

**ORDINANCE NO. 2023-38**

**AN ORDINANCE AMENDING CHAPTER 521 OF THE CODIFIED ORDINANCES OF THE CITY OF WILLOWICK, OHIO, TITLED "HEALTH, SAFETY AND SANITATION," AND DECLARING AN EMERGENCY.**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOWICK, COUNTY OF LAKE, STATE OF OHIO:**

**Section 1.** Chapter 521 of the Codified Ordinances of the City of Willowick, Ohio, titled "Health, Safety and Sanitation," is hereby amended to read and provide as follows:

**CHAPTER 521  
Health, Safety and Sanitation**

**521.01 ABANDONED REFRIGERATORS AND AIRTIGHT CONTAINERS.**

(a) No person shall abandon, discard, or knowingly permit to remain on premises under the person's control, in a place accessible to children, any abandoned or discarded icebox, refrigerator, or other airtight or semi-airtight container which has a capacity of 1.5 cubic feet or more and an opening of 50 square inches or more and which has a door or lid equipped with a hinge, latch, or other fastening device capable of securing such door or lid, without rendering the equipment harmless to human life by removing such hinges, latches or other hardware which may cause a person to be confined therein. This section shall not apply to an icebox, refrigerator or other airtight or semi-airtight container located in that part of a building occupied by a dealer, warehouse or repairer.

(ORC 3767.29)

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

**521.02 VENTING OF HEATERS AND BURNERS.**

(a) The use of a brazier, salamander, space heater, room heater, furnace, water heater, or other burner or heater using wood, coal, coke, fuel oil, kerosene, gasoline, natural gas, liquid petroleum gas or similar fuel, and tending to give off carbon monoxide or other harmful gases must comply with the following provisions;

(1) When used in living quarters, or in any enclosed building or space in which persons are usually present, shall be used with a flue or vent so designed, installed, and maintained as to vent the products of combustion outdoors; except in storage, factory, or industrial buildings which are provided with sufficient ventilation to avoid the danger of carbon monoxide poisoning.

(2) When used as a portable or temporary burner or heater at a construction site, or in a warehouse, shed, or structure in which persons are temporarily present, shall be vented as provided in division (a)(1) or used with sufficient ventilation to avoid the danger of carbon monoxide poisoning.

(b) This section does not apply to domestic ranges, laundry stoves, gas logs installed in a fireplace with an adequate flue, or hot plates, unless the same are used as space or room heaters.

(c) No person shall negligently use, or, being the owner, person in charge, or occupant of premises, negligently permit the use of a burner or heater in violation of the standards for venting and ventilation provided in this section.

(d) Division (a) above does not apply to any kerosene-fired space or room heater that is equipped with an automatic extinguishing tip-over device, or to any natural gas-fired or liquid petroleum gas-fired space or room heater that is equipped with an oxygen depletion safety shut-off system, and that has its fuel piped from a source outside the building in which it is located, that are approved by an authoritative source recognized by the State Fire Marshal in the State Fire Code adopted by him or her under Ohio R.C. 3737.82.

(e) The State Fire Marshal may make rules to ensure the safe use of unvented kerosene, natural gas, or liquid petroleum gas heaters exempted from division (a) above when used in assembly buildings, business buildings, high hazard buildings, institutional buildings, mercantile buildings, and type R-1 and R-2 residential buildings, as these groups of buildings are defined in rules adopted by the Board of Building Standards under Ohio R.C. 3781.10. No person shall negligently use, or, being the owner, person in charge or occupant of premises, negligently permit the use of a heater in violation of any rules adopted under this division.

(f) The State Fire Marshal may make rules prescribing standards for written instructions containing ventilation requirements and warning of any potential fire hazards that may occur in using a kerosene, natural gas, or liquid petroleum gas heater. No person shall sell or offer for sale any kerosene, natural gas, or liquid petroleum gas heater unless the manufacturer provides with the heater written instructions that comply with any rules adopted under this division.

(g) No product labeled as a fuel additive for kerosene heaters and having a flash point below 100°F or 37.8°C shall be sold, offered for sale, or used in any kerosene space heater.

(h) No device that prohibits any safety feature on a kerosene, natural gas, or liquid petroleum gas space heater from operating shall be sold, offered for sale, or used in connection with any kerosene, natural gas, or liquid petroleum gas space heater.

(i) No person shall sell or offer for sale any kerosene-fired, natural gas, or liquid petroleum gas-fired heater that is not exempt from division (a) above, unless it is marked conspicuously by the manufacturer on the container with the phrase "Not Approved For Home Use."

(j) No person shall use a cabinet-type, liquid petroleum gas-fired heater having a fuel source within the heater, inside any building, except as permitted by the State Fire Marshal in the State Fire Code adopted by him or her under Ohio R.C. 3737.82.

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

(ORC 3701.99(B))

## **521.03 BARRICADES AND WARNING LIGHTS; ABANDONED EXCAVATIONS.**

(a) No person shall abandon or knowingly permit to remain on public or private property, any excavation, well, cesspool or structure which is in the process of construction, reconstruction, repair or alteration unless the same is adequately protected by suitable barricades and guarded by warning devices or lights at night so that the condition will not reasonably prove dangerous to life or limb.

(b) No person shall destroy, remove, damage or extinguish any barricade or warning light that is placed for the protection of the public so as to prevent injury to life or limb.

(c) Any owner or agent in control of a premises upon which a basement, cellar, well or cistern has been abandoned due to demolition, failure to build or any other reason shall cause the same to be filled to the ground surface with rock, gravel, earth or other suitable material.

(d) Whoever violates any of the provisions of this section is guilty of a misdemeanor of the first degree. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

#### **521.04 SIDEWALK OBSTRUCTIONS; DAMAGE OR INJURY.**

(a) No person shall place or knowingly drop upon any part of a sidewalk, playground or other public place any tacks, bottles, wire, glass, nails or other articles which may damage property of another or injure any person or animal traveling along or upon such sidewalk or playground.

(b) No person shall walk on, or allow any animal upon, or injure or deface in any way any soft or newly laid sidewalk pavement.

