



ZACH KLEIN
COLUMBUS CITY ATTORNEY

Police Legal Advisor's Update—Summer in the City

by Jeffrey S. Furbee (Jfurbee@columbuspolice.org) and Deana Overking
(doverking@columbuspolice.org) 614-645-4530 May 17th, 2018

More information is available in the Legal Advisor's Office at 645-4530. This is not an inspectional item.

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I. Pedestrian/Solicitor Roadway Issues

A. Freeways v. City Streets:

Freeways: If a person is soliciting on a freeway/freeway exit ramp, or occupying that space for any other non-emergency reason, **CCC 2109.06** applies to that person if they are standing on the berm because the berm falls within the definition of “right of way” found within CCC 2101.32. In other words, the person in that situation would not need to go into/onto the actual freeway to be cited under CCC 2109.06.

2109.06 - Freeway use prohibited by pedestrians, bicycles and animals.

- (a) No person, unless otherwise directed by a police officer, shall:
 - (1) As a pedestrian, **occupy any space within the limits of the right-of-way of a freeway**, except: in a rest area, on a facility that is separated from the roadway and shoulders of the freeway and is designed and appropriately marked for pedestrian use, in the performance of public works or official duties, as a result of an emergency caused by an accident or breakdown of a motor vehicle, or to obtain assistance;

City Streets: If an officer considers citing someone under **CCC 2171.06** for soliciting on a City Street, that person would actually have to go into the roadway to be cited. In other words, soliciting from the sidewalk or berm of a City street by itself would not suffice for charging—the officer would have to see the person actually walk onto to the roadway, and roadway means that portion of the roadway between the boundary lines. The same would hold true if you wished to cite under **CCC 2171.05**—the person would have to be on the actual roadway. It also bears mentioning that application of CCC 2171.05 is not limited to soliciting—it applies to anyone who goes into the roadway for any purpose.

2171.06 - Soliciting rides—Riding on outside of vehicle.

(b) No person shall stand on a freeway, street, highway or roadway for the purpose of soliciting employment, business, or contributions from the driver or occupants of any vehicle. The prohibition contained in this paragraph does not apply if the person is soliciting contributions as a designated agent on behalf of an organization that has been issued a permit pursuant to Section 525.24 and that person has a copy of that permit in their possession.

2171.05- Walking on path or street, jaywalking.

(a) Where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(b) Where a sidewalk is not available, any pedestrian walking along a street or highway shall walk only on a shoulder, as far as practicable from the edge of the roadway.

(c) Where neither a sidewalk nor a shoulder is available, any pedestrian walking along and upon a street or highway shall walk as near as practicable to an outside edge of the roadway, and, if on a two (2) way roadway, should walk only on the left side of the roadway.

(d) No pedestrian shall cross a roadway at a place other than a crosswalk except in cases where crosswalks are an unreasonable distance apart.

B. Enhancements: These charges are minor misdemeanors on first offenses, but if, within one (1) year of the offense, the offender previously has been convicted of or pleaded guilty to one (1) predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one (1) year of the offense, the offender previously has been convicted of two (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree. *See CCC 2101.251* for the list of *Predicate Motor Vehicle Offenses or Traffic Offenses* that allow for enhancement.

Charges must be enhanced properly. You must list the prior offenses on the front of the charging instrument to enhance the charge to a higher level of offense and you must list the correct level of the enhanced offense. (See CCC 2171.06(e)). Bear in mind, that to enhance there must have been a conviction in the past year of a *predicate* motor vehicle or traffic offense. If you look at the list of predicate offenses, which are found in CCC 2101.251, there are many offenses which qualify as predicate offenses—most Columbus City Code traffic offenses are predicate offenses. A prior conviction for CCC 2171.06 is one predicate offense, but there are others.

