

## EXHIBIT B

### NEW MATTER FOR THE CODE OF ORDINANCES OF THE CITY OF POWELL, OHIO

New matter in the Code of Ordinances of the City of Powell, Ohio, includes legislation regarding:

#### **General Offenses Code**

#### **131<sup>st</sup> General Assembly**

#### **January 2017 Update**

*Editor's Note:* The Municode staff attorneys perform a review of ORC Title XLV and Title XXIX in January and July of each year for the current legislative session. This update encompasses all legislative Acts updated in Title XXIX- Crimes from July 2016 through December 2016.

#### **R.C. § 2909.09**

#### **2909.09 Vehicular vandalism**

*Amends Powell City Code § 541.10*

(A) As used in this section:

(1) "Highway" means any highway as defined in section 4511.01 of the Revised Code or any lane, road, street, alley, bridge, or overpass.

(2) "Alley," "street," "streetcar," "trackless trolley," and "vehicle" have the same meanings as in section 4511.01 of the Revised Code.

(3) "Vessel" and "waters in this state" have the same meanings as in section 1546.01 of the Revised Code.

(B) No person shall knowingly, and by any means, drop or throw any object at, onto, or in the path of any of the following:

(1) Any vehicle, streetcar, or trackless trolley on a highway;

(2) Any boat or vessel on any of the waters in this state.

(C) Whoever violates this section is guilty of vehicular vandalism. Except as otherwise provided in this division, vehicular vandalism is a misdemeanor of the first degree. Except as otherwise provided in this division, if the violation of this section creates a substantial risk of physical harm to any person or the violation of this section causes serious physical harm to property, vehicular vandalism is a felony of the fourth degree. Except as otherwise provided in this division, if the violation of this section causes physical harm to any person, vehicular vandalism is a felony of the third degree. If the violation of this section causes serious physical harm to any person, vehicular vandalism is a felony of the second degree.



**R.C. § 2909.11**

**2909.11 Determining property value or amount of physical harm**

*Amends Powell City Code § 541.01.*

*Editor's Note:* This section effective 3-21-17. See, also, section 2909.11 effective until 3-21-17.

(A) When a person is charged with a violation of division (A)(1) or (B)(1) of section 2909.03 of the Revised Code involving property value or an amount of physical harm of one thousand dollars or more or with a violation of section 2909.05 of the Revised Code involving property value or an amount of physical harm of one thousand dollars or more, the jury or court trying the accused shall determine the value of the property or amount of physical harm and, if a guilty verdict is returned, shall return the finding as part of the verdict. In any such case, it is unnecessary to find or return the exact value or amount of physical harm, section 2945.75 of the Revised Code applies, and it is sufficient if either of the following applies, as appropriate, relative to the finding and return of the value or amount of physical harm:

(1) If the finding and return relate to a violation of division (A)(1) or (B)(1) of section 2909.03 of the Revised Code and are that the value or amount of the physical harm was one thousand dollars or more, the finding and return shall include a statement that the value or amount was one thousand dollars or more.

(2) If the finding and return relate to a violation of section 2909.05 of the Revised Code and are that the value or amount of the physical harm was in any of the following categories, the finding and return shall include one of the following statements, as appropriate:

(a) If the finding and return are that the value or amount was one hundred fifty thousand dollars or more, a statement that the value or amount was one hundred fifty thousand dollars or more;

(b) If the finding and return are that the value or amount was seven thousand five hundred dollars or more but less than one hundred fifty thousand dollars a statement that the value or amount was seven thousand five hundred dollars or more but less than one hundred fifty thousand dollars;

(c) If the finding and return are that the value or amount was one thousand dollars or more but less than seven thousand five hundred dollars, a statement that the value or amount was one thousand dollars or more but less than seven thousand five hundred dollars.

(B) The following criteria shall be used in determining the value of property or amount of physical harm involved in a violation of division (A)(1) or (B)(1) of section 2909.03 or section 2909.05 of the Revised Code:

(1) If the property is an heirloom, memento, collector's item, antique, museum piece, manuscript, document, record, or other thing that is either irreplaceable or is replaceable only on the expenditure of substantial time, effort, or money, the value of the property or the amount of physical harm involved is the amount that would compensate the owner for its loss.

