RECORD OF ORDINANCES

CITY OF UPPER ARLINGTON
STATE OF OHIO

ORDINANCE NO. 74-2022

TO AMEND VARIOUS SECTIONS OF PART 3, TRAFFIC CODE AND PART 5, GENERAL OFFENSES CODE, OF THE UPPER ARLINGTON CODE OF ORDINANCES, TO ALIGN WITH STATE LAW

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

WHEREAS, certain provisions within the Upper Arlington Code of Ordinances should be amended to conform with current State law as required by the Ohio Constitution; and

WHEREAS, the proposed changes include the following: increase of the minimum fine for penalties for common OVI reductions, offense level of reckless operation is raised to M1, reduced level of charge for license issues, reduced minimum jail sentences for certain charges, reduced penalties for marijuana paraphernalia, revisions to gun and knife laws.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Upper Arlington, Ohio:

SECTION 1. That Part 3, Traffic Code and Part 5, General Offenses Code, of the Upper Arlington Code of Ordinances is hereby amended as set forth in EXHIBIT A, attached hereto and made a part herein.

SECTION 2. That this Ordinance shall take effect at the earliest date allowed by law.

§ 353.01 OPERATING A VEHICLE UNDER THE INFLUENCE (O.V.I.); PHYSICAL CONTROL.

(A) No person who is under the influence of alcohol, a drug of abuse, or a combination of them shall operate any vehicle~~, streetcar, or trackless trolley~~ within this city.

(B) No person shall operate any vehicle within this city when:

(1) The person has a concentration of eight-hundredths (.08) of one percent (1%) or more but less than seventeen-hundredths (.17) of one percent (1%) by weight per unit volume of alcohol in the person's whole blood; or

(2) The person has a concentration of eight-hundredths (.08) of one (1) gram or more but less than seventeen-hundredths (.17) of one (1) gram by weight of alcohol per two hundred ten (210) liters of the person's breath; or

(3) The person has a concentration of eleven-hundredths (.11) of one (1) gram or more but less than two hundred thirty-eight thousandths (.238) of one (1) gram by weight of alcohol per one hundred (100) milliliters of the person's urine; or

(4) The person has a concentration of ninety-six-thousandths (.096) of one percent (1%) or more but less than two hundred four-thousandths (.204) of one per cent (1%) by weight per unit volume of alcohol in the person's blood serum or plasma; or

(5) The person has a concentration of seventeen-hundredths (.17) of one percent (1%) or more by weight per unit volume of alcohol in the person's whole blood; or

(6) The person has a concentration of seventeen-hundredths (.17) of one (1) gram or more by weight of alcohol per two hundred ten (210) liters of the person's breath; or

(7) The person has a concentration of two hundred thirty-eight thousandths (.238) of one (1) gram or more by weight of alcohol per one hundred (100) milliliters of the person's urine; or

(8) The person has a concentration of two hundred four-thousandths (.204) of one percent (1%) or more by weight per unit volume of alcohol in the person's blood serum or plasma.

(9) Except as provided in division (O) 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:

(a) The person has a concentration of amphetamine in the person's urine of at least five hundred (500) nanograms of amphetamine per milliliter of the person's urine or has a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least one hundred (100) nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma.

(b) The person has a concentration of cocaine in the person's urine of at least one hundred fifty (150) nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least fifty (50) nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma.

(c) The person has a concentration of cocaine metabolite in the person's urine of at least one hundred fifty (150) nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least fifty (50) nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma.

(d) The person has a concentration of heroin in the person's urine of at least two thousand (2,000) nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the person's whole blood or blood serum or plasma of at least fifty (50) nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma.

(e) The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least ten (10) nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least ten (10) nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma.

(f) The person has a concentration of L.S.D. in the person's urine of at least twenty-five (25) nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least ten (10) nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma.

(g) The person has a concentration of marijuana in the person's urine of at least ten (10) nanograms of marijuana per milliliter of the person's urine or has a concentration of marijuana in the person's whole blood or blood serum or plasma of at least two (2) nanograms of marijuana per milliliter of the person's whole blood or blood serum or plasma.

(h) Either of the following applies:

(i) The person is under the influence of alcohol, a drug of abuse, or a combination of them, and, as measured by gas chromatography mass spectrometry, the person has a concentration of marijuana metabolite in the person's urine of at least fifteen (15) nanograms of marijuana metabolite per milliliter of the person's urine or has a concentration of marijuana metabolite in the person's whole blood or blood serum or plasma of at least five (5) nanograms of marijuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

(ii) As measured by gas chromatography mass spectrometry, the person has a concentration of marijuana metabolite in the person's urine of least thirty-five (35) nanograms of marijuana metabolite per milliliter of the person's urine or has a concentration of marijuana metabolite in the person's whole blood or blood serum or plasma of at least fifty (50) nanograms of marijuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

(i) The person has a concentration of methamphetamine in the person's urine of at least five hundred (500) nanograms of methamphetamine per milliliter of the person's urine or has a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least one hundred (100) nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma.

(j) The person has a concentration of phencyclidine in the person's urine of at least twenty-five (25) nanograms of phencyclidine per milliliter of the person's urine or has a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least ten (10) nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.

(C) No person shall be in physical control of a vehicle~~, streetcar, or trackless trolley~~ 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, breath, urine, or blood serum or plasma contains at least the concentration of alcohol specified in division (A)(1)(b), (c), (d), (e), (f), (g), (h), or (i) of ORC § 4511.19 or C.O. § 353.01(B)(1), (2), (3), (4), (5), (6), (7), or (8).

(3) Except as provided in division (K)(5)(c) 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 ORC § 4511.19(A)(1)(j) or C.O. § 353.01(B)(9).

(D) No person under twenty-one (21) years of age shall operate any vehicle~~, streetcar or trackless trolley~~ within this city, if any of the following apply:

(1) The person has a concentration of at least two-hundredths (.02) of one percent (1%), but less than eight-hundredths (.08) of one percent (1%) by weight per unit volume of alcohol in the person's whole blood; or

(2) The person has a concentration of at least two-hundredths (.02) of one (1) gram but less than eight-hundredths (.08) of one (1) gram by weight of alcohol per two hundred ten (210) liters of the person's breath; or

(3) The person has a concentration of at least twenty-eight one thousandths (.028) of one (1) gram but less than eleven hundredths (.11) of one (1) gram by weight of alcohol per one hundred (100) milliliters of the person's urine; or

(4) The person has a concentration of at least three-hundredths (.03) of one percent (1%), but less than ninety-six-thousandths (.096) of one percent (1%) by weight per unit volume of alcohol in the person's blood serum or plasma.

(E) No person who, within twenty (20) years of the conduct described in division (E)(1) of this section, previously has been convicted of or pleaded guilty to a violation of this division, division (A), (B), or (D) of this section, ORC § 4511.19(A)(1) or (B), or any other equivalent offense shall do both of the following:

(1) Operate any vehicle~~, streetcar, or trackless trolley~~ within this city while under the influence of alcohol, a drug of abuse, or a combination of them;

(2) Subsequent to being arrested for operating the vehicle~~, streetcar, or trackless trolley~~ as described in division (E)(1) of this section, or ORC § 4511.19(A)(2)(a), being asked by a law enforcement officer to submit to a chemical test or tests under ORC § 4511.191, and being advised by the officer in accordance with ORC § 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.

(F) (1) In any prosecution for a violation of division (A), (B), (C), or (D) of this section or for an equivalent offense, 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, breath, urine, blood serum or plasma, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within three (3) hours of the time of the alleged violation. The three-hour time limit specified in this division regarding the admission of evidence does not extend or affect the two (2) hour time limit specified in ORC § 4511.192(A) as the maximum period of time during which a person may consent to a chemical test or tests as described in that section.

When a person submits to a blood test at the request of a law enforcement officer under ORC § 4511.191, only a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist shall withdraw blood for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the whole blood, blood serum, or blood plasma. This limitation does not apply to the taking of breath or urine specimens. A person authorized to withdraw

blood under this division may refuse to withdraw blood under this division, if in that person's opinion, the physical welfare of the person would be endangered by the withdrawing of the blood.

