



ORDINANCE 2020-07
Adopted May 19, 2020

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF POWELL, OHIO TO PROVIDE AMENDMENTS TO GENERAL OFFENSES POWELL CITY CODE SECTIONS 501.01, 509.03, 513.01, 513.03; TO PROVIDE FOR PENALTIES; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

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

NOW THEREFORE BE IT ORDAINED BY THE CITY OF POWELL, DELAWARE COUNTY, OHIO AS FOLLOWS:

Section 1: That the Code of Ordinances of the City of Powell, Ohio (meaning City Municipal Code) is hereby amended by adding the provisions as provided under Section 6, below.

Section 2: The addition, amendment, or removal of Powell City Code Sections when passed in such form as to indicate the intention of the governing authority of the City of Powell, Ohio to make the same a part of the Municipal Code shall be deemed to be incorporated in the Municipal Code, so that reference to the Municipal Code includes the additions, amendments, and removals.

Section 3. The codifier (meaning the person, agency or organization authorized to prepare the supplement to the Code of Ordinances of the City of Powell, Ohio) is authorized to exclude and omit any provisions of this ordinance that are inapplicable to the City's Municipal Code.

Section 4: Supplementation of Code.

(a) In preparing a supplement to City's Municipal Code, all portions of this ordinance which have been repealed shall be excluded from the City's Municipal Code by the omission thereof from reprinted pages.

(b) When preparing a supplement to the City's Municipal Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, non-substantive changes in this ordinance and parts of this ordinance included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions;
- (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the City's Municipal Code printed in the supplement, and make changes in such catchlines, headings and titles;
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the City's Municipal Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- (4) Change the words "this ordinance" or words of the same meaning to "this

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chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the City's Municipal Code which embody the substantive sections or the ordinance incorporated into the Code); and

(5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the City's Municipal Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the City's Municipal Code.

(c) In preparing a supplement to the City's Municipal Code, the pages of a supplement shall be so numbered that they will fit properly into the City's Municipal Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the City's Municipal Code will be current through the date of the adoption of the latest ordinance included in the supplement.

Section 5: Provisions of Section 6 that duplicate or track State statutes which do not become effective until after the effective date of this ordinance, shall not take effect until such statutes take effect.

Section 6: The following sections and of the Municipal Code are new or have been amended with new matter in the Municipal Code, and are hereby approved, adopted and enacted:

501.01 DEFINITIONS.

As used in the Codified Ordinances:

- (a) *Force* means any violence, compulsion or constraint physically exerted by any means upon or against a person or thing.
- (b) *Deadly force* means any force that carries a substantial risk that it will proximately result in the death of any person.
- (c) *Physical harm to persons* means any injury, illness or other physiological impairment, regardless of its gravity or duration.
- (d) *Physical harm to property* means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use.
- (e) *Serious physical harm to persons* means any of the following:
 - (1) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
 - (2) Any physical harm that carries a substantial risk of death;
 - (3) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
 - (4) Any physical harm that involves some permanent disfigurement, or that involves some temporary, serious disfigurement;
 - (5) Any physical harm that involves acute pain of such duration as to result in substantial suffering, or that involves any degree of prolonged or intractable pain.
- (f) *Serious physical harm to property* means any physical harm to property that does either of the following:
 - (1) Results in substantial loss to the value of the property, or requires a substantial amount of time, effort or money to repair or replace;

