist. The Soil Survey and interpretive assistance may be obtained from the Cuyahoga County SWCD.

(8) The scheduling, phasing, and coordination of construction operations and erosion and sediment control practices, including vegetative plantings and mulch.

(9) Erosion and sediment control, non-sediment pollution control practices, and post construction water quality practices to be employed on the development area, including:

A. Their location and size, including detail drawings, maintenance requirements during construction, and design calculations, all where applicable.

B. The type and amount of approved vegetative cover seed, fertilizer, and mulch to be used.

C. Settling ponds drawn to scale and including dimensions.

D. Limits of clearing and of soil disturbing activities.

E. Areas designated for the storage or disposal of solid, sanitary and toxic water, including dumpster areas and concrete truck washouts.

F. The name, address, and contact information of the person responsible for the continued maintenance of the erosion and sediment control practices.

(e) Inspection and Maintenance Agreement between the City and the applicant which meets the standards set forth in Section 1336.10 and contains the following information and provisions:

(1) Detail drawings that include the location of each storm water pollution prevention practice. Maintenance plans must be provided for all post-construction best management practices (BMPs).

(2) A schedule for regular maintenance for each aspect of the storm water management system to ensure continued performance of that system as is detailed in the Storm Water Control Plan. This schedule may include additional standards, as required by the City Engineer, to ensure the continued performance of the storm water management practices.

(3) Identification of the person or entity responsible for continued maintenance of all vegetative and/or mechanical BMPs for both the construction and post-construction phase of the development project.

(4) The plan will identify the person or entity financially responsible for maintaining the permanent inspection and maintenance of the permanent storm water conveyance and storage structures and other conservation practices.

(5) The method of ensuring that funding will be available to conduct the long term maintenance and inspections of all permanent storm water soil erosion and sediment control, storm water detention, and water quality practices will be identified.

(6) Identification of all easements.

(Ord. 08-13. Passed 3-3-08.)

1336.09 PERFORMANCE STANDARDS .

(a) To control sediment pollution of water resources, the owner shall adhere to the following planning and best management practices as specified in the most current edition of *Rainwater and Land Development Manual*, where applicable:

(1) Timing of Sediment Trapping Practices.

A. Sediment control practices shall be functional throughout all phases of up slope soil disturbing activities.

B. Settling facilities, perimeter controls, and other practices intended to trap sediment shall be implemented as the first step of grading within seven (7) days from the start of grubbing. They shall continue to function until the up slope development area is permanently re-stabilized.

(2) Clearing and Grubbing: Clearing and grubbing will be done in two (2) more phases. The first phase will include only those locations necessary to install the perimeter soil erosion and sediment control, and storm water control practices. After the perimeter controls are in place and functioning, the remaining phase(s) of clearing and grubbing may continue.

(3) Stabilization of Denuded Areas & Soil Stockpile: Permanent or temporary soil stabilization shall be applied as described in the tables below. Permanent vegetation shall not be considered established until ground cover is achieved which, in the opinion of the Community Engineer, uniformly covers seventy percent (70%) or more of the soil surface, provides adequate cover, and is mature enough to control soil erosion and to survive adverse weather conditions.

Temporary Stabilization

Area Requiring Temporary Stabilization	Time Frame to Apply Erosion Control
Any disturbed areas within 50 feet of a Stream and not at final grade	Within two days of the most recent disturbance if the area will remain idle for more than 21 days
For all construction activities, any disturbed areas that will be dormant for more than 21 days but less that one year, and not within 50 feet of a stream	Within seven days of the most recent disturbance within the area For residential subdivisions, disturbed areas must be stabilized at least seven days prior to the transfer of permit coverage for the individual lot(s)
Disturbed areas that will be idle over the winter	Prior to the onset of winter weather

Permanent Stabilization

Area Requiring Permanent Stabilization	**Time Frame to Apply Erosion Controls**
Any areas that will lie dormant for one year or more	Within seven days of the most recent disturbance
Any areas within 50 feet of a stream and at final grade	Within two days of reaching final grade
Any other areas at final grade	Within seven days of reaching final grade within that area

(4) Settling Ponds: Storm water runoff flowing at rates that exceed the design capacity of sediment barriers shall pass through a sediment settling pond. When designing sediment settling pond, the following shall apply:

A. The facility's storage capacity shall be designed in accordance with the requirements of the *Rainwater and Land Development Manual*.

B. Permanent storm water management ponds that are designed to trap sediment during construction shall be designed to provide for a slow release of sediment-laden water.

(5) Sediment Barriers: Sheet and rill runoff from denuded areas shall be directed to a settling pond or treated by a geotextile silt fence or other approved sediment barrier. The total runoff flow treated by a sediment barrier shall not exceed the design capacity of that sediment barrier.

(6) Storm Sewer Protection: All storm sewer inlets that receive water runoff from the development area shall be protected so that sediment-laden water will not enter the storm sewer. In areas where construction will be ongoing, such as subdivisions, the storm sewer protection shall be maintained until all up-slope areas reach final stabilization, as determined by the Community Engineer. The owner shall be required to hydraulically clean the storm sewers after each of this period to the satisfaction of the Community Engineer. Sediment from the soil disturbing activities shall be removed from the system and shall not be flushed downstream. In situations deemed necessary to preserve the public health, safety, and welfare the Public Service Director, or his designee, may order the temporary removal of such storm sewer protection. It shall be restored when so ordered, at no additional expense to the Municipality.

(7) Working Near or Crossing Water Resources:

A. Construction vehicles shall avoid water resources and their setback areas. If construction vehicles must cross a drainage way repeatedly during construction, an approved temporary stream crossing shall be constructed. Construction of bridges, culverts, or sediment control structures shall not place soil, debris, or other particulate material into or close to the water resources in such a manner that it may slough, slip or erode.

B. No soil, rock, debris, or any other material shall be dumped or placed into a water resource or into such proximity that it may readily slough, slip, or erode into a water resource unless such dumping or placing has been authorized by the Community, and where applicable, the U.S. Army Corps of Engineers and the Ohio Environmental Protection Agency, for such purposes as, but not limited to, constructing bridges, culverts, and erosion control measures.

(8) Construction Access Routes:

A. Measures shall be taken to prevent soil transport onto surfaces where runoff is not checked by sediment controls or onto public roads. Gravel construction access drives shall be implemented as required by the Community Engineer and Ohio EPA.

B. Soil shall be removed from paved surfaces and/or public roads at the end of each day or more frequently as needed to insure public safety and prevent a nuisance.

(9) Sloughing and Dumping: Soils prone to slipping, land sliding, or other instability, as determined by the Cuyahoga County Soil Survey, shall not be graded, excavated, filled, or have loads imposed upon them, unless the work is done in accordance with a qualified professional engineer's recommendation to correct, eliminate, or adequately address the problems caused by the soil characteristics.

(10) Cut and Fill Slopes: Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion and slippage. Consideration shall be given to the length and steepness of the slope, soil type, up slope drainage area, groundwater conditions, and slope stabilization.

(11) Stabilization of Outfalls and Channels: Outfalls and constructed or modified channels shall be designed and constructed to withstand the expected velocity of flow from a post-development, ten-year (minimum) frequency storm without eroding.

(12) Disposition of Temporary Practices: All temporary erosion and sediment controls practices shall be disposed of immediately after final site stabilization is achieved or after the temporary practices are no longer needed, unless otherwise required by the Community Engineer. Trapped sediment shall be permanently stabilized to prevent further erosion.

(13) Control of Non-Sediment Pollution: Site Management practices shall be implemented to prevent toxic materials, hazardous materials, or other debris from entering the Community's water resources. These practices shall include but are not limited to the following:

A. A covered Dumpster shall be made available for the proper disposal of construction site waste materials, garbage, plaster, drywall, grout, or gypsum.

B. The washing of concrete material into a street, catch basin, or other public facility or natural resource shall not occur. A designated area for concrete washout shall be made available.

C. All fuel tanks and drums shall be stored in a marked storage area. A functional dike, or other approved containment, shall be constructed around this storage area with a minimum capacity equal to 110% of the volume of the largest container in the storage area and any additional requirements stipulated by the local Fire Authority.

D. Any toxic or hazardous waste shall be disposed of properly.

E. Contaminated soils from redevelopment sites shall be disposed of properly. Runoffs from contaminated sites shall not be discharged from the site. Proper permits shall be obtained for development projects on solid waste landfill sites.

(14) Pre-Winter Stabilization Planning: If the development area is, or is planned, to remain active through the winter months, a Pre-Winter Stabilization Meeting shall be held by the owner, and the developer, engineer, and contractor of the project with the Community prior to October 1, in order to plan and approve winter erosion and sediment control as defined in the most current edition of *Rainwater and Land Development Manual*.

(15) Maintenance: All temporary and permanent erosion and sediment control practices shall be:

A. Designed and constructed to minimize maintenance requirements. They shall be maintained and repaired as needed to assure continued performance of their intended function. The person or entity responsible for the continued physical and financial maintenance of permanent erosion control measures shall be identified to the satisfaction of the Community.

B. Inspected by the owner or person responsible for the development area once every seven (7) days and within twenty-four (24) hours of a 0.5" or greater rainfall event. A written log of these inspections and any subsequent improvements to controls shall be kept by the Owner or the Owner' designated representative. The inspections shall include the date of the inspection, the name of the inspector, weather conditions, the actions taken to correct problems, and the date actions were taken.

(16) Underground Utility Construction: Backfilled trenches for underground utility lines and pipes shall be temporarily stabilized within seven (7) days if they are to remain inactive or thirty (30) days. Trench de-watering devices shall discharge in a manner that filters soil-laden water before discharging it to a receiving drainage.

(b) To control increases in storm water runoff peaks and volumes a Storm Water Quantity Management Plan shall be prepared in accordance with Chapter 1337.
(Ord. 08-13. Passed 3-3-08.)

1336.10 INSPECTIONS AND MAINTENANCE.

All temporary and permanent control practices shall be maintained and repaired in accordance with the approved Inspection and Maintenance Agreement and as needed to ensure continued performance of their intended function. All sediment control practices must be maintained in a functional condition until all slope areas they control are permanently stabilized. Any portion of the permanent water quality management systems, including on-site and off-site treatment/storage facilities that are constructed by the owner, will be continuously maintained into perpetuity. All maintenance plans must meet the following standards and those responsible for implementation of the maintenance plan must adhere to them:

(a) Maintenance plans must ensure that pollutants collected within structural Post-Construction BMP practices are disposed of in accordance with local, state and federal guidelines.

(b) Maintenance plans shall be provided by the owner of the site to both the City of Fairview Park Engineer and the post-construction operator of the BMP (including homeowner associations) upon completion of construction activities and prior to the City of Fairview Park Engineer giving final approval for the completed construction.

(c) Single-Family Residential Developments: A Homeowners' Association or other entity acceptable to the City shall be created and placed in title of the affected lands and shall be continuously responsible for post-construction maintenance and inspections into perpetuity unless such maintenance and inspections become officially accepted by the City of Fairview Park.

(d) Multi-Family and Commercial Developments: The plans will clearly state that the owner of the property shall be continuously responsible for post-construction maintenance and inspections into perpetuity unless such maintenance and inspections become officially accepted by the City of Fairview Park.

(e) Maintenance Design: Low maintenance requirements are a priority in the design and construction of all facilities. Multi-use facilities incorporating assets such as aesthetics and recreation may be incorporated into the design of the drainage facilities. All permanent drainage, soil erosion, sediment control, water quality management systems and BMPs, including on-site and off-site structures and vegetation that are constructed or planted, must be inspected and maintained into perpetuity by the responsible party designated in the plans and the requirements of this ordinance. Inspections and maintenance will be incorporated periodically throughout the year to ensure that the facilities are properly operational.

(f) Permit Related Inspections: All controls on the site shall be inspected in accordance with the applicable individual NPDES Construction Activity Permit or Ohio EPA's NPDES Construction Activity Permit #OHC000002. This shall include procedures that all controls on the site are inspected at least once every seven calendar days and within 24 hours after any storm event greater than one-half inch of rain per 24 hour period until no longer required under the applicable Ohio EPA storm water control permit.

(g) Perpetual Maintenance Inspections: One (1) inspection with a written report will be performed each year. The written report will be given to the City of Fairview Park's Building Department by May 1st of each and every year after the Best Management Practice (BMP) has been completed. The City retains the authority to require that the annual inspection report be a written and stamped report from a professional engineer or other individual possessing a valid state license that authorizes them to design the type of BMP inspected.

(h) Structures that require a permit from the Ohio Division of Water: A written and stamped report from a professional engineer on the status of all structural BMPs that require a permit from the Ohio Department of Natural Resources (ODNR) Division of Water. This applies to all BMPs that require a permit either at the time of construction or fall under the jurisdiction of ODNR Division of Water at any time after construction if completed.

(i) Repair and maintenance: If an inspection reveals that a control practice is in need of repair or maintenance, with the exception of a sediment settling pond, it must be repaired or maintained within three days of the inspection. Sediment settling ponds must be repaired or maintained within 10 days of the inspection.

(j) Authority of City to perform corrective actions: The City of Fairview Park is authorized to enter upon the property and to perform the inspections or any necessary corrective actions if the landowner(s), person, or organization responsible for maintenance does not make the required inspection or correction within the specified time period in the maintenance plan or within a reasonable amount of time where no time period has been specified. The City of Fairview Park shall be reimbursed by the landowner(s), person, or organization responsible for maintenance for all expenses related to inspection or correction incurred by the City within ten (10) days of receipt of invoice from the City.

(k) Modification of the selected control practice: If an inspection reveals that a control practice fails to perform its intended function and that another, more appropriate control practice is required, the Storm Water Pollution Prevention Plan must be amended by the person or entity responsible for maintenance and the new control practice must be installed after receiving approval from the City Engineer. If an inspection reveals that a planned control practice is not needed, the person or entity responsible for installation must request approval from the City Engineer to no longer implement the planned control practice.

(l) Easements: A written report from an inspector on the status of all storm water pollution prevention easements for each project shall be submitted to the City of Fairview Park Engineer by May 1st of each year into perpetuity. These reports will document if restricted plantings, fences and structures are on the easement and will identify the location of the noted easement restriction violations.
(Ord. 08-13. Passed 3-3-08.)

1336.11 EASEMENTS.

Future access to all permanent vegetative and/or mechanical post construction water quality conservation practices (BMPs) and other areas, as required by the City of Fairview Park, shall be secured by means of easements.

(a) Easements shall be approved by the City Engineer and shall be recorded with the Cuyahoga County Auditor and on all property deeds.

(b) Unless otherwise required by the City Engineer, access easements between a public right-of-way and all storm water management practices shall be no less than 20-feet wide. The easement shall also incorporate the entire storm water management practice, plus an additional 15-foot wide band around the perimeter of the storm water management practice.

(c) The easement shall be graded and/or stabilized as necessary to allow maintenance equipment to access and manipulate around and within each facility, as defined in the Inspection and Maintenance agreement for the site.

(d) Easements to structural storm water management practices shall be restricted against the construction therein of buildings, fences, walls, and other structures that may obstruct the free flow of storm water and the passage of inspector and maintenance equipment; and against the changing of final grade from that described by the final grading plan approved by the City of Fairview Park. Any re-grading and/or obstruction placed within a maintenance easement may be removed by the City of Fairview Park at the property owners' expense.
(Ord. 08-13. Passed 3-3-08.)

1336.12 APPROVAL AND PERMIT.

(a) Funds shall be deposited with the Community prior to review by the Community and/or its consultant to cover professional services of the Community Engineer and/or other experts required by the Community Council or Review Boards.

(b) No project subject to this regulation shall commence without an SWP3 approved by the Community Engineer. (Ord. 08-13. Passed 3-3-08.)

1336.13 VIOLATIONS.

No person shall violate or cause or knowingly permit to be violated any of the provisions of this regulation, or fail to comply with any of such provisions or with any lawful requirements of any public authority made pursuant to this regulation, or knowingly use or cause or permit the use of any lands in violation of this regulation or in violation of any permit granted under this regulation. (Ord. 08-13. Passed 3-3-08.)

1336.99 PENALTY.

(a) Whoever violates or fails to comply with any provisions of this regulation is guilty of a misdemeanor of the third degree and shall be fined no more than five hundred dollars ($500.00) or imprisoned for no more than sixty (60) days, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

(b) Upon notice from the Community Engineer, or designated representative, that work is being done contrary to this regulation, such work shall immediately stop. Such notice shall be in writing and shall be given to the owner, and shall state the conditions under which such work may resume; provided, however, in instances here immediate action is deemed necessary for public safety or the public interest, the Community Engineer may require that work be stopped upon verbal order pending issuance of the written order.

(c) The imposition of any other penalties provided herein shall not preclude the Community, by and through its Law Director and/or any of its assistants, from instituting an appropriate action or proceeding in a Court of proper jurisdiction to prevent an unlawful development, or to restrain, correct, or abate a violation, or to require compliance with the provisions of this regulation or other applicable laws, ordinances, rules or regulations, or the orders of the Community Engineer.
(Ord. 08-13. Passed 3-3-08.)

CHAPTER 1337
Storm Water Quantity Management

1337.01 Purpose and scope.
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1337.01 PURPOSE AND SCOPE.

(a) The intent of this regulation is to establish consistent technically feasible and operationally practical standards to achieve a level of storm water management that will minimize damage to public and private property and degradation of water resources, and will promote and maintain the health, safety and welfare of the residents of the City of Fairview Park.

(b) This regulation further intends, but is not limited, to:

(1) Assure that property owners control the volume and rate of storm water runoff originating from their property so that surface water and ground water are protected, soil erosion is controlled, and flooding potential is not increased.

(2) Preserve to the maximum extent practicable the natural drainage characteristics of the site and minimize the need to construct, repair, and replace enclosed, storm drain systems.

(3) Preserve to the maximum extent practicable natural infiltration and ground recharge, and maintain subsurface flow that replenishes water resources, wetlands and wells.

(4) Assure that storm water controls are incorporated into site planning and design at the earliest possible stage.

(5) Reduce the need for costly maintenance and repairs to roads, embankments, sewage systems, ditches, water resources, wetland, and storm water management practices that are the result of inadequate storm water management.

(6) Reduce the long-term expense of remedial projects needed to address problems caused by inadequate storm water management.

(7) Require the construction of storm water management practices that serve multiple purposes including, flood control, erosion control, and require water quality protection; and encourage such practices that promote recreation and habitat preservation.

(8) Ensure that all storm water management practices are properly designed, constructed, and maintained.

(c) This regulation applies to, and requires a Storm Water Quantity Management Plan (SWQM Plan) for earth disturbing activity on a parcel or combination of parcels which results in 5,000 square feet or more of land disturbance for parcels used or being developed, either wholly or partially, for new or relocated projects involving highways and roads; subdivisions or larger common plans of development, commercial, institutional, or residential projects; building activities on farms; redevelopment activities; grading and all other uses that are not specifically exempted. The regulation shall apply to roadway construction projects initiated after the effective date of this regulation. Uses specifically exempted include:

(1) Development or redevelopment on a parcel of land less than one acre used for single family residential purposes only.

(2) This regulation does not apply to activities regulated by the Ohio Agricultural Sediment Pollution Abatement Rules.

(3) This regulation does not apply to linear construction projects, (e.g. pipeline or utility line installation), which do not result in the installation of increased impervious surface and are independent of other construction projects (not part of a larger common plan of development or sale). However, linear construction projects must be designed to minimize the number of stream crossings and the width of disturbance.

(d) SWQM Plans are not required for the following activities:

(1) Existing farming, silvicultural operations, or areas regulated by the Ohio Agricultural Sediment Pollution Abatement Rules in Sections 1501:15-3 of the Ohio Administrative Code.

(2) Existing coal surface mining operations regulated by Section 1513 of the Ohio Revised Code.

(3) Existing other surface mining operations regulated by Section 1514 of the Ohio Revised Code. (Ord. 08-14. Passed 3-3-08.)

1337.02 WORDS AND TERMS DEFINED.

For the purpose of this regulation, the following terms shall have the meaning herein indicated:

(a) ACRE: A unit of measure equaling 43,560 square feet.

(b) AS-BUILT CERTIFICATION: A survey shown on a plan or drawing prepared by a registered surveyor or a Professional Engineer indicated the actual dimensions, elevations, and locations of any structures, underground utilities, swales detention facilities, and sewage treatment facilities after construction has been completed.

(c) BEST MANAGEMENT PRACTICES: Structural or nonstructural facilities or activities that control soil erosion and/or storm water runoff at a development site. Includes treatment requirements, operating and maintenance procedures, or other practices to control site runoff, leaks, or waste disposal.

(d) CHANNEL: a natural bed that conveys water or a ditch excavated for the flow of water.

(e) CLEAN WATER ACT: Pub. L. 92-500, as amended Pub L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4, 33 U.S.C. 1251 et. seq. Formally referred to as the Federal Water Pollution Control Act or the Federal Water Pollution Control Act Amendments of 1972.

(f) COMMUNITY: Throughout this regulation, this shall refer to the City of Fairview Park or its designated representatives.

(g) CRITICAL STORM: A storm, which is calculated by means of the percentage increase in volume of runoff by a proposed development area. The critical storm is used to calculate the maximum allowable storm water discharge rate from a developed site.

(h) CUT: An excavation that reduces an existing elevation, as in road or foundation construction.

(i) DEVELOPMENT AREA: A contiguous parcel or parcels owned by one person or persons, or operated as one development unit, and used or being developed for non-farm commercial, residential, or other institutional construction or alteration which changes the runoff characteristics of a parcel of land.

(j) DISTURBED AREA: An area of land subject to erosion due to the removal of vegetative cover and/or soil disturbing activities.

(k) DITCH: An open channel, either human made or natural, for the purpose of drainage or irrigation with intermittent flow.

(l) DRAINAGE: The removal of surface water or groundwater from land by surface or subsurface drains.

(m) EROSION: The process by which the land surface is worn away by the action of the wind, water, ice, gravity, or any combination of those forces.

(n) EXISTING: The present condition of the land at the time of the adoption of this Ordinance.

(o) IMPERVIOUS COVER: Any surface that cannot effectively absorbed or infiltrate water. This may include roads, streets, parking lots, rooftops, sidewalks, and other areas not covered by vegetation.

(p) MAXIMUM EXTENT PRACTICABLE: The level of pollutant reduction that operators of small municipal separate storm sewer systems regulated under 40 C.F.R. Parts 9, 122, 123, and 124, referred to as NPDES Storm Water Phase II, must meet.

(q) NPDES: National Pollutant Discharge Elimination System; a regulatory program in the Federal Clean Water Act that prohibits the discharge of pollutants into surface waters of the United States without a permit.

(r) NONSTRUCTURAL STORM WATER MANAGEMENT PRACTICE: Storm water runoff control and treatment techniques that use natural measures to control runoff and/or reduce pollution levels, and do not require extensive construction efforts and/or do promote runoff control and/or pollutant reduction by eliminating the runoff and/or pollutant source.

(s) OWNER: Any person, as defined herein, holding fee simple title to the property proposed for development or option for same.

(t) PERSON: Any individual, corporation, firm, trust, commission, board, public or private partnership, joint venture agency, unincorporated association, municipal corporation, county or state agency, the federal government, or other legal entity, or an agent thereof.

(u) POST-DEVELOPMENT: The conditions which exist following the completion of soil disturbing activity in terms of topography, vegetation, land use, and the rate, volume, or direction of storm water runoff.

(v) PRE-DEVELOPMENT: The conditions which exist prior to the initiation of soil disturbing activity in terms of topography, vegetation, land use, and the rate, volume, or direction of storm water runoff.

(w) PROFESSIONAL ENGINEERING: A Professional Engineer registered in the State of Ohio with specific education and experience in water resources engineering, acting in strict conformance with the Code of Ethics of the Ohio State Board of Registration for Engineers and Surveyors.

(x) RAINWATER AND LAND DEVELOPMENT: The publication of Ohio's standards for storm water management, land development and urban stream protection. Developed by the Ohio Department of Natural Resources, the U.S Department of Agriculture Natural Resource Conservation Service, and the Ohio Environmental Protection Agency. The most recent version of these standards shall be used in this regulation.

(y) RUNOFF: The portion of rainfall, melted snow, or irrigation water that flows across the ground surface and is eventually returned to water resources.

(z) SOIL DISTRIBUTING ACTIVITY: Clearing, grading, excavating, filling, or other alteration of the earth's surface where natural or human made ground cover is altered or destroyed and which may result in, or contribute to, erosion and sediment pollution.

(aa) SOIL & WATER CONSERVATION DISTRICT: An entity organized under Chapter 1515 of the Ohio Revised Code referring either to the Cuyahoga County Soil and Water Conservation District Board or its designated employee(s).

(bb) STORM WATER QUANTITY MANAGEMENT PLAN: The written document meeting the requirements of this regulation that sets forth the plans and practices to be used to minimize storm water runoff from a development area and to safely convey or temporarily store and release post-development storm water runoff at an allowable rate to minimize flooding and erosion. Referred to as "SWQM Plan."

(cc) STRUCTURAL STORM WATER MANAGEMENT PRACTICE: Any human made facility, structure, or device that is constructed to provide permanent or temporary conveyance, storage, or treatment of storm water runoff.

(dd) WATER RESOURCES: Any public or private body of water including lakes or ponds, wetlands and streams, gullies, swales, or ravines having banks, a defined bed and a definite direction of course, either continuously or intermittently flowing.

(ee) WATERSHED: The total drainage area contributing storm water runoff to a single point. (Ord. 08-14. Passed 3-3-08.)

1337.03 DISCLAIMER OF LIABILITY.

Neither submission of a SWQM Plan under the provisions herein, nor compliance with this regulation, shall relieve any person from responsibility for damage to any person otherwise imposed by law; nor shall it create a duty by the Community to those damaged by storm water runoff. The provisions of this regulation are promulgated to promote the health and safety of the public and are not designated for the benefit of any individual or for the benefit of any particular parcel of property. (Ord. 08-14. Passed 3-3-08.)

1337.04 CONFLICTS, SEVERABILITY, NUISANCES AND RESPONSIBILITY.

(a) Where this regulation is in conflict with existing provisions of law, ordinance, contract, or deed, whichever imposes the more stringent restriction shall prevail.

(b) If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, validity of the remainder shall not be affected thereby.

(c) This regulation shall not be construed as authorizing any person to maintain a private or public nuisance on their property, and compliance with the provisions of this regulation shall not be a defense in any action to abate such a nuisance.

(d) Failure of the Community to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the owner from the responsibility for the condition or damage resulting there from, and shall not result in the Community, its officers, employees, or agents being responsible for any condition or damage resulting there from. (Ord. 08-14. Passed 3-3-08.)

1337.05 APPLICATION PROCEDURES FOR SWQM PLANS.

(a) The Community shall administer this regulation, shall be responsible for determination of compliance with this regulation, and shall issue notices and orders as may be necessary. The Community may consult with technical experts as necessary in reviewing the SWQM Plan required by this regulation.

(b) The SWQM Plan and necessary data required by this regulation shall be submitted to the Community Engineer as follows:

(1) For subdivisions: After the approval of the preliminary plat and prior to the approval of improvement plans or drawings by the Community Planning Commission or as required by the Community.

(2) For other construction projects: Concurrently with the submittal of construction drawings to the Community approval authority.

(c) The Community shall review the SWQM Plan for conformance with the provisions of this regulation, and approve or return for revisions with comments and recommendations for revisions, within twenty-one (21) working days after receipt of the SWQM Plan as described above. At the time of receipt of a revised SWQM Plan, another twenty-one (21) day review period shall begin.

(d) Approved SWQM Plans shall remain valid for the duration of the related Zoning or Building permit. (Ord. 08-14. Passed 3-3-08.)

1337.06 COMPLIANCE WITH STATE AND FEDERAL REGULATIONS.

(a) SWQM Plans issued in accordance with this regulation do not relieve the site owner of responsibility for obtaining all other necessary permits and/or approvals from federal, state, and/or county agencies. If requirements vary, the most stringent shall be followed.

(b) **SWQM** Plans shall be accompanied by other permits and documentation relevant to the project, including, but not limited to, those listed below. No soil-disturbing activity shall begin before all necessary state and federal permits have been granted to the owner or operator.

(1) Proof of compliance with the Ohio EPA General Storm Water NPDES Permit. Proof of compliance shall be, but is not limited to, a copy of the NPDES General Storm Water Permit Notice of Intent; and the Ohio EPA Director's Acceptance Letter for the NPDES Permit.

(2) Proof of compliance with Section 404 of the Clean Water Act administered by the U.S. Army Corps of Engineers or Section 401 Water Quality Standards of the Ohio EPA relating to waters of the United States under its jurisdiction. Proof of compliance shall be, but not limited to, a copy of the U.S. Army Corps of Engineers and/or Ohio EPA permit, showing project approval and any restrictions that apply to site activities, if an Individual Permit is required for the development project. If an Individual Permit is not required, the site owner shall submit proof of compliance with the U.S. Army Corps of Engineer's Nationwide Permit Program. This shall include, but is not limited to, one of the following:

A. A letter from the site owner verifying that a qualified professional has surveyed the site and found no waters of the United States. Such a letter shall be noted on site plans submitted to the Community.

B. A site plan showing that any proposed fill waters of the United States conform with the general and specific conditions specified in the applicable Nationwide Permit. Wetlands, and other waters of the United States, shall be delineated by protocols accepted by the US Army Corps of Engineers at the time of application of this regulation.