The bodily substance withdrawn shall be analyzed in accordance with methods approved by the Ohio Director of Health, by an individual possessing a valid permit issued by the director pursuant to ORC § 3701.143.

(2) In any prosecution for a violation of C.O. § 353.01(A), (B), or (C) or for an equivalent offense, if there was at the time the bodily substance was withdrawn a concentration of less than the applicable concentration of alcohol specified in divisions (B)(1), (2), (3) and (4) of this section or less than the applicable concentration of a listed controlled substance or a listed metabolite of a controlled substance specified for a violation of division (B)(9) of this section, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This division does not limit or affect a criminal prosecution for a violation of division (D) of this section or for an equivalent offense that is substantially equivalent to that division.

(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.

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. The form to be read to the person to be tested, as required under ORC § 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 divisions (F)(4)(b) and (c) of this section, "National Highway Traffic Safety Administration" means the National Highway Traffic Safety Administration established as an administration of the United States Department of Transportation under 96 Stat. 2415 (1983), 49 U.S.C.A. 105.

(b) In any prosecution for a violation of division (A), (B), (C), (D) or (E) 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 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, or being in physical control of a motor vehicle, if a law enforcement officer has administered a field sobriety test to the operator of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that were set by the National Highway Traffic Safety Administration, all of the following apply:

(i) The officer may testify concerning the results of the field sobriety test so administered.

(ii) The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the prosecution.

(iii) If testimony is presented or evidence is introduced under division (F)(4)(b)(i) or (ii) of this section and if the testimony or evidence is admissible under the rules of evidence, the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

(c) Division (F)(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 prosecution of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (F)(4)(b) of this section.

The foregoing provisions of this section do not limit the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of alcohol, drug of abuse or combined influence of alcohol and drug of abuse.

(G) As used in this section drug of abuse has the same meaning as that term defined in ORC § 4506.01.

(H) In any proceeding arising out of one (1) incident, a person may be charged with a violation of C.O. § 353.01(A), § 353.01(B), § 353.01(D) or § 353.01(E) of this section, but the person may not be convicted of more than one (1) violation of these divisions.

(1) Subject to division (I)(3) of this section, in any prosecution for a violation of division (B)(1), (2), (3), (4), (5), (6), (7), (8), or (9), (C), or (D) (1), (2), (3), or (4) of this section or for an equivalent offense that is substantially equivalent to any of those divisions, a laboratory report from any laboratory personnel issued a permit by the Ohio Department of Health authorizing an analysis as described in this division that contains an analysis of the whole blood, blood serum or plasma, breath, urine, or other bodily substance test and that contains all of the information specified in this division shall be admitted as prima-facie evidence of the information and statements that the report contains. The laboratory report shall contain all of the following:

(a) The signature, under oath, of any person who performed the analysis;

(b) Any findings as to the identity and quantity of alcohol, a drug of abuse, a controlled substance, a metabolite of a controlled substance, or a combination of them that was found;

(c) A copy of a notarized statement by the laboratory director or a designee of the director that contains the name of each certified analyst or test performer involved with the report, the analyst's or test performer's employment relationship with the laboratory that issued the report, and a notation that performing an analysis of the type involved is part of the analyst's or test performer's regular duties; and

(d) An outline of the analyst's or test performer's education, training, and experience in performing the type of analysis involved and a certification that the laboratory satisfies appropriate quality control standards in general and, in this particular analysis, under rules of the department of health.

(2) Notwithstanding any other provision of law regarding the admission of evidence, a report of the type described in division (I)(1) of this section is not admissible against the defendant to whom it pertains in any proceeding, other than a preliminary hearing or a grand jury proceeding, unless the prosecutor has served a copy of the report on the defendant's attorney or, if the defendant has no attorney, on the defendant.

(3) A report of the type described in division (I)(1) of this section shall not be prima-facie evidence of the contents, identity, or amount of any substance if, within seven (7) days after the defendant to whom the report pertains or the defendant's attorney receives a copy of the report, the defendant or the defendant's attorney demands the testimony of the person who signed the report. The judge, magistrate, or mayor in the case may extend the seven-day time limit in the interest of justice.

(I) [Reserved.]

(J) Except as otherwise provided in this division, any physician, registered nurse, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to this section, ORC § 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, ORC § 4511.191 or 4511.192, is immune from criminal liability and civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. The immunity provided in this division is not available to a person who withdraws blood if the person engages in willful or wanton misconduct.

(K) (1) Whoever violates any provision of division (A) or (B)(1) to (8) of this section is guilty of operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them. Whoever violates division (B)(9) of this section is guilty of operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance. The court shall sentence the offender for either offense under ORC ch. 2929, except as otherwise authorized or required by divisions (K)(1)(a) to (d) of this section:

(a) Except as otherwise provided in division (K)(1)(b), (c), (d)(i), (ii) of this section, the offender is guilty of a misdemeanor of the first degree, and the court shall sentence the offender to all the following:

(i) If the sentence is being imposed for a violation of division (A), (B) (1), (2), (3), (4), or (9) of this section, a mandatory jail term of three (3) consecutive days. As used in this division, three (3) consecutive days means seventy-two (72) 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 one hundred eighty (180) days.

The court may suspend the execution of the three-day jail term under this division if the court, in lieu of that suspended term, places the offender on probation and requires the offender to attend, for three (3) consecutive days, a drivers' intervention program certified under ORC § 3793.10. The court also may suspend the execution of any part of the three (3) day jail term under this division if it places the offender on probation for part of the three (3) 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 (3) consecutive days that the offender does not spend attending the program. The court may require the offender, as a condition of probation 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 ORC ch. 3793 by the director of alcohol and drug 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 probation that it considers necessary.

If the court grants unlimited driving privileges to a first-time offender under ORC § 4510.022, all penalties imposed upon the offender by the court under division (K)(1)(a)(i) of this section for the offense apply, except that the court shall suspend any mandatory or additional jail term imposed by the court under division (K)(1)(a)(i) of this section upon granting unlimited driving privileges in accordance with ORC § 4510.022.

(ii) If the sentence is being imposed for a violation of division (B) (5), (6), (7), or (8) or division (E)(1), (2) of this section, except as otherwise provided in this division, a mandatory jail term of at least three (3) consecutive days and a requirement that the offender attend, for three (3) consecutive days, a drivers' intervention program that is certified pursuant to ORC § 3793.10. As used in this division, three (3) consecutive days means seventy-two (72) consecutive hours. If the court determines that the offender is not cooperative with ~~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 (6) consecutive days.

The court may require the offender, as a condition of probation, to attend and satisfactorily complete any treatment or education programs that comply with the minimum standards adopted pursuant to ORC ch. 3793 by the director of alcohol and drug 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 probation on the offender that it considers necessary.

If the court grants unlimited driving privileges to a first-time offender under ORC § 4510.022, all penalties imposed upon the offender by the court under division (K)(1)(a)(i) of this section for the offense apply, except that the court shall suspend any mandatory or additional jail term imposed by the court under division (K)(1)(a)(i) of this section upon granting unlimited driving privileges in accordance with ORC § 4510.022.

(iii) If the sentence is being imposed for a violation of (A), (B)(1), (2), (3), (4) or (9) of this section, a fine of not less than five hundred dollars ($500.00) and not more than one thousand seventy-five dollars ($1,075.00). If the sentence is being imposed for a violation of (B) (5), (6), (7), (8) or (E) (1) or (2) of this section, a fine of not less than five hundred fifty dollars ($550.00) and not more than one thousand seventy-five dollars ($1,075.00).

(iv) In all cases, a suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified for a definite period of one (1) to three (3) years. The court may grant limited driving privileges relative to the suspension under ORC §§ 4510.021 and 4510.13. The court may grant unlimited driving privileges with an ignition interlock device relative to the suspension and may reduce the period of suspension as authorized under ORC § 4510.022.

