

Title 1- General Provisions

TITLE 1. GENERAL PROVISIONS

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Chapter 1.01. Rules of Construction; Prior Ordinances; Errors and Omissions.

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§1.01.01. Interpretation.

A. The provisions of this and subsequent Chapters in this volume shall constitute and be designated as the "Nelsonville City Code" and cited as such or "NCC". The codification has been made in one ordinance under appropriate Titles, Chapters and Sections by authority of the Revised Code of Ohio and Nelsonville City Charter.

B. Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this Code as those governing the interpretation of the Revised Code of Ohio.

C. Where a Section of this Code is followed by a reference to the Revised Code, such reference indicates that the Section is analogous or similar to such Revised Code Section. Footnotes, cross-references and other comments are by way of explanation only and should not be deemed a part of the text of any Section.

D. All provisions of this Code are limited in application to the territorial boundaries of the Municipal Corporation although the same may not be so limited specifically.

§1.01.02. Application to future legislation.

All of the provisions of Title I, not incompatible with future legislation, shall apply to ordinances hereafter adopted amending or supplementing this Code unless otherwise specifically provided.

§1.01.03. Captions.

Headings and captions used in this Code other than the Title, Chapter and Section numbers are employed for reference purposes only and shall not be deemed a part of the text of any Section.

§1.01.04. Definitions and rules of interpretation.

A. In the construction of this Code and of all ordinances of the City, the following definitions and rules of construction shall be observed, unless they are inconsistent with the intent of the Council or the context clearly requires otherwise:

(1) The expressions "this Code" or "this Code of Ordinances" shall mean the Nelsonville City Code as adopted by this ordinance, and as hereinafter modified by amendment, revision and by the adoption of new Titles, Chapters or Sections.

(2) The nouns "city", "town", "village", "municipal corporation" or "municipality" when used in this Code shall denote the Municipality of Nelsonville irrespective of its population or legal classification.

(3) Words denoting the masculine gender shall be deemed to include the feminine and neuter genders.

(4) Words in the singular shall include the plural, and words in the plural shall include the singular.

(5) The word "person" and its derivatives and the word "whoever" shall include a natural person, partnership or a corporate body or any body of persons corporate or incorporate.

(6) Whenever used in any clause prescribing and imposing a penalty, the term "person" or "whoever" as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

(7) A general term following a specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

(8) Either conjunction "and" or "or" shall include the other as if written "and/or".

(9) The word "month" shall mean a calendar month.

(10) The word "council" shall mean the Council of the City of Nelsonville.

(11) The word "property" shall include real and personal property.

(12) "Personal property" includes every species of property except real property.

(13) "Real property" includes lands, tenements and hereditaments and shall embrace all chattels real.

(14) The word "owner" applied to a building or land shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant of the whole or a part of such building or land, either alone or with others.

(15) Except as provided in the Traffic Code, the word "street" means the entire width between property lines of every way or place of whatever nature when any part thereof

is open to the use of the public, as a matter of right, and the word "sidewalk" means that portion of a street between the curb lines of the lateral lines of a roadway and the adjacent property lines intended for the use of pedestrians.

(16) Whenever the word "shall" appears in this Code it shall be considered mandatory and not directory, except as otherwise provided.

(17) The letters "RC" or phrase "Revised Code" refers to the Revised Code of Ohio.

(18) The term "Service Director" or "Safety Director" shall mean "City Manager."

§1.01.05. Rule of separability.

Each Chapter, Section or, whenever divisible, part of a Section of this Nelsonville City Code is hereby declared to be separable, and the invalidity of any Chapter, Section or divisible part of a Section, shall not be construed to affect the validity of any other chapter, section or part of a Section of this Code.

§1.01.06. Reference to other sections.

Whenever in one Section reference is made to another Section hereof, such reference shall extend and apply to the Section referred to as subsequently amended, revised, recodified or renumbered unless the subject matter be changed or materially altered by the amendment or revision.

§1.01.07. Reference to offices.

Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of the City of Nelsonville exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

§1.01.08. Errors and omissions.

If a manifest error be discovered consisting of the misspelling of any word or words, the omission of any word or words necessary to express the intention of the provisions affected, the use of a word or words to which no meaning can be attached, or the use of a word or words when another word or words was clearly intended to express such intent, such spelling shall be corrected and such word or words supplied, omitted or substituted as will conform with the manifest intention, and the provision shall have the same effect as though the correct words were contained in the text as originally published. No such alteration shall be made or permitted if any question exists regarding the nature or extent of such error.

§1.01.09. Ordinances repealed.

This Code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this Code shall be deemed repealed from and after the effective date of this Nelsonville City Code.

§1.01.10. Ordinances unaffected.

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not enumerated and embraced in the Nelsonville City Code, shall remain in full force and effect unless herein repealed expressly or by necessary implication.

§1.01.11. Ordinances saved.

Whenever an ordinance by its nature either authorizes or enables the legislative body, or a certain municipal officer or employee to make additional ordinances or regulations for the purpose of carrying out the intent of said ordinance, all ordinances and regulations of a similar nature serving such purpose effected prior to the codification and not inconsistent thereto, shall remain in effect and are saved.

§1.01.12. Title.

This shall be known as the Nelsonville City Code and may be referred to as the Nelsonville Code, the Nelsonville City Code, or "NCC".

Chapter 1.02. General Penalty; Time Limit on Prosecution; Fines.

- §1.02.01. General penalty for misdemeanors.
- §1.02.02. Limitation of criminal prosecutions.
- §1.02.03. Credit toward fines; imprisonment.
- §1.02.04. Organizational criminal liability.
- §1.02.05. Personal accountability for organizational conduct.
- §1.02.06. Citation and financial settlement in lieu of prosecution for certain offenses.

§1.02.01. General penalty for misdemeanors.

Whoever violates any provision of the Nelsonville City Code for which no other penalty is prescribed is guilty of a minor misdemeanor as defined in Ohio Revised Code Sections §2929.21 and §2929.31.

§1.02.02. Limitation of criminal prosecutions.

A. Except as otherwise provided in this Section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:

- (1) For a felony other than aggravated murder or murder, 6 years;
- (2) For a misdemeanor other than a minor misdemeanor, 2 years;
- (3) For a minor misdemeanor, 6 months.

B. If the period of limitation provided in paragraph A. of this Section has expired, prosecution shall be commenced for an offense of which an element is fraud or breach of fiduciary duty, within one year after discovery of the offense either by an aggrieved person, or by his legal representative who is not himself a party to the offense.

C. If the period of limitation provided in paragraph A. of this Section has expired; prosecution shall be commenced for an offense involving misconduct in office by a public servant as defined in Section 2921.01 of the Ohio Revised

Code, at any time while the accused remains a public servant, or within 2 years thereafter.

D. An offense is committed when every element of the offense occurs. In the case of an offense of which an element is a continuing course of conduct, the period of limitation does not begin to run until such course of conduct or the accused's accountability for it terminates, whichever occurs first.

E. A prosecution is commenced on the date an indictment is returned, information filed, or on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation, or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of information unless reasonable diligence is exercised to issue and execute process on the same. A prosecution is not commenced upon issuance of a warrant, summons, citation, or other process, unless reasonable diligence is exercised to execute the same.

F. The period of limitation shall not run during any time when the corpus delicti remains undiscovered.

G. The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused absented himself from this or concealed his identity or whereabouts is prima-facie evidence of his purpose to avoid prosecution.

H. The period of limitation shall not run during any time a prosecution against the accused based on the same conduct is pending in this State, even though the indictment, information, or process which commenced the prosecution is quashed or the proceedings thereon are set aside or reversed on appeal. (RC §2901.13)

§1.02.03. Credit toward fines; imprisonment.