(3) Proof of compliance with the Ohio Dam Safety Law administered by ODNR Division of Water. Proof of compliance shall be, but is not limited to, a copy of the ODNR Division of Water permit number, a copy of the project approval letter from the ODNR Division of Water, or a letter from the site owner explaining why the Ohio Dam Safety Law is not applicable. (Ord. 08-14. Passed 3-3-08.)

1337.07 STORM WATER QUANTITY MANAGEMENT PLAN.

(a) In order to control flooding, erosion and water quality, the owner shall be responsible for developing a **SWQM** Plan. If applicable, the owner or operator shall also obtain an Ohio EPA NPDES Storm Water General Permit and shall abide by its requirements in addition to an approved **SWQM** Plan from the Community. In situations of conflict between Ohio EPA requirements and Community requirements, the most stringent shall apply.

(b) If the construction site is subject to Ohio EPA's NPDES Storm Water General Permit, a copy of all the required inspection sheets shall be maintained per Ohio EPA requirements. Copies of the inspection sheets shall be submitted to the Community within two (2) working days of the request.

(c) The **SWQM** Plan shall be designed, signed and sealed by a professional engineer registered in the State of Ohio.

(d) The **Storm Water Quantity Management** Plan shall incorporate measures as recommended by the most current edition of *Rainwater and Land Development* or other recognized design manuals approved by the City of Fairview Park Engineer, and shall include the following information:

(1) A project description including the type and purpose of soil disturbing activities and a description of the larger common plan of development if applicable.

(2) A vicinity sketch locating the site, and the larger common plan of development or sale if applicable, and all pertinent surrounding features within 200 feet of the site including wetlands, streams, steep slopes, and other sensitive areas receiving runoff from the development area.

(3) The name and location of the immediate receiving water resource and the first subsequent named receiving water resource and the major watershed(s) in which the project is located.

(4) The existing and proposed topography shown in one foot contour intervals for flat areas and two foot contour intervals in steeper areas.

(5) The location and description of existing and proposed drainage patterns and storm water management practices, including any related storm water management practices beyond the development area and the larger common development area. Drainage patterns during major phases of construction shall also be shown as appropriate.

(6) Existing and proposed watershed boundary lines, direction of flow, and watershed acreage.

(7) The types and locations of soils within or affected by the development area, including unstable soils as determined by the most recent edition of the Cuyahoga County Soil Survey and/or field investigations performed by Natural Resources Conservation Service or Soil and Water Conservation District personnel, a professional engineer, or a professional soil scientist. The Soil Survey and interpretive assistance can be obtained from the Cuyahoga County SWCD.

(8) Storm water management practices to be employed on the development area both during and after soil disturbing activities, including:

A. Their location and size, including detail drawings, maintenance requirements during and after construction, and design calculations. A narrative report containing information required by and in a format acceptable to the City Engineer shall be provided.

B. The name, address, and contact information of the person responsible for the continued operation and maintenance of storm water management practices.

C. A calculation of the percent impervious cover for both the pre-development and post-development site conditions.

D. Final site conditions including storm water inlets and permanent nonstructural and structural storm water management practices. Details of storm water management basins shall be drawn to scale and shall allow volumes and sizes of contributing drainage areas.

E. Any other structural and/or non-structural storm water management practices necessary to meet the design criteria in this regulation and other referenced regulations.

F. Description of maintenance procedures needed to assure the continued performance of storm water management practices as required in this regulation and other referenced regulations.

G. All other runoff information or supporting information required to conform with the storm water management design criteria detailed in this regulation and other referenced regulations.

(e) Inspection and Maintenance Agreement between the City and the applicant which meets the standards set forth in Section 1337.08(b) and contains the following information and provisions:

(1) Detail drawings that include the location of each storm water quantity management practice. Maintenance plans must be provided for all post-construction best management practices (BMPs).

(2) A schedule for regular maintenance for each aspect of the storm water management system to ensure continued performance of that system as is detailed in the Storm Water Quantity Management Plan. This schedule may include additional standards, as required by the City Engineer, to ensure the continued performance of the storm water management practices.

(3) Identification of the person or entity responsible for continued maintenance of all vegetative and/or mechanical BMPS for both the construction and post-construction phase of the development project.

(4) The plan will identify the person or entity financially responsible for maintaining the permanent inspection and maintenance of the permanent storm water conveyance and storage structures and other conservation practices.

(5) The method of ensuring that funding will be available to conduct the long term maintenance and inspections of all permanent storm water quantity management practices will be identified.

(6) Identification of all easements.

(Ord. 08-14. Passed 3-3-08.)

1337.08 PERFORMANCE STANDARDS.

(a) SWQM Plans required by this regulation shall meet the following design criteria:

(1) Storm water quantity management practices shall be designed for the ultimate use of the site and to function safely and with minimal maintenance.

(2) Proposed redevelopment project designs shall include storm water quantity management practices that are designed to result in a reduction of the rate of storm water runoff from the site.

A. "Redevelopment" refers to alterations of a property that change the footprint of a site or building which results in greater than 5,000 square feet of land disturbance except for parcels of land less than one acre used for single family residential purposes only.

(3) All storm water quantity management practices shall have easements sufficient to provide access to the Community for municipal purposes. The following conditions shall apply to all easements:

A. Easements and covenants for subdivisions shall be approved by the Community prior to approval of a final plat and shall be recorded with the County Recorder and on all property deeds. Maintenance responsibilities for such practices shall be clearly stated on the record plat.

B. Unless otherwise required by the Community Engineer, access easements to all storm water management practices shall be no less than 20 feet wide. The easement shall also incorporate the entire storm water management practice, plus an additional 15-wide band around the perimeter of the storm water management practice.

C. Unless otherwise required by the Community Engineer, storm water management practices in subdivisions, including basins, ponds, and wetlands, shall be on separate lots held and maintained by an entity capable of long term maintenance responsibility.

D. Those lots crossed by an easement are restricted against the planting within said easement of trees, shrubbery, or other woody growth; against the construction therein of buildings, fences (unless approved by the City), walls, and other structures that may obstruct the free flow of storm water and the passage of inspectors and maintenance equipment; and against the changing of final grade from that described by the final grading plan approved by the Community.

E. The easement shall be graded and/or stabilized as necessary to allow maintenance equipment to access and manipulate around and within each facility, as defined in the Inspection and Maintenance Agreement for the site.

(4) When developing a Storm Water Quantity Management Plan, storm water management practices shall be used to control storm water quantity. In meeting this requirement, the following shall apply:

A. Storm water management practices shall be designed in accordance with the most recent version of the *Rainwater and Land Development Manual*, as specified within this regulation, and/or in accordance with specifications provided by the Community Engineer.

(5) Calculations submitted for the design of storm water quantity management practices shall demonstrate the following:

A. The peak rate of runoff from the Critical Storm and all more frequent storms occurring on the development drainage area does not exceed 75% of the peak rate of runoff from a one (1) year frequency, twenty-four (24) hour storm occurring on the same area under pre-development conditions.

B. Storms of less frequent occurrence (longer return periods) than the Critical Storm, up to the 100-year storm, have peak runoff rates no greater than 75% of the peak runoff rates from equivalent storms under pre-development conditions. Consideration of the 1, 2, 5, 10, 25, 50, and 100 – year storms in design and construction will be considered meeting this standard.

C. In the case of redevelopment, the Community may stipulate additional criteria regarding discharge rates with respect to existing storm water problems in down-stream areas.

(6) The Critical Storm for a specific development drainage area shall be determined as follows:

A. Determine, by appropriate hydrologic methods, the total volume of runoff from a one-(1) year frequency, 24-hour storm occurring on the development drainage area before and after development.

B. From the volume determined in (a), determine the percent increase in runoff volume due to development.

C. Using the percentage increase determined in (b), select the 24-hour Critical Storm from the following table:

If the Percentage of Increase in Volume of Runoff is		**The Critical Storm for Peak Rate Control will be:**
Equal to or Greater Than:	**And Less Than:**	
--	10	1 Year
10	20	2 Years
20	50	5 Years
50	100	10 Years
100	250	25 Years
250	500	50 Years
500	--	100 Years

(7) Calculation Methods.

A. The selection of a calculation method shall be based on the size of the development drainage area and the output information required.

B. The engineer selecting the calculation method and/or performing the calculations shall do so with full knowledge of the method's limitations, applicable conditions, and degree of accuracy and shall state these in the calculations submitted to the Community Engineer for review.

C. The Community Engineer may reject any calculation method he/she deems inappropriate for the given situation.

(b) Maintenance and Inspection of Storm Water Quantity Management Practices.

(1) The Community Engineer and Law Director shall approve an inspection and maintenance agreement binding on all subsequent owners of land served by the planned storm water quantity management practices before the Community accepts the final plat of the proposed project.

(2) All inspection and maintenance agreements shall do the following:

A. Designate the party responsible for maintenance of storm water quantity management practices including mowing and ensuring outlet structures are clear and in good repair. Unless otherwise approved by the Community, this shall be an entity of common ownership within the proposed subdivision or the owner of a commercial site.

B. Prohibit unauthorized alterations of storm water quantity management practices.

C. Provide access to storm water quantity management practices for inspection by the Community to document the condition of the practices.

(3) Whenever feasible, the location, dimensions, and bearing (including the depth of capacity) of all storm water quantity management practices shall be incorporated on the final plat, prior to approval by the Community, and reference thereon shall be made to the entity or individual(s) responsible for maintenance.

(4) An as-built survey must be completed by qualified registered engineer or surveyor and submitted to the Community showing the location, detention volume (include depth and capacity) of all storm water quantity management practices.

(4) The Community may inspect storm water quantity management practices periodically.

(6) Upon finding a malfunction or other need for maintenance, the Community shall notify the responsible party of the need for maintenance.

(7) Upon notification, the responsible party shall have thirty (30) working days, or other times stipulated by the Community, to make repairs.

(8) Should repairs not be made within this time, or a plan approved by the Community for these repairs not be in place, the Community may undertake necessary repairs and assess the responsible party.

(9) One (1) inspection with a written report will be performed each year. The written report will be given to the City of Fairview Park by May 1st of each and every year after the Best Management Practice (BMP) has been completed. The City retains the authority to require that the annual inspection report be a written and stamped report from a professional engineer or other individual possessing a valid state license that authorizes them to design the type of BMP inspected.

(10) A written report from an inspector on the status of all storm water management easements for each project shall be submitted to the City of Fairview Park by May 1st of each year into perpetuity. These reports will document if restricted plantings, fences and structures are on the easement and will identify the location of the noted easement restriction violations. (Ord. 08-14. Passed 3-3-08.)

1337.09 PERMIT.

(a) Fees shall be deposited with the Building Department prior to review by the City Engineer to cover professional approval of the City Engineer and/or other experts required by the City Council or Review Boards during the approval or construction process.

(b) No project subject to this regulation shall commence without a SWQM Plan approved by the City Engineer.
(Ord. 08-14. Passed 3-3-08.)

1337.10 VIOLATIONS.

No person shall violate or cause or knowingly permit to be violated any of the provisions of this regulation, or fail to comply with any such provisions or with any lawful requirements of any public authority made pursuant to this regulation, or knowingly use or cause or permit the use of any lands in violation of this regulation or in violation of any permit granted under this regulation. (Ord. 08-14. Passed 3-3-08.)

1337.99 PENALTY.

(a) Whoever violates or fails to comply with any provision of this regulation is guilty of a misdemeanor and shall be fined no more than five hundred dollars ($500.00) or imprisoned for no more than sixty (60) days, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

(b) Upon notice from the City Engineer, or designated representative, that work is being done contrary to this regulation, such work shall immediately stop. Such notice shall be in writing and shall be given to the owner or operator, and shall state the conditions under which such work may resume; provided, however, in instances where immediate action is deemed necessary for the public safety or the public interest, the City Engineer may require that work be stopped upon verbal order pending issuance of the written order.
(Ord. 08-14. Passed 3-3-08.)

CHAPTER 1338
Illicit Discharge and Illegal Connection Control

1338.01 Purpose and scope.
1338.02 Applicability.
1338.03 Definitions.
1338.04 Disclaimer of liability.
1338.05 Conflicts, severability, nuisances and responsibility.
1338.06 Responsibility for administration.
1338.07 Discharge and connection prohibitions.
1338.08 Monitoring of illicit discharges and illegal connections.
1338.09 Watercourse protection.
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1338.11 Remedies not exclusive.

1338.01 PURPOSE AND SCOPE.

The purpose of this regulation is to provide for the health, safety and general welfare of the citizens of the City of Fairview Park through the regulation of illicit discharges to the municipal separate storm sewer system (MS4). This regulation establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process as required by the Ohio Environmental Protection Agency (Ohio EPA). The objectives of this regulation are:

(a) To prohibit illicit discharges and illegal connections to the MS4.

(b) To establish legal authority to carry out inspections, monitoring procedures, and enforcement actions necessary to ensure compliance with this regulation.

(Ord. 08-15. Passed 3-3-08.)

1338.02 APPLICABILITY.

This regulation shall apply to all residential, commercial, or institutional facilities responsible for discharges to the MS4 and on any lands in the City of Fairview Park, except for those discharges generated by the activities detailed in Section 7 of this regulation (Discharge and Connection Prohibitions). (Ord. 08-15. Passed 3-3-08.)

1338.03 DEFINITIONS.

The words and terms used in this regulation, unless otherwise expressly stated, shall have the following meaning:

(a) Best Management Practices (BMPs): means schedules of activities, prohibition of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to storm water, BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

(b) Community: means the City of Fairview Park, its designated representative, board or commissions.

(c) United States Environmental Protection Agency (USEPA): means the United States Environmental Protection Agency or any duly authorized official of said agency.

(d) Floatable Material: in general this term means any foreign matter that may float or remain suspended in the water column, and includes but is not limited to, plastic, aluminum cans, wood products, bottles, and paper products.

(e) Hazardous Materials: means any material including any substance, waste or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(f) Illicit Discharge: as defined at 40 C.F.R. 122.26 (b)(2) means any discharge to an MS4 that is not composed entirely of storm water, except for those discharges to an MS4 pursuant to a NPDES permit o noted in Section 7 of this regulation.

(g) Illegal Connection: means any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the MS4.

(h) Municipal Separate Storm Sewer System (MS4): as defined at 40 C.F.R. 122.26 (b)(8), municipal separate storm sewer system means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(1) Owned or operated by a State, city, town, borough, county, parish, district, municipality, township, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over sewage, industrial wastes, including special districts under State law such as a sewer district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Waster Act that discharges to waters of the United States;

(2) Designed or used for collecting or conveying storm water;

(3) Which is not a combined sewer;

(4) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F. R. 122.2.

(i) National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general areawide basis.

(j) Off-Lot Discharging Home Sewage Treatment System: means a system designed to treat home sewage on-site and discharges treated wastewater effluent off the property into a storm water or surface water conveyance or system.

(k) Ohio Environmental Protection Agency (Ohio EPA): means the Ohio Environmental Protection Agency or any duly authorized official of said agency.

(l) Owner/Operator: means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or on the owner's behalf.

(m) Pollutant: means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, solvents, oil and other automotive fluids, non-hazardous liquid and solid wastes, yard wastes, refuse, rubbish, garbage, litter or other discarded or abandoned objects, floatable materials, pesticides, herbicides, fertilizers, hazardous materials, wastes, sewage, dissolved and particulate metals, animal wastes, residue that result from constructing a structure, and noxious or offensive matter of any kind.

(n) Storm Water: any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

(o) Wastewater: The spent water of a community. From the standpoint of a source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions.

(Ord. 08-15. Passed 3-3-08.)

1338.04 DISCLAIMER OF LIABILITY.

Failure of the City of Fairview Park to enforce the provisions of this regulation shall not relive the site owner from the responsibility for the condition or damage resulting from a failure to comply, and shall not result in the City of Fairview Park, its officers, employees, or agents being responsible for any condition or damage resulting from a failure to comply with applicable requirements. (Ord. 08-15. Passed 3-3-08.)

1338.05 CONFLICTS, SEVERABILITY, NUISANCES AND RESPONSIBILITY.

(a) This regulation is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

(b) If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.

(c) This regulation shall not be construed as authorizing any person to maintain a nuisance on their property, and compliance with the provisions of this regulation shall not be a defense in any action to abate such a nuisance.

(d) Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law.

(e) These regulations shall not be construed to relieve any person from complying with all applicable state and federal laws, including but not limited to laws requiring authorization prior to impacts to streams and wetlands.

(f) The standards set forth herein and promulgated pursuant to this regulation are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants. (Ord. 08-15. Passed 3-3-08.)

1338.06 RESPONSIBILITY FOR ADMINISTRATION.

The City of Fairview Park shall administer, implement, and enforce the provisions of this regulation. The City of Fairview Park may contract with the Cuyahoga County Board of Health to conduct inspections and monitoring and to assist with enforcement actions.
(Ord. 08-15. Passed 3-3-08.)

1338.07 DISCHARGE AND CONNECTION PROHIBITIONS.

(a) Prohibition of Illicit Discharges. No person shall discharge, or cause to be discharged, an illicit discharge into the MS4. The commencement, conduct, or continuance of any illicit discharge to the MS4 is prohibited except as described below:

(1) Water line flushing; landscape irrigation diverted stream flows; rising ground waters; uncontaminated ground water infiltration; uncontaminated pumped ground water; discharges from potable surface water sources; foundation drains; air conditioning condensate; irrigation water; springs; water from crawl space pumps; footing drains; lawn watering; individual residential car washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; street water wash; and discharge or flows from fire fighting activities and any other water source not containing Pollutants. These discharges are exempt until such time as they are determined by the City of Fairview Park to be significant contributors of pollutants to the MS4.

(2) Discharges specified in writing by the City of Fairview Park as being necessary to protect public health and safety.

(3) Discharges from off-lot discharging home sewage treatment systems permitted by the Cuyahoga County Board of Health for the purpose of discharging treated sewage effluent in accordance with Ohio Administrative Code 3701-29-02(6) and covered by an NPDES general or individual permit, so long as an NPDES permit is required by law. These discharges are exempt unless such discharges are deemed to be creating a public health nuisance by the Cuyahoga County Board of Health or are not in compliance with all requirements of the applicable permits or authorizations.

(4) A Non-storm water discharge permitted under an NPDES permit, waiver, or wastewater discharge order issued to the discharger and administered under the authority of the US EPA or Ohio EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(b) Prohibition of Illegal Connections. The construction, use, maintenance, or continued existence of illegal connections to the MS4 is prohibited.

(1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(2) A person is considered to be in violation of this regulation if the person connects a line conveying illicit discharges to the MS4, or allows such a connection to continue. (Ord. 08-15. Passed 3-3-08.)

1338.08 MONITORING OF ILLICIT DISCHARGES AND ILLEGAL CONNECTIONS.

(a) Establishment of an Illicit Discharge Connection Monitoring Program: The City of Fairview Park shall establish a program to detect and eliminate illicit discharges and illegal connections to the MS4.

(b) Inspection of Residential, Commercial, Industrial, or Institutional Facilities.

(1) The City of Fairview Park shall be permitted to enter and inspect facilities subject to this regulation as often as may be necessary to determine compliance with this regulation. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

(2) The City of Fairview Park shall have the right to set up facilities subject to this regulation such devices as are necessary to conduct monitoring and/or sampling of the facility's storm water discharge, as determined by the City of Fairview Park.

(3) The City of Fairview Park shall have the right to require the facility owner/operator to install monitoring equipment as necessary. This sampling and monitoring equipment shall be maintained at all times in safe and proper operating condition by the facility owner/operator at the owner/operator's expense. All devices used to measure storm water flow and quality shall be calibrated by the City of Fairview Park to ensure their accuracy.

(4) Any temporary or permanent obstruction to safe and reasonable access to the facility to be inspected and/or sampled shall be promptly removed by the facilities owner/operator at the written or oral request of the City of Fairview Park and shall not be replaced. The costs of clearing such access shall be borne by the facility owner/operator.

(5) Unreasonable delays in allowing the City of Fairview Park access to a facility subject to this regulation for the purpose of illicit discharge inspection is in violation of this regulation.

(6) If the City of Fairview Park is refused access to any part of the facility from which storm water is discharged, and the City of Fairview Park demonstrates probable cause to believe that there may be a violation of this regulation, or that there is a need to inspect and/or sample as part of an inspection and sampling program designed to verify compliance with this regulation or any order issued hereunder, or to protect the public health, safety, and welfare, the City of Fairview Park may seek issuance of a search warrant, civil remedies including but not limited to injunctive relief, and/or criminal remedies from any court of appropriate jurisdiction.

(7) Any costs associated with these inspections shall be assessed to the facility owner/operator. (Ord. 08-15. Passed 3-3-08.)

1338.09 WATERCOURSE PROTECTION.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structure will not become a hazard to the use, function or physical integrity of the watercourse.
(Ord. 08-15. Passed 3-3-08.)

1338.10 ENFORCEMENT.

(a) Notice of Violation. When the City of Fairview Park finds that a person has violated a prohibition or failed to meet requirements of this regulation, the City of Fairview Park may order compliance by written Notice of Violation. Such notice must specify the violation and shall be hand delivered, and/or sent by registered mail, to the owner/operator of the facility. Such notice may require the following actions:

(1) The performance of monitoring, analysis, and reporting;
(2) The elimination of illicit discharges or illegal connections;
(3) That violating discharges, practices, or operations cease and desist;
(4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; or
(5) The implementation of source control or treatment BMPs.

(b) If abatement of a violation and/or restoration of affected property is required, the Notice of Violation shall set forth a deadline within which such remediation or restoration must be completed. Said Notice shall further advise that, should the facility owner/operator fail to remediate or restore within the established deadline, a legal action for enforcement may be initiated.

(c) Any person receiving a Notice of Violation must meet compliance standards within the time established must meet compliance standards within the time established in the Notice of Violation.

(d) Injunctive Relief: It shall be unlawful for an owner/operator to violate any provision or fail to comply with any of the requirements of this regulation pursuant to Ohio R.C. 3709.211. If an owner/operator has violated or continues to violate the provisions of this regulation, the City of Fairview Park may petition for a preliminary or permanent injunction restraining the owner/operator from activities that would create further violations or compelling the owner/operator to perform abatement or remediation of the violation.
(Ord. 08-15. Passed 3-3-08.)

1338.11 REMEDIES NOT EXCLUSIVE.

The remedies listed in this regulation are not exclusive of any other remedies available under any applicable federal, state or local law and it is in the discretion of the City of Fairview Park to seek cumulative remedies. (Ord. 08-15. Passed 3-3-08.)

CHAPTER 1339
Riparian Setbacks and Wetland Setbacks

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1339.01 PUBLIC PURPOSE.

It is hereby determined that the system of streams and wetlands within Fairview Park contributes to the health, safety and general welfare of its residents. The purpose of this Riparian and Wetland Setback chapter is to assist in the preservation of water quality within the streams of Fairview Park and to help protect the residents of the City from property loss or damage because of flooding or other impacts of the stream. This chapter will further the following objectives:

(a) Protect the receiving stream's physical, chemical and biological characteristics and to maintain stream functions.

(b) Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters, and regulating base flow.

(c) Assist in stabilizing the banks of streams and wetlands to reduce bank erosion and the downstream transport of sediments eroded from stream and wetland banks.

(d) Reduce pollutants in streams and wetlands by filtering, settling, transforming and absorbing pollutants in runoff before they enter streams and wetlands.

(e) Prevent unnecessary stripping of vegetation and loss of soil, especially adjacent to water resources and wetlands.

(f) Benefit Fairview Park economically by minimizing encroachment on stream channels and reducing the need for costly maintenance and repairs to roads, embankments, sewage systems, ditches, water resources, wetlands, and storm water management practices that are the result of inadequate storm water control due to the loss of riparian areas and wetlands.

(g) Protect and maintain the native vegetation of riparian and wetland areas by implementing specification for the establishment, protection and maintenance of vegetation along streams and wetlands within Fairview Park's jurisdiction.

(Ord. 08-18. Passed 3-3-08.)

1339.02 DISCLAIMER OF LIABILITY.

Failure of the City of Fairview Park to enforce the provisions of this chapter shall not relieve the owner from the responsibility for conditions or damages that may result from a failure to comply, and shall not result in the City of Fairview Park, its officers, employees, or agents being responsible for any condition or damage resulting from a failure to comply with applicable requirements. (Ord. 08-18. Passed 3-3-08.)

1339.03 CONFLICTS, SEVERABILITY, NUISANCES AND RESPONSIBILITY.

(a) This chapter is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this chapter should be considered minimum requirements, and where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

(b) If a court of competent jurisdiction declares any clause, section, or provision of these regulations invalid or unconstitutional, the validity of the remainder shall not be affected thereby.

(c) These regulations shall not be construed as authorizing any persons to maintain a private or public nuisance on his or her property or to violate any other applicable laws. Compliance with the provisions of this regulation shall not be a defense in any action to abate such nuisance or comply with applicable laws.

(d) Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law.

(e) This regulation shall not be construed to relieve any person from complying with all applicable state and federal laws, including but not limited to laws requiring authorization prior to impacts to streams or wetlands.

(f) The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore, this chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants. (Ord. 08-18. Passed 3-3-08.)

1339.04 EFFECTIVE DATE.

This chapter and its regulations shall become effective upon its passage.
(Ord. 08-18. Passed 3-3-08.)

1339.05 CONSULTATION.

In implementing these regulations the City Officials or other Community officials may consult with the local county Soil and Water Conservation District (SWCD), state and federal agencies and other technical experts as necessary. Any costs associated with such consultations may be assessed to the applicant or his or her designated representative.
(Ord. 08-18. Passed 3-3-08.)

1339.06 DEFINITIONS.

As used in this chapter:

(a) APPROVING AUTHORITY: The official responsible for administering the applicable program(s).

(b) BEST MANGEMENT PRACTICES (BMP): means schedules of activities, prohibitions of practices, maintenance procedures and other management practices (both structural and non-structural) to prevent or reduce the pollution of surface waters of the state. BMP's also include treatment requirements, operating procedures and practices to control plant and/or construction site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

(c) CHANNEL: A natural stream that conveys water, or a ditch or channel excavated for the natural flow of water.

(d) CITY: Shall mean the City of Fairview Park and its designated representatives.

(e) CONSERVATION: The wise use and management of natural resources.

(f) DAMAGED OR DISEASED TREES: Trees that have split trunks; broken tops; heart rot; insect or fungus problems that will lead to imminent death; undercut root systems that put the tree in imminent danger of falling; leaning as a result of root failure that puts the tree in imminent danger of falling, or any other condition that puts the tree in imminent danger of being uprooted or falling.

(g) DUMPING: The grading, pushing, piling, throwing, unloading or placing of soil or other materials.

(h) EARTH DISTURBING ACTIVITY: Any grading, excavating, filling, or other alteration of the earth's surface where natural or man-made ground cover is destroyed.

(i) EROSION: The process by which the land surface is worn away by the action of water, wind, ice, or gravity.

(j) EXISTING: In existence at the time of the passage of this ordinance and these regulations.

(k) FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA): The agency with overall responsibility for administering the National Flood Insurance Program.

(l) GRADING: Earth disturbing activity such as excavation, stripping, cutting, filling, stockpiling, or any combination thereof.

(m) IMPERVIOUS COVER: Any surface that cannot effectively absorb or infiltrate water. This includes roads, streets, parking lots, rooftops, and sidewalks.

(n) INTERMITTENT STREAM: A natural channel that may have some water in pools, but where surface flows are non-existent or interstitial (flowing through sand and gravel in stream beds) for periods of one week or more during typical summer months.

(o) LARGER COMMON PLAN OF DEVELOPMENT OR SALE: A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different scheduled under one plan.

(p) NATIONAL WETLANDS INVENTORY MAP: Wetland maps that were created by the Fish and Wildlife Service, United States Department of the Interior.

(q) NATURAL RESOURCES CONSERVATION SERVICE (NRCS): An agency of the United States Department of Agriculture, formerly known as the Soil Conservation Service (SCS).

(r) NPDES PERMIT: A National Pollutant Discharge Elimination System Permit issued by Ohio EPA under the authority of the USEPA, and derived from the Federal Clean Water Act.

(s) NOXIOUS WEED: Any plant species defined by the Ohio Department of Agriculture as a "noxious weed" and listed as such by the Department. For the purpose of this regulation, the most recent version of this list at the time of application of these regulations shall prevail.

(t) OHIO EPA: The Ohio Environmental Protection Agency.

(u) OHIO WETLANDS INVENTORY MAP: Wetland maps that were created by the Natural Resources Conservation Service, USDA, and the Ohio Department of Natural Resources.

(v) ORDINARY HIGH WATER MARK: Means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clean, natural line impressed on the bank, shelving, changes in the character or soil, destruction of terrestrial vegetation, the presence of litter or debris, or other appropriate means that consider the characteristics of the surrounding area.

(w) PERSON: Any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, township, county, state agency, the federal government, or any combination thereof.

(x) PERENNIAL STREAM: A natural channel that contains water throughout the year, except possibly during periods of extreme drought.

(y) PROFESSIONAL ENGINEER: A person registered in the State of Ohio as a Professional Engineer, with specific education and experience in water resources engineering, acting in strict conformance with the Code of Ethics of the Ohio Board of Registration for Engineers and Surveyors.