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- (2) Temporarily prevents the use or enjoyment of the property, or substantially interferes with its use and enjoyment for an extended period of time.
- (g) *Risk* means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.
- (h) *Substantial risk* means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.
- (i) *Offense of violence* means any of the following:
- (1) A violation of O.R.C. §§ 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2905.32, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, 2923.161, 2911.12(A)(1) to (3) or 2919.22(B)(1) to (4), or felonious sexual penetration in violation of former O.R.C. § 2907.12;
 - (2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section listed in subsection (i)(1) hereof;
 - (3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed, purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;
 - (4) A conspiracy or attempt to commit, or complicity in committing any offense under subsection (i)(1), (2) or (3) hereof.
- (j) (1) *Property* means any property, real or personal, tangible or intangible, and any interest or license in that property. "Property" includes, but is not limited to, cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human readable form, trade secrets, trademarks, copyrights, patents, and property protected by a trademark, copyright, or patent. "Financial instruments associated with computers" include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities, or any computer system representations of any of them.
- (2) As used in this section, "trade secret" has the same meaning as in O.R.C. § 1333.61, and "telecommunications service" and "information service" have the same meanings as in O.R.C. § 2913.01.
 - (3) As used in this section, "cable television service," "computer," "computer software," "computer system," "computer network," "data," and "telecommunications device" have the same meanings as in O.R.C. § 2913.01.
- (k) *Law enforcement officer* means any of the following:
- (1) A sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under O.R.C. § 3735.31(D) or State highway patrol trooper;
 - (2) An officer, agent or employee of the State or any of its agencies, instrumentalities or political subdivisions, upon whom, by statute, Charter or ordinance, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;

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- (3) A mayor or manager in the mayor's or manager's capacity as chief conservator of the peace within the mayor's or manager's municipal corporation;
 - (4) A member of an auxiliary police force organized by county, township or municipal law enforcement authorities, within the scope of the member's appointment or commission;
 - (5) A person lawfully called pursuant to O.R.C. § 311.07 to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;
 - (6) A person appointed by a mayor pursuant to O.R.C. § 737.01 as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;
 - (7) A member of the organized militia of this state or the Armed Forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;
 - (8) A prosecuting attorney, assistant prosecuting attorney, secret service officer or municipal prosecutor;
 - (9) A veterans' home police officer appointed under O.R.C. § 5907.02;
 - (10) A member of a police force employed by a regional transit authority under O.R.C. § 306.35(Y);
 - (11) A special police officer employed by a port authority under O.R.C. § 4582.04 or 4582.28;
 - (12) The Senate Sergeant of Arms and or Assistant Sergeant at Arms;
 - (13) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in Section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States Department of Transportation as provided in Parts 1542 and 1544 of Title 49 of the Code of Federal Regulations, as amended.
- (l) *Privilege* means an immunity, license or right conferred by law, or bestowed by express or implied grant, or arising out of status, position, office or relationship, or growing out of necessity.
- (m) *Contraband* means any property that is illegal for a person to acquire or possess under a statute, ordinance, or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property's involvement in an offense. "Contraband" includes, but is not limited to, all of the following:
- (1) Any controlled substance, as defined in O.R.C. § 3719.01, or any device, or paraphernalia;
 - (2) Any unlawful gambling device, or paraphernalia;
 - (3) Any dangerous ordnance or obscene material.
- (n) A person is "not guilty by reason of insanity" relative to a charge of an offense only if the person proves, in the manner specified in O.R.C. § 2901.05, that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts.
- (o)