(2) If the property is not covered under division (B)(1) of this section and the physical harm is such that the property can be restored substantially to its former condition, the amount of physical harm involved is the reasonable cost of restoring the property.

(3) If the property is not covered under division (B)(1) of this section and the physical harm is such that the property cannot be restored substantially to its former condition, the value of the property, in the case of personal property, is the cost of replacing the property with new property of like kind and quality, and, in the case of real property or real property fixtures, is the difference in the fair market value of the property immediately before and immediately after the offense.

(C) As used in this section, “fair market value” has the same meaning as in section 2913.61 of the Revised Code.

(D) Prima-facie evidence of the value of property, as provided in division (E) of section 2913.61 of the Revised Code, may be used to establish the value of property pursuant to this section.

## **R.C. § 2909.03**

### **2909.03 Arson**

*Amends Powell City Code § 541.02*

*Editor's Note:* This section effective 3-21-17. See, also, section 2909.03 effective until 3-21-17.

(A) No person, by means of fire or explosion, shall knowingly do any of the following:

(1) Cause, or create a substantial risk of, physical harm to any property of another without the other person's consent;

(2) Cause, or create a substantial risk of, physical harm to any property of the offender or another, with purpose to defraud;

(3) Cause, or create a substantial risk of, physical harm to the statehouse or a courthouse, school building, or other building or structure that is owned or controlled by the state, any political subdivision, or any department, agency, or instrumentality of the state or a political subdivision, and that is used for public purposes;

(4) Cause, or create a substantial risk of, physical harm, through the offer or the acceptance of an agreement for hire or other consideration, to any property of another without the other person's consent or to any property of the offender or another with purpose to defraud;

(5) Cause, or create a substantial risk of, physical harm to any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by another person, the state, or a political subdivision without the consent of the other person, the state, or the political subdivision;

(6) With purpose to defraud, cause, or create a substantial risk of, physical harm to any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by the offender, another person, the state, or a political subdivision.

(B) No person, by means of fire or explosion, shall knowingly do any of the following:

(1) Cause, or create a substantial risk of, physical harm to any structure of another that is not an occupied structure;

(2) Cause, or create a substantial risk of, physical harm, through the offer or the acceptance of an agreement for hire or other consideration, to any structure of another that is not an occupied structure;

(3) Cause, or create a substantial risk of, physical harm to any structure that is not an occupied structure and that is in or on any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by another person, the state, or a political subdivision.

(C)(1) It is an affirmative defense to a charge under division (B)(1) or (2) of this section that the defendant acted with the consent of the other person.

(2) It is an affirmative defense to a charge under division (B)(3) of this section that the defendant acted with the consent of the other person, the state, or the political subdivision.

(D)(1) Whoever violates this section is guilty of arson.

(2) A violation of division (A)(1) or (B)(1) of this section is one of the following:

(a) Except as otherwise provided in division (D)(2)(b) of this section, a misdemeanor of the first degree;

(b) If the value of the property or the amount of the physical harm involved is one thousand dollars or more, a felony of the fourth degree.

(3) A violation of division (A)(2), (3), (5), or (6) or (B)(3) of this section is a felony of the fourth degree.

(4) A violation of division (A)(4) or (B)(2) of this section is a felony of the third degree.

## **R.C. § 2903.06**

### **2903.06 Aggravated vehicular homicide; vehicular homicide; vehicular manslaughter; effect of prior convictions; penalties**

*Amends Powell City Code § 537.02*

*Editor's note:* This section effective 3-14-17. See, also, section 2903.06 effective until 3-14-17.

(A) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause the death of another or the unlawful termination of another's pregnancy in any of the following ways:

(1)(a) As the proximate result of committing a violation of division (A) of section 4511.19 of the Revised Code or of a substantially equivalent municipal ordinance;

(b) As the proximate result of committing a violation of division (A) of section 1547.11 of the Revised Code or of a substantially equivalent municipal ordinance;

(c) As the proximate result of committing a violation of division (A)(3) of section 4561.15 of the Revised Code or of a substantially equivalent municipal ordinance.

(2) In one of the following ways:

(a) Recklessly;

(b) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense, provided that this division applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and does not apply as described in division (F) of this section.