(b) Except as otherwise provided in division (K)(1)(d)(i), (ii) of this section, an offender who, within ten (10) years of the offense, previously has been convicted of or pleaded guilty to one (1) violation of division (A), (B), or (D) of this section or one (1) other equivalent offense is guilty of a misdemeanor of the first degree. The court shall sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of division (A), (B)(1), (2), (3), (4), or (9) of this section, a mandatory jail term of ten (10) consecutive days. The court shall impose the ten-day mandatory jail term under this division, unless, subject to (K)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of electronically monitored house arrest or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or 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 (6) months. In addition, the court may authorize that the defendant be granted work release from imprisonment during the ten (10) consecutive days of imprisonment that the court is required by this section to impose.

In addition to the jail term or the term of electronically monitored house arrest or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or continuous alcohol monitoring and jail term, the court shall require the offender to be assessed by an alcohol and drug treatment program that is authorized by section ORC § 3793.02, subject to

division (I) of this section, and shall order the offender to follow the treatment recommendations of the program. 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 program shall submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use. (Ordinance No. 88-2008)

(ii) If the sentence is being imposed for a violation of division (B)(5), (6), (7), or (8) or division (E)(1), (2) of this section, except as otherwise provided in this division, a mandatory jail term of twenty (20) consecutive days. The court shall impose the twenty-day mandatory jail term under this division unless, subject to division (K)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of electronically monitored house arrest or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or 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 (6) months. In addition, the court may authorize that the offender be granted work release during the twenty (20) consecutive days.

In addition to the jail term or the term of electronically monitored house arrest and jail term, or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or continuous alcohol monitoring, the court shall require the offender to be assessed by an alcohol and drug treatment program that is authorized by section ORC § 3793.02, subject to division (I) of this section, and shall order the offender to follow the treatment recommendations of the program. 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 program shall submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use.

(iii) In all cases, notwithstanding the fines set forth in ORC ch. 2929, if the sentence is being imposed for a violation of division (A), (B)(1), (2), (3), (4) or (9) of this section, a fine of not less than seven hundred twenty-five dollars ($725.00) and not more than one thousand six hundred twenty-five dollars ($1,625.00). If the sentence is being imposed for a violation of division (B) (5), (6), (7), (8) or (E) (1) or (2) of this section, a fine of not less than seven hundred fifty dollars ($750.00) and not more than one thousand six hundred twenty-five dollars ($1,625.00).

(iv) 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 (1) to seven (7) years. The court may grant limited driving privileges relative to the suspension under ORC §§ 4510.021 and 4510.13.

(v) In all cases, if the vehicle is registered in the offender's name, immobilization of the vehicle involved in the offense for ninety (90) days in accordance with ORC § 4503.233 and impoundment of the license plates of that vehicle for ninety (90) days unless a vehicle immobilization waiver has been filed as required in ORC § 4503.235.

(c) Except as otherwise provided in division (K)(1)(d)(i), (ii) of this section, an offender who, within ten (10) years of the offense, previously has been convicted of or pleaded guilty to two (2) violations of division (A), (B), or (D) of this section or other equivalent offenses is guilty of a misdemeanor of the first degree. The court shall sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of division (A), (B)(1), (2), (3), (4), or (9) of this section, a mandatory jail term of thirty (30) consecutive days. The court shall impose the thirty-day mandatory jail term under this division unless, subject to division (K)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of electronically monitored house arrest or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or continuous alcohol monitoring. The court may impose a jail term in addition to the thirty-day mandatory jail term. Notwithstanding the terms of imprisonment set forth in ORC ch. 2929, the additional jail term shall not exceed one (1) year, and the cumulative jail term imposed for the offense shall not exceed one (1) year. In addition, the court may authorize that the offender be granted work release during the thirty (30) consecutive days of imprisonment that the court is required by this section to impose.

(ii) If the sentence is being imposed for a violation of division (B)(5), (6), (7), or (8) or division (E)(1), (2) of this section, a mandatory jail term of sixty (60) consecutive days. The court shall impose the sixty-day mandatory jail term under this division unless, subject to division (K)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of electronically monitored house arrest or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or 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 ORC ch. 2929, the additional jail term shall not exceed one (1) year, and the cumulative jail term imposed for the offense shall not exceed one (1) year. In addition, the court may grant the offender work release for the sixty (60) consecutive days.

(iii) In all cases, notwithstanding the fines set forth in ORC ch. 2929, if the sentence is being imposed for a violation of (A), (B)(1), (2), (3), (4) or (9) of this section, a fine of not less than one thousand fifty dollars ($1,050.00) and not more than two thousand seven hundred fifty dollars ($2,750.00). If the sentence is being imposed for a violation of (B)(5), (6), (7) (8) or (E)(1) or (2) of this section, a fine of not less than one thousand seventy-five dollars ($1,075.00) and not more than two thousand seven hundred fifty dollars ($2,750.00);

(iv) 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 (2) to twelve (12) years. The court may grant limited driving privileges relative to the suspension under ORC §§ 4510.021, 4510.13 and 4511.198.

(v) 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 ORC § 4503.234 [4503.23.4]. ORC § 4511.19(G)(6) applies regarding any vehicle that is subject to any order of criminal forfeiture under this division.

(vi) In all cases, the court shall order the offender to participate in an alcohol and drug addiction program authorized by ORC § 3793.02, subject to division (I) of this section, and shall order the offender to follow the treatment recommendations of the program. The operator of the program 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 program shall submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use.

(d) (i) If within ten (10) years of the offense, the offender previously has been convicted of or pleaded guilty to three (3) or four (4) violations of division (A), (B) or (D), or other equivalent offenses or an offender who, within twenty (20) years of the offense, previously has been convicted of or pleaded guilty to five (5) or more violations of that nature, is guilty of a felony and is to be prosecuted under the appropriate state law.

(ii) If the offender previously has been convicted of or pleaded guilty to a violation of division (A) of ORC § 4511.19 or an equivalent offense under circumstances in which the violation was a felony, regardless of when the prior violation and the prior conviction or guilty plea occurred, the offender is guilty of a felony of the third degree and is to be prosecuted under the appropriate state law.

(2) An offender who is convicted of or pleads guilty to a violation of division (A), (B), (D) or (E) 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 ORC § 4511.191 [4511.19.1] division (F)(2).

(3) If an offender is sentenced to a jail term under division (K)(1)(b)(i) or (ii) or (K)(1)(c)(i) or (ii) of this section and if, within sixty (60) days of sentencing of the offender, the court issues a written finding on the record that, due to the unavailability of space at the jail where the offender is required to serve the term, the offender will not be able to begin serving that term within the sixty-day period following the date of sentencing, the court may impose an alternative sentence under this division that includes a term of electronically monitored house arrest or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or continuous alcohol monitoring, as defined in ORC § 2929.23.

As an alternative to a mandatory jail term of ten (10) consecutive days required by division (K)(1)(b)(i) of this section, the court, under this division, may sentence the offender to five (5) consecutive days in jail and not less than eighteen (18) consecutive days of electronically monitored house arrest or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or continuous alcohol monitoring. The cumulative total of the five (5) consecutive days in jail and the period of electronically monitored house arrest or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or continuous alcohol monitoring shall not exceed one hundred eighty (180) days. The five (5) 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 (20) consecutive days required by division (K)(1)(b)(ii) of this section, the court, under this division, may sentence the offender to ten (10) consecutive days in jail and not less than thirty-six (36) consecutive days of electronically monitored house arrest or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or continuous alcohol monitoring. The cumulative total of the ten (10) consecutive days in jail and the period of electronically monitored house arrest or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or continuous alcohol monitoring shall not exceed one hundred eighty (180) days. The ten (10) 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 (30) consecutive days required by division (K)(1)(c)(i) of this section, the court, under this division, may sentence the offender to fifteen (15) consecutive days in jail and not less than fifty-five (55) consecutive days of electronically monitored house arrest or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or continuous alcohol monitoring. The cumulative total of the fifteen (15) consecutive days in jail and the period of electronically monitored house arrest or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or continuous alcohol monitoring shall not exceed one (1) year. The fifteen (15) 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 (60) consecutive days required by division (K)(1)(c)(ii) of this section, the court, under this division, may sentence the offender to thirty (30) consecutive days in jail and not less than one hundred ten (110) consecutive days of electronically monitored house arrest or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or continuous alcohol monitoring. The cumulative total of the thirty (30) consecutive days in jail and the period of electronically monitored house arrest or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest with electronic monitoring or continuous alcohol monitoring shall not exceed one (1) year. The thirty (30) consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

(4) If the offender has been convicted of or pleaded guilty to a violation of division (B)(5), (6), (7) or (8) or (E)(1), (2) of this section or any equivalent offense, in addition to any other penalty or sanction authorized by this code or the Ohio Revised Code, the offender's driver's or occupational driver's license or permit or nonresident operating privilege is suspended under division (K) of this section and if ORC § 4510.13 permits the court to grant limited driving privileges, the court may grant the limited driving privileges in accordance with that section. If division (A)(7) of that section requires 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 ORC § 4503.231, except as provided in division (B) of that section, the court shall impose that condition as one of the conditions of the limited driving privileges granted to the offender, except as provided in ORC § 4503.231(B).