(z) QUALIFIED FORESTER: Any forester employed by the Ohio Department of Natural Resources, Division of Forestry, or any person attaining the credential of Certified Forester as conferred by the Society of American Foresters.

(aa) QUALIFIED WETLAND PROFESSIONAL: Means an individual competent in the areas of botany, hydric soils, and wetland hydrology, and is acceptable to the Community Engineer.

(bb) REDEVELOPMENT: The demolition or removal of existing structures or land uses and construction of new ones.

(cc) RETENTION BASIN: A storm water management pond that maintains a permanent pool of water. These storm water management ponds include a property engineered/designed volume dedicated to the temporary storage and slow release of runoff waters.

(dd) RIPARIAN SETBACK: Means the transition area between flowing water and terrestrial (land) ecosystems composed or if composed of trees, shrubs, and surrounding vegetation serve to stabilize erodible soil, improve both surface and ground water quality, increase stream shading, enhance wildlife habitat or perform other functions consistent with the purposes of these regulations. Those lands within the Community which are alongside streams, and which fall within the area defined by the criteria set forth in these regulations.

(ee) SEDIMENT: Solid materials, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water, gravity, or ice, and has come to rest on the earth's surface either on dry land or in a body of water.

(ff) SEDIMENT CONTROL: The limiting of sediment being transported, by controlling erosion or detaining sediment-laden water, and allowing the sediment to settle out.

(gg) SEDIMENT POLLUTION: A failure to use management or conservation practices to control wind or water erosion of the soil and to minimize the degradation of water resources by soil sediment in conjunction with land grading, filling, or other soil disturbing activities on land used or being developed for commercial, industrial, residential or other purposes.

(hh) SOIL CONSERVATION SERVICE, USDA: The federal agency now titled the "Natural Resources Conservation Service", which is an agency of the United States Department of Agriculture.

(ii) SOIL DISTURBING ACTIVITY: Clearing, grading, excavating, filling, or other alteration of the earth's surface where natural or human made ground cover is destroyed and which may result in, or contribute to, soil erosion and sediment pollution.

(jj) SOIL EROSION AND SEDIMENT CONTROL PLAN: A written and/or drawn plan designed to control soil erosion, sediment pollution and post-construction storm water runoff that complies with Chapter 1336 of the City of Fairview Park Codified Ordinances.

(kk) SOIL EROSION AND SEDIMENT CONTROL PRACTICES: Conservation measures used to control sediment pollution and including structural practices, vegetative practices and management techniques.

(ll) SOIL SURVEY: The official soil survey produced by the Natural Resources Conservation Service, USDA in cooperation with the Division of Soil and Water Conservation, ODNR and the local Board of County Commissioners.

(mm) STORM WATER CONVEYANCE SYSTEM: All storm sewers, channels, streams, ponds, lakes, etc., used for conveying concentrated storm water runoff, or for storing storm water runoff.

(nn) STREAM: A surface watercourse with a well defined bed or bank, either natural or artificial, which confines and conducts continuous or periodical flowing water in such a way that terrestrial vegetation cannot establish roots within the channel.

(oo) USEPA: The United States Environmental Protection Agency

(pp) WATER RESOURCES: All streams, lakes, ponds, wetlands, water courses, waterways, drainage systems, and all other bodies or accumulations of surface water, either natural or artificial, which are situated wholly or partly within, or border upon this state, or are within its jurisdiction, except those private waters which do not combine or affect a junction with natural surface waters.

(qq) WETLAND: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

(rr) WETLAND, OHIO EPA CATEGORY 2 WETLANDS: Those wetlands classified by the Ohio EPA as Category 2 wetlands under OAC3745-1-54 (C)(2), or current equivalent Ohio EPA classification, in accordance with generally accepted wetland functional assessment methods acceptable to the U.S. Army Corps of Engineers and Ohio EPA at the time of application of this regulation.

(ss) WETLAND, OHIO EPA CATEGORY 3 WETLANDS: Those wetlands classified by the Ohio EPA as Category 3 wetlands under OAC3745-1-54 (C)(2), or current equivalent Ohio EPA classification, in accordance with generally accepted wetland functional assessment methods acceptable to the U.S. Army Corps of Engineers and Ohio EPA at the time of application of this regulation.

(tt) WETLAND SETBACK: Those lands within the Community that fall within the area defined by the criteria set forth in these regulations.

(Ord. 08-18. Passed 3-3-08.)

1339.07 APPLICABILITY.

(a) The provisions of this chapter shall apply to all lands within the jurisdiction of the City of Fairview Park. No development shall be approved or issued by the City, including a preliminary plan, building (involving land disturbing activities), or zoning approval, without full compliance with the terms of these regulations where applicable.

(b) The Riparian Setback requirements set forth below apply to all Streams which are perennial, ephemeral, or intermittent streams with a defined bed, bank or channel within the City of Fairview Park legal jurisdiction. The presence of streams requiring protection must also be confirmed in the field.

(c) The Wetland Setback requirements set forth herein shall apply to all Category 2 and Category 3 wetlands within the City of Fairview Park legal jurisdiction. If a wetland delineation is required, it shall be performed by a Qualified Wetland Professional under guidelines established by the U.S. Army Corp of Engineers and the Ohio Environmental Protection Agency.

(d) This chapter shall not apply to agricultural operations that are covered by an approved NRCS conservation plan or other plan acceptable to the approving authority. The following are exempt from the terms and protection of this chapter: grassy swales, roadside ditches, drainage ditches created at the time of a subdivision to convey storm water to another system, tile drainage systems, and stream culverts.

(Ord. 08-18. Passed 3-3-08.)

1339.08 ESTABLISHMENT OF RIPARIAN SETBACKS.

(a) Riparian Setbacks are established on all Streams within the City's jurisdiction. Streams shall include those watercourses meeting any one of the following criteria:

(1) All streams draining an area greater than ½ square mile, or

(2) All streams draining an area less than ½ square mile and having a defined bed and bank. In determining if water courses have a defined bed and bank, the City of Fairview Park may consult with a representative of the local county SWCD or other technical experts as necessary.

(b) Widths of Riparian Setbacks are measured as horizontal map distance outward from the ordinary high water mark on each side of the stream and are established as follows:

(1) A minimum of 50 feet on each side of all streams draining an area greater than 20 square miles.

(2) A minimum of 25 feet on each side of all streams draining and area up to 20 square miles.

(3) Where the 100-year floodplain is wider than the Riparian Setback on either or both sides of the stream, the Riparian Setback shall be extended to the outer edge of the 100-year floodplain. The 100-year floodplain shall be defined by FEMA or determined by the project engineer conducting a hydrologic analysis of the project area in conformance with standard engineering practices and approved by the City Engineer.

(4) Where wetlands are identified within a riparian setback, the minimum riparian setback width shall be extended to the outer boundary of the wetland. In addition, a Wetland Setback shall be established to the extent detailed in these regulations.

(c) In determining Stream(s) or the location of a Riparian Setback, the following procedures shall apply:

(1) The City shall use the latest edition of the official soil survey that shows drainage features, on the paper maps in the back of the book, as a map identifying Stream and their Riparian Setbacks. The drainage features identified on the paper maps in the official soil survey and the information contained there shall be believed to be accurate.

(2) At the time of application of this regulation, if any discrepancy is found between the Riparian Setback Map and the criteria for Streams or riparian setbacks as set forth in these regulations, the criteria shall prevail.

(3) In reviewing and interpreting the maps the City may consult with a representative of the local county SWCD and other technical experts as necessary.

(d) Preservation of Riparian Setback Areas: Except as otherwise provided in this regulation, Riparian Setbacks shall be preserved in their natural state, except that non-conforming structures and non-conforming uses existing at the time of passage of this regulation may be continued in their existing state as determined in the non-conforming structures or uses in riparian setback areas section of these regulations.

(e) If an applicant has received legal authorization under applicable state and federal laws to fill a wetland/stream or relocate a stream, then the setback requirements shall not apply to those portions of the wetland/stream that have been filled or relocated.

(f) An applicant shall be responsible for delineating the Riparian Setback, and identifying this setback on all subdivisions, land development plans, and/or building permit applications. This delineation shall be done at the time of application of the preliminary plans, or all plans that are required, or at the time of submission of any permit applications. This delineation may be done by a metes and bounds, or higher level survey and shall be subject to the review and approval of the City.

(g) No approval or permits for projects that involve soil disturbing or land clearing activities shall be issued by the City prior to delineation of the Riparian Setback in conformance with these regulations.

(h)_ Prior to any soil disturbing activity, the Riparian Setback shall be clearly delineated with construction fencing or other suitable material by the applicant on site, and such delineation shall be maintained throughout the soil-disturbing or land clearing activities. The delineated area shall be maintained in an undisturbed state unless otherwise permitted by these regulations. All fencing shall be removed when a development project is completed.

(i) Upon completion of an approved subdivision/property/parcel split, land development, or other improvement, the Riparian Setback shall be permanently recorded on the plat records of the City. (Ord. 08-18. Passed 3-3-08.)

1339.09 ESTABLISHMENT OF WETLAND SETBACKS.

(a) Where there are wetlands protected under federal and/or state law, wetland setbacks are established as follows:

(1) A minimum of 120 feet surrounding and including all Ohio EPA Category 3 Wetlands, or current equivalent Ohio EPA classification.

(2) A minimum of 75 feet surrounding and including all Ohio EPA Category 2 Wetlands, or current equivalent Ohio EPA classification.

(b) Wetland Setback Averaging: The City may allow modifications of the standard Riparian Setback width for wetlands on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where a Qualified Wetland Professional demonstrates to the satisfaction of the City that:

(1) It will not reduce wetland functions or functional performance;

(2) The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

(3) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and

(4) The buffer width is not reduced to less than 75% of the standard width. (Ord. 08-18. Passed 3-3-08.)

1339.10 PROCEDURES FOR WETLAND SETBACKS.

(a) No change to parcel boundaries or land use change:

(1) Upon filing a request for a building permit that does not involve changing of any parcel boundaries or changes in land use, the applicant will check for indicators of wetlands on the National Wetlands Inventory maps, and Ohio Wetlands Inventory map, and the Cuyahoga County Wetlands Inventory (if applicable). A photocopy of the applicable section of each map will be attached to the permit application.

(2) If a potential wetland is shown on any of the maps or if there is reason for the Community to believe that an unmapped wetland exists on or within 120 feet of the project site the applicant will retain a qualified wetland professional to evaluate the proposed project site for wetlands or wetland buffer areas. If no wetland buffer areas are found, the applicant shall submit a letter from the qualified wetland professional with the preliminary plat or permit application verifying his or her negative findings.

(b) New residential or commercial or other type development and projects involving a change to parcel boundaries or a land use change: Upon filing a request for approval of a preliminary plat or building permit for new residential, commercial or other type of development that involves changes in any parcel boundaries or changes in land use, the applicant or his or her designated representative shall retain a qualified wetland professional to survey the proposed development site for wetlands. If no wetlands are found, the applicant or his or her designated representative shall submit a letter with the preliminary plat or permit application verifying that a qualified wetland professional has surveyed the site and found no wetlands. The City may waive the requirement to perform a survey if the applicant demonstrates to the City's satisfaction that no wetlands are within 120 feet of the project site.

(c) If the wetlands are found during either of the reviews set forth above, the following procedure shall be followed:

(1) A qualified wetland professional acceptable to the City of Fairview Park, shall determine the presence of Ohio EPA Category 2 or 3 wetlands (or current equivalent Ohio EPA classification) on the proposed development site using the latest version of the Ohio Rapid Assessment Method for wetland evaluation approved at the time of application of this regulation. Acceptance of this determination shall be subject to approval by the City of Fairview Park Engineer.

(2) If Ohio EPA Category 2 or 3 wetlands (or current equivalent Ohio EPA classification) are located on the proposed development site, the applicant or his or her designated representative shall delineate these wetlands and the wetland setback in conformance with these regulations. The applicant or his or her designated representative shall identify all delineated wetlands and their associated setbacks on all property subdivision/property/parcel split plans, land development plans, and/or permit applications submitted to the Community.

A. Wetlands shall be delineated by a site survey, approved by the Community, using delineation protocols accepted by the U.S. Army Corps of Engineers and the Ohio EPA at the time of application of this regulation. If conflict exists between the delineation protocols of these two agencies, the delineation protocol that results in the most inclusive area of wetland shall apply.

B. Wetland setbacks shall be delineated through a metes and bounds, or higher level, survey subject to approval by the Community.

(3) Prior to any soil or vegetation disturbing activity, the applicant or his or her designated representative shall delineate wetland setbacks on the development site in such a way that they can be clearly viewed, and such delineation shall be maintained throughout construction.

(4) No approvals or permits shall be issued by the Community prior to delineation of wetland setbacks in conformance with this regulation.

(d) Upon completion of an approved property subdivision/property/parcel split, commercial development or other land development or improvement, riparian and wetland setbacks shall be permanently recorded on the plat records for the community and shall be maintained as open space thereafter through a permanent conservation easement. A third party, not the landowner or permittee or the Community, which is allowed by state law, shall be given the conservation easement. If no third party will accept the conservation easement, the Community shall accept it and protect it in perpetuity.
(Ord. 08-18. Passed 3-3-08.)

1339.11 MITIGATION FOR IMPACTS TO RIPARIAN AREAS AND WETLAND SETBACK AREA.

(a) If an applicant can demonstrate to the satisfaction of the City Engineer that intrusion within the delineated Riparian Setback boundary is necessary to accomplish the purposes of a project, then the applicant must provide mitigation for that impact. The applicant shall develop a plan for mitigation and submit it to the City Engineer for review and approval. For a plan to be approvable it must meet the following minimum requirements:

(1) Mitigation for an impact will be required based on the location of the intrusion. The closer the intrusion to the stream, the more mitigation will be required. The Riparian Setback area for the stream corridor calculated in accordance with the method specified in Section 1339.08(a) shall be divided into two zones. Zone 1 extends from 0 to 25 feet from the stream edge; Zone 2 extends from 25 feet to the outer edge of the setback corridor. Intrusion into these zones will require the following mitigation within the same Watershed Assessment Unit:

A. An applicant shall provide mitigation equal or greater than four times the total area disturbed in the stream and within Zone 1 of the site being developed shall be mitigated within Zone 1 of the mitigation location. At least a fourth of the mitigation area shall be mitigation in the form of stream restoration in accordance with guidelines developed by the City of Fairview Park. The remaining mitigation can be in the form of restoration or protection.

B. An applicant shall provide mitigation equal or greater than three times the area disturbed within Zone 2 of the site being developed shall be mitigated within Zone 1 and/or 2 of the mitigation location.

(2) All mitigation shall, at a minimum include conserved or restored setback zone, and should be designed to maximize the ecological function of the mitigation. Including mitigation at the stream edge along with associated setback areas is one way to maximize ecological function. The applicant shall demonstrate to the satisfaction of the City Engineer that the mitigation provided will have equivalent or greater ecological value than the riparian area impacted by the project. Mitigation shall be protected in same manner as existing Riparian Setback areas under this ordinance.

(b) If an applicant can demonstrate to the satisfaction of the City Engineer that intrusion within the delineated wetland setback is necessary to accomplish the purposes of a project, then the applicant must provide mitigation for that impact. The applicant shall develop a plan for mitigation and submit it to the City Engineer for review and approval. For a plan to be approvable it must meet the following minimum requirements:

(1) Mitigation for an impact will be required based on the location of the intrusion, the closer the intrusion to the wetland, the more mitigation that will be required. The Wetland Setback area for a wetland is calculated in accordance with the method specified in Section 1339.09(a) shall be divided into two zones. Zone 1 extends from 0 to 25 feet from the wetland edge and Zone 2 extends from 25 feet to the outer edge of the setback area. Intrusion into these zones will require the following mitigation within the same Watershed Assessment Unit:

A. An applicant shall provide mitigation equal or greater than four times the total area disturbed within Zone 1 of the site being developed.

B. An applicant shall provide mitigation equal or greater than two times the area disturbed within Zone 2 of the site being developed.

(2) The mitigation may include buffer zone or wetland restoration or enhancement. The applicant shall demonstrate to the satisfaction of the City Engineer that the mitigation provided will have equivalent or greater ecological value than the riparian area impacted by the project. Mitigation shall be protected in same manner as existing Wetland Setback areas under this chapter. (Ord. 08-18. Passed 3-3-08.)

1339.12 USES PERMITTED IN RIPARIAN AND WETLAND SETBACKS.

(a) By-Rights Uses Without A Permit: The following uses are permitted by right within the Riparian and Wetland Setbacks without prior approval, provided they are not prohibited by any other applicable law. Open space uses that are passive in character shall be permitted in riparian and wetland setbacks, including, but not limited to, those listed in these regulations. No use permitted under these regulations shall be construed as allowing public trespass on privately held lands.

(1) Recreational Activity. Passive recreational uses, as permitted by federal, state, and local laws, such as hiking, fishing, hunting, picnicking, and similar uses. Structures associated with recreation activity, including limited boardwalks, pathways constructed of pervious material, picnic tables, and wildlife viewing areas are permitted.

(2) Removal of Damaged or Diseased Trees. Damaged or diseased trees may have to be removed. Because of potential for felled logs and branches to damage downstream properties and/or block ditches or otherwise exacerbate flooding, logs and branches resulting from the removal of damaged or diseased trees that are greater than 6 inches in diameter, shall be anchored to the shore or removed from the 100-year floodplain.

(3) Revegetation and/or Reforestation. Riparian and wetland setbacks may be revegetated with non-invasive plant species.

(4) Maintenance of lawns, gardens and landscaping. Lawns, gardens and landscaping, that existed at the time this ordinance was passed, may be maintained as long as they are not increased in size.

(5) Removal of deposited flood debris. The accumulation of flood debris within a channel can exacerbate potential flooding problems. The City reserves the right to, at any time, enter a stream area to remove deposited flood debris. Care shall be taken to ensure that the disturbance to the riparian setback is minimized during these events.

(6) Placement of stormwater retention or detention facilities. Storm water facilities may be allowed within the Riparian Setback or Wetland Setback, if:

A. Storm water quality treatment that is consistent with current state standards is incorporated into the basin.

B. The storm water quality treatment is located at least 50 feet from the ordinary high water mark of the stream or the delineated wetland.

(b) By-Right Uses With A Permit. The following uses are permitted within the Riparian and Wetland Setbacks with prior approval of the design by the City of Fairview Park Engineer, provided they are not prohibited by any other applicable law:

(1) Selective Harvesting of Timber. Selective harvesting of timber may be allowed upon presentation of a Forest Management and Harvest Plan prepared by a Qualified Forester and accepted by the City Official.

A. Any landowner harvesting timber for sale shall post a one thousand dollars ($1,000) performance guarantee with the Community. This performance guarantee shall be in the form of a Security Bond, Escrow Account, Certified Check or Cash, and it shall be held until completion of the timber-harvesting operation.

B. Due to the potential for felled logs and branches to damage downstream properties and/or to block ditches or otherwise exacerbate flooding, logs or branches resulting from permitted selective harvesting that are greater than six inches in diameter at the cut end and shall be cut into sections no longer than six feet or removed from the 100-year floodplain. Harvested trees or felled logs and branches that are part of a designed and approved Streambank Stabilization and Erosion Control Measure shall be allowed to remain in a designated watercourse.

C. The Forest Management and Harvest Plan must:

1. Show that the site will be adequately stocked after the approved selective harvest. "Adequately stocked" shall be defined as the residual stocking level greater than the B-Level on the Allegheny Hardwood Stocking Guide produced by the United States Forest Service, or other United States Forest Service stocking guides as dictated by the forest community to be harvested.

2. Show that trees located less than 25 feet from the ordinary water mark will not be impacted by the proposed harvesting.

3. Include a map of the site. This map shall specify the location of any skid and haul roads required for transporting harvested trees and fire wood from riparian wetland setbacks.

4. Include the method to be used to transport harvested trees from riparian and wetland setbacks.

5. Specify the erosion control Best Management Practices that will be employed during and after the proposed harvest. These erosion control practices shall be in conformance with the Ohio Department of Natural Resources, Division of Forestry's BMPs for Erosion Control on Logging Jobs in Ohio.

6. Provide the US Army Corps of Engineers and the Ohio EPA Wetland and Stream protection permit numbers and the associated permit requirements.

(2) Streambank Stabilization and Erosion Control Measures. Streambank stabilization and erosion control measures may be allowed provided that such measures are ecologically compatible and substantially utilize natural materials and native plant species where practical. The streambank stabilization and erosion control measures shall only be undertaken upon the approval of a Soil Erosion and Sediment Control Plan by the Community.

(3) Crossings. Crossings of designated watercourses and through riparian setbacks by publicly and privately owned roads, drives, sewer and/or water lines and public and private utility transmission lines shall only be allowed upon approval of a Crossing plan by the City Official. Such crossings shall minimize disturbance in riparian setbacks stream substrate and shall mitigate any necessary disturbances. Soil erosive materials will not be used in making stream crossings. Such crossings must also comply with applicable state and federal law, including U.S. Army Corps of Engineer and/or Ohio EPA permits, if such permits are required.

(4) Construction of Fencing. Construction of fencing shall be allowed with the condition that reasonable efforts be taken to minimize the destruction of existing vegetation, provided that the fence does not impede stream or flood flow, and the disturbed area is replanted to the natural or preexisting conditions before the addition of the fence, as approved by the City of Fairview Park.

(5) Dredging. Dredging may be allowed to be performed for the potential purpose of flood control. In order for the City to approve of dredging of an open channel, a hydrologic/hydraulic engineering study must first be performed and approved by the City Engineer; and that this study indicates that the dredging of a particular stream will help minimize future flooding problems. In addition, the dredging activity must be in accordance with all applicable state and federal law.

(Ord. 08-18. Passed 3-3-08.)

1339.13 USES PROHIBITED IN RIPARIAN AND WETLANDS SETBACKS.

The following uses are specifically prohibited within the Riparian and Wetland Setback:

(a) Construction. There shall be no structures of any kind, except as permitted under these regulations.

(b) Dredging or Dumping. There shall be no drilling, dredging, or dumping of soil, spoils, liquid, or solid materials, except for non-commercial composting of uncontaminated natural materials, and except as permitted under the uses permitted in riparian and wetlands setbacks section of these regulations.

(c) Roads or Driveways. There shall be no roads or driveways permitted in riparian and/or wetland setback areas, except as permitted under the uses permitted in riparian and wetland setbacks section of these regulations. There shall be no roads or driveway roads permitted in wetlands or watercourses without a permit issued by the US Army Corps of Engineers and/or the Ohio EPA.

(d) Motorized Vehicles. There shall be no use of motorized vehicles, except as permitted under the uses permitted in riparian and wetland setbacks section of these regulations.

(e) Disturbance of Natural Vegetation. There shall be no disturbance, including mowing, of the natural vegetation, except for such conservation maintenance that the landowner deems necessary to control noxious weeds; for such plantings as are consistent with this regulation; for such disturbances as are approved under the uses permitted in riparian and wetland setbacks section of these regulations; and for the passive enjoyment, access, and maintenance of landscaping or lawns existing at the time of passage of this regulation. Nothing in this regulation shall be construed as requiring a landowner to plant or undertake any other activities in riparian and wetland setbacks.

(f) Parking Lots. There shall be no parking lots or other human-made impervious cover, except as permitted under the Uses permitted in riparian and wetland setbacks section of these regulations.

(g) New Surface and/or Subsurface Sewage Disposal or Treatment Areas. Riparian and wetland setbacks shall not be used for the disposal or treatment of sewage except in accordance with local county Board of Health regulations in effect at the time of application of this regulation.

(Ord. 08-18. Passed 3-3-08.)

1339.14 NON-CONFORMING STRUCTURES OR USES IN RIPARIAN AND WETLAND SETBACKS.

(a) A non-conforming use within a riparian and/or wetland setback which is in existence at the time of passage of this regulation, and which is not otherwise permitted under these regulations, may be continued. However, the use shall not be changed or enlarged unless it is changed to a use permitted under these regulations, except as permitted in Section 1339.14(h). For example, the existing building footprint or roofline may not be expanded or enlarged in such a way that would move the structure closer to the stream or wetland.

(b) If damaged, destroyed or discontinued, a non-conforming structure or use may be repaired or restored within two years from the date of damage/destruction/discontinuation or the adoption of these regulations, whichever is later, at the property owner's risk. This section shall also not prohibit ordinary repairs to a residence or residential accessory building that are not in conflict with other provisions of this regulation.

(c) In the case of a non-conforming structure within a riparian or wetland setback, the Community will allow a ten (10) foot maintenance access zone measured perpendicular to the structure, to temporarily extend further into the setback as long as disturbance to existing vegetation is minimized and vegetation is restored to the pre-existing state, as near as practical, upon completion. If any soil disturbance in a wetland will occur as part of any such maintenance activity, a permit from the U.S. Army Corps of Engineers or the Ohio EPA, as appropriate, must be submitted prior to the onset of the soil disturbing activity.

(d) In the case of a non-conforming residential structure, the City Official may allow minor upgrades to the structure that extend further into the riparian setback, such as awnings and pervious decks/patios, provided the modifications do not extend more than ten (10) feet further toward the stream or wetland than the original foundation of the structure existing at the time of passage of this regulation, and further provided that the modification will not impair the function of the riparian zone nor destabilize any slope of stream bank, as determined by the City of Fairview Park Engineer. Expansions larger than (ten) 10 feet must be obtained through the variance process.

(e) In the case of existing dedicated City roadways within the riparian setback, the City of Fairview Park reserves the right to enter into the riparian setback to perform typical activities associated with the operation and maintenance of roadways. These activities include, but are not limited to, salt application during freezing temperatures, road and shoulder stabilization, repair and/or replacement of existing guardrail, the construction of new guardrail based upon safety concerns, and the widening of pavement or bike paths, based upon traffic studies. The City shall ensure that disturbance to existing vegetation is minimized, and vegetation is restored to the pre-existing state, as near as practical, upon completion.

(f) In the case of existing hydraulic structures, such as storm conduits and culverts, within the riparian setback, the City of Fairview Park reserves the right to enter into the riparian setback to perform typical activities associated with the operation and maintenance of these structures. These activities include, but are not limited to, the inspection of structures, maintenance and repair of structures, and the replacement of structures. Additionally, if supported by a proper engineering study, the City reserves the right to increase the size of any hydraulic structure within the riparian setback, or add to the structure to improve the hydraulic function of the structure, such as adding a headwall to a culvert. The City shall ensure that disturbance to existing vegetation is minimized, and vegetation is restored to the pre-existing state, as near as practical, upon completion.

(g) In case of existing utilities within the riparian setback, the City of Fairview Park reserves the right to grant permission to utility companies to enter into the riparian setback to perform typical activities associated with the inspection, maintenance, replacement, of any and all existing utilities within the riparian setback. The utility company shall ensure that disturbance to existing vegetation is minimized, and vegetation is restored to the pre-existing state, as near as practical, upon completion.

(h) A residential structure or use within the setback existing at the time of passage of these regulations may be expanded subject to the provisions of the following subsections (h)(1) through (h)(5).

(1) The expansion conforms to existing zoning regulations.
(2) The expansion must not impact the stream channel or the 100-year floodplain.
(3) The expansion must not exceed an area of fifteen percent (15%) of the footprint of the existing structure or use that lies within the setback. Expansions exceeding fifteen percent (15%) of the footprint within the setback must be obtained through the variance process.
(4) The expansion is at the property owner's own risk.
(5) Execution of a Chapter 1339 Release and Waiver form by the applicant.

(i) Non-residential structures or use expansions will be permitted only through the variance process. (Ord. 08-18. Passed 3-3-08.)

1339.15 VARIANCES WTH RIPARIAN AND WETLAND SETBACKS.

(a) Applications for variances to the provisions of this chapter shall be submitted to the Board of Zoning Appeals.

(b) The Board of Zoning Appeals may grant a variance from this regulation as provide herein. In determining whether there is unnecessary hardship or practical difficulty such as to justify the granting of a variance, the Community shall consider the potential harm or reduction in stream and/or wetland area functions that may be caused by a proposed structure use. The Board of Zoning Appeals may consult with representatives from the Cuyahoga SWCD; the Ohio Department of Natural Resources, Division of Natural Area; the Ohio Environmental Protection Agency, Division of Surface Water; the Army Corps of Engineers; the County of Cuyahoga Engineer; the Cuyahoga County Health Department or other technical experts at the expense of the applicant as necessary to consider variance requests.

(c) Requests for variances for subdivisions will be considered for the following:

(1) An additional stream crossing or crossings for a subdivision or open space development which is necessary for the health, welfare and safety of the residents of the subdivision.

(2) A reduction of the setback width, no to exceed ten percent (10%) of the prescribed setback width.

(d) No variances shall be granted for expansion of the following structures or uses:

(1) Facilities which use, store, distribute or sell petroleum-based products or any hazardous materials. Such facilities include, but are not limited to: asphalt plants, dry cleaners, gasoline service stations and road maintenance facilities.

(2) Facilities which use, store, distribute or sell products which may contribute higher than acceptable concentrations of dissolved or particulate matter to storm water runoff around the facility. Such facilities include, but are not limited to: landfills or transfer stations, junk yards, recycling facilities, quarries and borrow pits, sand and gravel extraction operations and road salt storage barns.

(e) In reviewing whether to grant variances, the Board of Zoning Appeals shall consider the following:

(1) The extent to which the requested variance impairs the flood control, soil erosion control, sediment control, water quality protection or other functions of the riparian and/or wetland area. The determination shall be based on sufficient technical and scientific evidence as provided by the applicant and the agencies, at the applicant's expense, listed herein.

