

Ordinance No. 1023-2023

By Council Members Polensek and Griffin
(by departmental request)

AN EMERGENCY ORDINANCE
To amend Sections 433.09, 605.04, 607.03, 607.04, 607.17, 617.02 and 625.05 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by various ordinances, and to repeal Sections 607.13 and 607.18 of the Codified Ordinances.

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the following Sections of the Codified Ordinances of Cleveland, Ohio, 1976:

- Section 433.09, as amended by Ordinance No. 105-09, passed April 13, 2009,
 - Section 605.04, as amended by Ordinance No. 54-74, passed March 25 1974,
 - Section 607.03, as amended by Ordinance No. 902-2019, passed January 27, 2020,
 - Section 607.04, as amended by Ordinance No. 90-96, passed March 18, 1996,
 - Section 607.17, as amended by Ordinance No. 2797-88, passed May 8, 1989,
 - Section 617.02, as amended by Ordinance No. 90-96, passed March 18, 1996,
 - and
 - Section 625.05, as amended by Ordinance No. 1094-13, passed September 23, 2013
- are amended to read as follows:

Section 433.09 Text Messaging While Driving Operating a Motor Vehicle While Using an Electronic Wireless Communication Device

- (a) — As used in this section:
 - (1) — “Text message” means a message sent or received via a process using wireless handsets. For the purposes of this section, an e-mail shall be considered a “text message.”
 - (2) — “Wireless handset” means a portable electronic device capable of transmitting or receiving data in the form of a text message.
- (b) — No person shall use a wireless handset to compose, send or read text messages while driving a motor vehicle in the city of Cleveland.
- (c) — Notwithstanding the provisions of division (b), this section shall not be construed to prohibit the use of a wireless handset inside a motor vehicle to compose, send or read a text message by:
 - (1) — A driver using a wireless handset to contact any law enforcement, police officers, emergency services personnel, emergency medical technicians, or fire safety officials to report an emergency situation; or

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~~(2) — A driver using a wireless handset inside a motor vehicle while such vehicle is parked, standing or stopped and is removed from the flow of traffic, in accordance with applicable laws or rules, or is stopped due to the inoperability of such vehicle.~~

(a) No person shall operate a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic while using, holding, or physically supporting with any part of the person's body an electronic wireless communications device.

(b) Division (a) does not apply to any of the following:

(1) A person using an electronic wireless communications device to make contact, for emergency purposes, with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;

(2) A person driving a public safety vehicle while using an electronic wireless communications device in the course of the person's duties;

(3) A person using an electronic wireless communications device when the person's motor vehicle is in a stationary position and is outside a lane of travel, at a traffic control signal that is currently directing traffic to stop, or parked on a road or highway due to an emergency or road closure;

(4) A person using and holding an electronic wireless communications device directly near the person's ear for the purpose of making, receiving, or conducting a telephone call, provided that the person does not manually enter letters, numbers, or symbols into the device;

(5) A person receiving wireless messages on an electronic wireless communications device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle, provided that the person does not hold or support the device with any part of the person's body;

(6) A person using the speaker phone function of the electronic wireless communications device, provided that the person does not hold or support the device with any part of the person's body;

(7) A person using an electronic wireless communications device for navigation purposes, provided that the person does not do either of the following during the use:

A. Manually enter letters, numbers, or symbols into the device;
and/or

B. Hold or support the device with any part of the person's body.

(8) A person using a feature or function of the electronic wireless communications device with a single touch or single swipe, provided that the person does not do either of the following during the use:

A. Manually enter letters, numbers, or symbols into the device;
and/or

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B. Hold or support the device with any part of the person's body.