(5) (a) Whoever violates C.O. § 353.01(C) is guilty of having physical control of a vehicle while under the influence, a misdemeanor of the first degree. In addition to other sanctions imposed, the court may impose on the offender a class seven (7) suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in C.O. § 315.99(F)(7) or division (A)(7) of ORC § 4510.02.

(b) The court shall also impose a fine of not less than ~~three~~ **SEVEN** hundred **AND FIFTY** dollars (~~$300.00~~ **750.00**) and not more than one thousand dollars ($1,000.00).

(c) Division (C)(3) of this section does not apply to a person who is in physical control of a vehicle~~, streetcar, or trackless trolley~~ while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in division (A)(1)(j) of ORC § 4511.19 or C.O. § 353.01(B)(9), if both of the following apply:

(i) The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(ii) The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.

(d) "Physical control" has the same meaning as in ORC § 4511.194.

(6) In all cases in which an offender is sentenced under division (K) of this section, the offender shall provide the court with proof of financial responsibility as defined in ORC § 4509.01. If the offender fails to provide that proof of financial responsibility, the court, in addition to any other penalties provided by law, may order restitution pursuant to ORC § 2929.18 or 2929.28 in an amount not exceeding five thousand dollars ($5,000.00) for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense for which the offender is sentenced under division (K) of this section.

(L) Whoever violates C.O. § 353.01(D) of this section is guilty of operating a vehicle after underage alcohol consumption and shall be punished as follows:

(1) (a) Except as otherwise provided in division (L)(2) of this section, 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 six (6) suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in C.O. § 315.99(F)(6) or division (A)(6) of ORC § 4510.02. The court may grant limited driving privileges relative to the suspension under ORC §§ 4510.021 and 4510.13. The court may grant unlimited driving privileges with an ignition interlock device relative to the suspension and may reduce the period of suspension as authorized under ORC § 4510.022. If the court grants unlimited driving privileges under ORC § 4510.022, the court shall suspend any jail term imposed under division (L)(1) of this section as required by ORC § 4510.022.

(b) The court shall order the offender to attend and complete a drug and/or alcohol assessment by a certified chemical dependency counselor and/or any other alcohol and/or drug program recommended by the court.

(2) (a) If, within one (1) year of the offense, the offender previously has been convicted of or pleaded guilty to one (1) or more violations of division (A), (B), or (D) of this section or other equivalent offenses, the offender is guilty of a misdemeanor of the second degree. In addition, to any other sanction imposed for the offense, the court shall impose a class four (4) suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in C.O. § 315.99(F)(4) or division (A)(4) of ORC § 4510.02. The court may grant limited driving privileges relative to the suspension under ORC §§ 4510.021 and 4510.13.

(b) The court shall order the offender to attend and complete any treatment or education program through an alcohol and drug addiction service as authorized by ORC § 3793.02.

(3) If the offender also is convicted of or also pleads guilty to a specification of the type described in ORC § 2941.1416 and if the court imposes a jail term for the violation of division (D) of this section, the court shall impose upon the offender an additional definite jail term pursuant to division (E) of ORC § 2929.24.

(4) The offender shall provide the court with proof of financial responsibility as defined in ORC § 4509.01. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to ORC § 2929.28 in an amount not exceeding five thousand dollars ($5,000.00) for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the violation of division (D) of this section.

(M) (1) No court shall sentence an offender to an alcohol treatment program under this section unless the treatment program complies with the minimum standards for alcohol treatment programs adopted under ORC ch. 3793 by the director of alcohol and drug addiction services.

(2) An offender who stays in a drivers' intervention program or in an alcohol treatment program under an order issued under this section shall pay the cost of the stay in the program. However, if the court determines that an offender who stays in an alcohol treatment program under an order issued under this section is unable to pay the cost of the stay in the program, the court may order that the cost be paid from the court's indigent drivers' alcohol treatment fund.

(N) 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.

(O) Division (B)(9) of this section does not apply to a person who operates a vehicle~~, streetcar, or trackless trolley~~ while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that division, if both of the following apply:

(1) The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(2) The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.

(P) All terms defined in ORC § 4510.01 apply to this section. If the meaning of a term defined in ORC § 4510.01 conflicts with the meaning of the same term as defined in ORC § 4501.01 or 4511.01, the term as defined in ORC § 4510.01 applies to this section.

(Q) As used in C.O. § 353.01, equivalent offense means any of the following:

(1) A violation of ORC § 4511.19(A) or (B); or C.O. § 353.01(A), (B) or (D);

(2) A violation of a municipal OVI ordinance;

(3) A violation of ORC § 2903.04 in a case in which the offender was subject to the sanctions described in division (D) of that section;

(4) A violation of ORC § 2903.06(A)(1) or 2903.08 or a municipal ordinance that is substantially equivalent to either of those divisions;

(5) A violation of ORC § 2903.06(A)(2), (3), or (4), ORC § 2903.08(A)(2), or former ORC § 2903.07, or a municipal ordinance that is substantially equivalent to any of those divisions or that former section, in a case in which a judge or jury as the trier of fact found that the offender was under the influence of alcohol, a drug of abuse, or a combination of them;

(6) A violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to ORC § 4511.19(A) or (B), or C.O. § 353.01(A), (B), or (D);

(7) A violation of a former law of this state that was substantially equivalent to ORC § 4511.19(A) or (B), or C.O. § 353.01(A), (B), or (D).

(R) 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 in the whole blood, blood serum or plasma, breath, or urine.

(S) Community control sanction, jail, mandatory prison term, mandatory term of local incarceration, sanction, and prison term, house arrest, and continuous alcohol monitoring have the same meanings as in ORC § 2929.01.

(T) "Controlled substance" and "marijuana" have the same meaning as in ORC § 3719.01.

(U) "Drug of abuse" has the same meaning as in ORC §§ 3719.011 and 4506.01.

(V) "Drug abuse offense," "cocaine," and "L.S.D.," have the same meanings as in ORC § 2925.01.

(Ord. No. 40-2008; Ord. No. 88-2008, 11-10-2008; Ord. No. 12-2011; Ord. No. 70-2011; Ord. No. 14-2017 , § 2, 2-27-2017)

§ 353.02 RECKLESS OPERATION.

(A) No person shall operate a vehicle~~, trackless trolley or street car~~ on any street or highway in willful or wanton disregard of persons or property.

(B) Whoever violates C.O. § 353.02 ~~on the first offense~~ is guilty of a misdemeanor of the **FIRST** ~~second~~ degree; ~~and on a second or subsequent offense is guilty of a misdemeanor of the first degree.~~

(C) IN ADDITION TO THE PENALTIES ASSOCIATED WITH A FIRST DEGREE MISDEMEANOR, THE COURT SHALL IMPOSE A FINE OF NOT LESS THAN SEVEN HUNDRED AND FIFTY DOLLARS ($750) AND NOT MORE THAN ONE THOUSAND DOLLARS ($1,000.00)

§ 355.01 OPERATING MOTOR VEHICLE WITHOUT VALID LICENSE.

(A) (1) No person, except those expressly exempted under ORC §§ 4507.03, 4507.04, 4507.05, or a holder of a probationary driver's license under ORC § 4507.071, shall operate any motor vehicle upon a street or highway or any public or private property used by the public for purposes of vehicular travel or parking in this city unless the person has a valid driver's license issued under ORC ch. 4507 or a commercial driver's license issued under ORC ch. 4506.