II. Panhandling--Conduct that Crosses the Line (CCC 2333 is Not Enforceable)

CCC 2333.01 thru 2333.04 Pedestrian or Vehicle Interference, or as it is also known, the “Aggressive Panhandling” section, is **not enforceable** due to a Supreme Court Ruling. Panhandling/soliciting money, by itself, is protected 1st Amendment activity, and loitering in a public place is not illegal. We know our advice to stop enforcing CCC 2333 has caused some frustration because criminal behavior sometimes occurs during otherwise legal panhandling activity, but there are still several viable legal/constitutional options available to deal with the criminal behavior:

A. Disorderly Conduct: If a solicitor gets in the face of a person, from whom they are attempting to solicit money, and/or yells or screams at them, this could rise to the level of violent or turbulent behavior. **(See CCC 2317.11(A)(1))**. If a solicitor hinders or prevents the movement of persons from whom they are attempting to solicit money by blocking or touching them, this could rise to the level of disorderly conduct. (See CCC 2317.11(A)(4)). If

a solicitor insults or calls names at/to a person from whom they are attempting to solicit money, this too could be disorderly conduct. (See CCC 2317.11(A)(3).

B. Menacing/Aggravated Menacing: If a panhandler threatens a person from whom they solicit, this could rise to the level of menacing (**CCC 2303.22**) or aggravated menacing (**2303.21**), depending on the level of threat. For example, the threat of, “I will kick your butt, hit you, spit on you, if you don’t give me money,” could rise to the level of menacing if the victim believed the solicitor would cause them physical harm based on the threat. The threat of, “I will kill/stab/cut/shoot you,” would rise to the level of aggravated menacing if the victim of the threat believed the solicitor would cause them serious physical harm.

C. Criminal Trespass: If a solicitor enters onto private property (a business or a private patio) to solicit this could be criminal trespass if the solicitor has been clearly warned in the past not to be on the property, has been told to leave and has refused to do so at that time, or if there is clear signage indicating that only patrons/customers may be on the property. (See CCC 2311.21).

III. Criminal Trespass Generally

This can be a frustrating area of the law for officers because it can be unclear if someone is a trespasser, or if they have been given proper notice they are trespassing. It can be frustrating for businesses because trespassers can disrupt their business. The recent Starbucks incident has made officers even more concerned with how/when to charge for trespassing, so here are our thoughts on how to sort out these incidents—it might seem long, but really it is just a few questions to assure officers are making proper legal decisions relative to alleged trespassers:

- A)** If called to a location for trespassing, the officer needs to find out who is in charge when they get to a scene (owner or manager etc.). The officer needs to find out if that person has authority to trespass a person and be listed as the victim/witness on behalf of company XYZ. Most of the time, the owner or on-site manager likely has that authority. However that is not always the case so the officer needs to ask questions before considering charging or arresting or taking any action against an alleged trespasser. The main questions that should be asked relative to authority are as follows: “Are you in charge and are you authorized on behalf of XYZ corporation to sign off on a criminal trespass charge for this place meaning you will listed as the charging person?” This should be documented.
- B)** The next question to ask the manager/person in charge, and this sometimes gets lost in all of the confusion, is this: “What is the basis for considering the person to be a trespasser— why do you say they are trespassing?” “Are they not a customer?” “Did they break the rules of the place and how?” All of this is a part of an officer’s PC analysis. The officer doesn’t want to find out later the alleged trespasser in fact had a privilege to be in the place, which of course would nullify PC for a CT charge.

- C) The officer then needs to ask the most basic question of the manager/person in charge: “Do you want the trespasser just to leave? Are you willing to charge?” We say this because we see situations where officers treat trespassers as if they are under arrest, and then the owner/manager says, “Oh, I don’t want them to be charged, I just want them to leave.” Ultimately an officer may not charge/arrest for trespass unless an owner/manager wants that charge filed.
- D) Finally, the officer needs to find out if the owner/manager has in fact put the alleged trespasser on notice they are a trespasser subject to being charged. So, the next question should be to the manager/person in charge: “Have you told the person they are trespassing and they have to leave?” Or, “is there signage that tells them that?” You should of course then follow-up with the suspect. If there is the slightest bit of ambiguity, or confusion, meaning the person might not be on notice they are a trespasser, the officer should have the on-site authorized agent/owner/manager inform the alleged trespasser they are trespassing and have to leave or they could be charged.
- E) If after all of this there is evidence the person has trespassed, the officer may charge for CT. CT is not an exception to the on-view rule so to arrest for CT it has to be on-view for the officer. The Starbucks incident rightfully got a lot of attention, but we don’t want officers to think they can never charge with CT, and we don’t want local businesses to think officers will not do anything to someone who is truly trespassing and disrupting a business.
- F) Be careful mixing up Trespass Agent Authorizations with these situations. Trespass Agent Authorizations are generally used for places/locations where there will not be an on-site person to say they want charges. For example, a warehouse owner might grant CPD Agent Authorization to charge anyone found on their grounds with CT when the place is closed between 10pm and 7am. If it is an open business and there is an on-site owner/manager who has authority on behalf of XYZ Company to eject trespassers/charge, then there need not be an agent authorization letter in place/on-file.