(9) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;

(10) A person operating a utility service vehicle or a vehicle for or on behalf of a utility, if the person is acting in response to an emergency, power outage, or circumstance that affects the health or safety of individuals;

(11) A person using an electronic wireless communications device in conjunction with a voice-operated or hands-free feature or function of the vehicle or of the device without the use of either hand except to activate, deactivate, or initiate the feature or function with a single touch or swipe, provided the person does not hold or support the device with any part of the person's body;

(12) A person using technology that physically or electronically integrates the device into the motor vehicle, provided that the person does not do either of the following during the use:

A. Manually enter letters, numbers, or symbols into the device; and/or

B. Hold or support the device with any part of the person's body.

or

(13) A person storing an electronic wireless communications device in a holster, harness, or article of clothing on the person's body.

~~(d) (c) Penalty. Whoever violates this section shall be fined one hundred dollars (\$100.00) for the first offense, two hundred and fifty dollars (\$250.00) for a second offense, and no more than five hundred dollars (\$500.00) for each subsequent offense.~~

(1) Whoever violates division (a) of this section is guilty of operating a motor vehicle while using an electronic wireless communication device, an unclassified misdemeanor and the court shall impose upon the offender a fine of not more than one hundred and fifty dollars (\$150.00) for the first offense. If, within two (2) years of the violation, the offender has been convicted of or pleaded guilty to one prior violation of this section or a substantially equivalent state statute or municipal ordinance, the court shall impose upon the offender a fine of not more than two hundred and fifty dollars (\$250.00). If, within two (2) years of the violation, the offender has been convicted of or pleaded guilty to two (2) or more prior violations of this section or a substantially equivalent state statute or municipal ordinance, the court shall impose upon the offender a fine of not more than five hundred dollars (\$500.00) and the court also may impose a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for ninety (90) days. Notwithstanding the above, if the offender was operating the motor vehicle at the time of the violation in a construction zone where a sign was posted in accordance with section 4511.98 of the Revised Code, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two (2) times the amount imposed for the violation under this section, as applicable.

(2) In lieu of payment of the fine of one hundred fifty dollars (\$150.00) under division (c)(1) of this section and the assessment of points under division (c)(4) of this section, the offender instead may elect to attend the distracted driving safety course, as described in section 4511.991 of the Revised Code. If the

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offender attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall not be required to pay the fine and shall not have the points assessed against that offender's driver's license if the offender submits the written evidence to the court.

(3) The court may impose any other penalty authorized under sections 2929.21 to 2929.28 of the Revised Code. However, the court shall not impose a fine or a suspension not otherwise specified in division (c)(1) of this section. The court also shall not impose a jail term or community residential sanction.

(4) Except as provided in division (c)(2) of this section, points shall be assessed for a violation of division (a) of this section in accordance with section 4510.036 of the Revised Code.

(5) The offense established under this section is a strict liability offense and section 2901.20 of the Revised Code does not apply. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.

(d) (1) A law enforcement officer does not have probable cause and shall not stop the operator of a motor vehicle for purposes of enforcing this section unless the officer visually observes the operator using, holding, or physically supporting with any part of the person's body the electronic wireless communications device.

(2) A law enforcement officer who stops the operator of a motor vehicle, trackless trolley, or streetcar for a violation of division (a) of this section shall inform the operator that the operator may decline a search of the operator's electronic wireless communications device. The officer shall not do any of the following:

A. Access the device without a warrant, unless the operator voluntarily and unequivocally gives consent for the officer to access the device;

B. Confiscate the device while awaiting the issuance of a warrant to access the device; and/or

C. Obtain consent from the operator to access the device through coercion or any other improper means. Any consent by the operator to access the device shall be voluntary and unequivocal before the officer may access the device without a warrant.

(e) As used in this section:

(1) “Electronic wireless communications device” includes any of the following:

A. A wireless telephone;

B. A text-messaging device;

C. A personal digital assistant;

D. A computer, including a laptop computer and a computer tablet;

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E. Any device capable of displaying a video, movie, broadcast television image, or visual image; and

F. Any other substantially similar wireless device that is designed or used to communicate text, initiate or receive communication, or exchange information or data.

An “electronic wireless communications device” does not include a two-way radio transmitter or receiver used by a person who is licensed by the federal communications commission to participate in the amateur radio service.