(2) The soil type and natural vegetation of the parcel, as well as the percentage of the parcel that is in the 100-year floodplain. The criteria of the Community's flood damage prevention regulations may be used as guidance when granting variances in the 100-year floodplain.

(3) Varying the front, rear and side yard setbacks before riparian and wetland setbacks are varied.

(4) The degree of hardship this regulation places on the landowner, and the availability of alternatives to the proposed activity.

(5) Soil disturbing activities permitted in a riparian and/or wetland setback through variances should be implemented in order to minimize clearing to the extent possible, and to include Best Management Practices necessary to minimize soil erosion and maximize sediment control.

(6) The presence of significant impervious cover, or smooth vegetation such as maintained lawns, in riparian setback areas compromises their benefits to the Community.

(7) A reduction in storm water infiltration into the soil in wetland areas will occur.

(8) A requested above ground fence does not increase the existing area of mowed grass or lawn.

(9) Modifying parking requirements before varying the riparian setback.

(10) Modifying building shape, size or design to avoid or minimize intrusion into the riparian setback.

(11) In the case of a lot made unbuildable or to which no economically viable use exists as a result of this regulation, consider the minimum variance needed to make it buildable or restore economic viability for an appropriate sized and compatibly designed structure, while following the guidance provided in this section.

(12) Whether the variance will increase the likelihood for flood or erosion damage to either the applicant's property or to other properties. Variances should not be granted for asphalt or concrete paving in the riparian and wetland setbacks in any situation where gravel or porous pavement will do the job.

(13) Culverting of watercourses should be avoided.

(14) Whether the variance will result in the result in the need for article slope or bank stabilization measures that could interfere with the function of the riparian zone.

(f) Any variances to the provisions of this chapter which are granted require the execution of a Chapter 1339 Variance Release and Waiver form by the applicant.
(Ord. 08-18. Passed 3-3-08.)

1339.16 BOUNDARY INTERPRETATION AND APPEAL PROCEDURE.

(a) When an applicant or his or her designated representative disputes the boundary of a riparian or wetland setback or the ordinary high water mark of a watercourse, the applicant or his or her designated representative shall submit documentation to the Community which describes the boundary, the applicant's proposed boundary, and justification for the proposed boundary change.

(b) The Community shall evaluate this documentation and shall make a written determination within a reasonable period of time, not exceeding sixty (60) days, a copy of which shall be submitted to the applicant. If during this evaluation the Community requires further information, it may be required of the applicant. In the event that the Community requests such additional information, the sixty (60) day limit on the Community's review shall be postponed until the applicant provides such information.

(c) Any party aggrieved by any wetland or riparian setback determination under this regulation may appeal to the Board of Zoning Appeals.

(d) During the interpretation and appeals procedure, the City of Fairview Park reserves the right to consult with any outside expert, as the City deems necessary.
(Ord. 08-18. Passed 3-3-08.)

1339.17 INSPECTION OF RIPARIAN AND WETLAND SETBACK.

The delineation of riparian and/or wetland setbacks shall be inspected by the Community or its designee, as follows:

(a) Prior to any soil disturbing activities authorized by the Community under for a property subdivision/property/parcel split, land development plan, and/or building permit. The applicant or his or her designated representative shall provide the Community with at least five (5) working days notice prior to starting soil disturbing or land clearing activities.

(b) Prior to starting any of the activities authorized by the Community under the uses permitted in riparian and wetland setbacks section of these regulations, the applicant or his or her designated representative shall provide the Community with at least five (5) working days notice prior to starting such activities.

(c) Any time evidence is brought to the attention of the Community that uses or structures are occurring that may reasonably be expected to violate the provisions of these regulations. (Ord. 08-18. Passed 3-3-08.)

1339.18 VIOLATIONS.

No person shall violate, or cause, or knowingly permit to be violated, any of the provisions of these regulations, or fail to comply with any such provisions or with any lawful requirements of any public authority made pursuant to these regulations, or knowingly use or cause or permit the use of any lands in violation of these regulations or in violation of any permit granted under these regulations. (Ord. 08-18. Passed 3-3-08.)

1339.99 PENALTIES.

(a) Whoever violates or fails to comply with any provision of this regulation is guilty of a misdemeanor of the first degree and shall be fined no more than one thousand dollars ($1,000) or imprisoned for no more than one hundred eighty (180) days, or both, for each offense.

(b) A separate offense shall be committed each day during or on which a violation or noncompliance occurs or continues.

(c) Upon notice from the City of Fairview Park Building Commissioner, or designated representative, that work is being performed contrary to this regulation, such work shall immediately stop. Such notice shall be in writing and shall be given to the owner or person responsible for the development are, or person performing the work and shall state the conditions under which such work may be resumed; provided, however, in instances where immediate action is deemed necessary for public safety or the public interest, the City Official may require that work be stopped upon verbal order pending issuance of the written order.

(d) The imposition of any other penalties provided herein shall not preclude the community, by or through its Law Director and/or any of his or her assistants, from instituting an appropriate action or proceeding in a Court of Proper Jurisdiction to prevent an unlawful development or to restrain, correct or abate a violation, or to require compliance with the provisions of this regulation or other applicable laws, or ordinances, rules or regulations or the orders of the City Officials.
(Ord. 08-18. Passed 3-3-08.)

TITLE THREE - Exterior Property Maintenance Code

Chap. 1341. Definitions.
Chap. 1343. General Provisions and Penalty.
Chap. 1345. Administration and Enforcement.
Chap. 1347. Owner and Operator Responsibilities.
Chap. 1349. International Property Maintenance Code.

CHAPTER 1341
Definitions

1341.01 Use of definitions.
1341.02 Accessory structure.
1341.03 Building Code.
1341.04 Deterioration.
1341.05 Exposed to public view.
1341.06 Exterior of the premises.
1341.07 Fire Chief.
1341.08 Fire Hazard.
1341.09 Immediate neighborhood.
1341.10 Mixed occupancy.
1341.11 Nuisance.
1341.12 Property Maintenance Officer.
1341.13 Refuse.
1341.14 Registered mail.
1341.15 Weathering.

CROSS REFERENCES
Zoning definitions - see P. & Z. Ch. 1105
Housing Code definitions - see BLDG. Ch.1351
International Property Maintenance Code 2003 Edition
definitions - see BLDG. Ch. 1349

1341.01 USE OF DEFINITIONS.

The following terms wherever used herein or referred to in this Property Maintenance Code shall have the respective meanings assigned to them unless a different meaning clearly appears from the context.
(Ord. 05-12. Passed 4-18-05.)

1341.02 ACCESSORY STRUCTURE.
"Accessory structure" means a structure, the use of which is incidental to that of the main building and which is attached thereto or located on the same premises.
(Ord. 05-12. Passed 4-18-05.)

1341.03 BUILDING CODE.
"Building Code" means the Building Code of the City of Fairview Park.
(Ord. 05-12. Passed 4-18-05.)

1341.04 DETERIORATION.
"Deterioration" means the condition, or appearance of a building or part thereof, characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting, or other evidence of physical decay, neglect or lack of maintenance.
(Ord. 05-12. Passed 4-18-05.)

1341.05 EXPOSED TO PUBLIC VIEW.
"Exposed to public view" means any premises, or any part thereof, or any building or any part, which may be lawfully viewed by the public, or any member thereof, from a sidewalk, street, alleyway, open air parking lot or from any adjoining or neighboring premises.
(Ord. 05-12. Passed 4-18-05.)

1341.06 EXTERIOR OF THE PREMISES.
"Exterior of the premises" means those portions of a building which are exposed to public view and the open space of any premises outside of any building erected thereon.
(Ord. 05-12. Passed 4-18-05.)

1341.07 FIRE CHIEF.
"Fire Chief" means the Chief of the Fire Department of the City of Fairview Park.
(Ord. 05-12. Passed 4-18-05.)

1341.08 FIRE HAZARD.
"Fire Hazard" means any thing or act which increases or may cause an increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service of preventing, suppressing or extinguishing fire; or which may obstruct, delay, or hinder or may become the extinguishment of fire, or any other fire hazard in the City.
(Ord. 05-12. Passed 4-18-05.)

1341.09 IMMEDIATE NEIGHBORHOOD.
"Immediate neighborhood" means an area separated by no applicable space and specifically denoting a limited number of properties in a very close relationship to each other; such as, properties located within the same block.
(Ord. 05-12. Passed 4-18-05.)

1341.10 MIXED OCCUPANCY.
"Mixed occupancy" means any building containing one or more dwelling units or rooming units and also having a portion thereof devoted to non-dwelling uses.
(Ord. 05-12. Passed 4-18-05.)

1341.11 NUISANCE.

"Nuisance" means:

(a) Any public nuisance known in equity jurisprudence, or as provided by the statutes of the State, or the ordinances of the City.

(b) Conditions dangerous to human life or detrimental to health or persons on or near the premises where the conditions exist and where the condition is perilous by active and negligent operation thereof.

(c) Unsanitary conditions or anything offensive to the senses or dangerous to health, in violation of this Property Maintenance Code.

(d) Fire hazards.

(Ord. 05-12. Passed 4-18-05.)

1341.12 PROPERTY MAINTENANCE OFFICER.

"Property Maintenance Officer" means the Building Commissioner of the City of Fairview Park.

(Ord. 05-12. Passed 4-18-05.)

1341.13 REFUSE.

"Refuse" means all putrescible and nonputrescible solid wastes, except body wastes, including but not limited to: garbage, rubbish, ashes, street cleanings, dead animals and solid market and industrial wastes. (See also garbage and rubbish).

(Ord. 05-12. Passed 4-18-05.)

1341.14 REGISTERED MAIL.

"Registered mail" means registered or certified mail.

(Ord. 05-12. Passed 4-18-05.)

1341.15 WEATHERING.

"Weathering" means deterioration, decay or damage caused by exposure to the elements.

(Ord. 05-12. Passed 4-18-05.)

CHAPTER 1343
General Provisions and Penalty

1343.01 Short title.
1343.02 Findings and declaration of policy.
1343.03 Purposes.
1343.04 Applicability.
1343.05 Conflict of law; greater standard to prevail.
1343.06 Condition for issuance and renewal of permits and licenses.
1343.07 Enforcement of and compliance with other ordinances.
1343.08 Responsibilities of owner, operator and occupant independent of each other.
1343.09 Existing offenses and violations not discharged.
1343.99 Penalty.

CROSS REFERENCES
Zoning Code enforcement- see P. & Z. Ch. 1149
Building Code enforcement - see BLDG. Ch. 1303
Housing Code enforcement - see BLDG. Ch. 1355
Ohio Fire Code enforcement - see FIRE PREV. 1501.02

1343.01 SHORT TITLE.
This Title Three shall be known as "the Exterior Property Maintenance Code" of the City of Fairview Park, and may be referred to as "this Code".
(Ord. 70-11. Passed 3-16-70.)

1343.02 FINDINGS AND DECLARATION OF POLICY.

It is hereby found and declared that there exists in the City vacant land and land with structures used for residential and nonresidential use which are, or may become in the future, substandard with respect to structure and maintenance, or further that such conditions including but not limited to structural deterioration, lack of maintenance and appearance of exterior of premises, existence of fire hazards, and unsanitary conditions, constitute a menace to the health, safety, welfare and reasonable comfort of the citizens and inhabitants of the City. It is further found and declared that by reason of lack of maintenance and progressive deterioration, certain properties have the further effect of creating blighting conditions and initiating slums, and that if the same are not curtailed and removed, the conditions will grow and spread and will necessitate in time the expenditure of large amounts of public funds to correct and eliminate the same, and that by reason of timely regulations and restrictions as herein contained the growth of slums and blight may be prevented and the immediate neighborhood and property values thereby maintained, the desirability and amenities of residential and nonresidential used and immediate neighborhoods enhanced and the public health, safety and welfare, protected and fostered.
(Ord. 05-12. Passed 4-18-05.)

1343.03 PURPOSES.

The purpose of this Exterior Property Maintenance Code is to protect the public health, safety and welfare by establishing minimum standards governing the maintenance, appearance and conditions of all residential and nonresidential premises; to fix certain responsibilities and duties upon owners and operators; to authorize and establish procedures for the inspection of residential and nonresidential premises; to fix penalties for the violations of this Code; and to provide for the right of access across adjoining premises to permit repairs. This Code is hereby declared to be remedial and essential for the public interest and it is intended that this Code be liberally construed to effectuate the purposes as stated herein.
(Ord. 70-11. Passed 3-16-70.)

1343.04 APPLICABILITY.

Every residential and nonresidential building and the premises on which it is situated in the City, used or intended to be used for dwelling, retail, commercial, business, light manufacturing or industrial occupancy shall comply with the provisions of this Exterior Property Maintenance Code, whether or not such building was constructed, altered or repaired before or after the enactment of this Code, and irrespective of any permits or licenses which were issued for the use or occupancy of the building or for the installation or repair of equipment or facilities prior to the effective date of this Code. This Code establishes minimum standards for the initial and continued occupancy and use of all such buildings and does not replace or modify standards otherwise established for the construction, repair, alteration or use of the building, except as provided in Section 1343.03. Where there is mixed occupancy, residential or nonresidential use therein shall be nevertheless regulated by and subject to the provisions of this Code.
(Ord. 70-11. Passed 3-16-70.)

1343.05 CONFLICT OF LAW; GREATER STANDARD TO PREVAIL.

In any case where the provisions of this Code impose a higher standard than set forth in any other City ordinance or under State law, then the standards as set forth herein shall prevail, but if the provisions of this Code impose a lower standard than any other City ordinance or of State law, then the higher standard contained in any such ordinance or law shall prevail.
(Ord. 70-11. Passed 3-16-70.)

1343.06 CONDITION FOR ISSUANCE AND RENEWAL OF PERMITS AND LICENSES.

After the date of enactment of this Exterior Property Maintenance Code, all licenses and permits shall be issued upon compliance with this Code as well as compliance with the ordinances under which such licenses and permits are granted.
(Ord. 70-11. Passed 3-16-70.)

1343.07 ENFORCEMENT OF AND COMPLIANCE WITH OTHER ORDINANCES.

No license or permit or other certification of compliance with this Exterior Property Maintenance Code shall constitute a defense against any violation of any other City ordinance applicable to any structure or premises, nor shall any provision herein relieve any owner, operator or occupant from complying with any such other provision, nor any City official from enforcing any such other provision.
(Ord. 70-11. Passed 3-16-70.)

1343.08 RESPONSIBILITIES OF OWNER, OPERATOR AND OCCUPANT INDEPENDENT OF EACH OTHER.

(a) Owners and operators shall have all the duties and responsibilities as prescribed in this Exterior Property Maintenance Code and the regulations promulgated pursuant thereto, and no owner or operator shall be relieved from any such duty and responsibility nor be entitled to defend against any such duty and responsibility nor be entitled to defend against any charge of violation thereof by reason of the fact that the occupant is also responsible therefor and in violation thereof.

(b) Unless expressly provided to the contrary, in this Code, the respective obligations and responsibilities of the owner and operator on one hand, and the occupant on the other, shall not be altered or affected by an agreement or contract by and between any of the aforesaid or between them and other parties.
(Ord. 70-11. Passed 3-16-70.)

1343.09 EXISTING OFFENSES AND VIOLATIONS NOT DISCHARGED.

The repeal of any provisions of any other ordinances by this Exterior Property Maintenance Code shall not affect any action for prosecution or abatement under any such ordinance or any notice, complaint or order issued by any officer or agency of the City, prior to the effective date hereof or concerning any prosecution or other steps of enforcement which have been taken or are being taken with any administrative agency or in the Municipal Court for enforcement thereof.
(Ord. 70-11. Passed 3-16-70.)

1343.99 PENALTY.

(a) Fines for Violations. A violation of any section or subsection of this Exterior Property Maintenance Code shall be punishable by a fine not to exceed one hundred dollars ($100.00) for each violation committed.

(b) Meaning of "Each Violation". Each violation of a section or subsection of this Code shall constitute a separate and distinct violation independent of any other section or subsection or any order issued pursuant to this Code. Each day's failure to comply with any such section or subsection shall constitute a separate violation.

(c) Application to Officers or Agents. Where the defendant is other than a natural person or persons, subsections (a) and (b) hereof shall apply to any agent, superintendent, officer, member or partner who alone or with others has charge, care or control of the premises.

(d) Other Legal Action. The imposition of any penalty shall not preclude the Director of Law from instituting an appropriate action or proceeding in a court of proper jurisdiction to prevent an unlawful repair or maintenance; or to restrain, correct or abate a violation, or to prevent the occupancy of a building, structure or premises, or to require compliance with the provisions of this Code, or other applicable laws, ordinances, rules or regulations, or the orders or determinations of the Property Maintenance Officer or the Zoning Board of Appeals.
(Ord. 70-11. Passed 3-16-70.)

CHAPTER 1345
Administration and Enforcement

1345.01 Administrative provisions.

1345.02 Powers and duties of Property Maintenance Officer.

CROSS REFERENCES
Building Commissioner - see ADM. Ch. 133
Zoning Code administrative provisions - see P. & Z. Ch. 1149
Building Code administrative provisions - see BLDG. Ch. 1303
Housing Code general provisions - see BLDG. Ch. 1353

1345.01 ADMINISTRATIVE PROVISIONS.

(a) Duties of Building Commissioner; Appointment of Property Maintenance Officer. All inspections, regulations, enforcement and hearings on violations of the provisions of this Exterior Property Maintenance Code shall be under the direction and supervision of the Building Commissioner. The Mayor shall appoint a Property Maintenance Officer to perform such duties as may be necessary to the enforcement of this Code, including the making of inspections. The Building Commissioner may designate, subject to the approval of the Mayor, such other public officials or employees of the City, to perform such duties as may be necessary to assist the Property Maintenance Officer in the enforcement of this Code, including the making of inspections. (Ord. 87-46. Passed 4-4-88.)

(b) When Inspections Are To Be Made.

(1) Residential. All buildings and premises subject to this Code are subject to inspections from time to time by the enforcing officer of the City. At the time of such inspections, all exterior parts of the premises shall be available and accessible for such inspections, and the owner, operator and occupant are required to provide the necessary arrangements to facilitate such inspections. Such inspections shall be made during regular open hours of the business occupying the premises unless there is reason to believe a violation exists of a character which is an immediate threat to health or safety requiring inspection and abatement without delay.

(c) Conduct of Inspectors. Inspectors shall conduct themselves so as to avoid intentional embarrassment or inconvenience to occupants.

(d) Where Access by Inspectors is Refused.

(1) Penalty. Where the Property Maintenance Officer or his agent is refused access or is otherwise impeded or prevented by the owner, occupant or operator from conducting an inspection of the premises, such person shall be in violation of this Code and subject to the penalty in Section 1343.99.

(2) Search Warrant or Access Warrant. In addition to the provisions of subsection (d)(1) hereof, the Property Maintenance Officer may, upon affidavit, apply to the Municipal Court for a search warrant setting the actual conditions and circumstances that provide a reasonable basis for believing that a nuisance or violation of this Code exists on the premises and, if the Court is satisfied as to the matter set forth in the affidavit, the Court may authorize the issuance of a search warrant permitting access to and inspection of that part of the premises on which the nuisance or violation exists. Warrant for access may be issued by the Court upon affidavit of the Property Maintenance Officer establishing grounds therefor.

(e) Procedure Where Violation Discovered. Where a violation of this Code or the regulations hereunder is found to exist, a written notice from the Property Maintenance Officer shall be served on the person or persons responsible for the correction thereof.

(1) Service of notice. Notice may be served personally or by prepaid telegram or by mail with postage prepaid, addressed to the last known address of the person to be served. Where it is ascertained that the owner does not reside on the premises, the last known address shall be the address of the owner as shown in the office of the County Auditor. If the last known address cannot be ascertained, the notice may be posted on the outside front entrance of the building. The Property Maintenance Officer shall file and provide notice to any owner or operator of any violation at any address other than the last know address provided hereunder if such other address is filed with the Property Maintenance Officer personally or by certified mail addressed to the Property Maintenance Officer. Date of service of the notice shall be determined where service is by mail as of the day following the day of mailing for notices to addresses within the City, and as of the fourth day after the day of mailing for notices to addresses outside the City. Where the day of service would fall upon a Sunday or other day when mail is not ordinarily delivered, then the day of service shall be the next regular delivery day. Notwithstanding any other provision herein contained, notice served upon the agent designated shall constitute service upon the owner, operator and lessor of the premises, jointly and severally. Where the owner, operator or lessor or the agent thereof cannot be found at the address given, the owner, operator or lessor affected thereby may be served by posting notice upon the premises in a conspicuous place near as possible to the front entrance thereof. (Ord. 70-11. Passed 3-16-70.)

(2) Notice to become an order unless hearing before the Board of Zoning and Building Appeals requested. Within twenty days of the date of service of a notice, the notice shall constitute a final order unless any person affected by the notice requests a hearing thereon before the Board of Zoning and Building Appeals and serves a written request within the twenty-day period in person or by mail on the Chairman of the Board. Such request for a hearing before the Board shall set forth briefly the grounds or reasons on which the request for a hearing is based and the factual matters contained in the notice of violation which are to be disputed at the hearing. The Chairman of the Board, upon receipt of the request, shall within thirty days therefrom and upon five days' notice to the party aggrieved, set the matter down for hearing. (Ord. 05-12. Passed 4-18-05.)

(3) Determination at hearing. At any hearing provided hereunder, the Chairman of the Board of Zoning and Building Appeals shall be vested with all the powers provided by law to compel the attendance of witnesses and parties in interest by issuance and service of subpoena, to require by subpoena the production of books, records or other documents at any such hearing which may be pertinent to matters to be determined by him and to enforce any such subpoena or secure any order for the enforcement of any such subpoena as provided by law. Determination shall be made within ten days from the completion of the hearing. The Board shall issue an order either incorporating the determinations and directions contained in the notice, modifying the same or withdraw the notice.

(4) Extension of time. The Property Maintenance Officer may extend the time for correction or abatement of the violation for an additional period of time not to exceed thirty days, except where major capital improvements or renovations are involved, in which instance the time for completion may be extended for a period not to exceed ninety days beyond the expiration date of the original notice.

(5) Effect of noncompliance with notice. Whenever the owner, agent, occupant or operator of a structure or premises fails, neglects or refuses to comply with any notice of the Property Maintenance Officer that becomes a final order as provided in subsection (e)(2) hereof, the Property Maintenance Officer may advise the Director of Law of the circumstances and request the Director to institute an appropriate action at law to compel compliance.

(6) Referral of violations. Any violation of any ordinance other than this Code discovered by the Property Maintenance Officer or his representative shall be reported to the official or agency responsible for the enforcement of such ordinance.

(7) Where notice and hearing not required prior to court proceedings. Notwithstanding the requirements of subsection (e)(l) through (3) hereof, violations of the following section may be prosecuted without notice by the filing of a complaint by the Property Maintenance Officer in the Municipal Court pursuant to Section 1345.01(d).

(8) Effect of notice on owner. For the purposes of enforcement of this Code, the service of a notice on an owner, whether or not the owner is also the operator, shall constitute notice of the violation set forth therein until such violation is abated in conformity with this Code and the other applicable City ordinances.
(Ord. 70-11. Passed 3-16-70.)

1345.02 POWERS AND DUTIES OF PROPERTY MAINTENANCE OFFICER.

(a) Adoption of Rules and Regulations. The Property Maintenance Officer is hereby authorized and empowered to promulgate such written rules and regulations as may be necessary for the proper interpretation and administration of the provisions of this Exterior Property Maintenance Code, provided that such rules and regulations do not conflict with this Code and conform to the general standards prescribed by this Code. The Property Maintenance Officer shall file copies of such rules and regulations with the Clerk of Council, City Engineer, Fire Chief, the Building Committee of Council and the Board of Zoning and Building Appeals and shall make available in the Property Maintenance Officer's office a copy for inspection by members of the public during regular business hours. Such rules and regulations shall have the approval of the City Engineer and Fire Chief, respectively, where the provisions thereof relate to matters which are also in the jurisdiction of and supervision of each officer. In case of conflict, the rule or regulation may be promulgated by direction of the Building Committee of Council. Such rules and regulations shall have the same force and effect as the provisions of this Code, and the violations thereof shall be enforced as violations of the express provisions of this Code, as herein provided.

(b) Power to Vary or Modify Provisions of This Code. The Property Maintenance Officer shall have the power to withhold strict enforcement of the requirements of this Code upon written application by an owner, operator or occupant, after making determination that:

(1) A. Any variation or modification of structure or use approved by the Property Maintenance Officer will not in any material way alter the standards of this Code and cannot affect detrimentally the health or safety of occupants or the health, safety or welfare of the occupants or owners of adjacent premises or of the immediate neighborhood; and

B. Strict enforcement would constitute an undue and unnecessary hardship on the owner or operator because it would compel expenditures on the premises which would be substantially disproportionate to any benefit to health, safety or welfare that might be derived therefrom; or

(2) The owner or operator is without any practical or feasible means to comply with the strict provisions of this Code, or

(3) A. The strict enforcement of the provisions of this Code would require the installation or repairs and improvements estimated to exceed five hundred dollars ($500.00) in cost; and

B. The premises subject to the Code are contemplated for acquisition or are within an area where acquisition is contemplated by a public agency having the power of eminent domain and there is a reasonable likelihood that the premises will be acquired and razed or moved within a period of two years. However, any waiver of the provisions of this Code shall be cancelled and the Property Maintenance Officer shall strictly enforce the Code if it shall be ascertained subsequent to the granting of the waiver that the premises are in fact not to be acquired for any public use or purpose.

(4) Right to hearing where application denied. Upon denial of any such application, the owner, operator or applicant may request a hearing which shall be held in accordance with provisions of Section 1345.01(e)(2).

(5) Application not to constitute a defense or stay. Such application shall not constitute a defense of any violation of this Code concerning any proceedings which are pending in the Municipal Court when the application is filed nor shall any variance or modification allowed hereunder constitute a vested right against any ordinance enacted hereinafter by Council compelling strict enforcement of any provisions of this Code.

(6) Record of variations or modifications granted. Where variations or modifications are approved in any section of this Code by the Property Maintenance Officer or by action of the Board of Zoning and Building Appeals or of any court, a written record thereof stating the name of the applicant, the address of the premises, the variation or modification approved, date of approval and the reasons therefor, satisfying the provisions contained herein, shall be prepared by the Property Maintenance Officer and filed both under the section or sections of this Code to which the variation or modification applies and under the address of the premises, and such files shall be available for public inspection in the office of the Property Maintenance Officer during regular business hours.
(Ord. 70-11. Passed 3-16-70.)

(c) Semi-Annual Review of Code Provisions and Operations. The Property Maintenance Officer shall semi-annually review the procedure and operation of this Code, and report to Council on or before June 30 and December 31:

(1) Any recommended amendment, addition or modification or provisions of this Code consonant with the field experience of the personnel charged with enforcement;

(2) A summary of the enforcement experience indicating number of violations abated, number of cases processed in the Municipal Court, number of inspections made and such other and further pertinent information as will provide Council with an account of progress in securing the standards required by this Code;

(3) Any further recommendation as to how the Code and the procedure and operations thereunder can be improved.
(Ord. 87-46. Passed 4-4-88.)

CHAPTER 1347
Owner and Operator Responsibilities

1347.01 Maintenance of exterior of premises.
1347.02 Appearance of exterior of premises and structures.
1347.03 Structural soundness and general maintenance, exterior.
1347.04 Reconstruction of walls and sidings.
1347.05 Freedom from infestation.

CROSS REFERENCES
Waste, garbage and junk - see GEN. OFF. 521.05
Owner and operator defined - see BLDG. 1341.17, 1341.18
Responsibilities are independent of each other - see BLDG. 1343.08
Rubbish and garbage disposal - see BLDG. 1357.11

1347.01 MAINTENANCE OF EXTERIOR OF PREMISES.

(a) Free of Hazards and Unsanitary Conditions. The exterior of the premises and all structures thereon shall be kept free of all nuisances, and any hazards to the safety of occupants, pedestrians and other persons utilizing the premises, and free of unsanitary conditions, and any of the foregoing shall be promptly removed and abated by the owner or operator. It shall be the duty of the owner or operator to keep the premises free of hazards which include but are not limited to the following:

(1) Refuse. An accumulation of brush, broken glass, stumps and roots that presents a safety hazard. Also garbage, trash and debris which presents an unsanitary and/or a safety hazard.

(2) Natural growth. Dead trees and limbs or other natural growth which, by reason of rotting or deteriorating conditions or storm damage, constitute a hazard to persons in the vicinity thereof.

(3) Overhangings. Loose and overhanging objects which, by reason of location above ground level, constitute a danger of falling on persons in the vicinity thereof.

(4) Sources of infestations. The permitting of any premises to become infested with vermin or rodents is declared to be a nuisance and unlawful. No owner, occupant or person in charge or control of any premises, shall cause or knowingly permit such premises to become or to remain infested with vermin or rodents.

(5) Foundation walls. Foundation walls shall be kept structurally sound, free from defects and damage and capable of bearing imposed loads safely.

(6) Chimneys and all flue and vent attachments thereto. Chimneys and all flue and vent attachments thereto shall be maintained structurally sound, free from defects, and so maintained as to capably perform at all times the functions for which they were designed, and the same shall be capable of withstanding the action of flue gasses.
(Ord. 70-11. Passed 3-16-70.)