IV. Graffitiism and Related Offenses

Pursuant to **CCC 2909.27** no person, without privilege to do so, shall commit graffitiism upon any public or private, real or personal property. (M-1). "Graffitiism" means the act of defacing, damaging or destroying any public or private, real or personal property, without the privilege to do so, by drawing, marking, painting, tagging, etching, scratching, or writing any inscription, design, word, figure, or mark of any type on any building, bridge, fence, gate, rock, structure, tree, wall or other property visible to the public. Pursuant to **CCC 2309.28** it is unlawful for a merchant to sell spray paint to a minor—the merchant is supposed to I.D. It is also unlawful to give spray paint to a minor, unless it is for a lawful activity under the supervision of a parent,

guardian, teacher, or supervisor. It is unlawful for a minor to purchase spray paint. Pursuant to **CCC 2309.30** it is unlawful for a minor to have spray paint in their possession in a public place unless for a lawful purpose under the supervision of an adult so if you see a kid alone with spray paint that is very likely a violation of the law. Finally, merchants who sell spray paint are required to have warning signs indicating minors cannot purchase such items. The Police may enforce these code sections.

V. Stop and I.D. Law

This is a quick summary of this code section, but we felt like we needed to touch on this topic given the increased policing activity at street-level during warm weather:

ORC 2921.21 Failure to disclose one's personal information: If an officer has reasonable suspicion to detain in a public place (*Terry* stop), or the person is a witness to a felony offense of violence, that person must disclose their name, address, or date of birth to the officer upon request. If they fail to do so, they may be charged with an M-4.

Some things to consider before charging pursuant to this code section:

- A) The only time a detainee/witness would not have to disclose their DOB is if age is an element of a crime (underage consumption for example);
- B) Officers sometimes misuse this code section by charging a person with violation when they refuse to give personal information during a consensual encounter. A person only has a duty to give an officer personal information when they are a witness to a violent felony, or when there is a good *Terry* stop first—citizens do not have to tell you I.D. information during a consensual contact;
- C) Do not charge a person with obstructing official business for failing to provide personal information. OOB requires an affirmative act and refusing to provide I.D. information is not.

VI. Noise Complaints (CCC 2329.11)

We get many questions/complaints about the noise code. Some officers are reluctant to enforce this section because they find parts of it a bit vague. Many citizens think officers don't enforce this code section nearly enough. We are here to tell you this code section is fully enforceable and is a useful tool when noise is unreasonably disrupting a neighborhood.

Q. Is the Community Noise Ordinance (CCC 2329.11) enforceable/constitutional?

A. Yes, it is good law and can/should be used. If you see/hear a violation, we believe you should take action because, legally speaking, you are in the best position to do so. Referring the

complaining person to prosecution isn't helpful because prosecution isn't at the scene, and cannot effectively assess noise level based on a report.

Q. If an officer responds to a call, wherein the caller says their neighbor's music is too loud, what should officer do?

A. One, see if the noise seems unreasonably loud—there is some common sense to this in that you should assess if the noise is too loud given the surroundings and the normal sound for the location and time. Two, assess what is causing the noise—is it amplified noise or something else? Three, assess if the area is zoned residential or not. Four, ask the person making the noise to turn it down to a reasonable level if the noise is too loud. Five, if that fails, assess which portion of CCC 2329.11 applies, and issue a summons to the person responsible for the noise.