(2) “Voice-operated or hands-free feature or function” means a feature or function that allows a person to use an electronic wireless communications device without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

(3) “Utility” means an entity specified in division (A), (C), (D), (E) or (G) of section 4905.03 of the Revised Code.

(4) “Utility service vehicle” means a vehicle owned or operated by a utility.

Section 605.04 Disturbing a Lawful Meeting

(a) No person, with purpose to prevent or disrupt a lawful meeting, procession or gathering, shall do either of the following:

(1) Do any act which obstructs or interferes with the due conduct of such meeting, procession or gathering;

(2) Make any utterance, gesture or display which outrages the sensibilities of the group.

(b) Whoever violates this section is guilty of disturbing a lawful meeting, a misdemeanor of the fourth degree. Disturbing a lawful meeting is a misdemeanor of the first degree if either of the following applies:

(1) The violation is committed with the intent to disturb or disquiet any assemblage of people met for religious worship at a tax-exempt place of worship, regardless of whether the conduct is within the place at which the assemblage is held or is on the property on which that place is located and disturbs the order and solemnity of the assemblage; or

(2) The violation is committed with the intent to prevent, disrupt, or interfere with a virtual meeting or gathering of people for religious worship, through use of a computer, computer system, telecommunications device, or other electronic device or system, or in any other manner.

(c) As used in this section:

(1) "Computer," "computer system," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.

(2) "Virtual meeting or gathering" means a meeting or gathering by interactive video conference or teleconference, or by a combination thereof.

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(RC 2917.12)

Section 607.03 Drug Abuse: Controlled Substance Possession or Use

(a) No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog.

(b) This section does not apply to the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with ~~RC~~ Chapters 3719, 4715, 4723, 4729, 4731, and 4741 of the Revised Code;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the “Federal Food, Drug, and Cosmetic Act,” 52 Stat. 1040 (1938), 21 U.S.C. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act; or

(4) Any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs if the prescription was issued for legitimate medical purpose and not altered, forged or obtained through deception or commission of a theft offense.

(c) (1) As used in this section:

A. "Community addiction services provider" has the same meaning as in section 5119.01 of the Revised Code.

B. "Community control sanction" and "drug treatment program" have the same meanings as in section 2929.01 of the Revised Code.

C. "Deception" and "theft" offense have the same meaning as in section 2913.01 of the Revised Code.

D. "Health care facility" has the same meaning as in section 2919.16 of the Revised Code.

E. "Minor drug possession offense" means a violation of this section that is a misdemeanor or a felony of the fifth degree.

F. "Post-release control sanction" has the same meaning as in section 2967.28 of the Revised Code.

G. "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

H. "Public agency" has the same meaning as in section 2930.01 of the Revised Code.

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I. "Qualified individual" means a person who is acting in good faith who seeks or obtains medical assistance for another person who is experiencing a drug overdose, a person who experiences a drug overdose and who seeks medical assistance for that overdose, or a person who is the subject of another person seeking or obtaining medical assistance for that overdose as described in division (c)(2) of this section.

J. "Seek or obtain medical assistance" includes, but is not limited to making a 9-1-1 call, contacting in person or by telephone call an on-duty peace officer, or transporting or presenting a person to a health care facility.

(2) Subject to division (c)(5) of this section, a qualified individual shall not be arrested, charged, prosecuted, convicted, or penalized pursuant to this chapter for a minor drug possession offense or a violation of section 607.05 or 607.17 of the Cleveland Codified Ordinances if all of the following apply:

A. The evidence of the obtaining, possession, or use of the controlled substance or controlled substance analog, drug abuse instruments, or drug paraphernalia that would be the basis of the offense was obtained as a result of the qualified individual seeking the medical assistance or experiencing an overdose and needing medical assistance;

B. Subject to division (c)(6) of this section, within thirty days after seeking or obtaining the medical assistance, the qualified individual seeks and obtains a screening and receives a referral for treatment from a community addiction services provider or a properly credentialed addiction treatment professional; and

C. Subject to division (c)(6) of this section, the qualified individual who obtains a screening and receives a referral for treatment under division (c)(2)(B) of this section, upon the request of any prosecuting attorney, submits documentation to the prosecuting attorney that verifies that the qualified individual satisfied the requirements of that division. The documentation shall be limited to the date and time of the screening obtained and referral received.