(7) Firewood. Front yards shall be kept free, and storage shall be prohibited of all firewood, brush, logs or any other material intended to be used in fireplaces or other permitted burning facilities. Storage of such materials shall be permitted only in side or rear yards and under the following conditions:

A. The firewood shall be stacked no higher than five feet;
B. It shall be cut for firewood;
C. It shall be stored five feet from the property line;
D. It shall be stored in such a manner as not to constitute a fire hazard; and
E. Storage shall not exceed an amount sufficient for one year supply of the property wherein such materials shall be stored.
(Ord. 87-54. Passed 12-21-87.)

(8) Compost piles. Nothing in this chapter shall be construed or interpreted so as to prevent persons from creating or maintaining a compost pile or piles for yard waste provided such pile or piles are not stored in quantities or locations prohibited by any provision of this chapter or by any other provision of the laws of the City. All such compost pile or piles shall:

A. Not be visible from the public right-of-way;
B. Not constitute a public nuisance or a nuisance to abutting and adjoining properties by providing a breeding place for, attraction for or becoming infested with vermin, rodents or insects or emit a smell or odor which annoys or disturbs a reasonable person of normal sensitivities or which endangers or injures real or personal property;
C. Not create any health or fire hazard;
D. Not be created or maintained in any front or side yard or located closer than five feet from any side or rear lot line;
E. Be permitted if the compost pile or piles are enclosed by a barrier on all sides which shall not exceed four feet in height;
F. Not be in excess of one percent (1%) of the square footage of the lot or seventy-five square feet, whichever is less; and

G. Not impede any natural watercourse or drainage from any property. As used herein, the phrase "yard waste" includes grass, leaves, branches, brush, organic natural matter and organic vegetative matter but does not include animal waste or food waste.
(Ord. 91-37. Passed 6-17-91.)

1347.02 APPEARANCE OF EXTERIOR OF PREMISES AND STRUCTURES.

(a) Residential. The exterior of the premises, the exterior of dwelling structures and the condition of accessory structures shall be maintained so that the appearance of the premises and all buildings thereon shall reflect a level of maintenance in keeping with the residential standards of the immediate neighborhood so that the appearance of the premises and structures shall not constitute a blighting factor for adjoining property owners nor an element leading to the progressive deterioration and downgrading of the immediate neighborhood with the accompanying diminution of property values including the following:

(1) Storage of commercial and industrial materials. There shall not be stored or used at a location visible from the sidewalk, street or other public areas, equipment and materials relating to commercial or industrial uses unless permitted under the Zoning Code for the premises.

(2) Landscaping. Premises shall be maintained. Lawns, hedges and bushes shall be kept from becoming overgrown and unsightly where exposed to public view and where the same constitute a blighting factor depreciating adjoining property and impairing the good residential character of the immediate neighborhood.

(3) Signs. All signs permitted by reason of other regulations or as a lawful nonconforming use shall be maintained in good repair and printed matter, pictures or illustrations contained thereon shall be completely maintained or when no longer in use completely removed.

(4) General maintenance. The exterior of every structure or accessory structure, including fences, shall be maintained in good repair and all surfaces thereon shall be kept painted where necessary for purposes of preservation and appearance, or surface coated with a protective coating or treated to prevent rot and decay. The same shall be maintained free of broken windows, crumbling stone or brick, peeling paint or other condition reflective of deterioration or inadequate maintenance to the end that the property itself may be preserved, safety and fire hazards eliminated and adjoining properties and the immediate neighborhood protected from blighting influences.
(Ord. 70-11. Passed 3-16-70.)

(5) Storage of vehicles. All vehicles which are junk vehicles as defined in Section 1325.01 or which do not carry a current year's license plate and registration where required by law shall be stored in a completely enclosed, authorized or permitted building on such lot or premises.
(Ord. 85-49. Passed 6-3-85.)

(b) Nonresidential. The exterior of the premises and the condition of accessory structures shall be maintained so that the appearance of the premises and all buildings thereon shall reflect a level of maintenance in keeping with the standards of the immediate neighborhood so that the appearance of the premises and structures shall not constitute a blighting factor for adjoining property owners nor an element leading to the progressive deterioration and down-grading of the immediate neighborhood with the accompanying diminution of property values including the following:

(1) Landscaping. Premises shall be maintained. Lawns, hedges and bushes shall be kept from becoming overgrown and unsightly where exposed to public view and where the same constitute a blighting factor depreciating adjoining property.

(2) Signs and billboards. All permanent signs and billboards exposed to public view permitted by reason of other regulations or as a lawful nonconforming use shall be maintained in good repair. Any signs which have weathered or faded or those upon which the paint has peeled or cracked shall, with their supporting members, be removed forthwith or put into a good state of repair. All non-operative or broken electrical signs shall be repaired or shall, with their supporting members, be removed forthwith.

(3) Windows. All windows exposed to public view shall be kept free of foreign substances except when necessary in the course of changing displays. No storage of materials, stock or inventory shall be permitted in window display areas or other areas ordinarily exposed to public view unless such areas are first screened from the public view by drapes, Venetian blinds or other permanent rendering of the windows opaque to the public view. All screening of interiors shall be maintained in clean and attractive manner and in a good state of repair.

(4) Store fronts. All store fronts shall be kept in good repair, painted where required and shall not constitute a safety hazard or nuisance. In the event repairs to a store front become necessary, such repairs to a store front shall be made with the same or similar materials used in the construction of the store front in such a manner as to permanently repair the damaged area or areas. Any cornice visible above a store front shall be kept painted, where required, and in good repair.

(5) Signs or advertising removal. Except for "For Rent" signs, any temporary sign or other paper advertising material glued or otherwise attached to a window or windows otherwise exposed to public view shall be removed at the expiration of the event or sale for which it is erected, or within sixty days after erection, whichever shall occur sooner. Except during the course of repairs or alterations, no more than thirty-three and one-third percent of the square footage of any single window or single window display area shall be devoted to signs or other temporary advertising material attached to the window or windows or otherwise exposed to public view.

(6) Awnings and marquees. Any awning or marquee and its accompanying structural members which extend over any street, sidewalk or other portion of the premises shall be maintained in good repair and shall not constitute a nuisance or a safety hazard. In the event such awnings or marquees are not properly maintained in accordance with the foregoing, they shall, together with their supporting members, be removed forthwith. In the event such awnings or marquees are made of cloth, plastic or of similar materials, such cloth or plastic where exposed to public view shall be maintained in good condition and shall not show evidence of weathering, discoloration, ripping, tearing or other holes. Nothing herein shall be construed to authorize any encroachment on streets, sidewalks or other parts of the public domain. (Ord. 70-11. Passed 3-16-70.)

(7) Storage of vehicles. All vehicles which are junk vehicles as defined in Section 1325.01 or which do not carry a current year's license plate and registration where required by law shall be stored in a completely enclosed, authorized or permitted building on such lot or premises. (Ord. 85-49. Passed 6-3-85.)

1347.03 STRUCTURAL SOUNDNESS AND GENERAL MAINTENANCE, EXTERIOR.

(a) Residential. Every dwelling and accessory structure and every part thereof shall be kept structurally sound and in a state of good repair to avoid safety, health or fire hazards, including:

(1) Painting and other protective coating. All exposed surfaces susceptible to decay shall be kept at all times painted or otherwise provided with a protective coating sufficient to prevent deterioration and rot.

(2) Exterior walls, sidings, roofs. Exterior walls, sidings and roofs shall be kept structurally sound, in good repair and free from unsafe defects. Damaged materials shall be repaired or replaced; places showing signs of substantial rot, deterioration or excessive corrosion are to be restored and protected.

(b) Nonresidential. The exterior of every structure or accessory structure, including fences, signs and store fronts, shall be maintained in good repair and all surfaces thereof shall be kept painted where necessary for purposes of preservation and appearance, or surface coated with a protective coating or treated to prevent rot and decay. All surfaces shall be maintained, free of broken windows, crumbling stone or brick, peeling paint or other condition reflective of deterioration or inadequate maintenance to the end that the property itself may be preserved, safety and fire hazards eliminated, and adjoining properties and the immediate neighborhood protected from blighting influences.
(Ord. 70-11. Passed 3-16-70.)

1347.04 RECONSTRUCTION OF WALLS AND SIDINGS.

All reconstruction of walls and sidings shall be of standard quality and appearance commensurate with the character of the properties in the same block and on both sides of the street on which the premises front; such that the materials used will not be of a kind that by their appearance under prevailing appraisal practices and standards will depreciate the value of neighboring and adjoining premises as aforesaid.
(Ord. 70-11. Passed 3-16-70.)

1347.05 FREEDOM FROM INFESTATION.

All parts of the premises shall be maintained so as to prevent infestation.
(Ord. 70-11. Passed 3-16-70.)

CHAPTER 1349
International Property Maintenance Code

1349.01 International Property Maintenance Code adopted.
1349.02 File copy.
1349.03 Definitions.
1349.04 Conflict.

1349.01 INTERNATIONAL PROPERTY MAINTENANCE CODE ADOPTED.

(a) There is adopted for the purpose of establishing the minimum regulations governing for conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures as herein provided the 2015 International Property Maintenance Code. The Code shall be in full force and effect with insertions, deletions, and changes prescribed hereafter.

(b) Insertions to the International Property Code shall be as follows:

101.1	FAIRVIEW PARK	(Jurisdiction)
103.5	NONE	(Fees for Property Maintenance Inspection)
112.4	NONE	(Stop work order fines)
302.4	6"	(Height of grass and weeds)
304.14	3/21 THRU 11/1	(Screens for operational windows required)
602.3	9/1 THRU 6/1	(Heating of rental units)
602.4	9/1 THRU 6/1	(Heating of business occupancies)

(1) Amendments: 111.1 currently reads in part: …. the right to appeal to the Board of Appeals should be amended to read: … the right to appeal to the Board of Zoning and Building Appeals.

(2) The following Sections of the International Property Maintenance Code, 2015 Edition need to be deleted due to conflict with our current code: 111.2, 111.2.1, 111.2.2, 111.2.4, 111.2.5, 111.3, and 111.4.

(Ord. 15-11. Passed 4-20-15.)

1349.02 FILE COPY.

One copy of the International Property Maintenance Code, as adopted in Section 1349.01, shall be on file with the Clerk of Council, the Building Commissioner, and the Fairview Park Public Library for inspection by the public.
(Ord. 05-11. Passed 4-18-05.)

1349.03 DEFINITIONS.

Wherever titles, words and phrases are used in portions of the International Property Maintenance Code hereby adopted, such terms shall be construed to mean the equivalent officer, word or phrase applicable to the City.
(Ord. 05-11. Passed 4-18-05.)

1349.04 CONFLICT.

In the event of conflict between any provisions of any other City ordinance or technical code adopted by the City, the more restrictive provision shall govern.
(Ord. 05-11. Passed 4-18-05.)

TITLE FIVE - Housing Code

Chap. 1351. Definitions.
Chap. 1353. General Provisions.
Chap. 1355. Enforcement; Penalty.
Chap. 1357. Residential Occupancy Standards.
Chap. 1359. Certificate of Occupancy.
Chap. 1361. Condominiums.

CHAPTER 1351
Definitions

1351.01 Definitions generally.
1351.02 Approved.
1351.03 Board.
1351.04 Basement.
1351.05 Building Commissioner.
1351.06 City.
1351.07 Code.
1351.08 Communal kitchen.
1351.09 Dwelling structure.
1351.10 Dwelling.
1351.11 Dwelling unit.
1351.12 Family.
1351.13 Habitable room.
1351.14 Hotel and motel.
1351.15 Multiple dwelling.
1351.16 Occupant.
1351.17 Operator.
1351.18 Owner.
1351.19 Person.
1351.20 Premises.
1351.21 Secondary or appurtenant structure.
1351.22 Supply or supplied.

CROSS REFERENCES
Zoning Code definitions - see P. & Z. Ch. 1105
Exterior Property Maintenance Code definitions - see BLDG. Ch. 1341
Condominium definitions - see BLDG. 1361.03

1351.01 DEFINITIONS GENERALLY.

Certain words and phrases as used in this Housing Code are defined as hereafter set forth in this chapter. (Ord. 67-15. Passed 3-6-67.)

1351.02 APPROVED.
"Approved" means approved by the Building Commissioner pursuant to this Housing Code, or approved by any other person or board designated by City ordinances to give approval to the matter in question. (Ord. 67-15. Passed 3-6-67.)

1351.03 BOARD.
"Board" means the Board of Zoning and Building Appeals, as created and existing under the provisions of the Charter. (Ord. 67-15. Passed 3-6-67.)

1351.04 BASEMENT.
"Basement" means a portion of a building whose floor level is below the surface of the ground. (Ord. 67-15. Passed 3-6-67.)

1351.05 BUILDING COMMISSIONER.
"Building Commissioner" means the Building Commissioner of the City of Fairview Park and, when used herein, shall be construed as though followed by the words "or his authorized agent or representative". (Ord. 67-15. Passed 3-6-67.)

1351.06 CITY.
"City" means the City of Fairview Park, Ohio.
(Ord. 67-15. Passed 3-6-67.)

1351.07 CODE.
"Code" means this Housing Code as contained in Title Five of Part Thirteen of the Codified Ordinances of Fairview Park.
(Ord. 67-15. Passed 3-6-67.)

1351.08 COMMUNAL KITCHEN.
"Communal kitchen" means a kitchen within a dwelling building used by the occupants of more than one dwelling unit or shared by any person other than the members of one family.
(Ord. 67-15. Passed 3-6-67.)

1351.09 DWELLING STRUCTURE.
"Dwelling structure" means a building or structure or that part of a building or structure used or designed or intended to be used, for residential purposes.
(Ord. 67-15. Passed 3-6-67.)

1351.10 DWELLING.
"Dwelling" means a building intended or designed to be occupied by not more than two families living separately and independently of each other.
(Ord. 67-15. Passed 3-6-67.)

1351.11 DWELLING UNIT.

(a) "Dwelling unit" means a group of rooms arranged, maintained or designed to be occupied by a single family and consists of a complete bathroom with toilet, lavatory and tub or shower facilities; kitchen facilities with approved cooking, refrigeration and sink facilities; and approved living and sleeping facilities; all of which are used exclusively by such family. The words "dwelling unit", "apartment" and "suite" shall be considered synonymous.

(b) "Bedroom" means any room within a dwelling unit, if such room has been specifically designed, constructed and intended primarily for sleeping purposes.
(Ord. 89-17. Passed 11-6-89.)

1351.12 FAMILY.

(a) "Family" means one person who shall be the head of the household and may include the following persons who live with the head of the household as a single housekeeping unit in a single dwelling unit:

(1) Persons related by blood, guardianship or adoption under an order of a court of competent jurisdiction, or marriage to the head of the household; or

(2) Not more than two persons, including roomers and servants, not related by blood, guardianship, adoption under an order of a court of competent jurisdiction, or marriage, to the head of the household.

(3) In no event shall the number of occupants of a dwelling unit exceed the number allowed by the Housing Code.

(b) "Single housekeeping unit" means persons who join with the head of the household in sharing meals, using the living room, dining room, kitchen facilities and other common areas within a dwelling unit, and sharing customary household obligations.

(c) "Head of the household" means:

(1) In an owner occupied dwelling unit with a single owner, the head of the household is the single owner.

(2) In an owner occupied dwelling unit with more than a single owner, the head of the household is the adult owner who has the greatest number of related family members, or such other adult owner as the co-owners may designate. In no event shall the number of family members exceed those allowed under the Housing Code.

(3) In a nonowner occupied dwelling unit with a single lessee or tenant, the head of the household is the single lessee or tenant.

(4) In a nonowner occupied dwelling unit with more than a single occupant, the head of the household is the adult occupant who has the greatest number of related occupant family members, or such other adult occupant as the co-occupants may designate. In no event shall the number of family members exceed those allowed under the Housing Code.

(d) "Roomer" means a person who renders services, pays rent or provides other consideration for occupancy of one or more rooms within a dwelling unit, but less than the entire dwelling unit, who is not a member of the resident family, and who occupies or contracts to occupy the room or rooms for more than thirty consecutive days. A roomer shall either have sole and exclusive occupancy of his/her sleeping quarters or shall share such sleeping quarters with only one other person. (Ord. 89-17. Passed 11-6-89.)

1351.13 HABITABLE ROOM.

"Habitable room" means a room or enclosed floor space used or intended to be used for living, sleeping or eating purposes, but excluding the following: bathroom, toilet rooms, laundries, pantries, dressing rooms, storage spaces, foyers, hallways, utility rooms, heater rooms, boiler rooms, basement recreation rooms, interior rooms not provided with natural light and ventilations and special purpose rooms shared by more than one dwelling unit.
(Ord. 89-17. Passed 11-6-89.)

1351.14 HOTEL AND MOTEL.

(a) "Hotel" means every structure which, in whole or in part, has a main or accessory use, is kept, used, maintained, advertised, or held out to the public to be a place where living and/or sleeping accommodations, excluding cooking facilities within the rental unit, are offered for consideration to transient guests and having a common entrance or entrances. The term "transient guest" means persons who contract to occupy the premises for thirty days or less. No person residing within the City of Fairview Park for a period of thirty days, or over, is to be deemed a transient guest under the provisions of Chapter 705 of the Codified Ordinances; nor shall the owner, operator, or person in control of such motel or hotel permit any person(s) to occupy any unit therein in excess of thirty days unless such motel or hotel is so licensed by the State of Ohio pursuant to Chapter 3731 of the Ohio Revised Code or any other authorized licensing agency; and is constructed as to be in full compliance with the City, or any other applicable Building Code, as such Code(s) apply to motel or hotel units.

(b) "Motel" means every structure or group of structures, detached, or semi-detached, separate outside entrances which, in whole or in part, has a main or accessory use, is kept, used, maintained, advertised or held out to the public to be a place where only overnight sleeping accommodations, excluding cooking facilities within rental unit, are offered for consideration to transient guests, principally automobile travelers. The term "transient guests" means persons who contract to occupy the premises on a daily basis not to exceed thirty days. No person residing within the City of Fairview Park for a period of thirty days, or over, is to be deemed a transient guest under the provisions of this chapter or Chapter 705 of the Codified Ordinances, nor shall the owner, operator or person in control of such motel or hotel permit any person(s) to occupy any unit therein for a period in excess of thirty (30) days unless such motel or hotel is so licensed by the State of Ohio pursuant to Chapter 3731 of the Ohio Revised Code or any other authorized licensing agency; and is constructed so as to be in full compliance with the City, or any other applicable Building Code, as such Code(s) apply to motel or hotel units.
(Ord. 04-20. Passed 4-19-04.)

1351.15 MULTIPLE DWELLING.

"Multiple dwelling" means a building containing the following:

(a) Three or more dwelling units;

(b) Two or more dwelling units above the first or ground floor; or

(c) One or more dwelling units if the building also contains a use other than a dwelling use or an area designed for such other use.

The words "multiple dwelling" and "apartment house" are synonymous.

(Ord. 67-15. Passed 3-6-67.)

1351.16 OCCUPANT.

"Occupant" means a person living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or a room.

(Ord. 67-15. Passed 3-6-67.)

1351.17 OPERATOR.

"Operator" means a person who has charge, care or control of a dwelling structure.

(Ord. 67-15. Passed 3-6-67.)

1351.18 OWNER.

"Owner" means the owner of the premises, including the holder of title thereto subject to contract of purchase, a vendee in possession, a mortgagee or receiver in possession, a lessee or joint lessees of the whole thereof, or an agent or any other person, firm, corporation or fiduciary directly in control of the premises.

(Ord. 67-15. Passed 3-6-67.)

1351.19 PERSON.

"Person" means any person, firm, partnership, association, corporation, company or organization or association of persons of any kind.

(Ord. 67-15. Passed 3-6-67.)

1351.20 PREMISES.

"Premises" means and describes a lot, parcel or plot of land including the buildings or structures thereon. (Ord. 67-15. Passed 3-6-67.)

1351.21 SECONDARY OR APPURTENANT STRUCTURE.

"Secondary or appurtenant structure" means a structure, the use of which is incidental or accessory to that of the main building, and which is attached to the main building or located on the same premises therewith.

(Ord. 67-15. Passed 3-6-67.)

1351.22 SUPPLY OR SUPPLIED.

"Supply" or "supplied" mean paid for, furnished, provided by or under the control of the owner or operator. (Ord. 67-15. Passed 3-6-67.)

CHAPTER 1353
General Provisions

1353.01 Short title.
1353.02 Purpose.
1353.03 General scope.
1353.04 Existing buildings.
1351.05 Conflict.
1351.06 Severability.
1351.07 Enforcement, legal action.

CROSS REFERENCES
Licensing motels - see BUS. REG. Ch. 705
Licensing apartments - see BUS. REG. Ch. 707
Zoning Code general provisions - see P. & Z. Ch. 1149
Building Code administration - see BLDG. Ch. 1303

1353.01 SHORT TITLE.
The provisions of this Title Five of Part Thirteen of the Codified Ordinances shall be known and may be cited and referred to as "The Housing Code of the City of Fairview Park". (Ord. 67-15. Passed 3-6-67.)

1353.02 PURPOSE.
The purpose of this Housing Code is to establish minimum standards necessary to make all dwelling structures safe, sanitary, free from fire and health hazards, fit for human habitation and beneficial to the public welfare; to establish minimum standards governing the maintenance of dwelling structures in such condition as will not constitute a blighting or deteriorating influence on the neighborhood and the community; to fix responsibilities for owners and occupants of dwelling structures with respect to sanitation, repair and maintenance; to establish additional standards for multiple dwellings; to authorize the inspection of dwelling structures; to establish enforcement procedures; to authorize the vacation or condemnation of dwelling structures unsafe or unfit for human habitation and to fix penalties for violations.
(Ord. 67-15. Passed 3-6-67.)

1353.03 GENERAL SCOPE.
The provisions of this Housing Code shall be supplementary to all other provisions of the ordinances of the City relating to the construction, use and maintenance of residential buildings and shall apply to all buildings or portions thereof, excepting hotels and motels as defined herein, which are used or designed or intended to be used for residential occupancy.
(Ord. 67-15. Passed 3-6-67.)

1353.04 EXISTING BUILDINGS.

Existing buildings or portions thereof presently used for residential purposes may continue to be occupied for residential purposes if:

(a) The building complies with the provisions of this Housing Code, except as to any variance heretofore specifically granted by the City; and

(b) The use and occupancy of the building is not in violation of any of the provisions of the City ordinances and applicable State statutes, including any rules and regulations adopted pursuant to such ordinances or statutes.

(Ord. 67-15. Passed 3-6-67.)

1353.05 CONFLICT.

In the event of conflict between any provisions of this Housing Code, including any rules and regulations adopted pursuant to this Housing Code, and any provisions of the ordinances of the City, including any rules and regulations adopted pursuant to such ordinances, the more restrictive provisions shall prevail.
(Ord. 67-15. Passed 3-6-67.)

1353.06 SEVERABILITY.

Sections and subsections of this Housing Code and the several parts and provisions thereof are declared to be independent sections, subsections, parts and provisions and the holding of any such section, subsection, part or provision thereof to be unconstitutional, void or ineffective for any cause shall not affect nor render invalid any other such section, subsection, part or provision thereof. (Ord. 67-15. Passed 3-6-67.)

1353.07 ENFORCEMENT, LEGAL ACTION.

The imposition of any penalty, as provided for in this Housing Code, shall not preclude the Director of Law from instituting an appropriate action or proceeding in a court of proper jurisdiction to prevent an unlawful repair or maintenance, to restrain, correct or abate a violation, to prevent the occupance of a building, structure or premises, to repair compliance with the provisions of this Housing Code or other applicable laws, ordinances, rules or regulations, or the orders or determinations of the Building Commissioner, the Mayor or the Board of Zoning and Building Appeals. (Ord. 67-15. Passed 3-6-67.)

CHAPTER 1355
Enforcement; Penalty

1355.01 Inspection.
1355.02 Right of entry.
1355.03 Notice of violation.
1355.04 Noncompliance with notice.
1355.05 Cases of emergency.
1355.06 Placards.
1355.07 Expenses and costs.
1355.08 Rules and regulations.
1355.09 Right of appeal.
1355.99 Penalty.

CROSS REFERENCES

Zoning Code enforcement - see P. & Z. Ch. 1105
Building Code enforcement - see BLDG. Ch. 1303
Exterior Property Maintenance Code enforcement - see BLDG. Ch. 1345
Ohio Fire Code enforcement - see FIRE PREV. 1501.02

1355.01 INSPECTION.

The Building Commissioner is authorized to make or cause to be made inspections of all structures or premises used for dwelling purposes and all secondary or appurtenant structures to determine whether such structures or premises conform to the provisions of this Housing Code. (Ord. 67-15. Passed 3-6-67.)

1355.02 RIGHT OF ENTRY.

Upon presentation of proper credentials, the Building Commissioner may enter at all reasonable times, or at such other times as may be necessary in an existing emergency, any dwelling, multi-family dwelling, building, structure or premises in the City to perform any duty imposed on him by this Housing Code.
(Ord. 67-15. Passed 3-6-67.)

1355.03 NOTICE OF VIOLATION.

(a) Whenever the Building Commissioner finds any dwelling, structure or premises, or any part thereof, to be in violation of the provisions of this Housing Code, the Commissioner shall give or cause to be given or mailed to the owner, agent or operator of such structure or premises a written notice stating the violation therein. Such notice shall order the owner, agent or operator, within a stated reasonable time, but not less than ten days, to repair, improve or demolish the structure or premises concerned. Such delivery or mailing shall be deemed legal service of notice.

(b) If the person to whom a notice of violation is addressed cannot be found within Cuyahoga County after a reasonable and diligent search, then notice shall be sent by registered mail to the last known address of such person, and warning of the existence of such notice shall be posted in a conspicuous place on the structure or premises to which it relates. No person shall remove or deface such warning notice without written permission of the Commissioner. Such mailing and posting shall be deemed legal service of notice.
(Ord. 67-15. Passed 3-6-67.)

1355.04 NONCOMPLIANCE WITH NOTICE.

(a) Whenever the owner, agent, occupant or operator of a structure or premises fails, neglects or refuses to comply with any notice of the Building Commissioner, the Commissioner may issue a notice to such owner, agent, occupant or operator ordering the structure or premises, or part thereof, to be vacated within such time as shall be vacated within such time as shall be stated in such notice, but which shall be not less than ten days, except in cases of emergency, or he may advise the Director of Law of the circumstances and request the Director of Law to institute an appropriate action at law to compel compliance or both. Such notice shall be delivered, mailed or posted in the same manner as provided in Section 1355.03.

(b) Whenever the owner, agent, operator or occupant of a structure or premises fails, neglects or refuses to comply with a notice to vacate issued by the Building Commissioner, the Commissioner may enforce the orders of such notice of vacation and cause the structure or premises, or part thereof, to be vacated in accordance with the terms of such notice.

(c) Whenever the owner, agent or operator of a structure fails, neglects or refuses to comply with a notice to demolish such structure, or a part thereof, or a secondary or appurtenant structure, issued in accordance with the provisions of this Housing Code, and when such structure is determined by the Building Commissioner to constitute a public nuisance in that it is dangerous or injurious to the public health, safety or welfare, the Commissioner may request the Director of Law to institute legal proceedings or to take such other action as may be necessary to abate the nuisance. The Commissioner shall further give notice informing the owner, agent or operator of such determination and action. Such notice shall be given in the same manner as provided in Section 1355.03.

(d) The owner or owners of any such property as to which such an order or notice to repair, improve, demolish or vacate has been issued shall not sell or enter into an agreement to sell or lease such property for longer than one year unless such order of the Commissioner has been disclosed and displayed to the prospective purchaser or lessee, or unless or until the owner or owners have received notice from the Commissioner of satisfactory compliance with such order or notice from the Building Commissioner or other duly constituted authority that such order has been withdrawn or canceled. (Ord. 67-15. Passed 3-6-67.)

1355.05 CASES OF EMERGENCY.

Whenever, in the opinion of the Building Commissioner, the condition of a structure or premises, or part thereof, constitutes an immediate hazard to human life or health, he shall declare a case of emergency and shall order immediate vacation of the structure or premises, or part thereof. Such notice shall be served in the manner provided in Section 1355.03, but shall require immediate compliance.
(Ord. 67-15. Passed 3-6-67.)

1355.06 PLACARDS.

Whenever the Building Commissioner orders a structure or premises, or part thereof, to be vacated, he shall cause to be posted at each entrance to such structure or premises or part thereof, a placard warning of the existence of such vacation order. No person shall deface or remove such placard until the repairs or demolition are completed, without written permission of the Commissioner. No person shall enter or use any structure or premises so placarded except for the purpose of making the required repairs or demolishing the structure or premises.
(Ord. 67-15. Passed 3-6-67.)

1355.07 EXPENSES AND COSTS.

Any expense or cost incurred under the provisions for demolition contained in this Code shall be paid by the owner of the structure or premises.

If expenses and costs of demolition are not paid by the owner of the structure or premises within thirty days after written notice from the City to do so, the expenses and costs may be recovered by an action at law or may be assessed against the lands of the owner and shall become a lien thereon, and shall be collected in the manner provided by law for assessments.
(Ord. 67-15. Passed 3-6-67.)