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- (1) A. Subject to subsection (o)(2) hereof, as used in any section contained in Part Five—General Offenses Code that sets forth a criminal offense, "person" includes all of the following:
1. An individual, corporation, business trust, estate, trust, partnership, and association;
 2. An unborn human who is viable.
- B. As used in any section contained in Part Five - General Offenses Code that does not set forth a criminal offense, "person" includes an individual, corporation, business trust, estate, trust, partnership and association.
- C. As used in subsection (o)(1)A. hereof:
1. *Unborn human* means an individual organism of the species *Homo sapiens* from fertilization until live birth.
 2. *Viable* means the stage of development of a human fetus at which there is a realistic possibility of maintaining and nourishing of a life outside the womb with or without temporary artificial life-sustaining support.
- (2) Notwithstanding subsection (o)(1)A. hereof, in no case shall the portion of the definition of the term "person" that is set forth in subsection (o)(1)A.2. hereof be applied or construed in any section contained in Part Five—General Offenses Code that sets forth a criminal offense in any of the following manners:
- A. Except as otherwise provided in subsection (o)(2)A. hereof, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of O.R.C. § 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21, or 2903.22, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate O.R.C. § 2919.12, division (B) of O.R.C. § 2919.13, or O.R.C. §§ 2919.15, 2919.151, 2919.17 or 2919.18, may be punished as a violation of O.R.C. § 2919.12, division (B) of O.R.C. § 2919.13, or O.R.C. §§ 2919.15, 2919.151, 2919.17 or 2919.18, as applicable. Consent is sufficient under this subsection if it is of the type otherwise adequate to permit medical treatment to the pregnant woman, even if it does not comply with O.R.C. § 2919.12.
- B. In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:
1. Her delivery of a stillborn baby;
 2. Her causing, in any other manner, the death in utero of a viable, unborn human that she is carrying;
 3. Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is a viable, unborn human;
 4. Her causing her child who is born alive to sustain one or more injuries while the child is a viable, unborn human;

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5. Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to a viable, unborn human that she is carrying.

- (p) *School safety zone* consists of a school, school building, school premises, school activity, and school bus.
- (q) *School, school building* and *school premises* have the same meaning as in O.R.C. § 2925.01.
- (r) *School activity* means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district; a governing authority of a community school established under O.R.C. Ch. 3314; a governing body of an educational service center; or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under O.R.C. § 3301.07.
- (s) *School bus* has the same meaning as in O.R.C. § 4511.01.

State Law reference— (O.R.C. § 2901.01)

509.03 DISORDERLY CONDUCT; INTOXICATION.

- (a) No person shall recklessly cause inconvenience, annoyance or alarm to another by doing any of the following:
 - (1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;
 - (2) Making unreasonable noise or offensively coarse utterance, gesture or display, or communicating unwarranted and grossly abusive language to any person, which by its very utterance or usage inflicts injury or tends to incite an immediate breach of the peace;
 - (3) Insulting, taunting or challenging another, under circumstances in which such conduct is likely to provoke a violent response;
 - (4) Hindering or preventing the movement of persons on a public street, road, highway or right of way, or to, from, within or upon public or private property, so as to interfere with the rights of others, and by any act which serves no lawful and reasonable purpose of the offender;
 - (5) Creating a condition which is physically offensive to persons or which presents a risk of physical harm to persons or property, by any act which serves no lawful and reasonable purpose of the offender.
- (b) No person, while voluntarily intoxicated shall do either of the following:
 - (1) In a public place or in the presence of two or more persons, engage in conduct likely to be offensive or to cause inconvenience, annoyance or alarm to persons of ordinary sensibilities, which conduct the offender, if he were not intoxicated, should know is likely to have such effect on others;
 - (2) Engage in conduct or create a condition which presents a risk of physical harm to himself or another, or to the property of another.
- (c) Violation of any statute or ordinance of which an element is operating a motor vehicle, locomotive, watercraft, aircraft or other vehicle while under the influence of alcohol or any drug of abuse, is not a violation of subsection (b) hereof.
- (d) If a person appears to an ordinary observer to be intoxicated, it is probable cause to believe that person is voluntarily intoxicated for purposes of subsection (b) hereof.

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- (e) (1) Whoever violates this section is guilty of disorderly conduct.
- (2) Except as otherwise provided in this subsections (e)(3) and (4), disorderly conduct is a minor misdemeanor.
- (3) Disorderly conduct is a misdemeanor of the fourth degree if any of the following applies:
- A. The offender persists in disorderly conduct after reasonable warning or request to desist.
 - B. The offense is committed in the vicinity of a school or in a school safety zone.
 - C. The offense is committed in the presence of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person who is engaged in the person's duties at the scene of a fire, accident, disaster, riot or emergency of any kind.
 - D. The offense is committed in the presence of any emergency facility person who is engaged in the person's duties in an emergency facility.
- (4) If an offender previously has been convicted of or pleaded guilty to three or more violations of division (B) of this section, a violation of division (B) of this section is a misdemeanor of the fourth degree.
- (f) As used in this section:
- (1) *Emergency medical services person* is the singular of "emergency medical services personnel" as defined in O.R.C. § 2133.21.
 - (2) *Emergency facility person* is the singular of "emergency facility personnel" as defined in O.R.C. § 2909.04.
 - (3) *Emergency facility* has the same meaning as in O.R.C. § 2909.04.
 - (4) *Committed in the vicinity of a school* has the same meaning as in O.R.C. § 2925.01.