(c) No person shall place, deposit or maintain any merchandise, goods, material or equipment upon any sidewalk so as to obstruct pedestrian traffic thereon except for such reasonable time as may be actually necessary for the delivery or pickup of such articles. In no case shall the obstruction remain on such sidewalk for more than one hour.

(d) No person shall unload upon, or transport any heavy merchandise, goods, material or equipment over or across any sidewalk or curb without first placing some sufficient protection over the pavement to protect against damage or injury. The affected area shall be rendered safe and free from danger.

(e) No person shall allow any cellar or trap door, coal chute or elevator or lift opening in any sidewalk to remain open without providing suitable safeguards to protect and warn pedestrian traffic of the dangerous condition.

(f) ~~Whoever violates this section is guilty of a minor misdemeanor.~~ **Whoever violates or fails to comply with any of the provisions of this section is guilty of a minor misdemeanor and shall be fined not less than one hundred and fifty dollars (\$150.00) for a first offense; for a second offense, such person is guilty of a misdemeanor of the third degree and shall be fined not less than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both; for a third offense, such person is guilty of a misdemeanor of the second degree and shall be fined not less than seven hundred fifty dollars (\$750.00) or imprisoned not more than ninety (90) days, or both; for a fourth offense, such person is guilty of a misdemeanor of the first degree and shall be fined not less than one thousand dollars (\$1,000.00) or imprisoned not more than one hundred eighty (180) days, or both.**

### **521.05 OBSTRUCTING OR DIVERTING WATERCOURSES OR SEWERS.**

(a) No person shall cause, suffer or permit any public watercourse, public drain, public water supply, public storm sewer or public sanitary sewer to be obstructed or diverted, except upon permission granted by ordinance of Council.

(b) ~~Whoever violates this section is guilty of a minor misdemeanor.~~ Whoever violates or fails to comply with any of the provisions of this section is guilty of a minor misdemeanor and shall be fined not less than one hundred and fifty dollars (\$150.00) for a first offense; for a second offense, such person is guilty of a misdemeanor of the third degree and shall be fined not less than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both; for a third offense, such person is guilty of a misdemeanor of the second degree and shall be fined not less than seven hundred fifty dollars (\$750.00) or imprisoned not more than ninety (90) days, or both; for a fourth offense, such person is guilty of a misdemeanor of the first degree and shall be fined not less than one thousand dollars (\$1,000.00) or imprisoned not more than one hundred eighty (180) days, or both.

### **521.06 DUTY TO KEEP SIDEWALKS, DRAINS AND DITCHES CLEAN.**

(a) No person owning, occupying or having charge or management of any building or premises in the City shall fail to keep all sidewalks, gutters and public drains or ditches abutting upon or adjacent to the same clean and free from snow, ice or say obstruction or nuisance.

(b) ~~Whoever violates this section is guilty of a minor misdemeanor.~~ Whoever violates or fails to comply with any of the provisions of this section is guilty of a minor misdemeanor and shall be fined not less than one hundred and fifty dollars (\$150.00) for a first offense; for a second offense, such person is guilty of a misdemeanor of the third degree and shall be fined not less than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both; for a third offense, such person is guilty of a misdemeanor of the second degree and shall be fined not less than seven hundred fifty dollars (\$750.00) or imprisoned not more than ninety (90) days, or both; for a fourth offense, such person is guilty of a misdemeanor of the first degree and shall be fined not less than one thousand dollars (\$1,000.00) or imprisoned not more than one hundred eighty (180) days, or both.

### **521.07 SNOW FENCES.**

(a) No person shall construct, cause to be constructed, maintain or permit to be maintained a snow fence parallel or approximately parallel to the side or back property line of the property on which such snow fence is placed or to be placed, at a distance of less than fifteen feet from such property line, unless the written consent of the adjoining landowner-is first obtained.

(b) "Snow fence" means any barrier erected for the principal purpose of deflecting the drifting of snow.

(c) ~~Whoever violates this section is guilty of a minor misdemeanor.~~ Whoever violates or fails to comply with any of the provisions of this section is guilty of a minor misdemeanor and shall be fined not less than one hundred and fifty dollars (\$150.00) for a first offense; for a second offense, such person is guilty of a misdemeanor of the third degree and shall be fined not less than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both; for a third offense, such person is guilty of a misdemeanor of the second degree and shall be fined not less than seven hundred fifty dollars (\$750.00) or imprisoned not more than ninety (90) days, or both; for a fourth offense, such person is guilty of a misdemeanor of the first degree and shall be fined not less than one thousand dollars (\$1,000.00) or imprisoned not more than one hundred eighty (180) days, or both.

## **521.08 LITTERING AND DEPOSIT OF GARBAGE, RUBBISH, JUNK, ETC.**

(a) No person shall throw or cause to be thrown, place or dispose of in any manner upon any public property or upon the premises of another, any paper, trash, garbage, waste, rubbish, refuse, junk, dirt, sweepings, grass clippings, filth, or any substance or material which is or may become noxious, offensive, injurious or dangerous to the public health, comfort or safety.

(b) No person shall cause or allow trash, garbage, waste, rubbish, refuse or any other noxious or offensive materials or substances to be collected or remain in any place to the damage or prejudice of others or of the public, or unlawfully obstruct, impede, divert, corrupt or render unwholesome or impure, any natural watercourse.

(c) No person shall cause or permit any rubbish, garbage, paper, household furnishings or any other material, equipment or personal property to be stored, piled or deposited upon any street, sidewalk, lane, alley or public ground or place within the City, nor shall any person cause or permit any rubbish, garbage, paper, household furnishings or other material, equipment or personal property to be stored, piled or deposited upon any tree lawn within the City, for any purpose other than for its collection and disposal, before 4:00 p.m. on the day prior to the scheduled refuse or garbage collection day. No person shall cause or permit any rubbish or garbage containers to be left on the tree lawn after 8:00 a.m. on the day following the day that actual refuse or garbage collection occurs.

(d) No person shall place any rubbish, garbage, paper, household furnishings or any other material, equipment or personal property to be stored, piled or deposited upon any tree lawn within the City for collection by the City or its appointed agent, except that upon that portion of the tree lawn which corresponds with the person's legal street address, and sets on the tree lawn which is in the front of that person's house.