Where a fine is imposed in whole or in part, in punishment for the violation of any misdemeanor or the violation of an ordinance within the corporation of the City and the Judge or Magistrate has authority to order that the defendant stand committed to the jail of this City or the County of Athens until said fine is paid or secured to be paid, the persons so imprisoned shall receive credit upon such fine at the rate of \$30.00 per day.*

*Case note: Based on Stratman v Studt, December 17, 1969), 20 OS2d 95, 49 OO2d 428, 253 NE2d 749

§1.02.04. Organizational criminal liability.

A. An organization may be convicted of an offense under any of the following circumstances:

(1) The offense is a minor misdemeanor committed by an officer, agent, or employee of the organization acting in its behalf and within the scope of his office or employment, except that if the Section defining the offense designates the officers, agents, or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, such provisions shall apply.

(2) A purpose to impose organizational liability plainly appears in the Section defining the offense, and the offense is committed by an officer, agent, or employee of the organization acting in its behalf and within the scope of his office or employment, except that if the Section defining the

offense designates the officers, agents, or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, such provisions shall apply.

(3) The offense consists of an omission to discharge a specific duty imposed by law on the organization.

(4) If, acting with the kind of culpability otherwise required for the commission of the offense, its commission was authorized, requested, commanded, tolerated or performed by the board of directors, trustees, partners, or by a high managerial officer, agent, or employee acting in behalf of his office or employment.

B. When strict liability is imposed for the commission of an offense, a purpose to impose organizational liability shall be presumed, unless the contrary plainly appears.

C. In a prosecution of an organization for an offense other than one for which strict liability is imposed, it is a defense that the high managerial officer, agent, or employee having supervisory responsibility over the subject matter of the offense exercised due diligence to prevent its commission. This defense is not available if it plainly appears inconsistent with the purpose of the Section defining the offense.

D. As used in this Section, "organization" means a corporation for profit or not for profit, partnership, limited partnership, joint venture, unincorporated association, e, trust, or other commercial or legal entity. "Organization" does not include an entity organized as or by a governmental agency for the execution of a governmental program. (RC §2901.23)

§1.02.05. Personal accountability for organizational conduct.

A. An officer, agent, or employee of an organization as defined in Section §2901.23 of the Ohio Revised Code may be prosecuted for an offense committed by such organization if he acts with the kind of culpability required for the commission of the offense, and any of the following apply:

(1) In the name of the organization or in its behalf, he engages in conduct constituting the offense, or causes another to engage in such conduct, or tolerates such conduct when it is of a type for which he has direct responsibility.

(2) He has primary responsibility to discharge a duty imposed on the organization by law, and such duty is not discharged.

B. When a person is convicted of an offense by reason of this Section, he is subject to the same penalty as if he had acted in his own behalf. (RC §2901.24)

§1.02.06. Citation and financial settlement in lieu of prosecution for certain offenses.

A. Whenever a person is observed violating certain provisions of the Nelsonville City Code, or a property is found to be in violation as specified in this section, or there is reasonable suspicion to believe that such a violation has occurred and that a responsible person or organization can be identified, the City may, in lieu of appearance in Nelsonville Mayor's Court to answer a criminal complaint, allow for a plea of guilty or no contest by payment of a

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financial penalty in voluntary response to the issuance of a ticket where said ticket shall:

(1) Advise said person or organization that the same has violated or that a property in their ownership or control has been found in violation of sections of the Nelsonville City Code specified upon the ticket.

(2) Inform said person or organization that payment in lieu of Mayor's Court appearance may be made at the office of the Nelsonville City Auditor within fourteen (14) days of the issuance of the ticket and in an amount applicable to said alleged violation as established by separate Council ordinance as settlement of said violation and by admission of guilty or no contest in lieu of criminal prosecution;

(3) Advise said person or organization, where applicable, to cease, desist, and/or abate said violation(s) forthwith and to refrain from like violation(s) in the future;

(4) Inform said person or organization that, upon failure to so settle the claim and to cease, desist, and/or abate said violation(s), appearance in Nelsonville Mayor's Court will be required at a time and place as indicated upon the ticket.