(3) If a person who is serving a community control sanction or is under a sanction on post-release control acts pursuant to division (c)(1)(B) of this section, then division (B) of section 2929.141, division (B)(2) of section 2929.15, division (D)(3) of section 2929.25, or division (F)(3) of section 2967.28 of the Revised Code applies to the person with respect to any violation of the sanction or post-release control sanction based on a minor drug possession offense, as defined in section 2925.11 of the Revised Code, or a violation of section 607.04 or 607.17 of the Cleveland Codified Ordinances.

(4) Nothing in division (c)(2) of this section shall be construed to do any of the following:

A. Limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regards to a defendant who does not qualify for the protections of division (c)(2) of this section or with regards to any crime other than a minor drug possession offense or a violation of section 607.04 of the Cleveland Codified Ordinances committed by a person who qualifies for protection pursuant to division (c)(2) of this section;

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B. Limit any seizure of evidence or contraband otherwise permitted by law;

C. Limit or abridge the authority of a peace officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in that division; or

D. Limit, modify, or remove any immunity from liability available pursuant to law in effect prior to September 13, 2016, to any public agency or to an employee of any public agency.

(5) Division (c)(2) of this section does not apply to any person who twice (2) previously has been granted an immunity under division (c)(2) of this section. No person shall be granted an immunity under division (c)(2) of this section more than two (2) times.

(6) Nothing in this section shall compel any qualified individual to disclose protected health information in a way that conflicts with the requirements of the "Health Insurance Portability and Accountability Act of 1996," 104 Pub. L. No. 191, 110 Stat. 2021, 42 U.S.C. 1320d et seq., as amended, and regulations promulgated by the United States department of health and human services to implement the act or the requirements of 42 C.F.R. Part 2.

~~(e)~~ (d) Whoever violates this section is guilty of drug abuse, and shall be sentenced as follows:

(1) If the drug involved is a compound, mixture, preparation or substance included in Schedule III, IV or V, and the amount of drug involved is less than the bulk amount, drug abuse is a misdemeanor of the third degree, and if the offender has previously been convicted of a drug abuse offense, drug abuse is a misdemeanor of the second degree;

(2) If the drug involved is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, and the amount is less than two hundred (200) grams, drug abuse is a misdemeanor of the fourth degree, unless the amount of marihuana involved is less than one hundred (100) grams, in which case drug abuse is a minor misdemeanor. Persons convicted of violating this section shall not be fined, all court costs shall be suspended, and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed;

(3) If the drug involved is an anabolic steroid included in Schedule III, and the amount involved is less than the bulk amount, drug abuse is a misdemeanor of the third degree and, in lieu of sentencing an offender to a definite or indefinite term of imprisonment in a detention facility, the court may place the offender on conditional probation pursuant to division (F) of ~~RC~~ section 2951.02 of the Revised Code, unless the offender previously has been convicted of a drug abuse offense, in which case drug abuse is a misdemeanor of the second degree.

~~(d)~~ (e) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license or other right or privilege, or made in connection with the person's appearance as a witness.

~~(e)~~ (f) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including

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any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with a person's appearance as a witness.

(f) (g) Should the State of Ohio enact lesser penalties than that set forth above, or entirely repeal penalties for the possession, use, or giving away of marihuana, then this ordinance, or the relevant portions thereof, shall be null and void.