(2) No person, except a person expressly exempted under ORC §§ 4507.03, 4507.04, and 4507.05 shall operate any motorcycle upon a street or highway or any public or private property used by the public for purposes of vehicular travel or parking in this city unless the person has a valid license as a motorcycle operator that was issued upon application by the Registrar of the Ohio Bureau of Motor Vehicles under ORC ch. 4507. The license shall be in the form of an endorsement, as determined by the registrar, upon a driver's or commercial driver's license, if the person has a valid license to operate a motor vehicle or commercial motor vehicle, or in the form of a restricted license as provided in ORC § 4507.14, if the person does not have a valid license to operate a motor vehicle or commercial motor vehicle.

(B) Upon the request or motion of the prosecuting authority, a noncertified copy of the law enforcement automated data system report or a noncertified copy of a record of the registrar of motor vehicles that shows the name, date of birth, and social security number of a person charged with a violation of division (A)(1) or (2) of this section may be admitted into evidence as prima-facie evidence that the person did not have either a valid driver's or commercial driver's license at the time of the alleged violation of division (A)(1) of this section or a valid license as a motorcycle operator either in the form of an endorsement upon a driver's or commercial driver's license or a restricted license at the time of the alleged violation of division (A)(2) of this section. The person charged with a violation of division (A)(1) or (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 offender's driver's or commercial driver's license or permit was expired at the time of the offense for no more than six (6) months, the offender is guilty of a minor misdemeanor.

(2) If at the time of the offense the offender's driver's or commercial driver's license or permit was expired for more than six (6) months; or the offender's driver's or commercial driver's license or permit privileges were cancelled for reasons other than pursuant to ORC ch. 4509; or the offender never has held a valid driver's or commercial driver's license or permit, the offender is guilty of ~~a~~ **AN UNCLASSIFIED** misdemeanor ~~of the first degree~~.

(D) The court shall not impose a license suspension for a first violation of this section or if more than three (3) years have passed since the offender's last violation of this section or any equivalent offense.

(E) If the offender was convicted of or pleaded guilty to one (1) or more violations of this section or any equivalent offense within the past three (3) years, and if the offender's license was expired for more than six (6) months at the time of the offense, the court may impose a class seven (7) suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in C.O. § 315.99(F)(7) or ORC § 4510.02(A)(7).

(F) Upon recommendation of the Upper Arlington City Prosecutor, a violation or violations of this section shall not prohibit an offender from eligibility into the traffic diversion program as provided in C.O. § 173.05.

(Ord. No. 70-2011; Ord. No. 42-2015, § 2, 6-22-2015)

§ 355.13 DRIVING UNDER FINANCIAL RESPONSIBILITY LAW SUSPENSION OR CANCELLATION; DRIVING UNDER A NON-PAYMENT OF JUDGMENT SUSPENSION.

(A) No person, whose driver's or commercial driver's license or temporary instruction permit or nonresident's operating privilege has been suspended or canceled pursuant to ORC ch. 4509, shall operate any motor vehicle within this city, or knowingly permit any motor vehicle owned by the person to be operated by another person in the city, during the period of the suspension or cancellation, except as specifically authorized by ORC ch. 4509. No person shall operate a motor vehicle within this city, or knowingly permit any motor vehicle owned by the person to be operated by another person in the city, during the period in which the person is required by ORC § 4509.45 to file and maintain proof of financial responsibility for a violation of ORC § 4509.101, unless proof of financial responsibility is maintained with respect to that vehicle.

(B) No person shall operate any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this state if the person's driver's or commercial driver's license or temporary instruction permit or nonresident operating privilege has been suspended pursuant to ORC § 4509.37 or 4509.40 for nonpayment of a judgment.

(C) Upon the request or motion of the prosecuting authority, a noncertified copy of the law enforcement automated data system report or a noncertified copy of a record of the registrar of motor vehicles that shows the name, date of birth, and social security number of a person charged with a violation of division (A) or (B) of this section may be admitted into evidence as prima-facie evidence that the license of the person was under either a financial responsibility law suspension at the time of the alleged violation of division (A) of this section or a nonpayment of judgment suspension at the time of the alleged violation of division (B) of this section. The person charged with a violation of division (A) or (B) of this section may offer evidence to rebut this prima-facie evidence.

(D) Whoever violates division (A) of this section is guilty of driving under financial responsibility law suspension or cancellation, a misdemeanor of the first degree. Whoever violates division (B) of this section is guilty of driving under a nonpayment of judgment suspension, ~~a~~ **AN UNCLASSIFIED** misdemeanor ~~of the first degree~~.

(Ord. No. 70-2011)

§ 355.15 FAILURE TO REINSTATE LICENSE.

(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 street 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 Ohio Bureau of Motor Vehicles or another provision of the Ohio Revised Code.

(B) Upon the request or motion of the prosecuting authority, a noncertified copy of the law enforcement automated data system report or a noncertified copy of a record of the registrar of motor vehicles that shows the name, date of birth, and social security number of a person charged with a violation of division (A) of this section may be admitted into evidence as prima-facie evidence that the license of the person had not been reinstated by the person at the time of the alleged violation of division (A) of this section. The person charged with a violation of division (A) of this section may offer evidence to rebut this prima-facie evidence.

(C) Whoever violates this section is guilty of failure to reinstate a license, ~~a~~ **AN UNCLASSIFIED** misdemeanor ~~of the first degree.~~ The court may impose upon the offender a class seven (7) 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 C.O. § 315.99(F)(7) or division (A)(7) of ORC § 4510.02.

(Ord. No. 70-2011)

§ 355.20 DRIVING UNDER SUSPENDED LICENSE FOR FAILING TO APPEAR OR PAY FINE; DRIVING UNDER NONPAYMENT OF CHILD SUPPORT SUSPENSION; DRIVING UNDER OTHER SPECIFIED SUSPENSIONS.

(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 state whose driver's or commercial driver's license has been suspended pursuant to ORC § 2151.354, 2151.87, 2935.27, 3123.58, 4301.99, 4510.032, 4510.22, or 4510.33.

(B) Upon the request or motion of the prosecuting authority, a noncertified copy of the law enforcement automated data system report or a noncertified copy of a record of the registrar of motor vehicles that shows the name, date of birth, and social security number of a person charged with a violation of division (A) 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 division (A) or (B) of this section. The person charged with a violation of division (A) or (B) of this section may offer evidence to rebut this prima-facie evidence.

(C) Whoever violates division (A) of this section is guilty of driving under suspension, ~~a~~ **AN UNCLASSIFIED** misdemeanor ~~of the first degree~~.

(Ord. No. 44-2014)

§ 505.05 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 if the value of the property is less than one thousand dollars ($1,000.00) or is not alleged in the complaint.

(C) (1) Except as provided in divisions (C)(2) or (C)(3), the court shall impose ~~a mandatory forty (40) hours term of community service and~~ a mandatory fine of two hundred fifty dollars ($250.00), which shall not be suspended.

(2) Except as provided in division (C)(3), if the offender has previously been convicted of or pleaded guilty to one (1) theft offense, then the court shall impose a mandatory term of imprisonment of at least three (3) days, which shall not be suspended.

(3) If the offender has previously been convicted of or pleaded guilty to two (2) or more theft offense, then the Court shall impose a mandatory term of imprisonment of at least thirty (30) days, which shall not be suspended.

§ 505.06 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 C.O. § 505.07(B) of the Upper Arlington City Codes or ORC § 2913.03(C) are affirmative defenses to a charge under this section.

(C) Whoever violates this section is guilty of unauthorized use of property. Except as otherwise provided in this division, unauthorized use of property is a misdemeanor of the third degree if the value of the property is less than one thousand dollars or is not alleged in the complaint.

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 if the value of the property or services or the loss to the victim is less than one thousand dollars ($1,000.00) or is not alleged in the complaint.

(D) (1) Except as provided in divisions (D)(2) or (D)(3), the court shall impose a ~~mandatory twenty (20) hours term of community service and a~~ mandatory fine of one hundred dollars ($100.00), which shall not be suspended.

(2) Except as provided in division (D)(3), if the offender has previously been convicted of or pleaded guilty to one (1) theft offense, then the court shall impose a mandatory term of imprisonment of at least three (3) days, which shall not be suspended.