State Law reference— (O.R.C. § 2917.11)

513.01 DEFINITIONS.

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

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

Controlled substance means a drug, compound, mixture, preparation or substance included in Schedule I, II, III, IV, or V.

Dispense means sell, leave with, give away, dispose of or deliver.

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

Hypodermic means a hypodermic syringe or needle, or other instrument or device for the injection of medication.

Manufacturer means a person who manufactures a controlled substance as "manufacture" is defined in O.R.C. § 3715.01 and includes a "manufacturer of dangerous drugs" as defined in section 4729.01 of the Revised Code.

Except as provided in subsection (1) hereof:

Marihuana means all parts of a plant of the genus cannabis, whether growing or not, the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture or preparation of a plant of that type or of its

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seeds or resin. "Marihuana" does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination. "Marihuana" does not include "hemp" or a "hemp product" as those terms are defined in section 928.01 of the Revised Code.

State Law reference— (O.R.C. § 3719.01)

(1) *Marihuana* does not include hashish.

State Law reference— (O.R.C. § 2925.01)

Controlled substance analog has the same meaning as provided in O.R.C. § 3719.01.

Official written order means an order written on a form provided for that purpose by the Director of the United States Drug Enforcement Administration, under any laws of the United States making provision for the order, if the order forms are authorized and required by Federal law.

Pharmacist means a person licensed under O.R.C. Ch. 4729 to engage in the practice of pharmacy.

Pharmacy has the same meaning as in O.R.C. § 4729.01.

Poison means any drug, chemical, or preparation likely to be deleterious or destructive to adult human life in quantities of four grams or less.

Licensed health professional authorized to prescribe drugs, prescriber and prescription have the same meanings as in O.R.C. § 4729.01.

Sale includes delivery, barter, exchange, transfer or gift, or offer thereof, and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant or employee.

Schedule I, Schedule II, Schedule III, Schedule IV and Schedule V mean controlled substance Schedules I, II, III, IV, and V respectively, as established pursuant to by rule adopted under O.R.C. § 3719.41, as amended pursuant to O.R.C. § 3719.43 or 3719.44, or as established by emergency rule adopted under section 3719.45 of the Revised Code.

Wholesaler means a person who, on official written orders other than prescriptions, supplies controlled substances that the person has not manufactured, produced or prepared personally and includes a "wholesale distributor of dangerous drugs" as defined in O.R.C. § 4729.01.

State Law reference— (O.R.C. § 3719.01)

Drug of abuse means any controlled substance as defined in subsection (b) hereof, any harmful intoxicant as defined in subsection (x) hereof and any dangerous drug as defined in subsection (r) hereof.

State Law reference— (O.R.C. § 3719.011)

Dangerous drug means any of the following:

(1) Any drug to which either of the following applies:

- A. Under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law

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restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription;

B. Under O.R.C. ch. 3715 or 3719, the drug may be dispensed only upon a prescription.

- (2) Any drug that contains a Schedule V narcotic drug and that is exempt from O.R.C. ch. 3719 or to which that chapter does not apply;
- (3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body.