Statutory reference: Similar state law, see RC 2925.11

Section 607.04 Possessing Drug Abuse Instruments

(a) No person shall knowingly make, obtain, possess, or use any instrument, article, or thing whose customary and primary purpose is for the administration or use of a dangerous drug, other than marihuana, when the instrument involved is a hypodermic or syringe, whether or not of crude or extemporized manufacture or assembly, and the instrument, article, or thing involved has been used by the offender to unlawfully administer or use a dangerous drug, other than marihuana, or to prepare a dangerous drug, other than marihuana, for unlawful administration or use.

(b) This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with ~~RC~~ Chapters 3719, 4715, 4729, 4731 and 4741 of the Revised Code or ~~RC~~ section 4723.56 of the Revised Code.

(c) Division (c)(2) of Section 607.03 of the Cleveland Codified Ordinances applies with respect to a violation of this section when a person seeks or obtains medical assistance for another person who is experiencing a drug overdose, a person experiences a drug overdose and seeks medical assistance for that overdose, or a person is the subject of another person seeking or obtaining medical assistance for that overdose.

(e) (d) Whoever violates this section is guilty of possessing drug abuse instruments, a misdemeanor of the second degree. If the offender has previously been convicted of a drug abuse offense, a violation of this section is a misdemeanor of the first degree.

(e) In addition to any other sanction imposed upon an offender for a violation of this section, the court may suspend for not more than five years the offender's driver's or commercial driver's license or permit. However, if the offender pleaded guilty to or was convicted of a violation of section 4511.19 of the Revised Code or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit for not more than five years. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code.

(RC 2925.12)

Section 607.17 Possession, Manufacture and Sale of Drug Paraphernalia

(a) ~~It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this chapter.~~

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~~(b) — It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this chapter.~~

~~(c) — It is unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.~~

~~(d) — This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct was in accordance with RC Chapters 3719, 4715, 4729, 4731 and 4741 of the Revised Code. This section shall not be construed to prohibit any possession, manufacture or use of hypodermics made lawful by Section 607.10 of the General Offenses Code of the Codified Ordinances.~~

~~(e) — Any drug paraphernalia used in violation of this section shall be seized and forfeited to the Municipality.~~

~~(f) — If any provision of this section or the application thereof to any person or circumstance 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.~~

(a) As used in this section, “drug paraphernalia” means any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of this chapter. “Drug paraphernalia” includes, but is not limited to, any of the following equipment, products, or materials that are used by the offender, intended by the offender for use, or designed by the offender for use, in any of the following manners:

(1) A kit for propagating, cultivating, growing, or harvesting any species of a plant that is a controlled substance or from which a controlled substance can be derived;

(2) A kit for manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(3) Any object, instrument, or device for manufacturing, compounding, converting, producing, processing, or preparing methamphetamine;

(4) An isomerization device for increasing the potency of any species of a plant that is a controlled substance;

(5) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of, a controlled substance, except for those exempted in division (d)(4) of this section;

(6) A scale or balance for weighing or measuring a controlled substance;

(7) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, for cutting a controlled substance;

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(8) A separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining, marihuana;

(9) A blender, bowl, container, spoon, or mixing device for compounding a controlled substance;

(10) A capsule, balloon, envelope, or container for packaging small quantities of a controlled substance;

(11) A container or device for storing or concealing a controlled substance;

(12) A hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body;

(13) An object, instrument, or device for ingesting, inhaling, or otherwise introducing into the human body, marihuana, cocaine, hashish, or hashish oil, such as a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe, with or without a screen, permanent screen, hashish head, or punctured metal bowl; water pipe; carburetion tube or device; smoking or carburetion mask; roach clip or similar object used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoon, or cocaine vial; chamber pipe; carburetor pipe; electric pipe; air driver pipe; chillum; bong; or ice pipe or chiller.