(e) ~~Whoever violates this section is guilty of a minor misdemeanor on a first offense; on each subsequent offense such person is guilty of a misdemeanor of the fourth degree.~~ **Whoever violates or fails to comply with any of the provisions of this section is guilty of a minor misdemeanor and shall be fined not less than one hundred and fifty dollars (\$150.00) for a first offense; for a second offense, such person is guilty of a misdemeanor of the third degree and shall be fined not less than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both; for a third offense, such person is guilty of a misdemeanor of the second degree and shall be fined not less than seven hundred fifty dollars (\$750.00) or imprisoned not more than ninety (90) days, or both; for a fourth offense, such person is guilty of a misdemeanor of the first degree and shall be fined not less than one thousand dollars (\$1,000.00) or imprisoned not more than one hundred eighty (180) days, or both.**

## **521.09 NOXIOUS OR OFFENSIVE ODORS; BURNING MANURE.**

(a) No person shall erect, continue, use or maintain a dwelling, building, structure or place for a residence or for the exercise of a trade, employment or business, or for the keeping or feeding of an animal, which dwelling, building, structure or place, or which activity, by occasioning noxious exhalations or noisome or offensive smells, becomes injurious to the health, comfort or property of individuals or of the public.

(b) No person shall burn dog or cat manure or other animal waste, or rubbish containing animal waste, in any indoor or outdoor incinerator, and no person shall operate an indoor or

outdoor incinerator in any manner which produces objectionable quantities of smoke or obnoxious odors offensive to or unwholesome for the public. No person shall keep or maintain any property or substance or conduct any trade or activity within the City from which emanates obnoxious odors offensive to or unwholesome for the public. On receipt by the City of two or more written complaints alleging a violation of any of the foregoing provisions, any such person violating any of the foregoing provisions shall be subject to prosecution.

(c) Whoever violates this section is guilty of a misdemeanor of the third degree.

#### **521.10 PUBLIC NUISANCES; ABATEMENT.**

(a) (1) No person, including any individual, corporation, association, partnership, trustee, trustee in bankruptcy, lessee, agent, assignee, or any other entity, being the owner, lessee or having charge or management of any property located within the City shall cause or permit to exist upon such property any substance, condition or activity which unreasonably interferes with or endangers the peace, health, welfare or safety of the City or any of its inhabitants.

(2) In reference to buildings, structures or real estate located within the City, a "nuisance" means any deterioration of structural materials or lack of repair or maintenance that is a hazard to health, safety, or welfare of its occupants or the public or, if not abated, in the opinion of the Safety Director or Chief Building Inspector, will become a blighting or deteriorating factor in the neighborhood which impairs or adversely affects the value of the neighboring property.

(3) Any activity or item defined elsewhere in the Codified Ordinances of the City as a public nuisance is also a public nuisance subject to the dictates of this chapter.

(b) Upon the finding that a nuisance exists in matters involving sidewalks, weeds, tall grass, landscaping, unsecured vacant property, abandoned property, unusable property, exterior deterioration, or other debris, the Chief Building Inspector or their designee shall cause written notice to be served on the appropriate person or entity identified in subsection (a)(1) hereof. The notice or order shall set forth the nature of the nuisance, the estimate of the cost of abating the nuisance if done by the City, a reasonable time determined by the Chief Building Inspector or their designee within which the owner shall abate the nuisance or pay the estimated cost to the City, the statement that unless the nuisance is abated within the stated time it may be abated by the City and the cost of abatement assessed on the real estate involved, and the City may prosecute the owner for failure to comply with the order. Such notice or order of abatement shall be issued by the Chief Building Inspector or their designee by posting said notice on the door of the structure, and, if no structure exists, at a conspicuous location on the property, where said nuisance exists and by regular U.S. mail addressed to such person or entity at their last known address.

(c) Upon the failure of such person to remove or abate such nuisance within the time specified in such notice, the Mayor may cause such nuisance to be removed or abated. Such removal or abatement may include the seizure and destruction or sale of property constituting or used in the maintenance of a nuisance, and the Mayor may enter into contracts on behalf of the City for the removal or abatement of such nuisances. Any person failing to remove or abate a nuisance as stated above shall be liable to the City for any and all costs of such removal or abatement, which costs may be recovered by a proceeding instituted in any court of competent jurisdiction.

(d) Any person or entity described in subsection (a)(1) hereof receiving notice to remove or abate a nuisance as provided for in subsection (b) hereof may, within the period of time specified in such notice, file a written request for a hearing on such order by delivering a copy of such request, specifying an address to which notices to such person or entity are to be sent, to the office of the Mayor. Upon receipt of such a request, the Mayor shall set a time and place for such a hearing and shall cause notice thereof to be provided to such person or entity by sending a copy by regular U.S. mail sent to the address provided by the requestor not less than five days prior to the hearing. Copies of such notice, stating the purpose of the hearing and the time and place thereof at which all interested persons or entities so requesting shall be heard, shall also be posted in the five public places in the City designated by Council for the posting of ordinances, resolutions, statements, orders, proclamations, notices and reports required by law or ordinance to be published. Such notice may also be published in one or more newspapers of general circulation in the City.

(e) Such hearing shall be conducted by the Mayor, and not less than five days after the conclusion of such hearing the Mayor shall issue an order confirming, modifying or rescinding the order of removal or abatement. Any such order shall be a final order within the meaning of Ohio R.C. 2506.01, upon the filing of a copy thereof with the Clerk of Council. A copy of such order shall be served as soon as possible in the manner specified in subsection (d) hereof upon the person requesting the hearing.

#### **521.11 ILLEGAL DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS; TRANSACTION SCANS.**

(a) Illegal Distribution of Cigarettes, Other Tobacco Products, or Alternative Nicotine Products.

(1) As used in this section:

A. "Age verification." A service provided by an independent third party (other than a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes) that compares information available from a commercially available database, or aggregate of databases, that regularly are used by government and businesses for the purpose of age and identity verification to personal information provided during an internet sale or other remote method of sale to establish that the purchaser is 21 years of age or older.