CCC 2329.11(C)(2) (see below) applies specifically to certain types of residential properties and to the use of a sound amplification system/auditory device. If you are at one the listed types of locations (a duplex in a zoned residential area for example), and you can hear the amplified noise at one of the listed distances, you can use the (C)(2) section—it literally is as easy as you are at a residential location/single family home, and you hear the amplified noise more than 50 feet from the house, you can cite under (C)(2). If you use the (C)(2) section, you need to measure the distances, and indicate the noise was generated by a amplification system or auditory device.

If you are unsure if the noise is emanating from a property which is zoned residential, or uncertain about other issues relative to the (C)(2) section, but you think the noise is unreasonably loud, you can always use the (C)(1) section. Generally for the (C)(1) section to be used, we want to see two complaining parties/locations, so it is clear that persons of ordinary sensibilities are disturbed by the noise—if two people at two different locations are disturbed by the same noise at roughly the same time, and you confirm it is too loud, we think it obvious the noise is unreasonably loud. If those conditions are met, cite for violation of CCC 2329.11(C)(1).

Q. Is there ever a time an officer could file a CCC 2329.11(C)(1) violation with only one complaining person?

A. Yes, even though this should be unusual, we do see some circumstances where this would be appropriate. For example, if there is a really loud bar with an outdoor patio, and there is only one home nearby which could be impacted by the noise because of proximity, then you could file under the (C)(1) section as long as you verified that you too thought the noise was unreasonably loud. However, if there are several homes that should be similarly impacted by the same noise, and only one homeowner is complaining, then we are very hesitant to recommend filing under the (C)(1) section because it is then difficult to say persons of ordinary sensibilities were offended by the noise since a whole lot of people apparently weren't.

Q. Does CCC 2329.11(C)(1) apply to commercial establishments like bars and restaurants?

A. Yes!!!! If noise is unreasonably loud, it is unreasonably loud. Officers often tell us that they have heard the (C)(1) section doesn't apply to noise emanating from bars—this is incorrect—it does apply and a manager of a bar that is generating unreasonably loud noise may be charged if they don't turn it down.

Q. Can someone get a “noise permit,” which exempts them from the Community Noise ordinance (CCC 2329.11)?

A. Yes, pursuant to CCC 2329.11(D)(1)(c), a person may obtain a permit or license issued by the of License Section of the Department of Public Safety or The Special Events Section of The Department of Recreation and Parks. If someone indicates they have one, ask to see it. The vast majority of loud places don't have one.

Q. Do you need decibel readings to charge under CCC 2329.11(C)(1) or (C)(2)?

A. No! No! No!

Q. Can someone be arrested for a noise violation?

A. Yes, if the offender persists in making or allowing to be made unreasonably loud and/or raucous noise after reasonable warning or request to desist within a twelve-hour period, unreasonably loud and/or raucous noise is a misdemeanor of the fourth degree.

Q. If a vehicle stereo is too loud, what is the correct charge?

A. If a vehicle is being operated on a street/ highway/other property open to the public for the purpose of vehicular travel or parking, and the music can be heard from 50 feet or more from the vehicle, then the best charge for loud music from a vehicle is CCC 2137.27—Loud sound amplification systems prohibited. If the vehicle is on a purely private property, thus rendering CCC 2137.27 inapplicable, then use CCC 2329.11(C)(1) to address the noise emanating from the vehicle if all of the requirements mentioned above apply.

VII. Misconduct on Public Transportation

CCC 2317.41 Misconduct involving a public transportation system: This code section contains various offenses related to the misuse or abuse of public transportation or public transportation officials/employees. For example, it is an M-1 to evade payment, to throw rocks at a bus, to damage public transit facilities, to push a bus operator, or to refuse to leave a bus when ordered to do so. Bear in mind, if a person refuses to leave a bus when told to do so, they should be charged under this section, and not with criminal trespass. It is also an M-1 to engage in disorderly conduct on a bus, to play sound equipment without head-phones on a bus, or to

alter a ticket/pass. If officers encounter misconduct on a bus or in a bus shelter, this is the first section they ought to review.