(b) In determining if any equipment, product, or material is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, the following:

(1) Any statement by the owner, or by anyone in control, of the equipment, product, or material, concerning its use;

(2) The proximity in time or space of the equipment, product, or material, or of the act relating to the equipment, product, or material, to a violation of any provision of this chapter;

(3) The proximity of the equipment, product, or material to any controlled substance;

(4) The existence of any residue of a controlled substance on the equipment, product, or material;

(5) Direct or circumstantial evidence of the intent of the owner, or of anyone in control, of the equipment, product, or material, to deliver it to any person whom the owner or person in control of the equipment, product, or material knows intends to use the object to facilitate a violation of any provision of this chapter. A finding that the owner, or anyone in control, of the equipment, product, or material, is not guilty of a violation of any other provision of this chapter does not prevent a finding that the equipment, product, or material was intended or designed by the offender for use as drug paraphernalia.

(6) Any oral or written instruction provided with the equipment, product, or material concerning its use;

(7) Any descriptive material accompanying the equipment, product, or material and explaining or depicting its use;

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(8) National or local advertising concerning the use of the equipment, product, or material;

(9) The manner and circumstances in which the equipment, product, or material is displayed for sale;

(10) Direct or circumstantial evidence of the ratio of the sales of the equipment, product, or material to the total sales of the business enterprise;

(11) The existence and scope of legitimate uses of the equipment, product, or material in the community;

(12) Expert testimony concerning the use of the equipment, product, or material.

(c) (1) Subject to divisions (d)(2), (3), and (4) of this section, no person shall knowingly use, or possess with purpose to use, drug paraphernalia.

(2) No person shall knowingly sell, or possess or manufacture with purpose to sell, drug paraphernalia, if the person knows or reasonably should know that the equipment, product, or material will be used as drug paraphernalia.

(3) No person shall place an advertisement in any newspaper, magazine, handbill, or other publication that is published and printed and circulates primarily within this state, if the person knows that the purpose of the advertisement is to promote the illegal sale in this state of the equipment, product, or material that the offender intended or designed for use as drug paraphernalia.

(d) (1) 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 Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by section 3719.172 of the Revised Code.

(2) Division (c)(1) of this section does not apply to a person's use, or possession with purpose to use, 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.

(3) Division (c)(2) of Section 607.03 of these Codified Ordinances applies with respect to a violation of division (c)(1) of this section when a person seeks or obtains medical assistance for another person who is experiencing a drug overdose, a person experiences a drug overdose and seeks medical assistance for that overdose, or a person is the subject of another person seeking or obtaining medical assistance for that overdose.

(4) Division (c)(1) of this section does not apply to a person's use, or possession with purpose to use, any drug testing strips to determine the presence of fentanyl or a fentanyl-related compound.

(e) Notwithstanding Chapter 2981. of the Revised Code, any drug paraphernalia that was used, possessed, sold, or manufactured in a violation of this section shall be seized, after a conviction for that violation shall be forfeited, and upon forfeiture shall be disposed of pursuant to division (B) of section 2981.12 of the Revised Code.

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(f) (1) Whoever violates division (c)(1) of this section is guilty of illegal use or possession of drug paraphernalia, a misdemeanor of the fourth degree.

(2) Except as provided in division (f)(3) of this section, whoever violates division (C)(2) of this section is guilty of dealing in drug paraphernalia, a misdemeanor of the second degree.

(3) Whoever violates division (c)(2) of this section by selling drug paraphernalia to a juvenile is guilty of selling drug paraphernalia to juveniles, a misdemeanor of the first degree.

(4) Whoever violates division (c)(3) of this section is guilty of illegal advertising of drug paraphernalia, a misdemeanor of the second degree.

(g) (1) In addition to any other sanction imposed upon an offender for a violation of this section, the court may suspend for not more than five years the offender's driver's or commercial driver's license or permit. However, if the offender pleaded guilty to or was convicted of a violation of section 4511.19 of the Revised Code or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit for not more than five years. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code.

(2) Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under this section prior to September 13, 2016, may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of a violation of section 4511.19 of the Revised Code or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under this section shall not file such a motion.

Upon the filing of a motion under division ()(2) of this section, the sentencing court, in its discretion, may terminate the suspension.