B. "Alternative nicotine product."

1. Subject to division 2. of this definition, an electronic smoking device, vapor product, or any other product or device that consists of or contains nicotine that can be ingested into the body by any means, including, but not limited to, chewing, smoking, absorbing, dissolving, or inhaling.

2. The phrase does not include any of the following:

a. Any cigarette or other tobacco product;

b. Any product that is a "drug" as that term is defined in 21 U.S.C. § 321(g)(1);

- c. Any product that is a “device” as that term is defined in 21 U.S.C. § 321(h);
- d. Any product that is a “combination product” as described in 21 U.S.C. § 353(g).

C. “Cigarette.” Includes clove cigarettes and hand-rolled cigarettes.

D. “Distribute.” Means to furnish, give, or provide cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes.

E. “Electronic smoking device.” Means any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device including an electronic cigarette, electronic cigar, electronic hookah, vaping pen, or electronic pipe. The phrase includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. The phrase does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. §§ 321 and 353(g).

F. “Proof of age.” Means a driver’s license, a commercial driver’s license, a military identification card, a passport, or an identification card issued under R.C. §§ 4507.50 to 4507.52 that shows that a person is 18 years of age or older.

G. “Tobacco product.” Means any product that is made or derived from tobacco or that contains any form of nicotine, if it is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, an electronic smoking device, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. The phrase also means any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, blunt or hemp wraps, and liquids used in electronic smoking devices, whether or not they contain nicotine. The phrase does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. §§ 321 and 353(g).

H. “Vapor product.” Means a product, other than a cigarette or other tobacco product as defined in R.C. Chapter 5743, that contains or is made or derived from nicotine and that is intended and marketed for human consumption, including by smoking, inhaling, snorting, or sniffing. The phrase includes any component, part, or additive that is intended for use in an electronic smoking device, a mechanical heating element, battery, or electronic circuit and is used to deliver the product. The phrase does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. §§ 321 and 353(g). The phrase includes any product containing nicotine, regardless of concentration.

I. “Vending machine.” Has the same meaning as “coin machine” in R.C. § 2913.01.

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



A. Give, sell, or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any person under 21 years of age;

B. Give away, sell, or distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes in any place that does not have posted in a conspicuous place a legibly printed sign in letters at least one-half inch high stating that giving, selling, or otherwise distributing cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under 21 years of age is prohibited by law;

C. Knowingly furnish any false information regarding the name, age, or other identification of any person under 21 years of age with purpose to obtain cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes for that person;

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

E. Sell cigarettes or alternative nicotine products in a smaller quantity than that placed in the pack or other container by the manufacturer;

F. Give, sell, or otherwise distribute alternative nicotine products, papers used to roll cigarettes, or tobacco products other than cigarettes over the internet or through another remote method without age verification.

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

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

B. An area to which persons under 21 years of age are not generally permitted access;

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

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

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

3. A clearly visible notice is posted in the area where the vending machine is located that states the following in letters that are legibly printed and at least one-half inch high: "It is illegal for any person under the age of 21 to purchase tobacco or alternative nicotine products."

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

A. The person under 21 years of age was accompanied by a parent, spouse who is 21 years of age or older, or legal guardian of the person under 21 years of age.

B. The person who gave, sold, or distributed cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under 21 years of age under division (a)(2)A. of this section is a parent, spouse who is 21 years of age or older, or legal guardian of the person under 21 years of age.

(5) It is not a violation of division (a)(2)A. or (a)(2)B. of this section for a person to give or otherwise distribute to a person under 21 years of age cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes while the person under 21 years of age is participating in a research protocol if all of the following apply:

A. The parent, guardian, or legal custodian of the person under 21 years of age has consented in writing to the person under 21 years of age participating in the research protocol.

B. An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol.

C. The person under 21 years of age is participating in the research protocol at the facility or location specified in the research protocol.

(6) A. Whoever violates division (a)(2)A., (a)(2)B., (a)(2)D., (a)(2)E., or (a)(2)F. or (a)(3) of this section is guilty of illegal distribution of cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this division, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (a)(2)A., (a)(2)B., (a)(2)D., (a)(2)E., or (a)(2)F. or (a)(3) of this section or a substantially equivalent state law or municipal ordinance, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

B. Whoever violates division (a)(2)C. of this section is guilty of permitting a person under 21 years of age to use cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this division, permitting a person under 21 years of age to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (a)(2)C. of this section or a substantially equivalent state law or municipal ordinance, permitting a person under 21 years of age to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(7) Any cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes that are given, sold, or otherwise distributed to a person under 21 years of age in violation of this section and that are used, possessed, purchased, or received by a person under 21 years of age in violation of R.C. § 2151.87 are subject to seizure and forfeiture as contraband under R.C. Chapter 2981.

(b) Transaction Scan.

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

A. “Card holder” means any person who presents a driver’s or commercial driver’s license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive cigarettes, other tobacco products, or alternative nicotine products from a seller, agent or employee.

B. “Identification card” means an identification card issued under Ohio R.C. 4507.50 to 4507.52.

C. “Seller.” A seller of cigarettes, other tobacco products, or alternative nicotine products and includes any person whose gift of or other distribution of cigarettes, other tobacco products, or alternative nicotine products is subject to the prohibitions of division (a) of this section.

D. “Transaction scan” means the process by which a seller or an agent or employee of a seller checks, by means of a transaction scan device, the validity of a driver’s or commercial driver’s license or an identification card that is presented as a condition for purchasing or receiving cigarettes, other tobacco products, or alternative nicotine products.

E. “Transaction scan device” means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver’s or commercial driver’s license or an identification card.

(2) A. A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver’s or commercial driver’s license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder cigarettes, other tobacco products, or alternative nicotine products.

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

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

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

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

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

2. The expiration date and identification number of the driver's or commercial driver's license or identification card presented by the card holder.

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

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

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

(5) Nothing in this division (b) or division (c) of this section relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable local, State or Federal laws or rules governing the sale, giving away, or other distribution of cigarettes, other tobacco products, or alternative nicotine products.

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

(c) Affirmative Defenses.