1355.08 RULES AND REGULATIONS.

The Building Commissioner is authorized to adopt such written rules and regulations as may be necessary for the proper interpretation and enforcement of this Housing Code. Such rules and regulations shall not conflict with or waive any provisions of this Code or any other ordinance of the City. Such rules and regulations shall be submitted to the Board for approval and no such rules or regulations shall be adopted without such approval.

Such rules and regulations, upon approval of the Board, shall be on file with the Commissioner for public examination, and a copy of such rules and regulations shall be posted on the bulletin board of the main entrance of the City Hall for at least five days. Such rules and regulations shall have the force and effect of this Housing Code and shall continue in effect until revoked by the Commissioner with the approval of the Board, or by action of Council.
(Ord. 67-15. Passed 3-6-67.)

1355.09 RIGHT OF APPEAL.

The owner, agent or operator of any structure or premises shall have the right to appeal from any order of, or written notice issued by, the Building Commissioner within thirty days from the date such notice was given or mailed or order issued, and to appear before the Board at a time and place fixed by the Board, to show cause why he should not comply with such notice. Such appeal must be in writing. Failure to file a written appeal with the Board within the time prescribed herein shall constitute a waiver of the right to appeal. Except in cases of emergency, as set forth in Section 1355.05, filing of an appeal from any such notice shall suspend action on enforcement of such notice until the appeal is acted upon by the Board.
(Ord. 67-15. Passed 3-6-67.)

1355.99 PENALTY.

Whoever violates any provision of this Housing Code, or any rule or regulation promulgated thereunder, or fails to comply therewith or with any written notice or written order issued thereunder, or whoever refuses to permit entry by the Building Commissioner or other City department heads or their representatives at a reasonable hour, and whoever interferes with, obstructs or hinders such Commissioner while attempting to make such inspection, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment for not to exceed six months, or both. Each day such violation occurs or continues shall constitute a separate offense.
(Ord. 67-15. Passed 3-6-67.)

CHAPTER 1357
Residential Occupancy Standards

1357.01 Leasing for residential occupancy; restrictions.
1357.02 Habitable floor area defined.
1357.03 Habitable floor area; occupancy standards.
1357.04 Habitable rooms below grade; restrictions.
1357.05 Required window area.
1357.06 Required ventilation area.
1357.07 Kitchens, bathrooms and water closet compartments.
1357.08 Required dwelling unit facilities.
1357.09 Communal kitchens.
1357.10 Connection of fixtures.
1357.11 Rubbish and garbage disposal.
1357.12 Heating capacity.
1357.13 Supply of heat.
1357.14 Flue connection required.
1357.15 Prohibited locations of heating equipment.
1357.16 Electrical facilities required.
1357.17 Maintenance responsibilities.
1357.18 General maintenance requirements.
1357.19 Maintenance of foundations.
1357.20 Maintenance of roofs, gutters and downspouts.
1357.21 Maintenance of exteriors of dwelling structures and secondary or appurtenant structures.
1357.22 Maintenance of interior walls and floors.
1357.23 Infestation by pests.
1357.24 Exterior property areas.
1357.25 Secondary or appurtenant structures.
1357.26 Access and egress.

CROSS REFERENCES

Littering - see GEN. OFF. 521.05
CABO Dwelling House Code - see BLDG. Ch. 1309
Surface water and grading - see BLDG. Ch. 1317
Unsafe structures - see BLDG. Ch. 1323
Waste, garbage and junk - see BLDG. Ch. 1325
Exterior property areas - see BLDG. Ch. 1347

1357.01 LEASING FOR RESIDENTIAL OCCUPANCY; RESTRICTIONS.

No owner, operator or agent shall rent or lease, or offer for rental or lease, any dwelling units, dwelling structures or any parts thereof which do not comply with the provisions of this Housing Code. (Ord. 67-15. Passed 3-6-67.)

1357.02 HABITABLE FLOOR AREA DEFINED.

"Habitable floor area" means the floor area in any room in any dwelling, dwelling structure or multiple dwelling, which floor area is required to be contained within such dwelling, dwelling structure or multiple dwelling, or part thereof, in order to meet the minimum requirements of this Housing Code. Areas and dimensions are to be measured from the interior face of enclosing walls and the center line of party walls.
(Ord. 89-17. Passed 11-6-89.)

1357.03 HABITABLE FLOOR AREA; OCCUPANCY STANDARDS.

Every dwelling unit shall conform to the following standards:

(a) Every dwelling unit shall have not less than 300 square feet of habitable floor area, and shall contain at least one room which shall have not less than 150 square feet of habitable floor area and which is not less than ten feet in width; provided that no room used to compute compliance with such 300 square foot minimum limitation shall be less than seven feet in width nor have less than seventy square feet of habitable floor area

(b) No portion of any room which is less than seven feet in width shall be included in determining habitable floor area

(c) All habitable rooms shall have a clear ceiling height of not less than seven feet, six inches, provided that rooms with sloping ceilings shall have a clear ceiling height of not less than six feet, six inches in at least one-half of their habitable floor area. In determining the habitable floor area of rooms with sloping ceilings, all portions of less than five feet in height shall be disregarded.

(d) Every dwelling unit shall contain at least 300 square feet of habitable floor area for the first occupant thereof and at least 150 additional square feet of habitable floor area for every additional occupant thereof, but in no case shall any dwelling unit contain less than the minimum number of square feet of habitable floor area as required by other provisions of the Code.

(e) No part of the third floor area of a double house, a two-family dwelling or a multi-family dwelling consisting of side by side dwelling units, sometimes known as row housing, shall be used to compute compliance with the requirements for minimum habitable floor area for a family occupying a dwelling unit in such double house, two-family dwelling or multi-family dwelling.

(f) The minimum habitable bedroom floor area of a dwelling unit shall be eighty square feet for the first occupant thereof and for each additional occupant fifty square feet.

(g) The occupancy of any dwelling unit shall be limited to one, and only one family.

(h) As used herein:

(1) "Bedroom" means a habitable room designed for sleeping purposes, and which has a minimum habitable floor area of eighty square feet.

(2) "Efficiency unit" means an apartment or condominium unit which is designed or used as both a living room and a bedroom with no separate bedroom.

(3) "Habitable bedroom floor area" means the sum of the gross horizontal area of each individual bedroom of a dwelling unit.

(Ord. 89-17. Passed 11-6-89.)

1357.04 HABITABLE ROOMS BELOW GRADE; RESTRICTIONS.

No room which has its floor level below grade shall be occupied as a habitable room unless it shall conform to all of the following standards, in addition to all other requirements of this Housing Code for habitable rooms:

(a) The room shall have been, prior to the effective date of this Code, originally designed and constructed for or legally converted to, use as a habitable room.

(b) The walls and floor enclosing the room shall be maintained in such condition as to prevent seepage or leakage of water into the habitable space.

(c) All required openings for light and ventilation shall be located entirely above the adjoining grade.

(d) The height of the finished ceiling of such room above any point of the adjoining ground level shall be at least fifty percent of the clear ceiling height of the room. (Ord. 67-15. Passed 3-6-67.)

1357.05 REQUIRED WINDOW AREA.

Every habitable room shall be provided with natural light by one or more windows, facing upon an approved open space. The aggregate glass area of such required windows shall be not less that ten percent of the floor area of the room served by them.
(Ord. 67-15. Passed 3-6-67.)

1357.06 REQUIRED VENTILATION AREA.

Every habitable room shall be provided with ventilation.
(Ord, 67-15. Passed 3-6-67.)

1357.07 KITCHENS, BATHROOMS AND WATER CLOSET COMPARTMENTS.

Every kitchen, bathroom and water closet compartment shall be provided with light and ventilation as prescribed for habitable rooms, except that the aggregate glass area in a kitchen shall be not less than six square feet, and in a bathroom or water closet compartment, not less than three square feet. However, where an approved exhaust ventilation system and approved artificial light is installed in such a manner as to be in operation at all times when any such room is occupied, no natural light or ventilation shall be required.
(Ord. 67-15. Passed 3-6-67.)

1357.08 REQUIRED DWELLING UNIT FACILITIES.

(a) Every dwelling unit shall be provided with not less than the following sanitary facilities contained within a room which shall afford privacy to any occupant thereof:

(1) A water closet.
(2) A bathtub or shower.
(3) A lavatory.

(b) Every dwelling unit shall be provided with one, and one only, complete kitchen or kitchenette with approved cooking, refrigeration and sink facilities. No such kitchen facilities shall be placed within any water closet compartment or within any bathroom.
(Ord. 67-15. Passed 3-6-67.)

1357.09 COMMUNAL KITCHENS.

Communal kitchens are prohibited.
(Ord. 67-15. Passed 3-6-67.)

1357.10 CONNECTION OF FIXTURES.

(a) All plumbing fixtures in a dwelling structure shall be supplied with running water from the municipal water supply system.

(b) Every dwelling unit shall have an approved supply of running hot water properly connected to all plumbing fixtures normally requiring hot water.

(c) All plumbing fixtures in a dwelling structure shall be so designed and installed as to prevent contamination of the water supply system.

(d) All plumbing fixtures in a swelling structure shall be connected to a public sanitary sewer. (Ord. 67-15. Passed 3-6-67.)

1357.11 RUBBISH AND GARBAGE DISPOSAL.

(a) Every occupant of a dwelling or dwelling unit shall dispose of all his rubbish in a clean and sanitary manner by placing it in approved receptacles or in other approved rubbish disposal facilities.

(b) Every occupant of a dwelling unit shall dispose of all his garbage and other wastes which might provide food for insects and rodents, in a clean and sanitary manner by placing it in approved nonleakable, nonabsorbent, covered garbage storage receptacles or in other approved garbage disposal facilities.
(Ord. 67-15. Passed 3-6-67.)

1357.12 HEATING CAPACITY.

Every dwelling unit shall be provided with approved heating facilities capable of maintaining an average temperature of seventy degrees Fahrenheit in all habitable rooms, kitchens, bathrooms and water closet compartments when the outdoor temperature is minus five degrees Fahrenheit, without forcing the facilities to operate in excess of their design capacity.
(Ord. 67-15. Passed 3-6-67.)

1357.13 SUPPLY OF HEAT.

The owner, operator or agent in charge of a dwelling structure, who rents or leases any dwelling unit therein under an agreement, express or implied, to supply or furnish heat to the occupants thereof, shall supply heat adequate to maintain an inside temperature of not less than sixty-eight degrees Fahrenheit in all habitable rooms, bathrooms, water closet compartments and kitchens whenever the outside temperature falls below sixty degrees Fahrenheit. Such inside temperature shall be measured in the approximate center of each room, approximately three feet above the floor. The provisions of this section shall not apply where the failure to meet minimum standards is caused by a general shortage of fuel, negligent or malicious act of the occupant or any cause beyond the control of the owner or occupant.

1357.14 FLUE CONNECTIONS REQUIRED.

Every appliance or piece of equipment burning solid, liquid or gaseous fuel, where permitted, shall be connected to an approved smoke pipe and flue. However, any appliance approved for use without such connections is exempted from the requirements of this section. (Ord. 67-15. Passed 3-6-67.)

1357.15 PROHIBITED LOCATIONS OF HEATING EQUIPMENT.

No heating equipment, or appliance depending on room air for combustion shall be located in any bedroom, bathroom, toilet room or any room used for sleeping purposes.
(Ord. 67-15. Passed 3-6-67.)

1357.16 ELECTRICAL FACILITIES REQUIRED.

Every dwelling structure and secondary or appurtenant structure shall be provided with approved electrical service, outlets and fixtures, which shall be installed and maintained so as to be free of any potential source of ignition of combustible material or any potential source of electrical hazard. Such facilities shall be approved as being adequate to supply the requirements of lighting, appliances and equipment of the structure concerned.
(Ord. 67-15. Passed 3-6-67.)

1357.17 MAINTENANCE RESPONSIBILITIES.

(a) Owner. The owner of every multiple dwelling or his appointed agent shall be responsible for maintaining in a clean and sanitary condition the shared or common areas of the premises and for meeting the requirements of Ohio R.C. 5321.04.

(b) Occupant. The occupant of a dwelling unit in any dwelling structure shall be responsible for maintaining in a clean and sanitary condition that part of the dwelling unit, dwelling structure or premises which he occupies and controls and for meeting the requirements of Ohio R.C. 5321.05.

1357.18 GENERAL MAINTENANCE REQUIREMENTS.

(a) All dwelling structures and all parts thereof, both exterior and interior, shall be maintained in good repair and shall be capable of performing the function for which such structure or part or any feature thereof was designed or intended to be used.

(b) All equipment and facilities appurtenant to a dwelling structure or dwelling unit shall be maintained in good and safe working order.
(Ord. 67-15. Passed 3-6-67.)

1357.19 MAINTENANCE OF FOUNDATIONS.

(a) All foundations of every dwelling structure shall be maintained structurally sound and in good repair.

(b) All foundations of every dwelling structure shall be maintained in such condition as to prevent seepage or leakage of water into the space enclosed within such foundations.

(c) All openings into the foundations of every dwelling structure shall be protected against the entrance of rodents.

(d) Where parts of dwellings supported on masonry piers, require substantial repair or replacement due to sagging, settling or failure of supporting piers, the same shall be replaced with a foundation conforming to the Building Code.
(Ord. 67-15. Passed 3-6-67.)

1357.20 MAINTENANCE OF ROOFS, GUTTERS AND DOWNSPOUTS.

All roofs of every dwelling structure shall be maintained weathertight and shall be equipped with gutters and downspouts connected to a public storm sewer.
(Ord. 67-15. Passed 3-6-67.)

1357.21 MAINTENANCE OF EXTERIORS OF DWELLING STRUCTURES AND SECONDARY OR APPURTENANCE STRUCTURES.

(a) All exterior walls of every dwelling structure shall be maintained weathertight and shall be maintained so as to resist decay or deterioration from any cause.

(b) Any dwelling structure or secondary or appurtenant structure whose exterior surface is bare, deteriorated, ramshackle, tumble down, decaying, disintegrating or in poor repair must be repaired or razed.

(1) All buckled, rotted or decayed walls, doors, windows, porches, floors, steps, railings, soffits, posts, sills, trim and their missing members shall be replaced and put in good condition.

(2) All replacements shall match and conform to original design or be replaced completely.

(3) All exterior wood or exterior unfinished surfaces shall be sealed and painted, or the surface covered with other approved protective coating or treated to prevent rot and decay, and conform and match the existing paint or surface covering and original design or replacement thereof. All exterior walls and surfaces shall be properly protected against the weather, where such are defective or lack weather protection, including lack of paint or surface covering, or have weathered due to lack of proper protective covering.

(c) Any dwelling structure or secondary or appurtenant structure whose exterior surface is deteriorated, decaying, disintegrating, or whose exterior surface has weathered with dirt and grime or has been impaired through peeling or flaking of the paint or other protective coating, shall be repaired, repainted or resurfaced.

(1) All exterior surfaces shall be replaced or repaired in good condition preparatory to repainting or coating.

(2) All bare exterior surfaces which are flaking or crumbling shall be replaced or sealed in a good and workmanlike manner.

(3) All new or repaired bare surfaces shall be painted or coated.
(Ord. 67-15. Passed 3-6-67.)

1357.22 MAINTENANCE OF INTERIOR WALLS AND FLOORS.

(a) All interior walls and floors of every dwelling structure shall be maintained free of holes, large cracks and any loose or deteriorated material.

(b) The floors of all bathrooms and water closet compartments shall have a cove base at all walls and partitions. Floor surfaces and cove base shall be of nonabsorbent materials with moisture-resistant joints.
(Ord. 67-15. Passed 3-6-67.)

1357.23 INFESTATION BY PESTS.

All dwelling structures and the premises thereof shall be maintained free from sources of breeding, harborage and infestation by insects, vermin or rodents.
(Ord. 67-15. Passed 3-6-67.)

1357.24 EXTERIOR PROPERTY AREAS.

Exterior property areas of all premises shall be kept free of any debris, object, material or condition which may create a health, accident or fire hazard, or which is a public nuisance, or which constitutes a blighting or deteriorating influence on the neighborhood. Lawns, landscaping and driveways shall also be maintained so as not to constitute a blighting or deteriorating effect in the neighborhood. (Ord. 67-15. Passed 3-6-67.)

1357.25 SECONDARY OR APPURTENANCE STRUCTURES.

(a) All secondary or appurtenance structures such as sheds, barns, garages, etc., shall either be maintained in good repair and free from health, accident and fire hazards or shall be removed from the premises.

(b) All roofs of every secondary or appurtenant structure shall be equipped with gutters and downspouts connected to a public storm sewer.

(c) Where foundations of secondary or appurtenant structures have deteriorated or settled to the point where wall plates or studs are rotting, they shall be replaced with foundations as required for garages in the Building Code.
(Ord. 67-15. Passed 3-6-67.)

1357.26 ACCESS AND EGRESS.

Every dwelling unit shall be provided with direct and approved means of access and egress to the outside of the dwelling structure without passing through any part of any other dwelling unit. In multiple dwellings any door which is used in connection with such means of access and egress shall be provided with a lock which can be opened from the inside without the use of a key.
(Ord. 67-15. Passed 3-6-67.)

CHAPTER 1359
Certificate of Occupancy

1359.01 Certificate required.
1359.02 Application.
1359.03 Inspection prior to issuance.
1359.04 Issuance.
1359.05 Fees.

CROSS REFERENCES
Licensing motels - see BUS. REG. Ch. 705
Licensing apartments - see BUS. REG. Ch. 707
Zoning certificate of occupancy - see P. & Z. 1149.06
Permits and fees - see BLDG. Ch. 1307

1359.01 CERTIFICATE REQUIRED.

No person shall move into or commence occupation of any two-family dwelling or duplex or suite therein, unless a certificate of occupancy shall first have been obtained from the Building Commissioner or unless a certificate of occupancy has been obtained from the Commissioner within one year prior to such occupancy or change of occupancy, and no alterations or additions are contemplated under the new occupancy.
(Ord. 67-15. Passed 3-6-67.)

1359.02 APPLICATION.

Application for a certificate of occupancy required by Section 1359.01 shall be made not less than fifteen days prior to such occupancy by the owner or prospective occupant, and shall include the following information:

(a) The street address of the dwelling structure, or specific addresses of the parts or part if the entire structure is not involved.

(b) The name and address of the owner, agent or person in charge, and the phone number where such person may be reached during normal business hours.

(c) In the case of direct sale, or sale by land contract, the name, address, phone number of the buyer and the number of prospective occupants, or in the case of rented premises, the names of all of the prospective occupants, if known.

(d) A statement as to whether the application is being made pursuant to a direct sale, sale by land contract, rental, lease or a specific combination of the same, and the proposed date of occupancy.

(e) A statement by the applicant as to any changes made or proposed to be made in the structure itself, of which he has knowledge.

In the case of premises occupied by other than the owner, the failure to apply for a certificate of occupancy as required by the provisions of this chapter, or the moving into, or commencement of occupancy without such a permit, shall constitute a violation of this chapter by either the owner or occupant, or both.
(Ord. 67-15. Passed 3-6-67.)

1359.03 INSPECTION PRIOR TO ISSUANCE.

Within fifteen days of the receipt of an application for a certificate of occupancy, the Building Commissioner shall cause to be made an inspection of the premises covered therein. Such inspection shall be made for the purpose of determining compliance or noncompliance with the provisions of this Housing Code, the Building Code and Zoning Code of this City, and other ordinances and regulations of the City applicable to the construction, alteration, maintenance or operation of dwelling structures. The applicant shall cooperate with the Building Commissioner and his inspectors in arranging for entry into the dwelling structure for the purpose of making such inspection, and failure to cooperate shall constitute a violation of this Housing Code. No occupancy shall take place during the required fifteen day notification period.
(Ord. 67-15. Passed 3-6-67.)

1359.04 ISSUANCE.

(a) If, upon inspection of the dwelling structure, it is determined that the same is in compliance with such codes, ordinances and regulations noted in Section 1359.03, the Building Commissioner shall collect the required fee and issue a certificate of occupancy.

(b) If, upon inspection it is determined that the dwelling structure is in substantial compliance with such codes and ordinances, the Building Commissioner may at his discretion issue a qualified certificate of occupancy, subject to the correction of minor violations within a specified period of time. Such qualified certificate shall be issued only upon completion of an agreement signed by the owner or his agent, specifying a time period for completion of such corrections, which period has been approved by the Commissioner. Failure to complete within the agreed time period shall void such qualified certificate of occupancy. No qualified certificate of occupancy shall be issued where corrections required as a result of a prior change of occupancy have not been completed.

(c) Where extensive violations are found, or where conditions exist which are determined to be a hazard to the health, safety or welfare of the occupants of a dwelling structure, the Commissioner shall refuse to issue a certificate of occupancy. Such refusal shall be in writing, and shall list the corrective measures required and the time limit for correction. No change of occupancy shall take place until such corrections have been made and approved and a certificate of occupancy has been issued. Where there is noncompliance with a written notices, or in case of an emergency situation the Commissioner shall proceed in the manner prescribed by Sections 1355.04 or 1355.05.

(d) All certificates of occupancy shall be issued in the name of the owner of record as of the date of issuance but shall be effective as to subsequent owners where no change of occupancy occurs and no alterations or additions are contemplated under the new occupancy.

(e) A certificate of occupancy shall become void under any of the following circumstances:

(1) If any false statement has been made by the applicant for a permit issued.

(2) For noncompliance of a structure or its use with the requirements of this Housing Code or other applicable codes, ordinances or regulations.

(3) For refusal or failure of the owner, agent or person in charge of a dwelling structure to comply with the provisions of this Housing Code, a written order of the Building Commissioner issued pursuant to such provisions, or for failure to comply with a written agreement made pursuant to the issuance of a qualified certificate of occupancy.

(4) A change in the occupancy, tenancy, or use of a residential building or part thereof covered by a certificate of occupancy.

(Ord. 67-15. Passed 3-6-67.)

1359.05 FEES.

An application for a certificate of occupancy shall be accompanied by a nonrefundable fee of ten dollars ($10.00) for each dwelling unit covered by the application. Failure to apply for a certificate of occupancy where required by Section 1359.01 shall double the fee.
(Ord. 67-15. Passed 3-6-67.)

CHAPTER 1361
Condominiums

1361.01 Title and purpose.
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1361.04 Water metering requirements.
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1361.11 Prohibitions against unlawful representations.
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1361.13 Equal opportunity.
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1361.99 Penalty.

CROSS REFERENCES

Condominiums - see Ohio R.C. 5311.01 et seq.
Smoke detectors required in condominiums - see Ohio R.C. 3781.104; OAC Ch. 4101:2-89

1361.01 TITLE AND PURPOSE.

(a) Title. This chapter shall be known and may be cited as the "Fairview Park Condominium Ordinance".

(b) Purpose. It is the purpose of this chapter and the policy of the City to establish standards for all future conversion condominium developments within the City in order to protect the tenants of rental units designated for condominium conversion and the purchasers of conversion condominium units and also to encourage the maintenance and improvement of the housing in the City. (Ord. 80-84. Passed 1-19-81.)

1361.02 CONSTRUCTION; SEVERABILITY; APPLICABILITY.

(a) Construction. This chapter shall be liberally construed and applied to promote its purposes and policies and is to be construed concerning rights, duties, remedies and standards as being in addition to those granted, imposed, provided or required in the laws and statutes of the State of Ohio so as not to be in direct conflict therewith. If a provision of this chapter prescribes a stricter standard, stricter obligation or duty or grants a broader right or provides for a different remedy, it is the intent of Council that such provision be deemed not in direct conflict with the laws of this State and therefore to be cumulative to any narrower right, a less strict duty, narrower remedy or less stringent standard provided by such State law or statute.

(b) Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision and neither the remainder of this chapter nor the application of such provision to other persons or circumstances shall be affected thereby.

(c) Applicability.

(1) This chapter shall apply to all multi-family dwellings located within the City:

A. Which are developed as conversion condominium developments; and

B. Which consist of four residential units or more; and

C. In which the developer has not, on the effective date of this chapter, commenced a public and common promotional plan for the sale of condominium units therein.

(2) The provisions of this chapter shall not apply to the resale of condominium units other than public resales of condominium units by the developer.

(3) The provisions of this chapter with the exception of Section 1361.08(k), shall not apply to nor be enforceable against any party to a sale of a unit other than the developer nor shall any violation or noncompliance by the developer of any of the provisions of this chapter operate to impose, either directly or indirectly any civil or criminal liability upon any such other party, including title insurance companies, mortgagees, escrow agents, attorneys and real estate brokers other than those directly employed by the developer as an agent.

(4) This chapter shall not apply and no conversion condominium development shall be permitted in the case of property designated in any manner or constructed as senior citizen housing.

(Ord. 80-84. Passed 1-19-81.)

1361.03 DEFINITIONS.

As used in this chapter, certain terms are defined as follows:

(a) "Agent" means any person, firm, partnership association, joint venture, corporation or any other entity or combination or any other entity or combination of entities who represent or act for or on behalf of a developer in selling or offering to sell a condominium unit.

(b) "Capital improvement" means any improvement with a useful life greater than one year and subject to the depreciation rules of the United States Internal Revenue Code.

(c) "Common areas and facilities" includes the following parts of the condominium property:

(1) The land described in the declaration; and

(2) All other areas, facilities, places and structures that are not a part of a unit, including but not limited to:

A. The foundations, columns, girders, beams, supports, supporting walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances and exits of buildings, and sidewalks;

B. The basements, except for units therein, yards, gardens, fountains and fences;

C. The premises for the lodging of janitors or persons in charge of the property and maintenance structures;

D. Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, incinerating, ventilation and master radio and television antenna;

E. The elevators, tanks, pumps, motors, fans, compressors, ducts and, in general, all apparatus and installations existing for common use;

F. Such community, including recreational, and commercial facilities as may be provided for in the declaration; and

G. The parking area, garages and storage spaces except to the extent such are designated in the declaration as being part of the individuals units.

H. All other parts of the condominium property necessary or convenient to its existence, maintenance and safety, or normally in common use or that have been designed as common areas and facilities in the declaration or drawings.

(d) "Condominium" means real property, portions of which are designated for separate unit ownership by the unit owners and the remainder of which is designed for common ownership by the unit owners.

(e) "Condominium development" means a condominium property in which two or more individual dwelling units, together with undivided interests in the common areas and facilities of the property, are offered for sale pursuant to a common promotional plan.

(f) "Condominium instruments" means the declaration and accompanying drawings and plans, by-laws of the unit owners association, any contract pertaining to the management of the condominium property and all other documents, contracts or instruments establishing ownership of or exerting control over condominium property or a unit.

(g) "Condominium ownership interest" means a fee simple estate or a ninety-nine year leasehold estate, renewable forever, in a unit, together with an appurtenant undivided interest in the common areas and facilities.

(h) "Condominium property" means land, all buildings, improvements and structures on the land, all easements, rights and appurtenances belonging to the land, and all articles of personal property submitted to the provisions of this chapter.

(i) "Condominium unit" or "unit" means a portion of the condominium development designated for separate ownership, consisting of one or more rooms on one or more floors of a building and designated as a unit.

(j) "Conversion condominium development" means a condominium development that was originally operated as a rental property occupied by tenants prior to the time that the condominium property is submitted to the provisions of this chapter and the units are offered for sale.

(k) "Declarant" means any person who plans to execute or has executed the declaration or on whose behalf the declaration is executed.

(1) "Declaration" means the instrument by which property is submitted to the provisions of Ohio R.C. Chapter 5311 and any and all amendments to the declaration.

(m) "Developer" means any person who, directly or indirectly, sells or offers for sale condominium ownership interests in a condominium development, including the declarant of a condominium development and any successor to the declarant who stands in the same relation to the condominium development as the declarant, and including any agent thereof.

(n) "Leasehold condominium development" means a conversion condominium development in which each unit owner owns a ninety-nine year leasehold estate, renewable forever, in his unit, or in the land upon which that unit is situated, or both, together with an individual leasehold interest in the common areas and facilities, with all such leasehold interests due to expire at the same time.

(o) "Limited common areas and facilities" means the common areas and facilities designated in the declaration as reserved for use of a certain unit or units to the exclusion of the other units but for all other purposes shall be considered as common areas and facilities. Balconies are deemed to be a limited common area and facility.

(p) "Offer" includes any inducement or solicitation to encourage a person to acquire a condominium ownership interest in a conversion condominium development or a reservation or subscription for such a condominium ownership interest.

(q) "Public offering statement" means a document provided by the developer under Section 1361.06 which discloses the characteristics of the conversion condominium development.

(r) "Purchaser" means both an actual and a prospective purchaser of a condominium ownership interest.

(s) "Sale of a condominium ownership interest" means the execution by both parties of an agreement for the conveyance or transfer for consideration of a condominium ownership interest but such term shall not include a transfer of two or more units from the developer to another developer, a subsidiary of the developer or a financial institution for the purpose of facilitating the sale of the remaining or unsold portion of property.

(t) "Tenant" means a family unit or an individual who occupies or has a leasehold interest in an apartment under a lawful rental agreement whether oral or written, express or implied. The rights of members of a family may not be added to extend the times herein.

(u) "Unit owner" means a person who owns a condominium ownership interest in a condominium unit or prospective unit.

(v) "Unit owners association" means the organization of all condominium unit owners in the condominium property that administers the condominium property.

(Ord. 80-84. Passed 1-19-81.)