VI. The Public Indecency Statute only Applies to Genitalia (Not Breasts)

We get questions about public indecency during festival season. Specifically we get asked if the exposing of bare breasts constitutes the crime of public indecency. It does not.

***State v. Jetter*, 74 Ohio App. 3d 535 (Ohio Ct. App., Hamilton County 1991)** --Although R.C. Chapter 2907 fails to provide a specific definition for "private parts," we are convinced that, in its commonly understood meaning, the term does not include the female breast.

***State v. Mackie*, 2011-Ohio-2102 (Ohio Ct. App., Warren County May 2, 2011)** -- In construing the offense of public indecency strictly against the state and liberally in favor of appellant, we find as a matter of law that the current definition of "private parts" does not include the situation in the case at bar. "Private parts" means strictly genitals."

VII. Public Urination/Defecation

CCC 2317.14 Public Urination/Defecation makes urinating or defecating in public or private places that are not toilet facilities a minor misdemeanor. It is an affirmative defense to this section if the person has a verified medical condition that renders the act beyond their control, *or* the person had the consent of the property owner to engage in the act *and* the person took reasonable precautions to be obscured from public view. It is an M-3 if the person has a prior conviction in the past 5 years.

VIII. Parks Rules and Regulations

If an officer encounters criminality in a City Park, consider these code sections.

919.05 - Restrictions

(A) Parks shall be open daily between the hours of 7:00 a.m. to 11:00 p.m... **(If a person is in a City Park outside of listed hours, or in parts of a park, which are closed for certain hours, and the signage is clear, the person may be charged with criminal trespass).**

919.10 - Fires.

(A) No person shall kindle, build, maintain or use a fire other than in places provided or designated for such purpose... **(M-3)**

919.11 - Swimming and wading.

(A) Except as otherwise provided for within Chapter 921, wading, swimming, bathing or entering into any of the lakes, ponds, streams, reservoirs, quarries, fountains or any other water repository is strictly prohibited without the express permission of the director. **(MM)**

919.12 - Camping.

(A) No person shall camp in any area except designated areas set aside by the director for the purpose of camping and unless such person possesses a current and valid camping permit. **(M-4)**

919.13 - Alcoholic beverages prohibited.

(A) No person shall knowingly possess with the purpose to consume any liquor or beer as defined in Ohio R.C. Chapter 4301 while being in or upon any park. **(M-4) (See 919.13 (C) for all of the exemptions/exceptions from this section)**

919.14 - Fishing (M-4)

No person shall:

(A) Engage in fishing in violation of Ohio R.C. Chapter 1533.

(C) Use nets, buckets, or methods other than pole fishing to harvest fish from ponds which are solely contained within park boundaries, except Antrim Lake.

919.15 - Archery.

No person, without privilege to do so, shall use any crossbow, bow, arrow, slingshot or any other projectile propelling device. **(MM)**

919.16 - Littering, importing of rubbish and trash prohibited and pet owner(s) responsibility

(C) No pet owner shall fail to clean up after their pets by collecting and removing feces from park or reservoir property. **(MM)**

919.17 - Climbing, rappelling, throwing objects.

(A) No person shall climb, stand or sit on any monument, decorative ornament, nature object or fountain or any other structure except those provided expressly for such purposes. **(MM)**

919.24 - Fireworks

No person shall possess, be in control of or engage in the discharge of fireworks, unless approved by the director and pursuant to Chapter 2533 of the Columbus City Code. **(M-4)**

IX. First Amendment Activity/Protests

A. Heckler's Veto:

Bible Believers v. Wayne County, 805 F.3d 228 (6th Cir. Mich. 2015) In lawsuit against a county and sheriff's officials, the court ruled that defendants (the sheriff deputies) violated the plaintiff's First Amendment rights because sheriff's deputies effectuated a heckler's veto by cutting off plaintiffs' protected speech in response to a hostile crowd's reaction. Offensive religious proselytizing, as well as speech that drives a crowd to extreme agitation, is not subject to sanction simply because of the violent reaction of offended listeners.

Before removing a speaker due to safety concerns, and thereby permanently cutting off his speech, the police must first make bona fide efforts to protect the speaker from the crowd's hostility by other, less restrictive means.