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

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

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

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

(2) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by division (c)(1) of this section, the trier of fact in the action for the alleged violation of division (a) of this section shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of division (a) of this section. For purposes of division (c)(1)C. of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

A. Whether a person to whom the seller or agent or employee of a seller sells, gives away or otherwise distributes cigarettes, other tobacco products, or alternative nicotine products is 21 years of age or older;

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

(3) In any criminal action in which the affirmative defense provided by division (c)(1) of this section is raised, the Registrar of Motor Vehicles or a deputy registrar who issued an identification card under Ohio R.C. 4507.50 to 4507.52 shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the Bureau of Motor Vehicles in the action.

(d) Shipment of Tobacco Products.

(1) As used in this division (d):

A. "Authorized recipient of tobacco products" means a person who is:

1. Licensed as a cigarette wholesale dealer under Ohio R.C. 5743.15;
2. Licensed as a retail dealer as long as the person purchases cigarettes with the appropriate tax stamp affixed;
3. An export warehouse proprietor as defined in Section 5702 of the Internal Revenue Code;
4. An operator of a customs bonded warehouse under 19 U.S.C. § 1311 or 19 U.S.C. § 1555;
5. An officer, employee, or agent of the federal government or of this state acting in the person's official capacity;
6. A department, agency, instrumentality, or political subdivision of the federal government or of this state;

7. A person having a consent for consumer shipment issued by the Tax Commissioner under Ohio R.C. 5743.71.

B. "Motor carrier." Has the same meaning as in Ohio R.C. 4923.01.

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

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

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

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

(5) A court shall impose a fine of up to one thousand dollars (\$1,000.00) for each violation of division (d)(3)A., (d)(3)B. or (d)(4) of this section.

(ORC 2927.023)

(e) *Furnishing false information to obtain tobacco products.*

(1) No person who is 18 years of age or older but younger than 21 years of age shall knowingly furnish false information concerning that person's name, age, or other identification for the purpose of obtaining tobacco products.

(2) Whoever violates division (e)(1) of this section is guilty of furnishing false information to obtain tobacco products. Except as otherwise provided in this division, furnishing false information to obtain tobacco products is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (e)(1) of this section or a substantially equivalent state law or municipal ordinance, furnishing false information to obtain tobacco products is a misdemeanor of the third degree.

### **521.115 ILLEGAL POSSESSION OF CIGARETTES OR OTHER TOBACCO PRODUCTS BY MINORS.**

(a) No person under the age of eighteen years shall use, possess, obtain, order, pay for, share the cost of, purchase, or attempt to purchase, any cigarettes, cigars or tobacco in any form or quantity.

(b) Whoever violates subsection (a) hereof is guilty of illegal possession of cigarettes or other tobacco products, a minor misdemeanor.

## 521.12 OPEN BURNING.

(a) (1) Definitions. As used in this section:

A. "Agricultural waste." Any waste material generated by crop, horticultural, or livestock production practices, and includes such items as woody debris and plant matter from stream flooding, bags, cartons, structural materials, and landscape wastes that are generated in agricultural activities, but does not include land clearing waste; buildings (including dismantled/fallen barns); garbage; dead animals; animal waste; motor vehicles and parts thereof; nor economic poisons and containers thereof, unless the manufacturer has identified open burning as a safe disposal procedure.

B. "Air curtain burner." An engineered apparatus consisting of a motorized high-velocity fan and an air distribution system designed to aid in the efficient combustion of materials placed in a manufactured steel structure and for which a permit-to-install has been obtained as required in O.A.C. Chapter 3745-31 and a permit-to-operate has been obtained as required in O.A.C. Chapter 3745-77.

C. "Air curtain destructor." An engineered apparatus consisting of a motorized high-velocity fan and an air distribution system designed to aid in the efficient combustion of materials placed in an adjacent pit. An air curtain burner may be used in place of an air curtain destructor, but an air curtain destructor may not be used in place of an air curtain burner.

D. "Economic poisons." Include but are not restricted to pesticides such as insecticides, fungicides, rodenticides, miticides, nematocides and fumigants; herbicides; seed disinfectants; and defoliant.

E. "Emergency burning." The burning of clean wood waste or deceased animals caused by a natural disaster or an uncontrolled event such as the following:

1. A tornado.
2. High winds.
3. An earthquake.
4. An explosion.
5. A flood.
6. A hail storm, a rain storm, or an ice storm.

F. "Garbage." Any waste material resulting from the handling, processing, preparation, cooking and consumption of food or food products.

G. "Inhabited building." Any inhabited private dwelling house and any public structure which may be used as a place of resort, assembly, education, entertainment, lodging, trade, manufacture, repair, storage, traffic, or occupancy by the public. Examples would include, but are not limited to, highway rest stops, restaurants, motels, hotels and gas stations.

H. "Land clearing waste." Plant waste material which is removed from land, including plant waste material removed from stream banks during projects involving more than one property owner, for the purpose of rendering the land useful for residential, commercial, or industrial development. Land clearing waste also includes the plant waste material generated during the clearing of land for new agricultural development.

I. "Landscape waste." Any plant waste material, except garbage, including trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery, yard trimmings, and crop residues.

J. "Ohio EPA." The Ohio Environmental Protection Agency Director or agencies delegated authority by the Director of the Ohio Environmental Protection Agency pursuant to R.C. § 3704.03 or the Chief of any Ohio Environmental Protection Agency District Office.

K. "Open burning." The burning of any materials wherein air contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney. Open burning includes the burning of any refuse or salvageable material in any device not subject to or designed specifically to comply with the requirements of O.A.C. 3745-17-09 or O.A.C. 3745-17-10.

L. "Residential waste." Any waste material, including landscape waste, generated on the property of a one-, two- or three-family residence as a result of residential activities, but not including garbage, rubber, grease, asphalt, liquid petroleum products, or plastics.

M. "Restricted area." The area within the boundary of the municipality, plus a zone extending 1,000 feet beyond the boundaries of a municipality having a population of 1,000 to 10,000 persons and a zone extending one mile beyond any municipality having a population of 10,000 persons or more according to the latest federal census.