1361.04 WATER METERING REQUIREMENTS.

(a) Every building of each conversion condominium development shall have installed, prior to the filing of the public offering statement pursuant to Section 1361.05, a water meter to accurately record the usage therein. All common areas and facilities shall have installed such water meters, prior to the filing of the public offering statement, as shall accurately record the usage attributable thereto.

(b) Subsequent to the effective date of this chapter, no rental property which has not then been constructed shall be converted to a condominium development unless within each unit there shall have been installed a water meter prior to its sale.

(Ord. 80-84. Passed 1-19-81.)

1361.05 ITEMS FILED WITH BUILDING COMMISSIONER; CODE COMPLIANCE; INSPECTIONS; ESCROW AGENT; WARRANTIES.

(a) No developer shall sell or offer to sell a condominium ownership interest in a conversion condominium development in the City unless he first files the following items with the Building Commissioner:

(1) Ten copies of the public offering statement provided by the developer under Section 1361.06;

(2) Any bond required by subsection (b) hereof;

(3) A fee of twenty-five dollars ($25.00) per condominium unit. Such fee shall be in substitution for all other fees incidental to the conversion condominium development under the Building Code;

(4) The address of the apartment building to be converted, the number of suites and the apartment numbers in the building that are to be converted and the effect of the conversion upon available rental units in the City;
(5) A copy of the notice mailed to tenants as required by Section 1361.08 together with a certified list of the tenants' names and proof of service to each tenant;
(6) Written receipts to evidence payment of past water and sewage bills to date of the filing of the public offering statement;
(7) Such number of drawings as may be required by the Building Commissioner which comply with the requirements of Section 1361.07; and
(8) Written record of payment of tax assessments for the condominium property for the period prior to the filing of the public offering statement.

(b) Compliance with Building Code. No developer shall sell or offer to sell a condominium ownership interests a conversion condominium development in the City unless the Building Commissioner has issued a certificate of occupancy attesting that all common areas and facilities therein are in compliance with the Building Code, the Fire Prevention Code and such other requirements within this chapter, unless within the public offering statement there is described the specific common areas and facilities therein which the Building Commissioner has determined are not in compliance with the Building Code, Fire Prevention Code and such other requirements of this chapter and also the following:
(1) A statement by the developer specifying the estimated cost and estimated time of completion of all work necessary to correct each Code violation, such time of completion not to exceed six months from date of filing, subject to strikes or acts of God; except that in the case of, in the opinion of the Building Commissioner, an immediate danger to the public health, safety and welfare exists, same shall be corrected within ninety days; and
(2) A bond filed with the City in the sum of one hundred percent (100%) of the estimated cost of the work required for code compliance, such estimated cost to be verified by copies of contracts for the completion of the work required for Code compliance; and
(3) Any work not completed in accordance with the time requirements of subsection (b)(1) hereof shall result in a revocation of the certificate of occupancy and no units may be sold.

(c) Compliance with Fairview Park Housing Code. At the time of closing of a sale of a condominium unit, the developer shall deliver to the purchaser thereof a certificate of occupancy issued by the Building Commissioner attesting that the particular unit is in compliance with Chapter 1357, Housing Code and such other requirements required by this chapter. The developer shall tender to and obtain from a prospective buyer a signed acknowledgement of the receipt of a copy of the certificate of occupancy which has been issued by the Building Commissioner within one year prior to the execution of the contract of sale, and a copy of the most recent certificate of occupancy pertaining to the common areas and facilities of the condominium property, which shall also be on file in the Building Department.

(d) Application for Inspection. The Building Commissioner shall issue a certificate of inspection within thirty days after gaining access to the interior of a condominium unit when:

(1) The owner or his authorized agent has applied in writing to the Building Commissioner, giving consent to such inspection, and such owner or agent has agreed to a time during the normal working hours of the Building Department at which the subject property shall be available for inspection, and has paid to the Building Department the application fee required by this chapter; and

(2) The Building Commissioner has inspected the condominium unit and has noted any condition found during the inspection which are in violation of the Codified Ordinances. Upon correction, a certificate of occupancy shall be issued.

If, after application to the Building Commissioner, the owner or his authorized agent, or occupant refuses to consent to an inspection of the subject property or consent is otherwise unobtainable, the Building Commissioner shall not make such inspection until consent is also obtained and no certificate of occupancy for that unit or units, as the case may be, shall be issued.

The City assumes no liability, expressed or implied, as the result of an issuance of a certificate of occupancy pertaining to an individual unit or pertaining to the common areas and facilities.

(e) Duties of Escrow Agent. When an escrow agent has been established in connection with the sale of such property, the escrow agent shall not transfer title or distribute funds until there has been deposited in escrow an acknowledgement from the buyer of the receipt of a copy of the certificate of occupancy for the unit so purchased and a copy of the most recent certificate of occupancy pertaining to the common areas and facilities of the condominium property.

In every sale of realty to which this chapter applies, the developer shall warrant, or be presumed to have warranted that the condominium unit is in compliance with the Building Code, the Housing Code and the Planning and Zoning Code and all other applicable ordinances of the City except as noted on the certificate of occupancy pertaining to the common areas and facilities of the condominium property.

(f) Compliance with Warranties.

(1) To assure compliance with the warranty obligations specified under Section 1361.06(g), the developer shall place in a separate warranty escrow account a sum equal to one percent (1%) of the gross sales price of each unit as sold, such escrow account to be established at a financial institution of the City whose accounts are insured by a government agency. The warranty escrow account shall be maintained for the period of the warranty and shall be held on behalf of the City. At the conclusion of the warranty period the escrow funds then remaining plus any accrued interest shall be returned to the developer. The unit owners other than the developer claim to the escrow fund shall be prior to any creditor of the developer including a trustee in bankruptcy or receiver.

(2) Following notification by a unit owner or the unit owners association, the developer shall make any required repairs or replacement of the warranted areas and facilities in a timely manner or as promptly as conditions necessitate in case of emergency. If the developer fails to comply with the warranty provisions, the unit owner or the unit owners association shall notify the developer and the Building Commissioner in writing of the intention to correct the condition at the developer's expense. If the developer fails to comply within fourteen days after being notified by the unit owner or the unit owners association, or as promptly as conditions require in case of emergency, the unit owner or unit owners association shall, after receiving two or more written estimates of the cost, have the work done by the tradesman submitting the lowest responsible estimate and have the cost of the work deducted from the warranty escrow account. If litigation is necessary in order to enforce any warranty hereunder and/or to attach funds from the escrow account, a prevailing plaintiff may, in addition to damages, be awarded reasonable attorney's fees by the court. (Ord. 80-84. Passed 1-19-81.)

1361.06 DISCLOSURES OF THE PUBLIC OFFERING STATEMENT.

The public offering statement shall disclose fully and accurately the characteristics of the conversion condominium development and the units therein and all unusual and material circumstances and features affecting the conversion condominium development. The public offering statement shall not intentionally omit any material fact or contain any untrue statement of a material fact and shall contain all of the following:

(a) A statement indicating the name, addresses and telephone numbers of:

(1) The developer and legal and beneficial owner, if different, of the land and improvements, including all general partners of a partnership, or all directors and owners of five percent (5%) or more of the beneficial interest in the stock of a corporation;

(2) The mortgagees, the principal sales and management agents, attorneys, accountants, architects, engineers and contractors; and

(3) The conversion condominium development which shall include the word condominium, and the development manager or his agent.

(b) A description of all condominium property and improvements in readable and understandable language which shall include the following:

(1) A general narrative description stating the total number of units, a description of the types of units, the price of each type of unit, all appliances and personal property included with each unit, a general description of the building or buildings, stating the materials of which they are constructed and the number of stories and basements, the precise nature of ownership offered and the total number of units that may be included in the development by reason of future expansion or merger of the development;

(2) A description of all of the common areas and facilities and the share of ownership of each unit in the common areas and facilities. This shall be done by indicating the basis upon which the share is allocated and the procedure of how same may be altered. Limited common areas and facilities, if any, shall also be indicated;

(3) A site plan showing location and dimension of the conversion condominium development and the land it occupies, including the legal description, together with all capital improvements, a typical floor plan, and typical individual unit plans, including dimensions, location, approximate area, number of rooms and the immediate common area and facility to which it has access;

(4) A description of each of the capital improvements to common areas and/or individual units contemplated but not yet completed by the developer, including the type and quality of materials to be used, the estimated cost, and the dates by which such capital improvements shall be completed;

(5) A description of the nature and ownership of all improvements and sub-lots occupying the same zoning lot, but which are not part of conversion condominium development and the locations, nature and ownership of easements, streets, roads, driveways and parking facilities which are associated with the conversion condominium development;

(6) A statement as to the maximum number of units a developer intends to retain ownership of and/or to transfer to persons who do not intend to reside therein;

(7) A statement disclosing whether any units or common areas and facilities in the conversion condominium development may be used for commercial purposes, the nature and extent of such uses, the effect of such uses, if any, on the condominium unit owners and the restrictions, if any, upon the use or uses thereof. In no event shall commercial uses be permitted where prohibited by the Planning and Zoning Code as indicated in Chapter 1121 of the Codified Ordinances;

(8) A description of the nature of any restraints on the free alienability and/or use of all or any part of the conversion condominium development, excluding residential zoning use. If there are any restrictions upon the free sale, transfer, conveyance, encumbrance or leasing of a unit, the following statement shall be inserted in a type size and style equal to at least twenty point bold type:

"THE SALE, LEASE OR TRANSFER OF UNITS (numbers) IS RESTRICTED OR CONTROLLED."

Immediately following this statement, there shall appear a description of the restriction, limitation or control on the sale, lease or transfer of units in readable and understandable language. There shall also be a reference to the documents, articles, paragraphs and pages where the restriction, limitation or control on the sale, lease or transfer of units is set forth;

(9) A report by the developer stating the age, the condition and the developer's opinion of the remaining useful life of structural elements and mechanical and supporting systems, together with the developer's estimate of repair and replacement costs projected for five years from the date of the filing of the public offering statement pursuant to this chapter. This shall be based upon inspection of relevant drawings, reports, records and personal inspection of the elements and systems; any limits on the inspection shall be stated in the report;

(10) A general disclosure of the status of construction, zoning, site plan or other approval, and compliance or notice of failure to comply with any other federal, State or local statutes or regulations affecting the development, and the actual or scheduled dates of completion of building, recreation facilities and other common areas and facilities. Such disclosure shall indicate what need not be built and what shall be built;

(11) A statement describing any present, imminent or threatened litigation concerning the conversion condominium development; and

(12) The significant terms of any encumbrances, easements, liens and matters of title affecting the conversion condominium development. Unless otherwise expressly agreed to in writing by the purchaser(s), a unit shall be conveyed free and clear of all encumbrances, easements, liens and matters of title against a unit.

(c) A statement of the significant provisions for management of the conversion condominium development which shall include the following:

(1) A general disclosure of the rights and obligations of the developer;

(2) A statement that each unit owner shall be a member of the unit owners association;

(3) Conditions for the formation of the unit owners association, the time at which control of the condominium development shall be assumed by the unit owners association and whether the records of account shall be audited prior to delivery of same by the developer;

(4) The contractual rights and responsibilities of the unit owners association, including its obligations under Title 3 of the Building Code, the Exterior Property Maintenance Code;

(5) The quorum requirements for meetings of the unit owners association which shall not exceed twenty-five percent (25%) of the interest in the common areas and facilities;

(6) The standards for the maintenance and repair of individually owned units and areas and the method of enforcement thereof; and

(7) The name of the person to receive service of process for the unit owners association together with the residence or place of business of such person, which residence or place of business shall be in Cuyahoga County.

(d) A statement advising the purchaser in a type size and style equal to at least twenty point bold type that the condominium instruments are binding legal documents; how such instruments may be amended or altered either by the developer or by the unit owners association; the right of the purchaser to review the condominium instruments, to void the contract and a statement of the rights of purchasers, including the return of deposits, under this chapter.

(e) The significant terms of any financing offered by or through the developer to purchasers of the condominium ownership interests in the development, including the name of any bank or other institution involved in the financing, the minimum down payment, a statement that the prospective purchaser may obtain financing from another bank or institution and the annual interest rate.

(f) Estimated financial statements, including the following:

(1) A two year estimated operating budget, revised and updated at least every six months, of annual expenditures necessary to operate and maintain the common areas and facilities of the conversion condominium development, specifically stating the assumptions and basis on which each item included in such operating budget was formulated, and a complete statement of estimated monthly cost per unit for such two year period. The developer may be held financially responsible for any intentional misrepresentations in the estimated operating budget. The estimated operating budget shall, without exception, include the following costs expressed in a dollar amount.

A. Operating costs.
Public health pest control
Utilities
Heating fuel
Janitorial services
Trash and garbage disposal
Ground and building maintenance
Security
Maintenance and operation of recreational and other facilities
Building insurance
Elevator maintenance
Sidewalk and street maintenance
Parking lot maintenance
Other operating costs, fees and assessments

B. Management costs.
Accounting and bookkeeping services
Legal services
Management fees
Other management costs

C. Reserve costs.
Reserve for unexpected repair work
Reserve for replacement and upkeep of common and limited common areas and facilities
Other reserve funds

If no reserve is provided for any one or more of the applicable reserve costs listed herein, the following statement shall be inserted in a type size and style equal to at least twenty point bold type:
"THE DEVELOPER HAS NOT PROVIDED A RESERVE FOR CERTAIN POSSIBLE FUTURE COSTS OF THE CONDOMINIUM IN HIS BUDGET. ACCORDINGLY, IT SHALL BE NECESSARY TO PROVIDE FOR A SPECIAL ASSESSMENT AND ALL CONDOMINIUM UNIT OWNERS TO PAY FOR SUCH COSTS SHOULD THEY OCCUR."

(2) A two year statement of the estimated common area and facility operating budget, revised and updated every six months, for each individual unit, and a statement of all additional estimated monthly expenses for the same period for each unit to be itemized as to utilities, parking, operating and maintenance expenses, recreational facilities and any other anticipated expenses, costs, fees and assessments for each unit. The statement shall include the formula or basis used in arriving at these amounts and be expressed in a dollar amount;

(3) A statement as to what financial arrangements the developer has made to cover the estimated common area operating budget in the event an insufficient number of units are sold;

(4) A statement of the current realty taxes for each individual unit and estimated changes in the tax assessment for each individual unit assuming the taxes as reappraised are based upon the sales price of the real estate;

(5) A statement that any deposit made in connection with the purchase or reservation of any unit shall be placed in an escrow account or held in trust until: (1) delivered to the developer at closing; (2) delivered to the developer because of purchaser's default under a contract to purchase the unit; or (3) refunded to the purchaser. A deposit of two thousand dollars ($2,000) or more, if held for more than ninety days shall bear interest at the rate of not less than four percent (4%) per annum for any period exceeding ninety days, and the statement shall so specify. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the developer and the statement shall so specify; and

(6) A statement in a type size and style equal to at least twenty point bold type the formula or method by which a unit shall be assessed for water usage within the development. In all conversion condominium developments the manner of assessment shall be based upon the number of individuals residing in each unit as compared to the number of individuals residing in all units within the development unless otherwise provided for in the public offering statement.

(g) A description of warranties, including the following:

(1) A two year warranty by the developer covering the full cost of any labor and materials for any repair or replacement of the common areas and facilities including, but not limited to, the roof and structural components and mechanical electrical, plumbing and common service elements and a two year warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical, electrical, plumbing and other elements pertaining to each unit, excluding costs necessitated by acts of God and except as provided in subsection (g)(4) hereof;

(2) The warranties specified herein shall commence on the date of the filing of the deed of the first condominium ownership interest in the conversion condominium development to a purchaser in good faith for value and shall carry over and be enforceable by any subsequent good faith for value purchaser within the times specified in subsection (g)(1) hereof;

(3) In no event shall a purchaser in good faith for value of a unit from a developer receive less than a one year warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical, electrical, plumbing and other elements pertaining to each unit excluding costs necessitated by acts of God, regardless of the expiration of the period specified in subsection (g)(1) hereof;

(4) In the case of ranges, refrigerators, washing machines, clothes dryers, hot water heaters, air conditioners and other similar appliances installed and furnished as part of the unit by the developer, the valid assignment by the developer of the express and implied warranties of the manufacturer satisfies the developer's obligation under this division with respect to such appliances and the developer's warranty is limited to the installation of the appliances; and

(5) All warranties owned by the developer that exceed time period specified herein with respect to any part of the units or common areas and facilities shall be assigned to the purchaser.

(h) Copies of the sales documents and literature, including, but not limited to:

(1) The sales brochures and purchase contracts to be used by the developer; and

(2) The declaration and by-laws of the unit owners association.

(i) Description of the following documents:

(1) Any leases of real or personal property in the conversion condominium development other than residential leases expiring later than two years after the filing of the public offering statement with the City;

(2) Any employment contract, insurance policy or other contract affecting the use, maintenance or access to all or part of the conversion condominium development expiring later than one year after the filing of the public offering statement with the City. The description shall include a brief narrative statement of the effect of each agreement upon the purchaser including the services to be rendered and the charges to be made thereunder and a statement of the relationship to the developer or managing agent. Neither the unit owners or unit owners association shall be subject to any such contract or policy for more than one year subsequent to the assumption of control unless renewed by a vote of the unit owners association;

(3) The coverage and amount of any insurance policies applicable to the conversion condominium development maintained by or on behalf of the developer; and

(4) Any management agreement, including name of management agent, services to be performed, term, charges, circumstances, if any, under which the charges may be increased, conditions, if any, under which the agreement may be cancelled or terminated and a statement stating the relationship between the developer and the management firm, if any. The term of such management agreement shall be, in no event, greater than one year after the filing of the public offering statement with the City, or the assumption of control by the unit owners association, whichever is earlier, unless renewed by a vote of the unit owners association.

(j) A statement as to recreational facilities, including a statement of whether, and under what circumstances, the unit owners are required to be member of, support or participate financially other than as part of their common expenses in recreational facilities, such as, but not limited to, health clubs, exercise rooms, tennis courts, swimming pools, party rooms and golf putting greens. If any recreational facility is not part of the common areas and facilities, charges for its use shall not exceed charges customarily made for similar facilities in the City or in surrounding communities, and the statement shall so specify. Additionally, of any recreational facility not part of the common areas and facilities, the following warning shall be inserted in a type style equal to at least twenty point bold type:
"THE (here name facilities) ARE NOT INCLUDED IN THE COMMON AREAS AND FACILITIES. THESE FACILITIES ARE AVAILABLE TO UNIT OWNERS FOR (here describe monthly charge and invitation fee). UNIT OWNERS ARE/ARE NOT (as applicable) REQUIRED TO PARTICIPATE FINANCIALLY."

(k) A statement as to parking facilities, including a description of the location, ownership and availability to unit owners and the general public of parking associated with the condominium. If such parking facilities are not a part of the common areas and facilities or divided as individual parking spaces among and designated as being part of the units, the parking facilities shall be legally dedicated to the exclusive use of the conversion condominium development and charges for the use of the parking facilities shall not exceed charges customarily made for similar facilities in the City or surrounding communities, and the statement shall so specify. Further, the following statement shall be inserted in a type size and equal to at least twenty point bold type:
"PARKING FACILITIES ASSOCIATED WITH THIS BUILDING ARE NOT OWNED INDIVIDUALLY OR IN COMMON BY THE UNIT OWNERS."
It is further provided, however, that every such unit shall be provided with at least two parking units for its exclusive use and no variance or exception shall be granted from this requirement.

(l) A statement conspicuously displayed on the first page of each copy of the public offering statement in a-type size and equal to at least twenty point bold type. "WARNING: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER AND ARE NOT BINDING ON THE DEVELOPER. REFER TO THIS PUBLIC OFFERING STATEMENT FOR CORRECT REPRESENTATION. THE CITY OF FAIRVIEW PARK ASSUMES NO LIABILITY FOR THE DEVELOPMENT OR THE DEVELOPER'S ACTIONS OR FAILURES TO ACT (HOWEVER THE CITY WILL USE THE POWERS GRANTED BY THIS CHAPTER IN AN EFFORT TO ASSURE COMPLIANCE WITH ITS PROVISIONS.)

(m) The signature of the executive officer of the developer to a statement affirming under oath that the public offering statement is and any supplement, modifications and amendments are true, full, complete and correct as he truly believes.

(n) Amendments. The developer shall amend the public offering statement from time to time when any material changes occur in any matter contained therein. Amendments shall be made as soon as practicable after such material change occurs or the developer has reason to know of such material change, and a public offering statement is not current unless all amendments are incorporated therein and filed with the Building Department.

(o) Promotional Use. The public offering statement shall not be distributed or used for any promotional purposes before its filing with the City and afterwards, with the exception of sales brochures contained therein, shall be used only in its entirety for promotional purposes.

(Ord. 80-84. Passed 1-19-81.)

1361.07 DRAWINGS; CONTENTS.

A set(s) of drawings shall be prepared for every conversion condominium property which show graphically, insofar as is possible, all particulars of the land, buildings and other improvements, including, but not limited to, the layout, location, designation and dimensions of each unit, the layout, location and dimensions of the common areas and facilities and limited common areas and facilities, the location and dimensions of all appurtenant easements or encroachments and, if the condominium property is not contiguous, the distances between any parcels of land. The drawings shall bear the certified statement of a registered surveyor and registered architect or registered surveyor and licensed professional engineer that the drawings accurately show the building or buildings as constructed.

If some, but not all, portions of the condominium property are to be held by unit owners in a leasehold estate, the drawings shall show the locations and dimensions of each portion and shall label the portion as leased land. If there is more than one portion of leased land, the drawings shall label each portion with one or more letters or numbers, or both, different from those designating any other portions of the leased land, and different also from the identifying number of any unit.

In the case of any improvements, the drawings shall indicate which, if any, have been begun but have not been substantially completed by the use of the phrase "NOT YET COMPLETED".

Any modification, alteration, enlargement, reconstruction, change, extension or relocation of any existing building or unit shall be subject to the regulations of Chapter 1121 of the Codified Ordinances and approval by the appropriate commissions, boards, and Building Commissioner and shall comply with the Building Code, Fire Code, Housing Code and all other applicable laws of the City. (Ord. 80-84. Passed 1-19-81.)

1361.08 PROTECTION OF TENANT AND PURCHASER; NOTICE OF CONVERSION AND PUBLIC OFFERING STATEMENT.

(a) Notification to Prospective Tenants. Throughout so much of the 180 day period immediately before the filing of a declaration with the Cuyahoga County Recorder pursuant to Ohio R.C. Chapter 5311 and subsequent to the effective date thereof (October 1, 1978) during which a developer of a conversion condominium development is the owner thereof, he shall give written notification to each prospective tenant before entering into a lease that such rental units may be converted to condominiums within such period.

(b) Notice of Conversion and Public Offering Statement. A developer of a conversion condominium development shall deliver to each of the tenants in possession written notice of his intention to convert to condominiums, which shall include the statement in at least twenty point, bold type that the tenant's suite shall be offered for sale to the public if not purchased by the tenant, and the public offering statement not less than 120 days prior to its offer for sale provided that in the case of any tenant who is over sixty years of age, or who is deaf or blind or who is unable to walk without assistance, the developer shall deliver such notice of conversion and the public offering statement not less than 180 days prior to its offer for sale.

(c) Appropriate Notices. A developer of a conversion condominium development shall deliver appropriate notices of conversion based upon his best knowledge and information as to the age and/or health of each tenant. No tenant who receives other than a 180 day notice of conversion shall be deemed to be entitled to a 180 day notice unless within fifteen days of receipt of such inappropriate notice the tenant delivers a written statement to the developer declaring that the tenant is over sixty years of age or is deaf or blind or is unable to walk without assistance, and in such case such statement shall be presumed to be true in the absence of evidence to the contrary.

(d) Expiration of Tenancy Before End of Notice Period. Any tenant whose tenancy expires other than for cause before the expiration of 120 days from the date of delivery of such notice of conversion shall have the right to an additional tenancy on the same terms and conditions and for the same rental until the expiration of such 120 day period, by the giving of written notice thereof by the tenant to the developer within thirty days of the date of delivery of such notice of conversion, provided that in the case of any tenant who is over sixty years of age, or who is deaf or blind or who is unable to walk without assistance, such tenant shall have the right to an additional tenancy on the same terms and conditions and for the same rental until the expiration of such 180 day period, by the giving of written notice thereof by the tenant to the developer within sixty days of the date of delivery of such notice of conversion.

(e) Expiration of Tenancy After Ninety Days from Notice.

(1) Any tenant whose tenancy expires after ninety days from the date of delivery of such notice of conversion shall have the right to terminate the lease upon forty-five days written notice, without penalty or other termination charge to the tenant. By delivering the notice of termination, the tenant waives the right of first refusal under subsection (h) hereof.

(2) Subsection (e) (1) hereof shall not apply to tenants who have received notification under this section before entering into a lease.

(f) Contents of Notice of Conversion.

(1) The notice of conversion shall include a copy of the Fairview Park Condominium Ordinance as an attachment.

(2) The notice of conversion shall contain a statement indicating that such notice shall not be construed as abrogating any rights any tenant may have under a valid existing written lease, including the statement that the tenant's rental may not be increased.

(3) The notice of conversion shall contain a statement instructing the tenant that he may advise the Building Department of any structural or mechanical defects in the building or common areas, and of any unhealthful or unsafe conditions therein which the tenant believes should be corrected.

(4) Failure of a developer to give notice of conversion as herein required shall be a defense to an action for possession.

(g) Service of Notice of Conversion and Delivery of Public Offering Statement.

(1) The notice of conversion and public offering statement shall be deemed to be delivered on the third day after they are deposited in the United States mail addressed to the tenant at his last known residence, which shall be the address of the property subject to the lease, sent by certified or registered mail, return receipt requested, with sufficient prepaid postage affixed to carry it to its destination. A tenant's refusal to accept delivery shall be deemed adequate service. If such mailing is returned to the developer undelivered to the tenant for any reason other than refusal of the tenant to accept delivery, the developer shall forthwith remail such mailing by regular United States mail, and such remailing shall be deemed to be delivered on the third day after it is deposited in the mail. Personnel delivery is permissible if service cannot be made by United States mail.

(2) The public offering statement shall be filed with the City on the same day that the notice of conversion and public offering statement are deposited in the United States mail to tenants.

(h) Tenant's Right of First Refusal.

(1) During the period of ninety days following delivery of the notice of conversion and public offering statement, and during the period of 120 days following delivery of the notice of conversion and the public offering statement in the case of any person who is over sixty years of age, or who is deaf or blind or who is unable to walk without assistance, any person who was both a tenant on the date of delivery of notice of conversion and the public offering statement and also a current tenant shall have the exclusive right of first refusal to purchase his unit and to enter into a contract for the purchase of the tenant's suite and obtain financing.

(2) During such period, the developer may offer to sell such unit to prospective purchasers other than the tenant at the price not less than offered to the tenant and/or on terms not more favorable than offered to the tenant, and each contract for sale of a unit shall conspicuously disclose the existence of, and shall be subject to, such right of first refusal.

(3) If during such period the tenant fails to purchase the unit the developer shall not offer to sell that unit during the following ninety days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant without first making the same offer to the tenant, who shall have ten days therefrom within which to accept the offer.

(4) Should a tenant reject the offer to purchase or decide to vacate the tenant's suite, the unit shall be made available to other tenants in the development. The tenant's right to purchase another unit in the development shall extend to the end of the applicable right of first refusal purchase period: provided that the tenants shall not have the right to purchase more than one unit in the development. Whenever all tenants in the development have indicated in writing their intention not to purchase a unit, the unit may be sold to the public.

(i) Co-Tenant's Rights.

(1) If there is more than one tenant leasing a unit, then each such tenant shall be entitled to contract for the purchase of a proportionate share of the unit and of a proportionate share of any tenant who elects not to purchase.

(2) In no case shall this provision be deemed to authorize the purchase of less than the entire interest in the unit to be conveyed.

(j) Tenant's Right to Cancel Contract.

(1) A tenant may, at his election, cancel an executed contract between himself and the developer for the purchase of a condominium ownership interest by delivering to the developer or his agent written notice of cancellation at any time before midnight local time of the third day following the date the contract is signed by the tenant, notwithstanding any other provisions of this chapter.

(2) Upon receipt of a timely cancellation, the developer shall immediately refund any deposit, earnest money or other funds and the parties shall have no further rights or liabilities under the contract. Each tenant's contract for sale of a unit shall conspicuously disclose the tenant's right of cancellation.

(k) Developer's Right of Access.

(1) The tenant in a conversion condominium development shall not unreasonably withhold consent to the developer to enter the unit in order to inspect the premises, make necessary or agreed repairs, supply necessary or agreed services or show the unit to purchaser.

(2) Except in case of emergency, or unless it is impracticable to do so, the developer shall give the tenant reasonable notice of his intent to enter and may enter only at reasonable times. Twenty-four hour notice is presumed to be reasonable notice in the absence of evidence to the contrary.

(3) The developer shall not abuse the right of access or use it to harass the tenant. Entry by the developer in excess of twice in any seven day period for the purpose of showing the unit to purchasers shall be presumed to be an abuse of the right of access in the absence of evidence to the contrary.

(4) The developer shall not undertake remodeling for conversion of a unit which is occupied by a tenant, unless the tenant has decided to purchase the unit or has granted permission to the developer. The developer shall not create any unreasonable disruption of the common areas, including but not limited to, restricting access thereto, not interfere with the quiet use and enjoyment of the premises, nor abuse the right of access or use it to harass the tenant.