State Law reference— (O.R.C. § 4729.02)

Bulk amount of a controlled substance means any of the following:

- (1) For any compound, mixture, preparation, or substance included in Schedule I, Schedule II or Schedule III, with the exception of any controlled substance ~~analogs~~ analog, marihuana, cocaine, L.S.D., heroin, any fentanyl-related compound, and hashish and except as provided in subsection (2), ~~or (5), or (6)~~ hereof, whichever of the following is applicable:
 - A. An amount equal to or exceeding ten grams or 25 unit doses of a compound, mixture, preparation or substance that is or contains any amount of a Schedule I opiate or opium derivative;
 - B. An amount equal to or exceeding ten grams of a compound, mixture, preparation or substance that is or contains any amount of raw or gum opium;
 - C. An amount equal to or exceeding 30 grams or ten unit doses of a compound, mixture, preparation or substance that is or contains any amount of a Schedule I hallucinogen other than tetrahydrocannabinol, or lysergic acid amide, or a Schedule I stimulant or depressant;
 - D. An amount equal to or exceeding 20 grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation or substance that is or contains any amount of a Schedule II opiate or opium derivative;
 - E. An amount equal to or exceeding five grams or ten unit doses of a compound, mixture, preparation or substance that is or contains any amount of phencyclidine;
 - F. An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation or substance that is or contains any amount of a Schedule II stimulant that is in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and the Federal Drug Abuse Control laws as defined in O.R.C. § 3719.01, that is or contains any amount of a Schedule II depressant substance or a Schedule II hallucinogenic substance;
 - G. An amount equal to or exceeding three grams of a compound, mixture, preparation or substance that is or contains any amount of a Schedule II stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act and the Federal Drug Abuse Control laws;
- (2) An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III or IV substance other than an anabolic steroid or a Schedule III opiate or opium derivative;

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- (3) An amount equal to or exceeding 20 grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III opiate or opium derivative;
- (4) An amount equal to or exceeding 250 milliliters or 250 grams of a compound, mixture, preparation or substance that is or contains any amount of a Schedule V substance.
- (5) An amount equal to or exceeding 200 solid dosage units, 16 grams or 16 milliliters of a compound, mixture, preparation or substance that is or contains any amount of a Schedule III anabolic steroid.
- (6) For any compound, mixture, preparation, or substance that is a combination of a fentanyl-related compound and any other compound, mixture, preparation, or substance included in schedule III, schedule IV, or schedule V, if the defendant is charged with a violation of section 2925.11 of the Revised Code and the sentencing provisions set forth in divisions (C)(10)(b) and (C)(11) of that section will not apply regarding the defendant and the violation, the bulk amount of the controlled substance for purposes of the violation is the amount specified in division (D)(1), (2), (3), (4), or (5) of this section for the other schedule III, IV, or V controlled substance that is combined with the fentanyl-related compound.

Unit dose means an amount or unit of a compound, mixture or preparation containing a controlled substance, that is separately identifiable and in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.

Cultivate includes planting, watering, fertilizing or tilling.

Drug abuse offense means any of the following:

- (1) A violation of O.R.C. §§ 2925.02, 2925.03, 2925.04—2925.06, 2925.11, 2925.12, 2925.13, 2925.22, 2925.23, 2925.24, 2925.31, 2925.32, 2925.36 or 2925.37; or a violation of O.R.C. § 2913.02(A) that constitutes theft of drugs;
- (2) A violation of an existing or former law of this or any other state or of the United States, that is substantially equivalent to any section listed in subsection (1) hereof;
- (3) An offense under an existing or former law of this or any other state, or of the United States, of which planting, cultivating, harvesting, processing, making, manufacturing, producing, shipping, transporting, delivering, acquiring, possessing, storing, distributing, dispensing, selling, inducing another to use, administering to another, using or otherwise dealing with a controlled substance is an element;
- (4) A conspiracy or attempt to commit, or complicity in committing or attempting to commit any offense under subsection (1), (2) or (3) hereof.

Felony drug abuse offense means any drug abuse offense that would constitute a felony under the laws of this state, any other state or the United States.