N. "Unrestricted area." All areas outside the boundaries of a restricted area as defined in this section.

(2) Referenced materials. This section includes references to certain matter or materials. The text of the referenced materials is not included in the legislation contained in this section. Information on the availability of the referenced materials as well as the date of, and/or the particular edition or version of the material is included in this legislation. For materials subject to change, only the specific versions specified in this legislation are referenced. Material is referenced as it exists on the effective date of this legislation. Except for subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not applicable unless and until this section has been amended to specify the new dates.

A. Availability. The referenced materials are available as follows:

1. Clean Air Act. Information and copies may be obtained by writing to: Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954. The full text of the act as amended in 1990 is also available in electronic format at [www.epa.gov/oar/caa/](http://www.epa.gov/oar/caa/). A copy of the act is also available for inspection and use at most public libraries and the State Library of Ohio.



2. Code of Federal Regulations (C.F.R.). Information and copies may be obtained by writing to: Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954. The full text of the C.F.R. is also available in electronic format at <http://www.ecfr.gov>. The C.F.R. compilations are also available for inspection and use at most public libraries and the State Library of Ohio.

3. National Fire Protection Association. Information on the National Fire Protection Association codes may be obtained by contacting the Association at 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, 617-770-3000. Codes may be ordered at [www.nfpa.org/catalog/home/index.asp](http://www.nfpa.org/catalog/home/index.asp). Copies of the code exist or are available at most public libraries and the State Library of Ohio.

#### B. Referenced materials.

1. 40 C.F.R. § 60.2974: “Am I required to apply for and obtain a title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?” as published in the July 1, 2012 Code of Federal Regulations.

2. 40 C.F.R. § 60.3069: “Am I required to apply for and obtain a title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?” as published in the July 1, 2012 Code of Federal Regulations.

3. NFPA publication 1403: “Standard on Live Fire Training Evolutions, Chapter 4, Acquired Structures” published April 30, 2007.

4. Section 129 of the Clean Air Act, contained in 42 U.S.C. § 7429: “Solid waste combustion” published January 2, 2006 in Supplement V of the 2000 Edition of the United States Code.

#### (b) Relation to Other Laws.

(1) Notwithstanding any provision in OAC Chapter 3745-19, no open burning shall be conducted in an area where an air alert, warning or emergency under OAC Chapter 3745-25 is in effect.

(2) No provisions of OAC Chapter 3745-19 permitting open burning, and no permission to open burn granted by the Ohio EPA, shall exempt any person from compliance with any section of the Ohio Revised Code, or any regulation of any state department, or any local ordinance or regulation dealing with open burning.

#### (c) Open Burning in Restricted Areas.

(1) No person or property owner shall cause or allow open burning in a restricted area except as provided in divisions (c)(2) to (c)(4) of this section or in Ohio R.C. 3704.11.

(2) Open burning shall be allowed for the following purposes without notification to or permission from the Ohio EPA:

A. Heating tar, welding, acetylene torches, highway safety flares, heating for warmth of outdoor workers and strikers, smudge pots and similar occupational needs.

B. Bonfires, campfires and outdoor fireplace equipment, whether for cooking food for human consumption, pleasure, religious, ceremonial, warmth, recreational, or similar purposes, if the following conditions are met:

1. They are fueled with clean seasoned firewood, natural gas or equivalent, or any clean burning fuel with emissions that are equivalent to or lower than those created from the burning of seasoned firewood;

2. They are not used for waste disposal purposes; and

3. They shall have a total fuel area of three feet or less in diameter and two feet or less in height.

C. Disposal of hazardous explosive materials, military munitions or explosive devices that require immediate action to prevent endangerment of human health, public safety, property or the environment and that are excluded from the requirement to obtain a hazardous waste permit pursuant to O.A.C. 3745-50-45(D)(1)(d).

D. Recognized training in the use of fire extinguishers for commercial or industrial fire prevention.

E. Fires set at the direction of Federal, State, and local law enforcement officials for the purpose of destruction of cannabis sativa (marijuana) plant vegetation, processed marijuana material and/or other drugs seized by Federal, State, or local law enforcement officials.

F. Fires allowed by divisions (c)(2)A., (c)(2)B., and (c)(2)D. of this section shall not be used for waste disposal purposes and shall be of minimum size sufficient for their intended purpose; the fuel shall be chosen to minimize the generation and emission of air contaminants.

(3) Open burning shall be allowed for the following purposes with prior notification to the Ohio EPA in accordance with division (d)(2) of this section:

A. Prevention or control of disease or pests, with written or verbal verification to the Ohio EPA from the Ohio Department of Health or local health department, the Centers for Disease Control and Prevention, cooperative extension service, Ohio Department of Agriculture or U.S. Department of Agriculture, that open burning is the only appropriate disposal method.

B. Bonfires or campfires used for ceremonial purposes that do not meet the requirements of division (c)(2)B. of this section, provided the following conditions are met:

1. They have a total fuel area no greater than five feet in diameter by five feet in height and burn no longer than three hours;

2. They are not used for waste disposal purposes; and

3. They are fueled with clean seasoned firewood, natural gas or equivalent, or any clean burning fuel with emissions that are equivalent to or lower than those created from the burning of seasoned firewood.

C. Disposal of agricultural waste generated on the premises if the following conditions are observed:

1. The fire is set only when atmospheric conditions will readily dissipate contaminants;
2. The fire does not create a visibility hazard on the roadways, railroad tracks, or air fields;
3. The fire is located at a point on the premises no less than 1,000 feet from any inhabited building not located on said premises;
4. The wastes are stacked and dried to provide the best practicable condition for efficient burning; and
5. The methods or actions which will be taken to reduce the emissions of air contaminants.