Section 617.02 Sales to and Use by Minors; Securing Public Accommodations

(a) Except as otherwise provided in this chapter or RC Chapter 4301 of the Revised Code, no person shall sell beer or intoxicating liquor to an underage person, or buy beer or intoxicating liquor for, or furnish it to, an underage person, unless given by a physician in the regular line of his or her practice or given for established religious purposes, or unless the underage person is accompanied by a parent, spouse who is not an underage person, or legal guardian.

In proceedings before the Liquor Control Commission, no permit holder, his or her employee or agent charged with a violation of this division shall, for the same offense, be charged with a violation of division (A)(1) of RC section 4301.22 of the Revised Code.

(b) No person who is the owner or occupant of any public or private place shall knowingly allow any underage person to remain in or on the place while possessing or consuming beer or intoxicating liquor, unless the intoxicating liquor or beer is given

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to the person possessing or consuming it by that person's parent, spouse who is not an underage person, or legal guardian and the parent, spouse who is not an underage person, or legal guardian is present at the time of the person's possession or consumption of the beer or intoxicating liquor.

An owner of a public or private place is not liable for acts or omissions in violation of this division that are committed by a lessee of that public place, unless the owner authorizes or acquiesces in the lessee's acts or omissions.

(c) No person shall engage or use accommodations at a hotel, inn, cabin, campground or restaurant when he or she knows or has reason to know either of the following:

(1) That beer or intoxicating liquor will be consumed by an underage person on the premises of the accommodations that the person engages or uses, unless the person engaging or using the accommodations is the spouse of the underage person and who is not himself or herself an underage person, or is the parent or legal guardian of all of the underage persons, who consume beer or intoxicating liquor on the premises and that person is on the premises at all times when beer or intoxicating liquor is being consumed by an underage person;

(2) That a drug of abuse will be consumed on the premises of the accommodations by any person, except a person who obtained the drug of abuse pursuant to a prescription issued by a practitioner and has the drug of abuse in the original container in which it was dispensed to the person.

(d) (1) No person is required to permit the engagement of accommodations at any hotel, inn, cabin or campground by an underage person or for an underage person, if the person engaging the accommodations knows or has reason to know that the underage person is intoxicated, or that the underage person possesses any beer or intoxicating liquor and is not accompanied by a parent, spouse who is not an underage person, or legal guardian who is or will be present at all times when the beer or intoxicating liquor is being consumed by the underage person.

(2) No underage person shall knowingly engage or attempt to engage accommodations at any hotel, inn, cabin or campground by presenting identification that falsely indicates that he or she is twenty-one (21) years of age or older for the purpose of violating this section.

(e) (1) No underage person shall knowingly order, pay for, share the cost of, attempt to purchase, possess, or consume any beer or intoxicating liquor in any public or private place, or be under the influence of any beer or intoxicating liquor in any public place. ~~No underage person shall knowingly possess or consume any beer or intoxicating liquor, in any public or private place,~~ unless the underage person is accompanied supervised by a parent, spouse who is not an underage person, or legal guardian, or unless the beer or intoxicating liquor is given by a physician in the regular line of his or her practice or given for established religious purposes.

(2) A. If a person is charged with violating division (e)(1) of this section in a complaint filed under section 2151.27 of the Revised Code, the court may order the child into a diversion program specified by the court and hold the complaint in abeyance pending successful completion of the diversion program. A child is ineligible to enter into a diversion program under division (e)(2)(a) of this section if the child previously has been diverted pursuant to division (e)(2)(a) of this section. If the child completes the diversion program to the satisfaction of the court, the court shall dismiss the complaint and order the child's record in the case sealed

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under sections 2151.356 to 2151.358 of the Revised Code. If the child fails to satisfactorily complete the diversion program, the court shall proceed with the complaint.

B. If a person is charged in a criminal complaint with violating division (e)(1) of this section, section 2935.36 of the Revised Code shall apply to the offense, except that a person is ineligible for diversion under that section if the person previously has been diverted pursuant to division (e)(2)(a) or (b) of this section. If the person completes the diversion program to the satisfaction of the court, the court shall dismiss the complaint and order the record in the case sealed under section 2953.33 of the Revised Code. If the person fails to satisfactorily complete the diversion program, the court shall proceed with the complaint.