(3) In one of the following ways:

(a) Negligently;

(b) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense, provided that this division applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the speeding offense in the construction zone and does not apply as described in division (F) of this section.

(4) As the proximate result of committing a violation of any provision of any section contained in Title XLV of the Revised Code that is a minor misdemeanor or of a municipal ordinance that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any provision of any section contained in Title XLV of the Revised Code that is a minor misdemeanor.

(B)(1) Whoever violates division (A)(1) or (2) of this section is guilty of aggravated vehicular homicide and shall be punished as provided in divisions (B)(2) and (3) of this section.

(2)(a) Except as otherwise provided in division (B)(2)(b) or (c) of this section, aggravated vehicular homicide committed in violation of division (A)(1) of this section is a felony of the second degree and the court shall impose a mandatory prison term on the offender as described in division (E) of this section.

(b) Except as otherwise provided in division (B)(2)(c) of this section, aggravated vehicular homicide committed in violation of division (A)(1) of this section is a felony of the first degree, and the court shall impose a mandatory prison term on the offender as described in division (E) of this section, if any of the following apply:

(i) At the time of the offense, the offender was driving under a suspension or cancellation imposed under Chapter 4510. or any other provision of the Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under section 4507.10 of the Revised Code.

(ii) The offender previously has been convicted of or pleaded guilty to a violation of this section.

(iii) The offender previously has been convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense.

(c) Aggravated vehicular homicide committed in violation of division (A)(1) of this section is a felony of the first degree, and the court shall sentence the offender to a mandatory prison term as provided in section 2929.142 of the Revised Code and described in division (E) of this section if any of the following apply:

(i) The offender previously has been convicted of or pleaded guilty to three or more prior violations of section 4511.19 of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.

(ii) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A) of section 1547.11 of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.

(iii) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(3) of section 4561.15 of the Revised Code or of a substantially equivalent municipal ordinance within the previous six years.

(iv) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(1) of this section within the previous six years.

(v) The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(1) of section 2903.08 of the Revised Code within the previous six years.

(vi) The offender previously has been convicted of or pleaded guilty to three or more prior violations of section 2903.04 of the Revised Code within the previous six years in circumstances in which division (D) of that section applied regarding the violations.

(vii) The offender previously has been convicted of or pleaded guilty to three or more violations of any combination of the offenses listed in division (B)(2)(c)(i), (ii), (iii), (iv), (v), or (vi) of this section within the previous six years.

(viii) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony violation of division (A) of section 4511.19 of the Revised Code.

(d) In addition to any other sanctions imposed pursuant to division (B)(2)(a), (b), or (c) of this section for aggravated vehicular homicide committed in violation of division (A)(1) of this section, the court shall impose upon the offender a class one suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(1) of section 4510.02 of the Revised Code.

Divisions (A)(1) to (3) of section 4510.54 of the Revised Code apply to a suspension imposed under division (B)(2)(d) of this section.

(3) Except as otherwise provided in this division, aggravated vehicular homicide committed in violation of division (A)(2) of this section is a felony of the third degree. Aggravated vehicular homicide committed in violation of division (A)(2) of this section is a felony of the second degree if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under Chapter 4510. or any other provision of the Revised Code or was operating a motor vehicle or motorcycle, did not have a

valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under section 4507.10 of the Revised Code or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense. The court shall impose a mandatory prison term on the offender when required by division (E) of this section.

In addition to any other sanctions imposed pursuant to this division for a violation of division (A)(2) of this section, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(2) of section 4510.02 of the Revised Code or, if the offender previously has been convicted of or pleaded guilty to a traffic-related murder, felonious assault, or attempted murder offense, a class one suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(1) of that section.

(C) Whoever violates division (A)(3) of this section is guilty of vehicular homicide. Except as otherwise provided in this division, vehicular homicide is a misdemeanor of the first degree. Vehicular homicide committed in violation of division (A)(3) of this section is a felony of the fourth degree if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under Chapter 4510. or any other provision of the Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under section 4507.10 of the Revised Code or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense. The court shall impose a mandatory jail term or a mandatory prison term on the offender when required by division (E) of this section.