(4) Open burning shall be allowed for the following purposes upon receipt of written permission from the Ohio EPA, in accordance with division (d)(1) of this section, provided that any conditions specified in the permission are followed:

A. Disposal of ignitable or explosive materials where the Ohio EPA determines that there is no practical alternate method of disposal, excluding those materials identified in division (c)(2)C. of this section;

B. Instruction in methods of fire fighting or for research in the control of fires as recognized by the State Fire Marshal Division of the Ohio Department of Commerce and the guidelines set forth in the National Fire Protection Association's (NFPA) publication 1403, Standard on Live Fire Training Evolutions, Chapter 4, Acquired Structures, provided that the application required in division (d)(1)A. of this section is submitted by the commercial or public entity responsible for the instruction;

C. In emergency or other extraordinary circumstances for any purpose determined to be necessary by the Director and performed as identified in the appendix to O.A.C. 3745-19-03. If deemed necessary, the open burning may be authorized with prior oral approval by the Director followed by the issuance of a written permission to open burn within seven working days of the oral approval;

D. Recognized horticultural, silvicultural (forestry), range, or wildlife management practices; and

E. Fires and/or pyrotechnic effects, for purposes other than waste disposal, set as part of commercial film-making or video production activities for motion pictures and television.

(d) Permission to Individuals and Notification to the Ohio EPA.

(1) Permission.

A. An application for permission to open burn shall be submitted in writing to Ohio EPA. The applicant shall allow Ohio EPA at least ten working days to review the permit. Applicant

may proceed with burn upon receipt of written permission from Ohio EPA. Saturday, Sunday, and legal holidays shall not be considered working days. The application shall be in such form and contain such information as required by the Ohio EPA.

B. Except as provided in divisions (d)(1)F. and (d)(1)G. of this section, such applications shall contain, as a minimum, information regarding:

1. The purpose of the proposed burning;
2. The quantity or acreage and the nature of the materials to be burned;
3. The date or dates when such burning will take place;
4. The location of the burning site, including a map showing distances to residences, populated areas, roadways, air fields, and other pertinent landmarks; and
5. The methods or actions which will be taken to reduce the emissions of air contaminants.

C. Permission to open burn shall not be granted unless the applicant demonstrates to the satisfaction of the Ohio EPA that open burning is necessary to the public interest; will be conducted in a time, place, and manner as to minimize the emission of air contaminants, when atmospheric conditions are appropriate; and will have no serious detrimental effect upon adjacent properties or the occupants thereof. The Ohio EPA may impose such conditions as may be necessary to accomplish the purpose of O.A.C. Chapter 3745-19.

D. Except as provided in division (d)(1)F. of this section, permission to open burn must be obtained for each specific project. In emergencies where public health or environmental quality will be seriously threatened by delay while written permission is sought, the fire may be set with oral permission of the Ohio EPA.

E. Violations of any of the conditions set forth by the Ohio EPA in granting permission to open burn shall be grounds for revocation of such permission and refusal to grant future permission, as well as for the imposition of other sanctions provided by law.

F. The Ohio Department of Commerce, Division of State Fire Marshal, may request permission to open burn on an annual basis for the purpose of training firefighters on pre-flashover conditions using the Ohio Fire Academy's mobile training laboratory at either the academy or at other training sites in Ohio. The annual application required pursuant to division (d)(1)A. of this section shall contain information as required in division (d)(1)B. of this section, except the information required in divisions (d)(1)B.3. and (d)(1)B.4. of this section need not be provided unless it is available at the time of submittal of the application. The Academy shall contact the appropriate Ohio EPA District Office or local air agency at least five working days before each training session of the date or dates when the training session will take place and its location. Saturday, Sunday, and legal holidays shall not be considered a working day.

G. For open burning defined under division (c)(4)B. of this section and O.A.C. 3745-19-04(C)(2), permission to open burn shall not be granted unless the applicant provides proof of

written notice of intent to demolish received by the appropriate Ohio EPA field office in accordance with O.A.C. 3745-20-03.

(2) Notification.

A. Notification shall be submitted in writing at least ten working days before the fire is to be set. Saturday, Sunday, and legal holidays shall not be considered a working day. It shall be in such form and contain such information as shall be required by the Ohio EPA.

B. Such notification shall inform the Ohio EPA regarding:

1. The purpose of the proposed burning;
2. The nature and quantities of materials to be burned;
3. The date or dates when such burning will take place; and
4. The location of the burning site.

C. The Ohio EPA, after receiving notification, may determine that the open burning is not allowed under O.A.C. Chapter 3745-19 and the Ohio EPA shall notify the applicant to this effect.

(e) ~~Penalty. Whoever violates any of the provisions of this section is guilty of a minor misdemeanor.~~ ~~Whoever violates or fails to comply with any of the provisions of this section is guilty of a minor misdemeanor and shall be fined not less than one hundred and fifty dollars (\$150.00) for a first offense; for a second offense, such person is guilty of a misdemeanor of the third degree and shall be fined not less than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both; for a third offense, such person is guilty of a misdemeanor of the second degree and shall be fined not less than seven hundred fifty dollars (\$750.00) or imprisoned not more than ninety (90) days, or both; for a fourth offense, such person is guilty of a misdemeanor of the first degree and shall be fined not less than one thousand dollars (\$1,000.00) or imprisoned not more than one hundred eighty (180) days, or both. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. In addition, the offender shall be required to pay the cost of proper disposal of the materials burned. The cost of proper disposal of the materials burned shall be the amount it would have cost to dispose of the materials in a manner that is consistent with the air, water and solid waste laws, ordinances and regulations of the Municipality and the State.~~

**521.13 SCAVENGING PROHIBITED.**

(a) No person shall remove, burn, overturn or tamper with any rubbish, garbage or the container therefor, when such rubbish, garbage or container is set out on a public street or highway, sidewalk or alley, or on private premises, and when such rubbish, garbage or container is placed there for the purpose of collection. This provision shall not apply to any employee of the Department of Public Service or any of its fully authorized agents or to a private person or organization authorized to remove such rubbish, garbage or container.

(b) As used in this section:

(1) "Street" and "highway" mean the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular traffic.

(2) "Sidewalk" has the same meaning given in Section 301.37 of these Codified Ordinances.

(3) "Alley" has the same meaning given in Section 301.03 of these Codified Ordinances.

(4) "Private premises" means all structures, and the lots or land upon which they are located, owned by an individual, partnership, association, company, church or corporation, whether occupied or not.

(5) "Rubbish" means combustible and noncombustible materials, except garbage. "Rubbish" shall include, but not be limited to, the following: wood, coal, coke and other combustible materials and their residue, paper, rags, clothing, cartons, boxes, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, glass, crockery, mineral matter, items containing any type of metal, stoves, refrigerators, televisions, radios, household appliances and any other similar items.