So, if an officer is dispatched to a festival/event, and a protestor is lawfully expressing his/her beliefs, which leads the crowd to surround him/her and to start shouting, the officer should initially take steps to protect the speaker so they can express themselves, as opposed to telling the protestor to leave because they are upsetting the crowd. The crowd (the hecklers) do not get to veto the 1st Amendment rights of the protestor.

B. Festivals/Fairs/Events Held on City Streets/Sidewalks or City Parks

If a citizen is exercising his or her 1st Amendment rights in or on a festival area, which also happens to be a City street, City sidewalk, or City park, and the protestor is not otherwise violating the law, the protestor should not be told to leave or stop their 1st Amendment activity. The protestor should not be threatened with arrest for criminal trespass just because the festival organizers have a permit to use that street/park, and don't like the protestors message, or because they are offending festival goers. Generally speaking, when festival organizers obtain permits to have a festival in/on City streets, or in City Parks, the permits do not give the organizers the right to exclude peaceable protestors from those types of public spaces. This rule only applies to traditional public forums! If an organization is having an event on a completely private lot, or at a private facility, this doesn't apply, and the protestor can be treated as a trespasser and made to leave.

C. Protest Signs and Protest Noise

Protesters can put up temporary non-obstructive items, such as crosses or signs, in the public right of way, and officers should not threaten the protestors with charge/arrest for doing so. If the items are not a safety hazard, or an obstruction to vehicles or pedestrians, and are only used during the duration of the protest, they should not be disturbed. Protestors have no right to place items on purely private property—they only would have the right to place the items in the public right of way. The use of graphic or disturbing signs is generally 1st Amendment protected activity.

If signs in the right of way are dangerous or obstructive to traffic or pedestrians, the protestors can be told to move the signs to a safer location, and if they refuse they can be charged with violation of **CCC 2317.11 Disorderly conduct** (A) No person shall recklessly cause inconvenience, annoyance, or alarm to another, by doing any of the following: (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.

If the **noise/volume** of protest activity is too loud, and bothering enough persons' of ordinary sensibilities, you may threaten to charge protestors who are engaging in this conduct. In order for this charge to be legally appropriate, you must be charging the protestor for the volume of their speech/noise, and not for what they are saying. If you are going to charge in this context, you should charge under **CCC 2329.11(C)(1)**. When it comes to protest activity, the human voice alone is generally not the basis for a noise violation, especially downtown during the day. However, if the noise is being generated with a megaphone, or other amplification device, then a noise violation may be charged if there are complaining parties etc....

Noise directed at officers or others with intent to harm or cause pain may be charged either as disorderly conduct or possibly even assault depending on the level of noise, the intent, and the harm done. For example, we had incidents last summer where protestors, with megaphones, were intentionally blasting noise at bike-officers, or other citizens, from inches away. The officers reported pain, and ringing ears as a result of the conduct. If this were to reoccur, the protestors should be told to stop, and if they do not do so, charges may be considered.

D. Photographing and Videotaping

Protestors generally may videotape or photograph other citizens in public places. Citizens may videotape or photograph the police – this is 1st amendment protected activity. You should not tell a citizen to stop videotaping you! You of course can tell them to stay a safe distance from you as you perform your duties, but if they are a safe distance, you generally have no legal basis to order them to stop videotaping. There may be times when you may collect video cameras as

evidence, but tread carefully here: 1) Do you have PC to believe the camera contains evidence of the offense; 2) Do you plan on processing the camera as evidence meaning seek consent or get a search warrant to view the contents—this must be done without unreasonable delay if it is evidence; and 3) Is it the best/primary or only evidence of offense. Taking a phone/camera from a person as “evidence,” but then not treating the item like evidence, could be seen as retaliatory behavior that could support a First Amendment claim.

E. Reproductive Health Care Facilities

There is certainly legal/constitutionally protected protest activity which takes place outside of reproductive health care facilities. However, there is other conduct which is not legal and thus not constitutionally protected. Pursuant to CCC 2317.51 it is illegal to physically obstruct or block another person from entering into or exiting from the premises of a reproductive health care facility by physically striking, shoving, restraining, grabbing, or otherwise subjecting the person to unwanted physical contact. It is also illegal to obstruct or block the premises of a reproductive health care facility, so as to impede access to or from the facility. If a person engages in disorderly conduct within fifteen feet of a reproductive health care facility, this conduct rises to the level of an M-1.

