



Plaintiffs the State of Ohio *ex rel.* Ohio Attorney General Mike DeWine, Lucas County Prosecutor Julia R. Bates, and Lucas County Sheriff John Tharp bring this action for declaratory and preliminary and permanent injunctive relief and allege that:

### INTRODUCTION

1. This case involves specific provisions of the City of Toledo's recently adopted municipal drug ordinance that:

- establish a gag rule, in conflict with the laws of the State, prohibiting Toledo police officers and the Toledo City Attorney from reporting to “any other authority for prosecution or for any other reason” such state law criminal offenses as trafficking in marijuana -- even in massive amounts and on school grounds;
- conflict with Ohio's duly enacted felony drug possession and drug trafficking laws by reciting, for example, that people convicted of trafficking in or controlling marijuana or hashish even in massive amounts and on school grounds “shall not be fined and no incarceration, probation, [or] any other punitive or rehabilitative measure shall be imposed;” and
- further conflict with Ohio's duly enacted felony drug abuse laws by renewing a policy that people who illegally possess even massive amounts of Schedule III, IV, or V drugs, including trafficked and illegally possessed Xanax, Valium, Anabolic Steroids, or some forms of prescription painkillers, shall be subject only to misdemeanor penalties.

2. Although inaccurately characterized by promoters as consistent with Ohio law penalizing bulk marijuana trafficking and as reducing penalties only to “the minimum allowed by the State,” provisions of the Ordinance in fact directly conflict with state law by eliminating all

penalties on, for example, a drug cartel's importation of thousands of pounds of marijuana to be marketed in school playgrounds.

3. "Section 3, Article XVIII of the Constitution of Ohio ... authorizes municipalities to adopt and enforce within their limits only such local police regulations as are not in conflict with general laws" of the State. *City of Cleveland v. Betts*, 168 Ohio St. 386 (syl.) (1958) (municipal ordinance making carrying a concealed weapon a misdemeanor conflicted with state statute making such offense a felony, and thus was invalid).

4. The State of Ohio through its Attorney General Mike DeWine, and Lucas County Prosecutor Julia Bates and Lucas County Sheriff John Tharp, therefore bring this declaratory judgment action seeking a determination by this Court that these identified provisions of the Ordinance that are in conflict with Ohio law are invalid and null and void, and asking that the effect of these specific, problematic provisions be preliminarily and permanently restrained and enjoined from operation and effect.

5. This action thus does not seek to have the Ordinance invalidated in full, but rather seeks to have particular identified provisions invalidated to the full extent that they are in conflict with Ohio law.

### **PARTIES**

6. Attorney General Mike DeWine brings this action as the chief law officer of the State of Ohio, a sovereign State of the United States.

7. Lucas County Prosecutor Julia R. Bates brings this action as the Prosecuting Attorney for Lucas County, Ohio and in conjunction with the authority granted her under *Ohio Revised Code* §309.08, including her duties within this jurisdiction to prosecute felony charges on behalf of the State.

8. Lucas County Sheriff John Tharp brings this action as the Sheriff for Lucas County, Ohio and in conjunction with the authority granted him under *Ohio Revised Code* §311.07, including his law enforcement responsibilities within this jurisdiction relating to felony drug matters.

9. Defendant City of Toledo is a political subdivision of the State. It is a municipal corporation authorized under Section 3 of Article XVIII of the Constitution of Ohio to exercise powers of local self-government and to adopt and enforce within its limits “such local police, sanitary and other similar regulations, as are not in conflict with general laws” of Ohio.

10. Defendant Adam Loukx is the Law Director of the City of Toledo and is sued only in that official capacity. As Law Director, he oversees a Prosecutorial Section charged with prosecuting misdemeanor offenses in Toledo Municipal Court.

11. Also in that capacity, Mr. Loukx putatively is subject to the gag order adopted by Toledo Ordinance precluding him from reporting to “any other authority for prosecution of for any other reason” state criminal law offenses -- including felony offenses he is not empowered to prosecute -- relating to marijuana.

