

ORDINANCE NO. 03-089

Sponsored by President of Council James Renacci

AN ORDINANCE TO ENACT SECTIONS 73.08 AND 74.39 AND TO AMEND SECTIONS 74.42 AND 138.03 OF THE CODIFIED ORDINANCES OF THE CITY OF WADSWORTH TO RESTORE ORDINANCE PROVISIONS TO PROHIBIT OPERATING A MOTOR VEHICLE IN A WEAVING COURSE, TO RESTRICT THE USE OF SOUND AMPLIFICATION SYSTEMS IN MOTOR VEHICLES, TO PROHIBIT TRACKING OR DROPPING MUD, STONES, GRAVEL OR OTHER SIMILAR MATERIAL ON ANY STREET, HIGHWAY OR OTHER PUBLIC PLACE TO ESTABLISH THE PENALTY FOR POSSESSION OF MARIHUANA AS A FIRST DEGREE MISDEMEANOR AND TO DECLARE AN EMERGENCY

WHEREAS, it has come to the attention of this Council that several ordinance provisions were inadvertently omitted in the new Code of Ordinances adopted by Ordinance 03-061 and this council has determined that these provisions should be restored, **NOW THEREFORE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WADSWORTH, STATE OF OHIO:

Section 1. That new sections 73.08 and 74.39 of the Codified Ordinances are hereby enacted and existing sections 74.42 and 138.03 of the Codified Ordinances are hereby amended to read as follows:

73.08 WEAVING COURSE

- (A) No person shall operate a motor vehicle upon any street or highway in a weaving or zigzag course unless such irregular course is necessary for safe operation or to be compliance with law.
- (B) Whoever violates this section is guilty of operating a motor vehicle in a weaving course, a minor misdemeanor.

74.39 SOUND AMPLIFICATION SYSTEMS IN MOTOR VEHICLES

- (A) No person shall operate or park a motor vehicle on a street or highway or public property if the sound from any sound amplifying equipment located inside of, outside of but attached to, or held by a person inside, the motor vehicle, is discernible at a distance of 50 feet or more from the vehicle.
- (B) This section does not apply to any of the following circumstances:
 - (1) The sound amplifying equipment of the motor vehicle is to warn others of a hazardous road, vehicle operating or traffic safety condition.
 - (2) The motor vehicle is an emergency vehicle or public safety vehicle and is on an emergency run.

- (3) The motor vehicle is owned and operated by the state, a political subdivision or a public utility.
- (4) The motor vehicle is participating in a parade for which the sponsors of the parade have obtained the proper permits.
- (5) The sound amplifying equipment of the motor vehicle is being operated as a requirement of federal or state law.
- (6) Vendors of ice cream and related products between the hours of 9:00 o'clock a.m. and 8:00 o'clock p.m.

(C) If there is a violation of division (A) of this section, there shall be a rebuttable presumption that the registered owner or lessee of the motor vehicle is the person who committed the violation.

(D) Upon receipt of a report of an alleged violation of division (A) of this section, a police officer shall conduct an investigation to attempt to determine or confirm the identity of the violator. If a credible witness provides the police officer with a license plate number of the vehicle involved and there are no circumstances apparent to the police officer to conclusively indicate that the owner or lessee could not be a person who violated division (A) then the police officer shall be deemed to have probable cause to file a complaint in the Wadsworth Municipal Court or Medina County Juvenile Court against the registered owner or lessee.

(E) Violation of this section is a minor misdemeanor. For a second offense committed within one year after the commission of the first offense, violation of this section shall be a fourth degree misdemeanor. For a third and/or subsequent offense committed within one year after the commission of the first offense, violation of this section is a third degree misdemeanor.

74.42 ALL LOADS SHALL BE PROPERLY SECURED; SHIFTING LOADS; LOOSE LOADS AND TRACKING MUD

(A) No vehicle shall be driven or moved on any highway unless the vehicle is so constructed, loaded, or covered as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand or other substances may be dropped for the purpose of securing traction, or water or other substances may be sprinkled on a roadway in cleaning or maintaining the roadway.

(B) Except for a farm vehicle used to transport agricultural produce or agricultural production materials or a rubbish vehicle in the process of acquiring its load, no vehicle loaded with garbage, swill, cans, bottles, waste paper, ashes, refuse, trash, rubbish, waste, wire, paper, cartons, boxes, glass, solid waste, or any other material of an unsanitary nature that is susceptible to blowing or bouncing from a moving vehicle shall be driven or moved on any highway unless the load is covered with a sufficient cover to prevent the load or any part of the load from spilling onto the highway.