F. Use of Streets/Parades and Moving Assemblages

Protestors must obtain a parade permit to march in the street. If protestors march in the street without a permit, and refuse to leave the street, they may be charged with violation of CCC 2111.02 Permit Required (M-4), as well as CCC 2171.05 (Walking on path/street/jaywalking), and perhaps disorderly if they are blocking. Protestors may march on sidewalks without a permit—they must leave a path open for pedestrians.

X. Placarded Structures

Any vacant structure, whether it's a commercial building, a house, or an apartment, can be placarded as a public nuisance. Anyone found inside these placarded buildings can be arrested and charged with violating **4707.07** re-occupying that placarded structure. (See complaint language below). Also, if you get called to a placarded structure, and a neighbor/witness indicates that a suspect has been in the placarded structure, but the suspect is not in the structure at that time, you can still charge the suspect. You of course could not arrest the suspect since the offense was not “on-view,” but you could issue the suspect a summons if they can be located.

If a structure is placarded thereby prohibiting re-occupancy pursuant to Columbus City Code, and if someone is on the attached porch of that structure, we believe they too can be charged if they are on the attached porch of the structure because that is a part of the structure. However, if they are only in the yard they cannot be charged pursuant to 4707.07 since they are not using the structure by being in the yard.

Also please generally keep this in mind as to any charges filed pursuant to 4707.07 -- unlike a criminal trespass we do not need the property owner as the complaining witness in these situations. What the affidavit must contain is the address of the property as well as the date it was posted. This information will be written on the face of the placard. Also on the placard is the name of the Code Enforcement Officer that posted the property, this name must be listed in the witness box of your U-10-100 so that the prosecutor's office knows to subpoena them. If a structure is not placarded, you must have a willing victim to charge with criminal trespass.

Re-occupancy of a placarded structure, C.C.C. 4707.07

_____ did (use or use for human habitation), to wit (describe use), a building or structure which has been vacated and declared and posted as unfit for human habitation or use or found to be vacant and declared a hazardous building pursuant to C.C.C. 4709.03 or a public nuisance pursuant to C.C.C. 4701.08, to wit (describe property, address and date of placard). **(M-1)**

XI. Bikes and Skateboards

Bicycles must generally be ridden in the street as near to the right side of the roadway as practicable obeying all traffic rules applicable to vehicles and exercising due care when passing a standing vehicle or one proceeding in the same direction. Persons riding bicycles or motorcycles upon a roadway shall ride not more than two (2) abreast in a single lane, except on shared-use paths or parts of roadways set aside for the exclusive use of bicycles or motorcycles. **(See CCC 2173.04)**. This section does not require a person operating a bicycle to ride at the edge of the roadway or within a marked bike lane when it is unreasonable or unsafe to do so. Conditions that may require riding away from the edge of the roadway or outside of a marked bike lane include when necessary to avoid fixed or moving objects, parked or moving vehicles, surface hazards, or if it otherwise is unsafe or impracticable to do so, including if the lane is too narrow for the bicycle and an overtaking vehicle to travel safely side by side within the lane. Bikes shall not be ridden on sidewalks but for on bikeways, or shared use paths. **(See CCC 2173.10)**.

Skateboards must be ridden on sidewalks, and not in the street, except when crossing the street on a cross-walk. **(See CCC 2171.09)**. Also, if skateboards are ridden on private property which is marked no-skateboarding, or something similar, or they have been told to leave, and have not, they could be charged with criminal trespass.

Bicyclists and skateboarders must show due regard for the safety of pedestrians and drivers. **(See CCC 2173.08)**. Zigzagging, weaving or riding at a greater than reasonable speed is prohibited.

XII. Open Containers (CCC 2325.62)

This section does not apply to a person who is drinking beer or other intoxicating liquor on their front porch, in their driveway, yard, or in a private court-yard of an apartment complex, which is not open to the public. Those are not "public places." However, this section does apply to

public sidewalks, parking lots open to the public, persons sitting in cars on public streets, or open areas of apartment complexes open to the public.