#### **JURISDICTION AND VENUE**

12. This declaratory judgment action is brought pursuant to *Ohio Revised Code* §§ 2721.02; 2721.03; and 2712.12. The accompanying request for injunctive relief is brought pursuant to *Ohio Revised Code* §2727.02 *et seq.* and *Ohio R. Civ. P.* 65.

13. Jurisdiction in this Court also is proper pursuant to *Ohio Revised Code* §109.16, in that this is an action prosecuted by the Attorney General in behalf of the State or in which the State is interested, and one or more of the defendants resides or may be found in Lucas County, where the City of Toledo is located.

14. Venue here is proper pursuant to *Ohio R. Civ. P.* 3(B)(1), (2), (3), (4), and (6).

## BACKGROUND

### A. Ohio's Home Rule Amendment

15. Section 3 of Article XVIII of Ohio's Constitution confers upon municipalities the "authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

16. Thus, "a police regulation in a municipal ordinance may not validly contravene a statutory enactment of general application throughout the state, and must give way if it is in conflict therewith." *Betts*, 168 Ohio St. at 388.

17. Municipal drug ordinances are police power regulations, and drug statutes duly enacted by the State of Ohio are laws of general application throughout the State. *City of Niles v. Howard*, 12 Ohio St.3d 162, 164 (1984) ("The drug laws of the state of Ohio are clearly statutes setting forth police regulations and are, therefore, 'general laws'.").

18. Where a local police power or similar regulation is in conflict with any general statutory enactment of the State, that provision of the local ordinance shall be found invalid as contrary to Ohio's constitutional structure. *Betts*, 168 Ohio St. at syllabus.

19. A municipal ordinance and State law need not be in direct opposition to reflect a conflict that renders the ordinance invalid. The Supreme Court of Ohio has "also recognized that a municipal ordinance is in conflict with state law when there is a significant discrepancy between the punishments imposed" for the same sort of behavior under the ordinance and under State law. *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 41 (2008).

20. Thus, for example, even if a municipal ordinance "does not permit what the statute prohibits, and vice versa, it does contravene the expressed policy of the state with respect to

crimes by deliberately changing an act which constitutes a felony under state law into a misdemeanor, and this creates the kind of conflict contemplated by the Constitution. Conviction of a misdemeanor entails relatively minor consequences, whereas the commission of a felony carries with it penalties of a severe and lasting character.” *Betts*, 168 Ohio St. at 389.

21. Similarly, “if the municipal ordinance does more than simply impose a greater penalty – by changing the character of an offense, for example – the ordinance and statute are in conflict.” *Mendenhall*, 117 Ohio St. 3d at 42.

**B. The Toledo Drug Ordinance**

22. After Toledo’s City Council by an August 26, 2014 vote of 11 – 1 declined to adopt what proponents styled the “Sensible Marihuana Ordinance,” the proposed Ordinance was submitted by initiative petition to the electors of the City of Toledo at the September 15, 2015 primary election.

23. The Ordinance passed by roughly 6,800 votes, 11,663 to 4,911, and was certified by the Lucas County Board of Elections on September 29, 2015.

24. A true and accurate copy of the Ordinance as so adopted is attached as Exhibit A.

25. The Ordinance among other things revises and adds to Toledo Municipal Code Chapter 513 (“Drug Abuse Control”). It also repeals Section 749.08 of that Code (“drugs prohibited”).

26. The Ordinance conflicts with the general laws of the State of Ohio in various respects. This declaratory judgment and injunctive relief action addresses only the particular provisions identified in the paragraphs below.

## CLAIMS

### **COUNT ONE -- The Ordinance's gag order creating Section 513.15(j) of the Toledo Municipal Code conflicts with Ohio law and is invalid.**

27. Plaintiffs restate and reallege each of the statements and allegations set forth in paragraphs 1 - 26 above.

28. Section 2 of the Ordinance purports to create a new Section 513.15(j) of the Toledo Municipal Code, reciting: "No Toledo police officer, or his or her agent, shall report the possession, sale, distribution, trafficking, control, use, or giving away of marihuana or hashish to any other authority except the Toledo City Attorney; and the City Attorney shall not refer any said report to any other authority for prosecution or for any other reason."

29. This gag rule provision thus purports to prohibit any Toledo police officer and the Defendant City Attorney from reporting even State felony drug offenses to the proper authorities for appropriate felony prosecution.