(f) No parent, spouse who is not an underage person, or legal guardian of a minor shall knowingly permit the minor to violate this section or divisions (a) to ~~(d)~~ (c) of Section 617.021.

(g) The operator of any hotel, inn, cabin or campground shall make the provisions of this section available in writing to any person engaging or using accommodations at the hotel, inn, cabin or campground.

(h) As used in this section:

(1) “Drug of abuse” has the same meaning as in RC section 3719.011 of the Revised Code.

(2) “Hotel” has the same meaning as in RC section 3731.01 of the Revised Code.

(3) “Licensed health professional authorized to prescribe drugs” and “prescription” have the same meanings as in section 4729.01 of the Revised Code.

~~(3)~~(4) “Minor” means a person under the age of eighteen (18) years.

~~(4)~~ “Practitioner” and “prescription” have the same meanings as in RC ~~3719.0.~~

(5) “Underage person” means a person under the age of twenty-one (21) years.

(RC 4301.69)

(i) Whoever violates division (b), (c), (d), ~~(e)~~, or (f) of this section is guilty of a misdemeanor of the first degree.

(j) Whoever violate division (e) of this section is guilty of a misdemeanor of the third degree, if the offender was under the age of eighteen (18) years at the time of the offense and the offense occurred while the offender was the operator of or a passenger in a motor vehicle, the court, in addition to any other penalties it imposes upon the offender, shall suspend the offender's temporary instruction permit or probationary driver's license for a period of not less than six (6) months and not more than one (1) year. If the offender is fifteen (15) years and six (6) months of age or older and has not been issued a temporary instruction permit or probationary driver's license, the offender shall not be eligible to be issued such a license or permit for a period of six (6) months. If the offender has not attained the age of fifteen (15) years and six (6) months, the offender shall not be eligible to be issued a temporary instruction permit until the offender attains the age of sixteen (16) years.

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(k) Whoever violates division (a) of this section is guilty of a misdemeanor, shall be fined not less than five hundred (\$500.00) and not more than one thousand dollars (\$1,000.00), and, in addition to the fine, may be imprisoned for a definite term of not more than six (6) months.

(RC 4301.99)

~~(j) — The provisions of this section relating to the attempted purchase, purchase, sale, possession or consumption of beer apply only to persons who on July 31, 1987, are less than nineteen (19) years of age.~~

Section 625.05 Petty Theft Misdemeanor 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) This section shall not apply if the value of the property involved is one thousand dollars (\$1,000.00) or more, or is any of the property listed in Section 625.04.

(c) This section shall not apply if the victim of the offense is an elderly person or disabled adult.

(d) Whoever violates this section is guilty of ~~petty~~ misdemeanor theft, a misdemeanor of the first degree.

(RC 2913.02)

Section 2. That the following existing Sections of the Codified Ordinances of Cleveland, Ohio, 1976:

Section 433.09, as amended by Ordinance No. 105-09, passed April 13, 2009,

Section 605.04, as amended by Ordinance No. 54-74, passed March 25 1974,

Section 607.03, as amended by Ordinance No. 902-2019, passed January 27, 2020,

Section 607.04, as amended by Ordinance No. 90-96, passed March 18, 1996,

Section 607.17, as amended by Ordinance No. 2797-88, passed May 8, 1989,

Section 617.02, as amended by Ordinance No. 90-96, passed March 18, 1996,

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and

Section 625.05, as amended by Ordinance No. 1094-13, passed September 23, 2013

are repealed.

Section 3. That Section 607.13, Sale of Marijuana Paraphernalia to Juveniles, as amended by Ordinance No. 1414-86 passed November 3, 1986, and Section 607.18, Penalty, as amended by Ordinance No. 902-2019, passed January 27, 2020, are repealed.

Section 4. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

SM:JS:nl
8-16-2023
FOR: Director Howard