XIII. Animals Running at Large—CCC 2317.11 (M-3 if the animal is a Dog)

This section may be enforced by the police. A dog must be on a leash in a city park or street, or it must be under “direct control,” which means that the dog is within sight and hearing and will respond instantly to the commands or signals to “come,” “sit,” or “stay.” So, if a dog is running off-leash in Goodale Park, and the owner yells come or stop, but the dog nonetheless runs up and jumps on a jogger, that dog is not under direct control and theoretically CCC 2317.11 has been violated.

XIV. Fireworks

This section is the correct section to use relative to the unlawful discharging/igniting/exploding of fireworks and it is enforceable by the police:

ORC Ann. 3743.65 Restrictions on possession, sale and use; persons under age 18; ejection of disruptive persons; disabling fire suppression system

(A) No person shall possess fireworks in this state or shall possess for sale or sell fireworks in this state, except a licensed manufacturer of fireworks as authorized by sections 3743.02 to 3743.08 of the Revised Code, a licensed wholesaler of fireworks as authorized by sections 3743.15 to 3743.21 of the Revised Code, a shipping permit holder as authorized by section 3743.40 of the Revised Code, an out-of-state resident as authorized by section 3743.44 of the Revised Code, a resident of this state as authorized by section 3743.45 of the Revised Code, or a licensed exhibitor of fireworks as authorized by sections 3743.50 to 3743.55 of the Revised Code, and except as provided in section 3743.80 of the Revised Code. **(M-1 on 1st offense)**

(B) Except as provided in section 3743.80 of the Revised Code and except for licensed exhibitors of fireworks authorized to conduct a fireworks exhibition pursuant to sections 3743.50 to 3743.55 of the Revised Code, no person shall discharge, ignite, or explode any fireworks in this state. **(M-1 on 1st offense)**

XV. Guns (Open-Carry)

We have covered this before, but it bears repeating: open carry of a firearm in a public place in Ohio is generally legal, and open-carry by itself will not support a *Terry* stop. Nor will it support forcibly disarming the person during the time of the contact. A citizen does not need a permit to carry openly. We know this can be difficult because members of the public who see “open carry” call the police expecting action, and we understand it can be uncomfortable to deal with a person at close range who is armed. However, our courts have been clear, as you can see below.

Northrup v. City of Toledo PD 785 F.3d 1128 (6th Cir. Ohio May 13, 2015) – Not only has Ohio made open carry of a firearm legal, but it also does not require gun owners to produce or even carry their licenses for inquiring officers. Ohio's concealed carry laws do not regulate the open carry of firearms. The open carry of firearms is a legal activity in Ohio. If an officer engages in a conversation with a person who is carrying a gun openly, but otherwise is not committing a crime, the person cannot be required to produce identification. While open-carry laws may put police officers in awkward situations from time to time, the Ohio legislature has decided its citizens may be entrusted with firearms on public streets. A police department has no authority to disregard that decision--not to mention the protections of the Fourth Amendment--by detaining every gunman who lawfully possesses a firearm.

XVI. Minor's Curfew

CCC 2319.30 - Minor's curfew

(A) No minor **under the age of thirteen** years shall loiter, idle, wander, stroll, or play in or upon the public streets, other public places, places of amusement and entertainment, vacant lots or other unsupervised places during the period from **one hour after sunset to 4:30 a.m.** of the following day, official city time.

(B) No minor **thirteen years of age or older** shall loiter, idle, wander, stroll or play upon the public streets, other public places, places of amusement and entertainment, vacant lots or other unsupervised places, between the hours of **midnight and 4:30 a.m.** of the following day, official city time, if the minor is not a member of the United States Military or a registered full-time student at a business school or institution of higher learning. **(an M-3)**

(C) The provisions of divisions (A) and (B) of this section do not apply to a minor accompanied by his parents, guardian or other adult person having the care and custody of the minor, or where the minor is upon an emergency errand or legitimate business directed by his parents, guardian, or other adult person having the care and custody of the minor.