(3) If the offender has previously been convicted of or pleaded guilty to two (2) or more theft offenses, then the Court shall impose a mandatory term of imprisonment of at least **FIFTEEN** ~~thirty~~ (**15**~~30~~) days, which shall not be suspended.

(Ord. No. 71-2012)

§ 505.11 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 if the value of the property is less than one thousand dollars ($1,000.00) or is not alleged in the complaint.

(D) (1) Except as provided in divisions (D)(2) or (D)(3), the court shall impose a ~~mandatory twenty (20) hours term of community service and a~~ mandatory fine of one hundred dollars ($100.00), which shall not be suspended.

(2) Except as provided in division (D)(3), if the offender has previously been convicted of or pleaded guilty to one (1) theft offense, then the court shall impose a mandatory term of imprisonment of at least three (3) days, which shall not be suspended.

(3) If the offender has previously been convicted of or pleaded guilty to two (2) or more theft offenses, then the Court shall impose a mandatory term of imprisonment of at least **FIFTEEN** ~~thirty~~ (~~30~~**15**) days, which shall not be suspended.

(Ord. No. 71-2011; Ord. No. 46-2013)

§ 511.08 POSSESSION AND SALE OF DRUG PARAPHERNALIA.

(A) No person shall knowingly use, or possess with purpose to use, drug paraphernalia.

(B) 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.

(C) 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 this state of the equipment, product, or material that the offender intended or designed for use as drug paraphernalia.

(D) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with ORC chs. 3719, 4715, 4723, 4729, 4731 and 4741. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by ORC § 3719.172.

(E) 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 to the municipality, and upon forfeiture shall be disposed of pursuant to ORC § 2933.41(D)(8).

(F) If any provision of this section or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(G) Whoever violates any of the provisions of C.O. §§ 511.08(A), (B) or (C) hereof, is guilty of a misdemeanor of the second degree. Whoever violates any of the provisions of C.O. §§ 511.08(A), (B), or (C) is guilty of a misdemeanor of the first degree if, at the time of the offense, the offender has previously been convicted of any of the following:

(1) Any violation of C.O. §§ 511.08(A), (B) or (C) hereof, or any substantially similar offense;

(2) Any violation of C.O. §§ 511.01, 511.04, 511.05, 511.09, or 511.10, or any substantially similar offense, or;

(3) Any violation of Ohio Revised Code §§ 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.09, 2925.11, 2925.12, 2925.13, 2925.14, 2925.141, 2925.22, 2925.23, 2925.24, 2925.31, 2925.32, 2925.36, 2925.37, 2925.55, 2925.56, or any offense substantially similar to these sections.

(H) **NOTWITHSTANDING SUBSECTION (G), POSSESSION OF ANY DRUG PARAPHERNALIA THAT IS EQUIPMENT, A PRODUCT, OR MATERIAL OF ANY KIND THAT IS USED BY THE PERSON, INTENDED BY THE PERSON FOR USE, OR DESIGNED FOR USE IN STORING, CONTAINING, CONCEALING, INJECTING, INGESTING, INHALING, OR OTHERWISE INTRODUCING INTO THE HUMAN BODY MARIHUANA IS A MINOR MISDEMEANOR.**

(I) Any person who violates C.O. § 511.08(B) hereof by delivering or selling drug paraphernalia to any person under eighteen (18) years of age is guilty of a misdemeanor of the first degree.

(Ord. No. 64-2013)

CHAPTER 523. FIREARMS, DANGEROUS ORDNANCE AND OTHER WEAPONS

§ 523.01 DEFINITIONS.

As used in C.O. Title 1, ch. 523 of the Upper Arlington City Codes:

Automatic firearm: means any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger. Automatic Firearm also means any semi-automatic firearm designed or specially adapted to fire more than thirty-one (31) cartridges without reloading, other than a firearm chambering only .22 caliber short, long, long-rifle magnum cartridges.

Ballistic knife: means a knife with a detachable blade that is propelled by a spring-operated mechanism.

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.

Cigarette load: means a small wooden peg that is coated with a small quantity of explosive composition and that is ignited in a cigarette.

Dangerous ordnance: means any of the following, except as provided in C.O. § 523.01.

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

(2) Any explosive device or incendiary device.

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

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

(5) Any firearm muffler or silencer;

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

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 (3) in this definition during displays, celebrations, organized matches or shoots and target practice, and smokeless and black powder, primers and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition.

(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.

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. Knives, razors, and cutting instruments are not considered deadly weapons if not used as a weapon.

Explosive: means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. "Explosive" includes all materials that have been classified as division 1.1, division 1.2, division 1.3, or division 1.4 explosives by the United States Department of Transportation in its regulations and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuses, fuse igniters, squibs, cordeau detonant fuses, instantaneous fuses, and igniter cords and igniters. "Explosive" does not include "fireworks," as defined in ORC § 3743.01, or any substance or material otherwise meeting the definition of explosive set forth in this section that is manufactured, sold, possessed, transported, stored, or used in any activity described in ORC § 3743.80, provided the activity is conducted in accordance with all applicable laws, rules, and regulations, including, but not limited to, the provisions of ORC § 3743.80 and the rules of the fire marshal adopted pursuant to ORC § 3737.82.

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, which has been knowingly tampered with or arranged so as to explode.

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

When determining whether a firearm is capable of expelling or propelling one (1) 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.

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 ORC § 3743.80.

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 (1) above can be assembled.

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.

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.

Party popper: means a small plastic or paper item that contains not more than sixteen (16) milligrams of friction-sensitive explosive composition, that is ignited by pulling a string protruding from the item, and from which paper streamers are expelled when the item is ignited.

Sawed-off firearm: means a shotgun with a barrel less than eighteen (18) inches long or a rifle with a barrel less than sixteen (16) inches long or a shotgun or rifle less than twenty-six (26) inches long overall.

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.

Smoke device: means a tube or sphere that contains pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.

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.

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.

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.

Wire sparkler: means a sparkler consisting of a wire or stick coated with a nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition and that contains no more than one hundred (100) grams of this mixture.

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 which is specially adapted for use as a firearm.

(3) Any industrial tool, signaling device or safety device, not designed as a firearm, but that as designed is capable of use as such, when possessed, carried or used as a firearm.

(Ord. No. 71-2011)

§ 523.02 CARRYING CONCEALED WEAPONS.

(A) **UNLESS PERMITTED BY STATE LAW,** 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 **IS A QUALIFYING ADULT UNDER ORC §2923.111,** has been issued a license or temporary emergency license to carry a concealed handgun under ORC § 2923.125 or 2923.1213 or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under ORC § 109.69 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~~ DISCLOSE TO ~~inform~~ any law enforcement officer who approaches the person after the person has been stopped that the person has been issued a license or temporary emergency license to carry a concealed handgun and that the person then is carrying a concealed handgun BEFORE OR WHEN ASKED BY LAW ENFORCMENT;

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

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

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

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

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

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

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

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

(2) Division (A)(2) of this section does not apply to any person who, at the time of the alleged carrying or possession of a handgun, is carrying a valid license or temporary emergency license to

carry a concealed handgun issued to the person under ORC § 2923.125 or 2923.1213 or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under ORC § 109.69, unless the person knowingly is in a place described in ORC § 2923.126(B).

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

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

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

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

(F) 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 ~~or if~~ **UNLESS** the officer reasonably believes additional time is needed to obtain information for public safety purposes.

(G) (1) Whoever violates this section is guilty of carrying concealed weapons. Except as otherwise provided in ORC § 2923.12, carrying concealed weapons in violation of division (A) of this section is a misdemeanor of the first degree.