Harmful intoxicant does not include beer or intoxicating liquor, but means any of the following:

- (1) Any compound, mixture, preparation or substance the gas, fumes or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation or other harmful physiological effects, and includes, but is not limited to, any of the following:
 - A. Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent;
 - B. Any aerosol propellant;

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C. Any fluorocarbon refrigerant;

D. Any anesthetic gas.

(2) Gamma Butyrolactone;

(3) 1,4 Butanediol.

Manufacture means to plant, cultivate, harvest, process, make, prepare or otherwise engage in any part of the production of a drug by propagation, extraction, chemical synthesis or compounding, or any combination of the same, and includes packaging, repackaging, labeling and other activities incident to production.

Possess or possession means having control over a thing or substance but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.

Sample drug means a drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a licensed health professional authorized to prescribe drugs, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.

Standard pharmaceutical reference manual means the current edition, with cumulative changes if any, of references that are approved by the State Board of Pharmacy.

Juvenile means a person under 18 years of age.

School means any school operated by a board of education or any school for which the State Board of Education prescribes minimum standards under O.R.C. § 3301.07, whether or not any instruction, extracurricular activities or training provided by the school is being conducted at the time a criminal offense is committed.

School premises means either of the following:

- (1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities or training provided by the school is being conducted on the premises at the time a criminal offense is committed;
- (2) Any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the State Board of Education prescribes minimum standards under O.R.C. § 3301.07 and on which some of the instruction, extracurricular activities or training of the school is conducted, whether or not any instruction, extracurricular activities or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

School building means any building in which any of the instruction, extracurricular activities or training provided by a school is conducted, whether or not any instruction, extracurricular activities or training provided by the school is being conducted in the school building at the time a criminal offense is committed.

Counterfeit controlled substance means:

- (1) Any drug that bears, or whose container or label bears, a trademark, trade name or other identifying mark used without authorization of the owner of rights to that trademark, trade name or identifying mark; or
- (2) Any unmarked or unlabeled substance that is represented to be a controlled substance manufactured, processed, packed or distributed by a person other than the person that manufactured, processed, packed or distributed it; or
- (3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance; or

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- (4) Any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of its similarity in shape, size and color, or its marking, labeling, packaging, distribution or the price for which it is sold or offered for sale.

An offense is *committed in the vicinity of a school* if the offender commits the offense on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises, regardless of whether the offender knows the offense is being committed on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises.

An offense is *committed in the vicinity of a juvenile* if the offender commits the offense within 100 feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within 100 feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense.

Hashish means the resin or a preparation of the resin contained in marihuana, whether in solid form or in a liquid concentrate, liquid extract, or liquid distillate form.

Public premises means any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort.

Methamphetamine means methamphetamine, any salt, isomer, or salt of an isomer of methamphetamine, or any compound, mixture, preparation, or substance containing methamphetamine or any salt, isomer or salt of an isomer of methamphetamine.

Lawful prescription means a prescription that is issued for a legitimate medical purpose by a licensed health professional authorized to prescribe drugs, that is not altered or forged, and that was not obtained by means of deception or by the commission of any theft offense.

Deception and theft offense have the same meanings as in O.R.C. § 2913.01.

"Outsourcing facility," "repackager of dangerous drugs," and "third-party logistics provider" have the same meanings as in section 4729.01 of the Revised Code.

State Law reference— (O.R.C. § 2925.01)

513.03 DRUG ABUSE; CONTROLLED SUBSTANCE POSSESSION OR USE.

- (a) No person shall knowingly obtain, possess or use a controlled substance or a controlled substance analog.
- (b) This section does not apply to the following:
- (1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies and other persons whose conduct was in accordance with O.R.C. chs. 3719, 4715, 4729, 4730, 4731 and 4741.
 - (2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States Food and Drug Administration;
 - (3) Any person who sells, offers for sale, prescribes, dispenses or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed or administered for that purpose in accordance with that Act;
 - (4) Any person who obtained the controlled substance pursuant to a lawful prescription issued by a licensed health professional authorized to prescribe drugs if the prescription was

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issued for a legitimate medical purpose and not altered, forged, or obtained through deception or commission of a theft offense.