30. The Toledo City Attorney lacks authority and jurisdiction to represent the State of Ohio in prosecuting felony drug offenses.

31. Under the terms of the gag rule, police who come upon members of a drug trafficking cartel in possession of, say, 2,500 pounds of marijuana, or distributing large quantities of marijuana on school grounds, could report that conduct only to the Toledo City Attorney. And the Toledo City Attorney himself would be precluded from reporting the matter to State authorities for prosecution under the State's felony drug laws.

32. The Toledo City Attorney would be left, at most, to pursue a case within the limited misdemeanor jurisdiction of the Toledo Municipal Court (if the charges required for even such prosecution were not precluded under the Ordinance as reports "to any other authority") – and

then under an Ordinance that also purports to abolish all incarceration, fines, or even probation for any such offense.

33. The Ordinance also would preclude truthful, entirely accurate alerts to school authorities, child welfare officers, or “any other authority,” even including reports required by State law.

34. The gag rule Section 513.15(j) conflicts with and indeed obstructs many aspects of Ohio general law and the express public policy of the State.

35. To take but a few examples, this gag rule subsection of the Ordinance conflicts not only with numerous provisions of Ohio’s felony drug laws, but also:

- Conflicts with the requirement of Ohio Revised Code § 2921.22 that apart from certain exceptions not relevant here, “no person, knowing that a felony has or is being committed, shall knowingly fail to report such information to law enforcement authorities.”
- Conflicts with the requirement of Ohio Revised Code § 2935.03(A)(1) that a “municipal police officer ... shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the political subdivision, ... a law of this state....”
- Conflicts with the requirement of Ohio Revised Code § 737.11 that the “police force of a municipal corporation shall ... enforce” not only the ordinances of the municipality, but also “all criminal laws of the state ...,” as well as with State dereliction of duty and reporting statutes including R.C. 2921.44(A)(2).

36. As the Lucas County Court of Appeals has emphasized: “state law places an affirmative duty on peace officers to *enforce* the criminal ... laws of Ohio ....” *State v. White*, 988 N.E. 2d 595, 634 (6<sup>th</sup> Dist. App. 2013) (emphasis in original), *aff’d* 142 Ohio St. 3d 277, 286 (2015) (municipal police officers have a “mandatory duty to enforce criminal laws”).

37. The Ordinance’s gag rule conflicts with the general law of Ohio, violates Section 3 of Article XVIII of Ohio’s Constitution, and is invalid in full, and Plaintiffs are entitled to a declaration to that effect from this Court.



**COUNT TWO -- The Ordinance's provisions creating Sections 513.15(e)-(g) of the Toledo Municipal Code purporting to establish a city drug trafficking offense under which trafficking in marijuana or hashish – in any quantity and in any location – cannot be punishable by incarceration, fine, probation or “any other punitive or rehabilitative measure” conflict with Ohio law and are invalid.**

38. Plaintiffs restate and reallege each of the statements and allegations set forth in paragraphs 1 – 37 above.

39. Section 2 of the Ordinance purports to create new Sections 513.15(e)-(g), which recite that trafficking in marijuana or hashish shall be what the Ordinance terms a “fifth degree felony drug offense” under which violators “shall not be fined[,] and no incarceration, probation, nor [sic] any other punitive or rehabilitative measure shall be imposed.”

40. The Ordinance's reference here to a “fifth degree felony drug offense” does not describe a fifth degree felony drug trafficking offense under Ohio law, and rather seeks to adopt a singular municipal use for that terminology.

41. The City of Toledo is not empowered to establish or amend Ohio felony law. And municipal authorities are not authorized to prosecute felony offenses under State law.

42. These marijuana and hashish trafficking provisions of the Ordinance conflict with Ohio general law.

43. They create a “significant discrepancy between the punishments imposed” for drug trafficking under the Ordinance as opposed to State law. They “contravene the expressed policy of the state with respect to crimes by deliberately changing an act which constitutes a felony under state law” into a newly designated municipal offense that “entails relatively minor consequences.” Indeed, the Ordinance specifically excludes the possibility of prison time, fines, or “any ... rehabilitative measure” for trafficking in marijuana or hashish.