(R.C. § 4513.31)

(C) (1) In addition to any other lawful requirements of load distribution, no person shall operate any vehicle upon a street or highway

unless such vehicle is so laden as to prevent its contents from shifting or otherwise unbalancing the vehicle to such an extent as to interfere with the safe operation of the same.

(2) No motor vehicle or trailer shall be driven unless the tailboard or tailgate, tarpaulins, chains (except ground or contact chains), ropes, stakes, poles, and the like, or any part of the load, are securely fastened to prevent dangling, flapping, swinging or falling from the side, end or top of the load or body. All projecting cargo shall be properly guarded by a red flag or cloth or a red light or lantern as required by § 74.10.

(D) (1) No person shall operate any vehicle so as to track or drop mud, stones, gravel or other similar material on any street, highway or other public place.

(2) It shall be the duty of the driver of a vehicle who unlawfully drops or deposits mud, stones, gravel or other similar material or permits the load or any portion thereof to be dropped or deposited upon any street, highway or other public place to immediately to immediately remove the same or cause it to be removed.

('65 Code, § 339.09)

138.03 DRUG ABUSE.

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

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719, 4715, 4723, 4729, 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, 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 prescription issued by a licensed health professional authorized to prescribe drugs.

(C) Whoever violates division (A) of this section 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 I or II of R.C. § 3719.41, with the exception of marijuana, or is cocaine, L.S.D., heroin, or a compound, mixture or preparation containing such drug, drug abuse is a felony to be prosecuted under appropriate state law.

(2) If the drug involved is a compound, mixture, preparation, or substance included in Schedule III, IV, or V of R.C. § 3719.41, whoever

violates division (A) of this section is guilty of possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following division, possession of drugs is a misdemeanor of the third degree or, if the offender previously has been convicted of a drug abuse offense, it is a misdemeanor of the second degree. If the drug involved in the violation is an anabolic steroid included in Schedule III and if the offense is a misdemeanor of the third degree under this division, in lieu of sentencing the offender to a term of imprisonment in a detention facility, the court may place the offender on conditional probation pursuant to R.C. § 2951.02(F).

(b) If the amount of the drug involved equals or exceeds the bulk amount, possession of drugs is a felony to be prosecuted under appropriate state law.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following division, possession of marihuana is a misdemeanor of the first degree.

(b) If the amount of the drug involved equals or exceeds 200 grams, possession of marihuana is a felony to be prosecuted under appropriate state law.

(4) If the drug involved in the violation is hashish or a compound, mixture, preparation or substance containing hashish, whoever violates division (A) of this section is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following divisions, 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.

(c) If the amount of the drug involved equals or exceeds ten grams of hashish in a solid form or equals or exceeds two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony to be prosecuted under appropriate state law.

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

(E) In addition to any prison term authorized or required by division (C) of this section and R.C. §§ 2929.13 and 2929.14 and in addition to any other sanction that is imposed for the offense under this section or R.C. §§ 2929.11 through 2929.18, the court that sentences an offender who is

convicted of or pleads guilty to a violation of division (A) of this section shall do the following if applicable regarding the offender:

(1) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and subject to the requirements of R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in R.C. § 2925.03(F).

(2) The court shall suspend for not less than six months nor more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to a violation of this section.

(3) If the offender is a professionally licensed person or a person who has been admitted to the Bar by order of the Supreme Court in compliance with its prescribed and published rules, in addition to any other sanction imposed for a violation of this section, the court shall comply with R.C. § 2925.38.

Section 2. That existing sections 74.42 and 138.03 of the Codified Ordinances are hereby repealed.

Section 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety in the City of Wadsworth in order to promote traffic safety, reduce annoyance to the public from excessive noise and tracing of mud on public streets and to provide a greater deterrent to prevent the possession of marihuana; WHEREFORE, this ordinance shall go into immediate effect provided that it receives a two thirds vote of all members of city council. If it receives approval by a majority of the members but less than a two-thirds vote, then it shall be effective at the earliest time permitted by law.

Passed: _____

President of Council

Attest: _____

Clerk of Council

Approved: _____

Mayor

1st Rdg. _____

1st Rdg. _____

3rd Rdg. _____

Vote: aye _____ nay _____

2nd Rdg. _____

Passed: yes _____ no _____

Immediate Effect: yes _____ no _____

CERTIFICATE OF PUBLICATION

I, Katherine M. Stugmyer, Clerk of Council of the City of Wadsworth, State of Ohio, do hereby certify that the forgoing resolution was duly published in *The Gazette* on _____ and _____, which is for two consecutive weeks as required by section 731.21 of the Ohio Revised Code.

Katherine M. Stugmyer
Clerk of Council, City of Wadsworth