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

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

~~(i) Within ten (10) days after the arrest, the offender presents a license or temporary emergency license to carry a concealed handgun issued under ORC § 2923.125 or 2923.1213 or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under ORC § 109.69, which license was valid at the time of the arrest to the law enforcement agency that employs the arresting officer.~~

~~(ii) At the time of the arrest, the offender was not knowingly in a place described in ORC § 2923.126(B).~~

(b) ~~The offender shall be guilty of a misdemeanor and shall be fined five hundred dollars ($500.00) if all of the following apply:~~

~~(i) The offender previously had been issued a license to carry a concealed handgun under ORC § 2923.125 or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under ORC § 109.69 and that was similar in nature to a license issued under ORC § 2923.125, and that license expired within the two (2) years immediately preceding the arrest.~~

~~(ii) Within forty-five (45) days after the arrest, the offender presents any type of license identified in division (G)(2)(a)(i) of this section to the law enforcement agency that employed the arresting officer, and the offender waives in writing the offender's right to a speedy trial on the charge of the violation that is provided in ORC § 2945.71.~~

~~(iii) At the time of the commission of the offense, the offender was not knowingly in a place described in ORC § 2923.126(B).~~

(Ord. No. 71-2011)

§ 523.03 DISCHARGING WEAPONS.

(A) No person shall discharge or cause to be discharged, any firearm, cannon, rifle, revolver, pistol, devils-head, flobert or airgun or other instrument used to explode any cartridge or thing filled with any explosive substance or material without a written permit from the chief of police.

(B) This section shall not be construed to include toy pistols, toy canes, toy guns or other devices in which paper caps containing twenty-five hundredths (.25) grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for the explosion, and toy pistol paper caps which contain less than twenty hundredths (.20) grains of explosive mixture, the sale and use of which shall be permitted at all times.

(C) This section shall not apply to a law enforcement officer in the lawful performance of their duties; or when the offender discharges the weapon when acting in self-defense of oneself or another person which is justified under state law, which the offender must show by a preponderance of the evidence; or the firearm which is discharged was used or was on or about the person or under the control of a person in the commission of a felony for which the Ohio Revised Code requires a term of actual incarceration of three (3) years and an indefinite term of imprisonment pursuant to ORC § 2929.71(B).

(D) Whoever violates this section is guilty of discharging weapons, a misdemeanor of the third degree.

(E) Strict liability is intended to be imposed for a violation of this section.

(Ord. No. 71-2011)

§ 523.04 RESERVED.

Editor's note(s)—Repealed in its entirety by Ordinance No. 71-2011.

~~§ 523.05 POSSESSION OF KNIVES.~~

~~(A) No person shall possess or carry on or about their person any knife with a blade fitted with a mechanical device for automatic release of the blade, opening the knife and locking the knife in the open position, commonly known as a switch or automatic spring knife or any knife that is possessed for use as a weapon.~~

~~(B) The affirmative defenses contained in C.O. § 523.02 (D)(1), (2) and (3) are affirmative defenses to a charge under C.O. § 523.05 (A) hereof.~~

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

§ 523.06 POINTING FIREARMS.

No person shall intentionally, and without malice, point a firearm at or toward another person.

~~§ 523.07 CARRYING DANGEROUS WEAPONS.~~

~~(A) No person shall carry on or about their person any weapon known or designated as a slingshot, slung shot, brass knuckles, billy, blackjack or other weapon of similar character. This section shall not apply to any such weapons when designated for use by officers of the law, or officers while on duty.~~

~~(B) The affirmative defenses contained in C.O. § 523.02 (D)(1), (2) and (3) are affirmative defenses to a charge under C.O. § 523.07 (A) hereof.~~

~~(C) Whoever violates this section is guilty of carrying a dangerous weapon, a misdemeanor of the fourth degree.~~

§ 523.08 SLINGSHOT; BOW AND ARROW; AIR GUN.

No person shall throw, shoot, cast or sling by hand or by slingshot, bow, airgun or other device, any stone, arrow, pellet, missile or other object capable of causing injury, on or across any street or other public property or on or across private property in a way as to endanger any person or property; provided, however, that this section shall not prohibit the playing of baseball, football and similar games on public property on which the playing of those games has been authorized by proper authority.

(Ord. No. 71-2011)

§ 523.11 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.

§ 523.12 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 Unite**D** States, the firearm is unloaded, and the firearm is carried in one (1) of the following ways:

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

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

(B) No person who **IS A QUALIFYING ADULT UNDER ORC §2923.111,** has been issued a license or temporary emergency license to carry a concealed handgun under ORC § 2923.125 or 2923.1213 or a license to carry a concealed handgun that was issued to the person by another state with which the attorney general has entered into a reciprocity agreement under ORC § 109.69, who is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose ~~or is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit for the purposes defined in ORC § 5503.34~~, and who is transporting or has a loaded handgun in the motor vehicle or commercial motor vehicle in any manner, shall do any of the following:

(1) Fail to ~~promptly inform~~ DISCLOSE TO any law enforcement officer who approaches the vehicle while stopped that the person ~~has been issued a license or temporary emergency license to carry a concealed handgun and that the person then~~ possesses or has a loaded handgun in the motor vehicle BEFORE OR AT THE TIME ASKED BY LAW ENFORCEMENT;

(2) ~~Fail to promptly inform the employee of the unit who approaches the vehicle while stopped that the person has been issued a license or temporary emergency license to carry a concealed handgun and that the person then possesses or has a loaded handgun in the commercial motor vehicle;~~

(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) Divisions (A) and (B) of this section do not apply to any of the following:

(1) An officer, agent or employee of this or any other state or the United States or to law enforcement officers, 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;

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

(D) (1) The affirmative defenses authorized in C.O. § 523.02(D)(1) and (2) are affirmative defenses to a charge under C.O. § 523.12(A) of this section that involves a firearm other than a handgun.

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

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

(F) Whoever violates this section is guilty of improperly handling firearms in a motor vehicle. A violation of division (A) of this section is a misdemeanor of the fourth degree. A violation of division (B)(1), (2), (3), and (4) of this section is a misdemeanor of the first degree.

(G) As used in this section, unloaded means, with respect to 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.

(Ord. No. 71-2011)

§ 523.13 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.

~~§ 523.14 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 or similar weapon.~~

~~(2) When transferring any dangerous ordnance to another, negligently fail to require the transferee to exhibit identification, license or permit showing the transferee to be authorized to acquire dangerous ordnance pursuant to ORC § 2923.17 or negligently fail to take a complete record of the transaction and forthwith forward a copy of that record to the sheriff of the county or safety director or police chief of the municipality where the transaction takes place;~~

~~(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. A violation of division (A)(1) or (2) of this section is a misdemeanor of the second degree. A violation of division (A)(3) of this section is a misdemeanor of the fourth degree.~~

(Ord. No. 71-2011)

§ 523.15 UNDERAGE PURCHASE OF FIREARM OR HANDGUN.

(A) No person under twenty-one (21) years of age shall purchase or attempt to purchase a handgun, provided that this division does not apply to the purchase or attempted purchase of a handgun by a person eighteen (18) years of age or older and under twenty-one (21) 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.

(B) Whoever violates this section is guilty of underage purchase of a handgun, a misdemeanor of the second degree.

(Ord. No. 71-2011)

§ 523.17 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 of identification on a firearm.

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

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

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

(Ord. No. 71-2011)

§ 543.02 ADOPTION OF RULES, VIOLATIONS; UNAUTHORIZED AND PROHIBITED ACTS.

(A) The following rules and regulations are ordained and established for the conduct in the parkettes, public parks, playgrounds and open space areas of the city.

(1) No person shall cut, injure, deface, remove or disturb any tree, shrub, building, fence, sign, bench or other structure, apparatus or property; or pick, cut, or remove any shrub, bush or flower; or mark or write upon any building, fence, bench or other structure.

(2) No person shall make or kindle an open fire except in fireplace or picnic stoves provided for that purpose.

(3) No abusive, profane or indecent language, or any lewd or obscene conduct, or any other conduct that may annoy others, shall be allowed.

(4) ~~(a) No person, except law enforcement officers within the scope of their duties shall carry on his/her person firearms of any description, knives, bows and arrows, crossbows, air and gas guns, slingshots, missiles or missile-throwing devices, or other dangerous ordnance or deadly weapon as defined in C.O. ch. 523. This subsection does not apply to those persons licensed to carry a concealed handgun under ORC § 2923.125 or 2923.1213 and in full compliance with applicable requirements of ORC ch. 2923.~~

(b) No person, except law enforcement officers within the scope of their duties, shall shoot or discharge any firearms of any description, knives, bows and arrows, crossbows, air and gas guns, slingshots, missiles or missile-throwing devices, or other dangerous ordnance or deadly weapon as defined in C.O. ch. 523.