(6) "Garbage" means animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

(c) ~~Whoever violates this section is guilty of a minor misdemeanor.~~ ~~Whoever violates or fails to comply with any of the provisions of this section is guilty of a minor misdemeanor and shall be fined not less than one hundred and fifty dollars (\$150.00) for a first offense; for a second offense, such person is guilty of a misdemeanor of the third degree and shall be fined not less than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both; for a third offense, such person is guilty of a misdemeanor of the second degree and shall be fined not less than seven hundred fifty dollars (\$750.00) or imprisoned not more than ninety (90) days, or both; for a fourth offense, such person is guilty of a misdemeanor of the first degree and shall be fined not less than one thousand dollars (\$1,000.00) or imprisoned not more than one hundred eighty (180) days, or both.~~

#### **521.14 INCINERATORS PROHIBITED.**

(a) No incinerator used to burn household garbage, yard waste or any other refuse, in one, two or three-family dwellings, shall be operated within the City.

(b) The Fire Chief, the Building Inspector or the Police Chief, or their assistants, may issue a citation and summons to any person in violation of this section. In addition, any incinerator operated in violation of this section is hereby declared to be a nuisance and may be abated, in addition to the prosecution and penalty provided in this chapter.

(c) Incinerators which are permanently banned from use shall have all openings, ash pits, chutes, loading doors and other openings permanently fixed in a closed or inoperable condition.

(d) ~~Whoever violates this section is guilty of a minor misdemeanor for a first offense and a misdemeanor of the first degree for any subsequent offense.~~ ~~Whoever violates or fails to comply with any of the provisions of this section is guilty of a minor misdemeanor and shall be fined not less than one hundred and fifty dollars (\$150.00) for a first offense; for a second offense, such person is guilty of a misdemeanor of the third degree and shall be fined not less than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both; for a third offense, such person is guilty of a misdemeanor of the second degree and shall be fined not less than seven hundred fifty dollars (\$750.00) or imprisoned not more than ninety (90) days, or both; for a fourth offense, such person is guilty of a~~

misdemeanor of the first degree and shall be fined not less than one thousand dollars (\$1,000.00) or imprisoned not more than one hundred eighty (180) days, or both. Each day during or on which any such violation occurs shall constitute a separate offense.

#### **521.15 FIREWOOD STACKING.**

(a) Every owner, lessee, sublessee, tenant, agent, servant, contractor, officer or other individual having charge of, or responsibility for, maintenance of any lot or land located within the City, who maintains, or allows the maintenance of, firewood on said lot or land outside the confines of an enclosed building, shall store such firewood in compliance with this section.

(b) Any firewood stacked shall be elevated at least twelve inches above the grade or on a concrete surface.

(c) Firewood shall not be permitted in a front or side yard and must be at least two feet from any rear and side property lines.

(d) Firewood shall not be stacked higher than five feet from the ground.

(e) ~~Whoever violates or fails to comply with any of the provisions of this section is guilty of a minor misdemeanor for each offense.~~ Whoever violates or fails to comply with any of the provisions of this section is guilty of a minor misdemeanor and shall be fined not less than one hundred and fifty dollars (\$150.00) for a first offense; for a second offense, such person is guilty of a misdemeanor of the third degree and shall be fined not less than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both; for a third offense, such person is guilty of a misdemeanor of the second degree and shall be fined not less than seven hundred fifty dollars (\$750.00) or imprisoned not more than ninety (90) days, or both; for a fourth offense, such person is guilty of a misdemeanor of the first degree and shall be fined not less than one thousand dollars (\$1,000.00) or imprisoned not more than one hundred eighty (180) days, or both. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

#### **521.16 ABATEMENT OF SWIMMING POOL HAZARD.**

(a) No person, including any individual, corporation, association, partnership, trustee, trustee in bankruptcy, lessee, agent or assignee, being the owner, lessee or having charge or management of any property located within the City shall cause or permit to exist upon such property an unattended swimming pool whether by virtue of a foreclosure or any other reason. Such swimming pool shall be defined as unattended upon the event that the property which contains the swimming pool is vacant.

(b) Upon the determination that a property which contains a swimming pool is vacant, the Chief Building Inspector shall cause the person, including any individual, corporation, association, partnership, trustee, trustee in bankruptcy, lessee, agent or assignee being the owner, lessee or having charge or management of any property to be notified via public service at the last known telephone number and by regular U.S. mail that the City shall immediately abate the swimming pool hazard.

(c) Upon the notification required in subsection (b) hereof, the Chief Building Inspector shall be authorized to enter onto the property and take all necessary steps to neutralize and abate any environmentally hazardous condition which exists in the unattended swimming pool. Upon the

neutralization and abatement of the environmentally hazardous condition, the Chief Building Inspector shall be authorized to locate the sanitary sewer test tee and take all necessary steps to drain the swimming pool into the sanitary sewer system for the appropriate treatment.

(d) Upon the completion of the abatement of the swimming pool hazard as required above, the Chief Building Inspector shall notify the person, including any individual, corporation, association, partnership, trustee, trustee in bankruptcy, lessee, agent or assignee being the owner, lessee or having charge or management of any property by regular U.S. mail of any and all actions taken by the Chief Building Inspector under the provisions of this section.

(Ord. 2008-43. Passed 8-19-08.)

**521.99 PENALTY.**

*(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)*

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were conducted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such actions were conducted in meetings open to the public in compliance with all legal requirements including Chapter 123 of the Codified Ordinances of the City of Willowick.

Section 3. This Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City of Willowick and the operation of its police department; wherefore, this Ordinance shall be in full force and take effect immediately upon its passage by Council and approval by the Mayor.

Adopted by Council: \_\_\_\_\_, 2023

\_\_\_\_\_  
Monica Koudela, Council President

Submitted to the Mayor: \_\_\_\_\_, 2023

\_\_\_\_\_  
Michael J. Vanni, Mayor

Approved by the Mayor: \_\_\_\_\_, 2023

ATTEST: \_\_\_\_\_  
Christine Morgan, Clerk of Council