As used in division (B)(1)(d) of this section, "deception" and "theft offense" have the same meanings as in section 2913.01 of the Revised Code.

(c) Whoever violates subsection (a) hereof is guilty of one of the following:

- (1) If the drug involved in the violation is a compound, mixture, preparation, or substance included in Schedule III, IV, or V, whoever violates subsection (a) hereof is guilty of possession of drugs. Possession of drugs is a misdemeanor if the amount of the drug involved does not exceed the bulk amount. The penalty for the offense shall be determined as follows: possession of drugs is a misdemeanor of the first degree or, if the offender previously has been convicted of a drug abuse offense, a felony and shall be prosecuted under appropriate State law.
 - (2) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates subsection (a) hereof is guilty of possession of marihuana. Possession of marihuana is a misdemeanor if the amount of the drug involved does not exceed 200 grams. The penalty for the offense shall be determined as follows:
 - A. Except as otherwise provided in subsection (c)(2)B. hereof, possession of marihuana is a minor misdemeanor.
 - B. If the amount of the drug involved equals or exceeds 100 grams but is less than 200 grams, possession of marihuana is a misdemeanor of the fourth degree.
 - (3) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates subsection (a) hereof is guilty of possession of hashish. Possession of hashish is a misdemeanor if the amount of the drug involved does not exceed the maximum amount specified in subsection (c)(3)B. hereof. The penalty for the offense shall be determined as follows:
 - A. Except as otherwise provided in subsection (c)(3)B. hereof, possession of hashish is a minor misdemeanor.
 - B. If the amount of the drug involved equals or exceeds five grams but is less than ten grams of hashish in a solid form or equals or exceeds one gram but is less than two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a misdemeanor of the fourth degree.
- (d) In addition to any other sanction that is imposed for an offense under this section, the court that sentences an offender who is convicted of or pleads guilty to a violation of this section may suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.
- (e) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

State Law reference— (O.R.C. § 2925.11)

Section 7: Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule, or regulation adopted or issued in pursuance thereof shall be punished by a fine or imprisonment, or both. The fine shall not to exceed five hundred dollars (\$500.00) and imprisonment shall not exceed six months.

Section 8: If any section, subsection, sentence, clause, phrase or portion of the Ordinance

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or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances. The governing authority of the City of Powell, Ohio hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable

Section 9: All ordinances and parts of ordinances in conflict herewith are expressly repealed.

Section 10: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of Council and that all deliberations of Council and any of the decision making bodies of the City of Powell which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the City of Powell, Delaware County, Ohio.

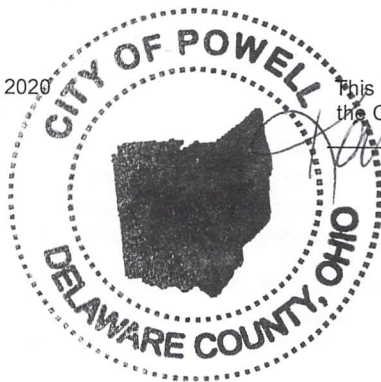
Section 11: That this Ordinance shall take effect on the earliest period allowed by law.

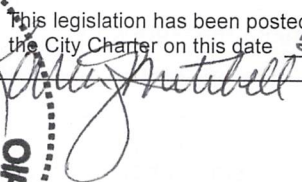
VOTE ON ORDINANCE 2020-07: Y 7 N 0


Frank Bertone
Mayor
Date 5/21/2020


Karen J. Mitchell
City Clerk
Date 5/21/2020

EFFECTIVE DATE: June 18, 2020



This legislation has been posted in accordance with the City Charter on this date 5/21/2020

City Clerk