(c) No person shall have in his or her possession or ignite or detonate any fireworks or explosive devices, as defined in C.O. ch. 523, without having first obtained in writing the permission of the director of parks and recreation.

(5) No person shall sell, offer or solicit for sale any goods or merchandise without a written permit therefore from the director of parks and recreation.

(6) No person shall use, consume, carry or bring any alcoholic beverage in or upon any parkette, public park, playground or open space areas.

(a) This subsection does not apply to intoxicating liquor or beer consumed on the premises of the Amelita Mirolo Barn or within the enclosed area of Northam Park designated by the city manager in accordance with a city permit issued by the city manager pursuant to C.O. § 131.05.

(7) Betting, gambling in any form or maintaining any gambling equipment is prohibited.

(8) The playing of baseball, golf and other games or contests involving risk of injury to persons or property is prohibited except in areas expressly set aside for such activities, unless otherwise approved by the director of parks and recreation.

(9) No person shall distribute any advertising, commercial or promotional circulars, cards or written matter within any parkette, public park, or playground or open space areas.

(10) No entertainment or exhibition shall be given in any parkette, public park, playground or open space areas except under the direction or by written permission of the director of parks and recreation.

(11) It shall be unlawful for any person to scatter or litter any form of waste material.

(12) No motor vehicles of any description, other than municipal service or emergency vehicles, may enter upon a parkette, public park, playground or open space areas, except as authorized by the director of parks and recreation.

(13) No person or group of persons shall erect, place or cause to be placed, alter or cause to be altered any equipment, facilities or grounds in the city-owned parkette, public park, playground or open space areas without special written permission from the director of parks and recreation.

(14) No person or group of persons shall enter, use or remain upon city parkette, public park, playground or open space areas between the hours of 11:00 p.m. to 5:00 a.m. except upon the express authorization of the director of parks and recreation.

(15) No person shall feed, cause to be fed or provide food for any waterfowl on any public property within the boundaries of the city. Exceptions to this will only be granted through city, state and/or federal permitting processes.

(a) Signs shall be conspicuously posted to notify individuals that feeding of waterfowl is prohibited on public property within the city.

(b) The absence of a sign shall not be an indication that the no feeding of waterfowl policy does not apply to a particular water source.

(c) Defacing, tampering, moving, or damaging such signs shall constitute a violation of this Chapter in addition to any other penalties that may apply regarding the defacement of public property.

(16) No person in a park shall engage in the activities of swimming, wading, boating and/or ice skating in areas or at times which have not been set aside for these purposes by appropriate signage.

(a) Signs shall be conspicuously posted to notify individuals that these activities are prohibited on public property within the city.

(b) The absence of a sign shall not be an indication that these activities do not apply to a particular water source.

(c) Defacing, tampering, moving or damaging such signs shall constitute a violation of this chapter in addition to any other penalties that may apply regarding the defacement of public property.

(17) No person in a park shall hunt, capture, take, trap or in any other way abuse, molest, injure, pursue or destroy any animal without the permission of the director other than by fishing.

(18) Fishing on a catch-and-release only basis is permitted within the City of Upper Arlington. After capture, all fish must be unhooked and returned to the water unharmed. No person shall take or carry away or attempt to take or carry away any fish caught in a public body of water within the City of Upper Arlington.

(a) Signs shall be conspicuously posted to notify individuals that a water source is catch-and-release fishing only and criminal penalties exist for taking or carrying away, or attempting to take or carry away fish from the water source.

(b) The absence of a sign shall not be an indication that this catch and release policy does not apply to a particular water source.

(c) Defacing, tampering, moving or damaging such signs shall constitute a violation of this chapter in addition to any other penalties that may apply regarding the defacement of public property.

(d) No person in a park shall fish in public park waters in violation of any sign or signs prohibiting fishing or a manner thereof.

(19) Model rocketry, archery and similar hobbies and/or activities shall be prohibited without the written permission of the director of parks and recreation.

(20) Smoking and the use of any smoking materials or devices within any areas of any parkette, public park, playground, or open space areas is prohibited.

(B) (1) Except as provided in subsections (B)(2) and (B)(3), whoever violates this section is guilty of violating park rules and regulations, a minor misdemeanor.

(2) If the offender has previously been convicted of a violation of this section, violating park rules is a misdemeanor of the fourth degree.

(3) If a violation of this section constitutes a higher classification of offense under another section of the general offenses code or under a state or federal statute, then the offender may also be prosecuted for said section of the general offense code or state or federal statute. It is the intent of this section that the offender be subject to the full range of penalties provided by said section of the general offense code or state or federal statute.

PASSED: December 5, 2022

President of Council

ATTEST:

City Clerk

I, Krystal Gonchar, City Clerk of Upper Arlington, Ohio, do hereby certify that the above is a true and correct copy.

City Clerk

CERTIFICATE OF POSTING

I, Krystal Gonchar, City Clerk of the City of Upper Arlington, Ohio, do hereby certify that publication of the foregoing was made by posting a true copy at the most public place in said corporation, for a period of ten (10) days commencing passage.

City Clerk

Vote Slip

Voting Aye: Adams, Burriss, Close, Kulewicz, Lynch and King
Voting Nay: Awakessien Jeter

Abstain:
Absent:

Other Review: November 14, 2022: November 21, 2022

City of Upper Arlington

STAFF REPORT

3600 Tremont Road | Upper Arlington, OH 43221
614-583-5000 | upperarlingtonoh.gov

Authors:	Darren Shulman, City Attorney
Council Meeting Date:	11/21/22
Subject/Legislative Item:	Criminal Code Revisions
Purpose:	To better align Upper Arlington's criminal code with state law
Executive Summary:	An ordinance amending various sections of criminal code in the Upper Arlington Code of Ordinances, to better align with state law.

Purpose and Impact

This legislation makes multiple changes to the City's criminal code to better align the code with state law and reflect current thinking on offenses. The proposed changes are as follows:

1. **Increase the minimum fine for penalties for common OVI reductions to $750**
2. **Raising the offense level of reckless operation to a M1**
3. **Reducing level of charge for license issues**: This draft drops most of the license charges (No OL, FRA suspension, judgment suspension, failure to reinstate) to an unclassified misdemeanor. This removes these charges from the list of offenses that someone can be sent to jail for, and is consistent with state code and our philosophy of working with defendants to get their license issues resolved as opposed to seeking a conviction for these charges.
4. **Reducing minimum jail sentence for certain charges**: Upper Arlington has a stiff mandatory sentence for repeated theft offenders, requiring a minimum 30 day jail sentence. State code has no minimum mandatory sentence for theft. While theft will keep the 3rd offense mandatory 30 days, unauthorized use of property and receiving stolen property (which are similar offenses) will drop to a 15 day mandatory sentence. This provides an alternative route to handling cases where a 30 day sentence isn't appropriate.
5. **Reduce marijuana paraphernalia penalty**: Adds a drug paraphernalia section for marijuana paraphernalia that is a minor misdemeanor. The other kinds of drug paraphernalia remain at the second degree misdemeanor level. This is reflective of the state's move to reduce/decriminalize marijuana. Our current code has the strange circumstance where the marijuana itself is a minor misdemeanor, but the pipe use to smoke it is a second degree misdemeanor.
6. **Gun code revisions**: Strikes code sections in conflict with State law regarding local gun regulation.
7. **Knives**: Strikes language in conflict with recent changes to state law regarding knives.

This draft incorporates an additional change that was previewed at the last Council meeting. This draft removes the requirement to order community service for theft (505.05), unauthorized use of property (505.06), and receiving stolen property (505.11). Community service is still an option to order, but the change recognizes that it is not appropriate for all situations.

This package increases the penalty for the more serious offenses (charges commonly associated with OVI reductions) while decreasing the penalty for less serious offenses (license issues) while eliminating some of the conflicts with State law that have arisen due to changes to the Ohio Revised Code.

Alternatives

Council could choose to decline some of all of these changes. It is strongly recommended that Council adopt the gun and knife code revisions, as leaving the existing language in place could expose the city to potential liability.