B. Except as provided below, tickets as provided herein may be served:

(1) Personally by police officers, code enforcement officers, fire safety officials, housing officials, litter control officers, sanitarians, and such other persons as designated by the City Manager, said persons herein given authority to issue tickets under this section; and

(2) Upon the owner, lessee, agent, occupant, tenant or other person, firm, corporation or entity capable of holding title to or having charge or care of such land or being responsible for such conduct.

(3) By posting the ticket at the premise, structure, location or vehicle where the violation(s) has occurred; or

(4) By sending a copy by United States certified mail return receipt requested to the last known address of such person or organization or in the case of a non-resident owner or organization, the mailing address for purposes of taxation as identified by the Athens County Auditor; and/or

(5) By copy via certified mail return receipt requested to the owner of a property where a tenant, lessee, agent, or occupant is suspected to have committed the violation, informing the owner that they may also be held liable for the conduct and legal consequences of said tenant, lessee, agent or occupant.

C. Any person or organization served with a ticket for violation(s) of the following provisions of the Nelsonville City Code may settle by admission of guilt or no contest, compromise the matter in respect of such code violation by ceasing, desisting and/or abating said violation, and paying a sum as established by separate Council ordinance for sections listed below. An extension of time to cease/desist/abate a violation and/or extend the fourteen (14) day period for payment of the civil penalty may be granted in writing by the person having authority to issue such ticket where it is deemed reasonable under the circumstances. The person having authority to issue such ticket shall also have administrative

authority to issue a warning prior to issuance of a ticket as determined reasonable in time and method to mitigate the violation and achieve compliance or a ticket may be issued at the time a violation is noticed. Nelsonville City Code provisions subject to ticketing powers are:

- (1) §5.02.03. Preparation and storage or rubbish and refuse.
- (2) §5.02.12. Uncollected rubbish and refuse.
- (3) §9.14.01. Trees, grass, weeds and litter.
- (4) §9.14.03. Rubbish and objectionable materials
- (5) §9.14.06. Used building materials, unlicensed motor vehicles, scrap metal, refuse or rubbish.
- (6) §9.14.12. Littering public ways.
- (7) §9.14.15 Excessive noise and music
- (8) §9.14.16. Exterior maintenance of property and premise conditions.

D. A ticket will be documented by a time and dated picture of each offense to be filed and maintained by the citing official. An appeal from a ticket of violation subject to this section may be reviewed at a hearing of the Nelsonville City Manager. A request for a hearing must be filed within ten (10) days from the issuance date of the ticket and the hearing must be conducted within ten (10) days from the date of receiving the request for hearing. The City Manager may adopt other administrative regulations for the conduct of hearings and for the enforcement of this section and the issuance of additional notices. Any dispute or disagreement with the decision of the Nelsonville City Manager may be appealed to Nelsonville Mayor's Court within fifteen (15) days after the Nelsonville City Manager's decision.

E. Payment of a ticket in cash, check, or money order shall be made in person at the office of the Nelsonville City Auditor or by United States first class mail to the office of the Nelsonville City Auditor. Checks and money orders shall be made payable to the City of Nelsonville. Mailed fines shall be considered received the day of delivery by the U.S. Postal Service and not by the date of check or money order or the date of mailing. The Nelsonville City Auditor may establish policies and procedures for receipt and recording of said funds.

F. Where the fine is not paid and the violation is not remedied within fourteen (14) days, appearance in Nelsonville Mayor's Court at a day and time indicated upon the ticket shall be required. If the name of the offending person cannot be determined or reasonably ascertained, then the owner of the property upon which the violation has occurred may also be liable so long as they have been notified in accordance with subsection (B) (5).

G. Each separate day in which the owner, lessee, agent, occupant, tenant or other person, firm, corporation or entity capable of holding title to or having charge or care of such land fails to cause such violation to cease and/or fails to pay the fine prescribed may be deemed a separate offense contingent upon issuance of daily tickets.