(5) No conversion condominium unit shall be sold or offered for sale if in the 180 day period immediately before the delivery of the notice of conversion and the public offering statement or during the notice of conversion period provided in subsection (b) hereof, any tenant has been evicted without cause.

(l) Nonwaiverability of Obligations and Rights. Neither the obligations nor the rights under this section may be waived in a contract of lease, a contract of sale or otherwise and any attempted waiver is void.

(m) Delivery of Public Offering Statement to Purchasers Other Than Tenants.

(1) The developer shall deliver a copy of the public offering statement to a purchaser other than a tenant not less than fifteen days before the execution of a contract for the purchase of a unit.

(2) On the day of delivery of the public offering statement, the developer shall obtain a receipt signed by the purchaser acknowledging that he has received the public offering statement and has also received a copy of such receipt on that date. Such receipts shall be kept on file in the possession of the developer for a period of two years from the date of delivery to and signature by the purchaser and such receipts shall be subject to inspection by the City at any reasonable time.

(n) Purchaser's Right to Cancel Contract.

(1) Unless a purchaser is given the public offering statement not less than fifteen days before executing a contract for the purchase of a unit, the purchaser may cancel the contract within fifteen days after first receiving the public offering statement. The notice of cancellation by the purchaser shall be in writing, and cancellation is to be without penalty. All payments which were made by the purchaser before cancellation, including interest where applicable, shall be refunded by the developer within three days after receiving notice of cancellation.

(2) If the developer fails to provide a purchaser with a public offering statement and all amendments thereto before conveying a unit, the purchaser, in addition to any rights to damages or other relief, is entitled to receive from the developer an amount equal to ten percent (10%) of the sales price of the unit as liquidated damages.

(3) The provisions of this subsection shall apply to tenants, in addition to the tenant's right to cancel under subsection (j) hereof.

(4) Each purchaser's contract for the sale of a unit shall conspicuously disclose the purchaser's right of cancellation.

(5) The purchaser's right to cancel under this section may not be waived in the contract of sale or otherwise and any attempted waiver is void.

(Ord. 80-84. Passed 1-19-81.)

1361.09 SAFETY MEASURES IN CONVERSION CONDOMINIUM DEVELOPMENTS.

Conversion condominium developments shall provide such safety measures as are required by the Building Code and the Fire Prevention Code.

(Ord. 81-39. Passed 5-18-81.)

1361.10 SECURITY ILLUMINATION REQUIREMENTS.

Conversion condominium developments shall provide such security illumination as is required by the Building Code.

(Ord. 81-40. Passed 5-18-81.)

1361.11 PROHIBITIONS AGAINST UNLAWFUL REPRESENTATIONS.

(a) General Unlawful Representations. It shall be unlawful for any developer or agent selling or offering to sell any condominium unit in any condominium development to:

(1) Employ any device, scheme or artifice to defraud; or

(2) Obtain money or property by means of any untrue statement of a material fact or by an omission to state a material fact or necessary in order to make the statements not misleading or by any pictorial representations which are false; or

(3) Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon a purchaser; or

(4) Make or cause to be made in any document required by this chapter any statement or representation that is knowingly false or misleading; or

(5) Make or cause to be made to any purchaser any oral representation which differs from the statements made in any document required by this chapter.

(b) Specific Unlawful Representations. It shall be unlawful for any developer or agent in selling or offering to sell any condominium unit in any condominium development to:

(1) Request a tenant and/or purchaser to acknowledge receipt of any notice or public offering statement which he has not received or to falsify the date of receipt; or

(2) Certify falsely to having provided notices of the public offering statement required by this chapter; or

(3) Employ undue pressure to induce a tenant to purchase a unit which intrudes on or prevents his use of his best judgment in deciding whether to purchase, including the following:

A. Any false statements as to the number of standby or backup sales contracts or reservations or subscriptions or like agreements;

B. Any false statement prior to the end of the period during which the tenant may not be evicted without cause pursuant to Section 1361.08 (h) as to a future rent increase; or

C. Any false statement relating to future conversions which would reduce rental units available in the City.

(Ord. 80-84. Passed 1-19-81.)

1361.12 RIGHT OF ENTRY BY UNIT OWNERS ASSOCIATION.

The unit owners association shall provide in its by-laws that the association or its authorized agent may enter into any condominium unit at a reasonable time after twenty-four hours' notice, to the extent necessary to correct conditions threatening other units or common areas, and for maintenance, repair, restoration or servicing of any items, things or areas of or in the condominium property, and for immediate entry in the event of an emergency.
(Ord. 80-84. Passed 1-19-81.)

1361.13 EQUAL OPPORTUNITY.

No person shall be denied the right to purchase or lease a condominium unit in the City because of race, color, creed, sex, religious beliefs, national origin, handicap or age.
(Ord. 80-84. Passed 1-19-81.)

1361.14 REMEDIES.

(a) Public's Remedies.

(1) The rights, obligations and remedies set forth in this chapter shall be cumulative and in addition to any others available at law or in equity.

(2) The City or any tenant or purchaser or owner of a unit may seek compliance of any provision of this chapter in a court of competent jurisdiction, provided, however, that only the City may enforce the provisions of subsection (b) hereof.

(3) In any action brought to enforce any provision of this chapter except subsection (b) hereof a prevailing plaintiff may be entitled to recover, in addition to any other remedy available, his reasonable attorney's fees.

(4) If a developer fails to comply with any of the provisions of this chapter, a purchaser may at his option at any time prior to the closing of the sale, rescind, in writing, the contract of sale, without any liability on the part of the purchaser and shall thereupon be entitled to the return of the moneys made on account of the contract, and any expenses incurred on account of the contract shall be the responsibility of the developer.

(b) City's Remedies. Whenever it is determined by the Director of Law that there has been a violation of this chapter, the Law Department is authorized, at its discretion, to commence with one or more of the following:

(1) Attempt to conciliate the matter by conference or otherwise and secure a written conciliation agreement; or

(2) Seek a written assurance of discontinuance which shall be signed by the developer and the Director; or

(3) Institute injunctive or other appropriate action or proceeding in any court of competent jurisdiction to obtain a restraining order, permanent injunction or temporary injunction or any other appropriate form of relief; or

(4) Institute criminal proceedings.

(Ord. 80-84. Passed 1-19-81.)

1361.15 RELOCATION ASSISTANCE.

(a) Relocation assistance shall be paid by the developer to qualifying tenants and subtenants who vacate the development either voluntarily or involuntarily after receiving the notice of conversion in accordance with the following:

Length of Tenancy (years)	Relocation Assistance For Tenants Under Age 60 Who Are Not Blind Or Deaf Or Unable To Walk Without Assistance	Relocation Assistance For Tenants Over Age 60 Or Who Are Blind Or Deaf Or Unable To Walk Without Assistance
Under 5	- 0-	One Month's Rent
5 to 10	One Month's Rent	Two Month's Rent
Over 10	Two Month's Rent	Three Month's Rent

(b) The relocation assistance provided for in subsection (a) hereof shall be determined to have been waived by the tenant and subtenant of the unit if occupancy is voluntarily continued beyond the expiration date of the lease or the applicable 120 or 180 day periods as provided for in Section 1361.08, whichever shall occur later.

(c) The age of the tenant, years of continuous occupancy and applicable monthly rental shall be determined as of the date the public offering statement is filed with the City pursuant to Section 1361.06.

(d) In unfurnished sublet units, the subtenant shall be entitled to the benefits of this section; otherwise the tenant shall be entitled to the benefits, provided that, the developer shall not be obligated to determine tenant from subtenant and shall have fulfilled his obligation under this section by delivering the relocation assistance to either the tenant or subtenant.

(e) The relocation assistance payment required herein shall be paid within fourteen days of complete vacation of the development by the tenant or subtenant,

(f) Where the rental unit is occupied by two or more co-tenants, one of whom is a qualified tenant, each co-tenant of the unit shall be paid a pro-rata share of the relocation assistance payable within fourteen days of complete vacation of the unit by the last remaining co-tenant. In no event shall the developer be liable to pay more relocation assistance per unit then that payable as if the unit were occupied by one qualifying tenant.

(g) The relocation assistance provided for herein shall be in addition to any damage, deposit or other compensation or refund to which the tenant is otherwise entitled.

(h) Any tenant who claims relocation assistance upon the basis of age, physical condition or years of continuous occupancy shall, prior to vacation, deliver a written statement to the developer declaring such to be the fact, and in such case, such statement shall be presumed to be true in the absence of evidence to the contrary.
(Ord. 80-84. Passed 1-19-81.)

1361.99 PENALTY.

(a) Any person found guilty of violating any of the provisions of this chapter upon conviction thereof shall be guilty of a misdemeanor of the second degree for the first offense and for a second or subsequent offense shall be guilty of a misdemeanor of the first degree.

(b) Each day such violation occurs or continues shall constitute a separate offense.

(c) Violation of any provision of this chapter shall be cause for revocation of any license, certificate or permit issued to such violator or offending party by the City.

(d) In addition to the above penalties, whoever violates any of the provisions of this chapter shall be subject to an order of competent jurisdiction when appropriate, of equitable relief.
(Ord. 80-84. Passed 1-19-81.)

CODIFIED ORDINANCES OF FAIRVIEW PARK

PART FIFTEEN - FIRE PREVENTION CODE

Chap. 1501. International Fire Code.

Chap. 1519. Fireworks.

Chap. 1529. Westshore Regional Community Emergency Response Team.

CODIFIED ORDINANCES OF FAIRVIEW PARK

PART FIFTEEN - FIRE PREVENTION CODE

CHAPTER 1501
International Fire Code

1501.01 Adoption. **1501.02 Enforcement.**

CROSS REFERENCES

See sectional histories for similar State law
Appeals of orders - see Ohio R.C. 119.12
State certification of firefighters - see Ohio R.C. 737.08, 737.22, 3737.33
State certification of Fire Safety Inspectors - see Ohio R.C. 3737.01(C), 3737.34
Fire investigation - see Ohio R.C. 737.27, 3737.24 et seq.
Entry and inspection - see Ohio R.C. 737.34 et seq., 3737.14, 3737.41, 3737.42
Common Pleas Court jurisdiction - see Ohio R.C. 3737.44(A), 3737.51(H)
Ohio Fire Code - see Ohio R.C. 3737.82 et seq.; OAC Ch. 1301:7-1 et seq.
Fire extinguishing and alarm systems in rest and nursing homes - see Ohio R.C. 3721.071
Self-service filling stations - see Ohio R.C. 3741.14
Fireworks - see Ohio R.C. 3743.27, 3743.32 et seq.
Smoke detectors - see BLDG. Ch. 1331

1501.01 ADOPTION.

The International Fire Code, in its most recent edition, is hereby adopted for the control of the buildings and structures provided herein, and each and all of the regulations, provisions, penalties, conditions and terms of such International Fire Code are hereby referred to as adopted and made a part thereof as if fully set out in this chapter with the additions, insertions and deletions, if any, prescribed in this chapter.
(Ord. 02-49. Passed 11-4-02.)

1501.02 ENFORCEMENT.

No person shall serve as a Code Inspector Official for the purpose of enforcing the Code unless he has received a certificate issued by the Ohio Superintendent of Public Instruction under Ohio R.C. 3303.07 evidencing his satisfactory completion of a fire safety inspection program. (Ord. 91-18. Passed 4-1-91.)

(EDITOR'S NOTE: The next printed page is page 9.)

CHAPTER 1519
Fireworks

1519.01 Definitions.
1519.02 Public exhibition permit required; fee; bond; records.
1519.03 Unlawful conduct by exhibitor.
1519.04 Possession, sale or discharge prohibited; exceptions.
1519.05 Application.
1519.99 Penalty.

CROSS REFERENCES

Manufacturers to comply with building and zoning ordinances - see Ohio R.C. 3743.06(F)
Wholesalers to comply with building and zoning ordinances - see Ohio R.C. 3743.19(G)
Arrests, seizure of fireworks by certified fire safety inspector - see Ohio R.C. 3743.68
Conflict of Fire Marshal's rules with rules of Ohio Board of Building Standards - see Ohio R.C. 3781.11(D)

1519.01 DEFINITIONS.

As used in this chapter:

(a) "Beer" and "intoxicating liquor" have the same meanings as in Ohio R.C. 4301.01.

(b) "Booby trap" means a small tube that has a string protruding from both ends, that has a friction-sensitive composition and that is ignited by pulling the ends of the string.

(c) "Cigarette load" means a small wooden peg that is coated with a small quantity of explosive composition and that is ignited in a cigarette.

(d) (1) “1.3 G fireworks” means display fireworks consistent with regulations of the United States Department of Transportation as expressed using the designation “Division 1.3" in Title 49, Code of Federal Regulations.

(2) “1.4 G fireworks” means consumer fireworks consistent with regulations of the United States Department of Transportation as expressed using the designation “Division 1.4" in Title 49, Code of Federal Regulations.

(e) "Controlled substance" has the same meaning as in Ohio R.C. 3719.01.

(f) "Fireworks" means any composition or device prepared for the purpose of producing a visible or an audible effect by combustion, deflagration or detonation, except ordinary matches and except as provided in Section 1519.05.

(g) "Licensed exhibitor of fireworks" or "licensed exhibitor" means a person licensed pursuant to Ohio R.C. 3743.50 to 3743.55.

(h) "Licensed manufacturer of fireworks" or "licensed manufacturer" means a person licensed pursuant to Ohio R.C. 3743.02 to 3743.08.

(i) "Licensed wholesaler of fireworks" or "licensed wholesaler" means a person licensed pursuant to Ohio R.C. 3743.15 to 3743.21.

(j) "Novelties and trick noisemakers" include the following items:

(1) Devices that produce a small report intended to surprise the user, including, but not limited to, booby traps, cigarette loads, party poppers and snappers;

(2) Snakes or glow worms;

(3) Smoke devices;

(4) Trick matches.

(k) "Party popper" means a small plastic or paper item that contains not more than sixteen milligrams of friction-sensitive explosive composition, that is ignited by pulling string protruding from the item, and from which paper streamers are expelled when the item is ignited.

(l) "Railroad" means any railway or railroad that carries freight or passengers for hire, but does not include auxiliary tracks, spurs and sidings installed and primarily used in serving a mine, quarry or plant.

(m) "Smoke device" means a tube or sphere that contains pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.

(n) "Snake or glow worm" means a device that consists of a pressed pellet of pyrotechnic composition that produces a large, snake-like ash upon burning, which ash expands in length as the pellet burns.

(o) "Snapper" means a small, paper-wrapped item that contains a minute quantity of explosive composition coated on small bits of sand, and that, when dropped, implodes.

(p) "Trick match" means a kitchen or book match that is coated with a small quantity of explosive composition and that, upon ignition, produces a small report or a shower of sparks.

(q) “Wire sparkler” means a sparkler consisting of a wire or stick coated with a non-explosive pyrotechnic mixture that produces a shower of sparks upon ignition and that contains no more than one hundred grams of this mixture.

(ORC 3743.01)

1519.02 PUBLIC EXHIBITION PERMIT REQUIRED; FEE; BOND; RECORDS.

(a) A licensed exhibitor of fireworks who wishes to conduct a public fireworks exhibition within the Municipality shall apply for approval to conduct the exhibition to the Fire Chief and from the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or similar chief law enforcement officer.

The required approval shall be evidenced by the Fire Chief or Fire Prevention Officer and by the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or similar chief law enforcement officer, signing a permit for the exhibition, the form for which shall be prescribed by the State Fire Marshal. Any exhibitor of fireworks who wishes to conduct a public fireworks exhibition may obtain a copy of the form from the Fire Marshal or, if it is available, from the Fire Chief, Fire Prevention Officer, Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or similar chief law enforcement officer.

(b) Before a permit is signed and issued to a licensed exhibitor of fireworks, the Fire Chief or Fire Prevention Officer in consultation with the Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, shall inspect the premises on which the exhibition will take place and shall determine that, in fact, the applicant for the permit is a licensed exhibitor of fireworks. Each applicant shall show the applicant's license as an exhibitor of fireworks to the Fire Chief or Fire Prevention Officer.

The Fire Chief or Fire Prevention Officer and the Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, shall give approval to conduct a public fireworks exhibition only if satisfied, based on the inspection, that the premises on which the exhibition will be conducted allow the exhibitor to comply with the rules adopted by the Fire Marshal pursuant to Ohio R.C. 3743.53(B) and (E) and that the applicant is, in fact, a licensed exhibitor of fireworks. The Fire Chief or Fire Prevention Officer in consultation with the Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, may inspect the premises immediately prior to the exhibition to determine if the exhibitor has complied with the rules, and may revoke the permit for noncompliance with the rules.

(c) The Fire Chief or Fire Prevention Officer and the Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, shall not issue a permit until the applicant pays a permit fee of twenty-five dollars ($25.00) plus any necessary costs of investigation of the applicant and of inspecting the premises on which the exhibition will be conducted.

Each exhibitor shall provide an indemnity bond in the amount of at least one million dollars ($1,000,000), with surety satisfactory to the Fire Chief or Fire Prevention Officer and to Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, conditioned for the payment of all final judgments that may be rendered against the exhibitor on account of injury, death or loss to persons or property emanating from the fireworks exhibition, or proof of insurance coverage of at least one million dollars ($1,000,000) for liability arising from injury, death or loss to persons or property emanating from the fireworks exhibition. The Legislative Authority may require the exhibitor to provide an indemnity bond or proof of insurance coverage in amounts greater than those required by this subsection. The Fire Chief or Fire Prevention Officer and Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, shall not issue a permit until the exhibitor provides the bond or proof of the insurance coverage required by this subsection.

(d) (1) Each permit for a fireworks exhibition issued by the Fire Chief or Fire Prevention Officer and by the Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, shall contain a distinct number, designate the Municipality, and identify the certified Fire Safety Inspector, Fire Chief or Fire Prevention Officer who will be present before, during, and after the exhibition, where appropriate. A copy of each permit issued shall be forwarded by the Fire Chief or Fire Prevention Officer and by the Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, issuing it to the Fire Marshal, who shall keep a record of the permits received. A permit is not transferable or assignable.

(2) The Fire Chief, Fire Prevention Officer and Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, shall keep a record of issued permits for fireworks exhibitions. In this list, the Fire Chief, Fire Prevention Officer, Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, shall list the name of the exhibitor, the exhibitor's license number, the premises on which the exhibition will be conducted, the date and time of the exhibition and the number of the permit issued to the exhibitor for the exhibition.

(e) The governing authority having jurisdiction in the location where an exhibition is to take place shall require that a certified Fire Safety Inspector, Fire Chief, or Fire Prevention Officer be present before, during, and after the exhibition, and shall require the certified Fire Safety Inspector, Fire Chief, or Fire Prevention Officer to inspect the premises where the exhibition is to take place and determine whether the exhibition is in compliance with this chapter and Ohio R.C. Chapter 3743. (ORC 3743.54)

1519.03 UNLAWFUL CONDUCT BY EXHIBITOR.

(a) No licensed exhibitor of fireworks shall fail to comply with the applicable requirements of the rules adopted by the Fire Marshal pursuant to Ohio R.C. 3743.53(B) and (E) or to comply with Divisions (C) and (D) of that section.

(b) No licensed exhibitor of fireworks shall conduct a fireworks exhibition unless a permit has been secured for the exhibition pursuant to Section 1519.02 or if a permit so secured is revoked by the Fire Chief or Fire Prevention Officer in consultation with the Police Chief or other similar chief law enforcement official or a designee of such Police Chief or other similar law enforcement official pursuant to that section.

(c) No licensed exhibitor of fireworks shall acquire fireworks for use at a fireworks exhibition other than in accordance with Ohio R.C. 3743.54 and 3743.55.

(d) No licensed exhibitor of fireworks or other person associated with the conduct of a fireworks exhibition shall have possession or control of, or be under the influence of, any intoxicating liquor, beer or controlled substance while on the premises on which the exhibition is being conducted.

(e) No licensed exhibitor of fireworks shall permit an employee to assist the licensed exhibitor in conducting fireworks exhibitions unless the employee is registered with the Fire Marshal under Ohio R.C. 3743.56. (ORC 3743.64)

1519.04 POSSESSION, SALE OR DISCHARGE PROHIBITED; EXCEPTIONS.

(a) No person shall possess fireworks in this Municipality or shall possess for sale or sell fireworks in this Municipality, except a licensed manufacturer of fireworks as authorized by Ohio R.C. 3743.02 to 3743.08, a licensed wholesaler of fireworks as authorized by Ohio R.C. 3743.15 to 3743.21, a shipping permit holder as authorized by Ohio R.C. 3743.40, an out-of-state resident as authorized by Ohio R.C. 3743.44, a resident of this State as authorized by Ohio R.C. 3743.45, or a licensed exhibitor of fireworks as authorized by Ohio R.C. 3743.50 to 3743.55 and Section 1519.02 and except as provided in Section 1519.05.

(b) Except as provided in Section 1519.05 and except for licensed exhibitors of fireworks authorized to conduct a fireworks exhibition pursuant to Ohio R.C. 3743.50 to 3743.55 and Section 1519.02, no person shall discharge, ignite or explode any fireworks in this Municipality.

(c) No person shall use in a theater or public hall, what is technically known as fireworks showers, or a mixture containing potassium chlorate and sulphur.

(d) No person shall sell fireworks of any kind to a person under eighteen years of age. No person under eighteen years of age shall enter a fireworks sales showroom unless that person is accompanied by a parent, legal guardian, or other responsible adult. No person under eighteen years of age shall touch or possess fireworks on a licensed premises without the consent of the licensee. A licensee may eject any person from a licensed premises that is in any way disruptive to the safe operation of the premises.

(e) No person, other than a licensed manufacturer, licensed wholesaler, licensed exhibitor, or shipping permit holder, shall possess 1.3 G fireworks.
(ORC 3743.65)

1519.05 APPLICATION.

This chapter does not prohibit or apply to the following:

(a) The manufacture, sale, possession, transportation, storage or use in emergency situations, of pyrotechnic signaling devices and distress signals for marine, aviation or highway use;

(b) The manufacture, sale, possession, transportation, storage or use of fusees, torpedoes or other signals necessary for the safe operation of railroads;

(c) The manufacture, sale, possession, transportation, storage or use of blank cartridges in connection with theaters or shows, or in connection with athletics as signals or for ceremonial purposes;

(d) The manufacture for, the transportation, storage, possession or use by, or sale to the Armed Forces of the United States and the militia of this State of pyrotechnic devices;

(e) The manufacture, sale, possession, transportation, storage or use of toy pistols, toy canes, toy guns or other devices in which paper or plastic caps containing twenty-five hundredths grains or less of explosive material are used, provided that they are constructed so that a hand cannot come into contact with a cap when it is in place for explosion, or apply to the manufacture, sale, possession, transportation, storage or use of those caps;

(f) The manufacture, sale, possession, transportation, storage or use of novelties and trick noisemakers, auto burglar alarms or model rockets and model rocket motors designed, sold and used for the purpose of propelling recoverable aero models;

(g) The manufacture, sale, possession, transportation, storage or use of wire sparklers.

(h) The conduct of radio-controlled special effect exhibitions that use an explosive black powder charge of not more than one-quarter pound per charge, and that are not connected in any manner to propellant charges, provided that the exhibition complies with all of following:

(1) No explosive aerial display is conducted in the exhibition;

(2) The exhibition is separated from spectators by not less than two hundred feet;

(3) The person conducting the exhibition complies with regulations of the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury and the United States Department of Transportation with respect to the storage and transport of the explosive black powder used in the exhibition.
(ORC 3743.80)

1519.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the first degree for a first offense and shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than six months or both. (ORC 3743.99(C))

CHAPTER 1529
Westshore Regional Community Emergency Response Team

1529.01 Definitions.
1529.02 WSC volunteer status.
1529.03 Activation.
1529.04 WSC administration.
1529.05 WSC funding.
1529.99 Penalty.

CROSS REFERENCES
Fire Department - see ADM. Ch. 131

1529.01 DEFINITIONS.

(a) General Definitions.

(1) As used in the Codified Ordinances, unless another definition is provided or the context otherwise requires, The WSC shall hereinafter serve as a regionally sponsored volunteer organization as a unit of the City of Fairview Park Department of Public Safety and the Westshore Council of Governments through the Fire Chief or their designee. The organization and structure of the WSC shall substantially comply with the organization and structure recommended by FEMA, the State of Ohio, Cuyahoga County EMA, and be compatible with the National Incident Management System.

(2) "Westshore Council of Governments" or "Westshore Council of Government city/cities" shall refer to the cities of Bay Village, Fairview Park, Lakewood, North Olmsted, Rocky River, and Westlake.

(Ord. 12-53. Passed 2-4-13.)

1529.02 WSC VOLUNTEER STATUS.

(a) Volunteer Status.

(1) All WSC members shall serve as volunteers only.

(2) WSC members shall not seek or accept any monetary compensation of any kind for volunteer service, shall acknowledge and agree that any loss or injury incurred during service shall be solely at the risk of the volunteer, waive any and all claims for him/herself, his/her heirs and assigns, and agree to hold harmless the City of Fairview Park, Ohio, its employees and agents for any such loss or injury as well as the Westshore Council of Governments and its employees and agents, provided that such indemnity shall not be effective for damages that result from negligent or intentional acts of the City or the Westshore Council of Governments, their employees or agents.

(b) Membership/Identification Cards. Any person 18 years of age or older who is a resident of a Westshore Council of Governments city or is a resident in a city contiguous to a Westshore city may volunteer to become a member of the WSC if they meet all of the following requirements:

(1) Submit a completed application for WSC membership.
(2) Complete required FEMA training.
(3) Abide by and fulfill membership requirements defined in the WSC Guidelines.
(4) Submit to a background check.
A. Every WSC applicant shall submit to a background check conducted by the appropriate representative of a Westshore city police department.
B. Only upon successful completion thereof as per the WSC Guidelines, the volunteer shall be issued a WSC identification card, which he/she may retain during his/her continued active membership and good behavior.
C. The identification card is and remains at all times the property of the WSC.
(5) At such time as a volunteer leaves the organization for any reason or is expelled or has his/her membership terminated, he/she agrees to return the identification card to the WSC coordinator forthwith.

(c) Termination. Westshore safety directors or their designees may, at their discretion, terminate any volunteer from the WSC organization.
(Ord. 12-53. Passed 2-4-13.)

1529.03 ACTIVATION.

(a) WSC Guidelines. The WSC shall keep up to date such Guidelines necessary for the governance and efficient operation of the WSC.

(b) WSC Activation.
(1) The WSC may be activated for the purposes of assisting public safety forces by the Municipal Safety Authority. The Municipal Safety Authority shall be the Mayor, the Director of Public Safety, the Fire Chief, or the Police Chief.
(2) As a regional team under the Westshore Council of Governments, the Municipal Safety Authorities of any Westshore Council of Governments city may also activate the WSC.
(Ord. 12-53. Passed 2-4-13.)

1529.04 WSC ADMINISTRATION.

(a) Administration Representation. A fire chief representing the Westshore Council of Governments or their designee shall attend all regularly scheduled WSC Advisory Committee meetings, shall represent all Westshore Council of Government cities at such meetings, and shall report to the Westshore fire chiefs and mayors on the activities, needs, and other relevant matters concerning the WSC.

(b) WSC Equipment.

(1) All WSC equipment and supplies are and remain the property of the WSC and Westshore Council of Governments.

(2) Equipment issued to WSC members including but not limited to CERT kits, shirts, hats, and identification cards are and remain the property of the WSC and the Westshore Council of Governments.

(3) At such time as a volunteer leaves the organization for any reason or is expelled or has his/her membership terminated, he/she agrees to return the identification card to the WSC coordinator forthwith.

(Ord. 12-53. Passed 2-4-13.)

1529.05 WSC FUNDING.

(a) Funding and Audits.

(1) As a Westshore Council of Governments sponsored organization, the WSC is designated as a 501(c)(3) tax-exempt organization.

(2) Through the Westshore fire chiefs, the WSC may apply for funding from Westshore city councils in the same manner as other departments subject to the rules and regulations governing all municipal funds and further subject to the review, audit and oversight of the Westshore Council of Governments Fiscal Officer.

(3) All books and records of the WSC shall be made available to all Westshore directors of finance and council finance committees in conjunction with the budgetary process.

(4) No funds of the organization shall be used for any purpose other than the training and retention of volunteers, and the purchase and maintenance of equipment, supplies, disaster preparedness materials, and fundraising supplies necessary to fulfill the stated purpose(s) of the WSC.

(5) No WSC funds shall be used for or paid to any person or persons serving as a volunteer in the WSC with the exception of authorized reimbursements.

(b) Donations.

(1) As a 501(c)(3) under the Westshore Council of Governments, the WSC may accept donations to the WSC from private sources including but not limited to private citizens, corporations, non-governmental organizations (NGOs), charitable non-profit corporations, and other similar entities.

(2) Donations may be in cash or in kind.

(3) The WSC coordinator or his/her designee, upon request, will issue a charitable donation receipt to any donor.

(Ord. 12-53. Passed 2-4-13.)

1529.99 PENALTY.

Any person who violates provisions of Chapter 1529 and fails to return to the WSC an identification card, CERT kit, and/or other equipment issued to him/her will be subject to a replacement fee, which will be determined by the WSC Coordinator.
(Ord. 12-53. Passed 2-4-13.)