In addition to any other sanctions imposed pursuant to this division, the court shall impose upon the offender a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of section 4510.02 of the Revised Code, or, if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense, a class three suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(3) of that section, or, if the offender previously has been convicted of or pleaded guilty to a traffic-related murder, felonious assault, or attempted murder offense, a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of that section.

(D) Whoever violates division (A)(4) of this section is guilty of vehicular manslaughter. Except as otherwise provided in this division, vehicular manslaughter is a misdemeanor of the second degree. Vehicular manslaughter is a misdemeanor of the first degree if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under Chapter 4510. or any other provision of the Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or

commercial driver's license without examination under section 4507.10 of the Revised Code or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense.

In addition to any other sanctions imposed pursuant to this division, the court shall impose upon the offender a class six suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(6) of section 4510.02 of the Revised Code or, if the offender previously has been convicted of or pleaded guilty to a violation of this section, any traffic-related homicide, manslaughter, or assault offense, or a traffic-related murder, felonious assault, or attempted murder offense, a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of that section.

(E) The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of division (A)(1) of this section. If division (B)(2)(c)(i), (ii), (iii), (iv), (v), (vi), (vii), or (viii) of this section applies to an offender who is convicted of or pleads guilty to the violation of division (A)(1) of this section, the court shall impose the mandatory prison term pursuant to section 2929.142 of the Revised Code. The court shall impose a mandatory jail term of at least fifteen days on an offender who is convicted of or pleads guilty to a misdemeanor violation of division (A)(3)(b) of this section and may impose upon the offender a longer jail term as authorized pursuant to section 2929.24 of the Revised Code. The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of division (A)(2) or (3)(a) of this section or a felony violation of division (A)(3)(b) of this section if either of the following applies:

(1) The offender previously has been convicted of or pleaded guilty to a violation of this section or section 2903.08 of the Revised Code.

(2) At the time of the offense, the offender was driving under suspension or cancellation under Chapter 4510. or any other provision of the Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under section 4507.10 of the Revised Code.

(F) Divisions (A)(2)(b) and (3)(b) of this section do not apply in a particular construction zone unless signs of the type described in section 2903.081 of the Revised Code are erected in that construction zone in accordance with the guidelines and design specifications established by the director of transportation under section 5501.27 of the Revised Code. The failure to erect signs of the type described in section 2903.081 of the Revised Code in a particular construction zone in accordance with those guidelines and design specifications does not limit or affect the application of division (A)(1), (A)(2)(a), (A)(3)(a), or (A)(4) of this section in that construction zone or the prosecution of any person who violates any of those divisions in that construction zone.

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

(a) "Mandatory prison term" and "mandatory jail term" have the same meanings as in section 2929.01 of the Revised Code.



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(b) “Traffic-related homicide, manslaughter, or assault offense” means a violation of section 2903.04 of the Revised Code in circumstances in which division (D) of that section applies, a violation of section 2903.06 or 2903.08 of the Revised Code, or a violation of section 2903.06, 2903.07, or 2903.08 of the Revised Code as they existed prior to March 23, 2000.

(c) “Construction zone” has the same meaning as in section 5501.27 of the Revised Code.

(d) “Reckless operation offense” means a violation of section 4511.20 of the Revised Code or a municipal ordinance substantially equivalent to section 4511.20 of the Revised Code.

(e) “Speeding offense” means a violation of section 4511.21 of the Revised Code or a municipal ordinance pertaining to speed.

(f) “Traffic-related murder, felonious assault, or attempted murder offense” means a violation of section 2903.01 or 2903.02 of the Revised Code in circumstances in which the offender used a motor vehicle as the means to commit the violation, a violation of division (A)(2) of section 2903.11 of the Revised Code in circumstances in which the deadly weapon used in the commission of the violation is a motor vehicle, or an attempt to commit aggravated murder or murder in violation of section 2923.02 of the Revised Code in circumstances in which the offender used a motor vehicle as the means to attempt to commit the aggravated murder or murder.

(g) “Motor vehicle” has the same meaning as in section 4501.01 of the Revised Code.

(2) For the purposes of this section, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or a prior or current specified offense, the reference to the violation of the specified law or the specified offense includes any violation of any substantially equivalent municipal ordinance, former law of this state, or current or former law of another state or the United States.