44. Ohio law punishes trafficking in marijuana (Ohio Revised Code § 2925.03(C)(3)) or hashish (Ohio Revised Code § 2925.03(C)(7)) as felony offenses, punishable by sentences

depending on the quantity of the drug involved and on whether the offense is committed in the vicinity of a school or juvenile.

45. All such State law trafficking offenses carry at least potential prison sentences, in addition to fines, mandatory driving suspensions, and other sanctions and potential drug rehabilitation measures.

46. Thus, for example, trafficking in between 20 and 200 grams of marijuana or under ten grams of hashish carries a potential prison sentence of 6 to 12 months (6 to 18 months if in the vicinity of a school or juvenile), with a driving suspension and a fine of up to \$2,500. R.C. 2925.03.

47. To take but a few other examples: trafficking in at least twenty thousand but less than forty thousand grams of marijuana, or in at least one thousand but less than two thousand grams of hashish in solid form, carries a mandatory prison sentence of between five to eight years (or ten years if committed in the vicinity of a school or juvenile). R.C. 2925.03(C)(3)(f) and (7)(f). Trafficking in at least forty thousand grams of marijuana or at least two thousand grams of hashish in solid form carries a mandatory prison term of eight years (ten years if committed in the vicinity of a school or juvenile). R.C. 2923.03(C)(3)(g) and (7)(g). These offenses also carry fines and license suspensions, among other serious consequences.

48. But the Ordinance says that such offenders shall not be fined, incarcerated, placed on probation, or subject to “any other punitive or rehabilitative measure.”

49. Because the Ordinance’s marijuana and hashish trafficking provisions conflict with the general law of Ohio in violation of Section 3 of Article XVIII of the Constitution of Ohio, they are invalid in full, and Plaintiffs are entitled to a declaration to that effect from this Court.

**COUNT THREE -- The Ordinance's provisions creating Sections 513.15(b)(3) and (d)(3) of the Toledo Municipal Code purporting to establish a city drug offense under which possession of state felony amounts of marijuana or hashish (in unlimited amounts) cannot be punishable by incarceration, fine, probation or "any other punitive or rehabilitative measure" conflict with Ohio law and are invalid.**

50. Plaintiffs restate and reallege each of the statements and allegations set forth in paragraphs 1 - 49 above.

51. Section 2 of the Ordinance purports to create new Sections 513.15(b)(3) and (d)(3), which recite that the penalty for possession of any amount of marijuana equal to or exceeding 200 grams, or any amount of solid hashish equal to or exceeding ten grams, or any amount of liquid hashish equal to or exceeding two grams shall be what the Ordinance terms a "fifth degree felony drug abuse offense" under which violators "shall not be fined[,] and no incarceration, probation, nor [sic] any other punitive or rehabilitative measure shall be imposed."

52. The Ordinance's reference here to a "fifth degree felony drug offense" does not describe a fifth degree felony drug trafficking offense under Ohio law, and rather seeks to adopt a singular municipal use for that terminology.

53. The City of Toledo is not empowered to establish or amend Ohio felony law. And municipal authorities are not authorized to prosecute felony offenses under State law.

54. These marijuana and hashish provisions of the Ordinance conflict with Ohio general law.

55. They create a "significant discrepancy between the punishments imposed" for possession of significant amounts of drugs under the Ordinance as opposed to State law. They "contravene the expressed policy of the state with respect to crimes by deliberately changing an act which constitutes a felony under state law" into a newly designated municipal offense that "entails relatively minor consequences." Indeed, the Ordinance specifically excludes the possibility of prison time, fines, or "any ... rehabilitative measure" for possession even of massive amounts of marijuana or hashish.

56. Ohio law punishes possession of large amounts of marijuana (R.C. 2925.11(C)(3)(c)-(g)) or large amounts of hashish (R.C. 2925.11(C)(7)(c)-(g)) as felony offenses, punishable by sentences depending on the quantity of the drug involved.

57. Under State law, such large quantity possession offenses carry at least potential prison sentences, in addition to fines, mandatory driving suspensions, and other sanctions and potential drug rehabilitation measures.

58. Thus, to take but a few examples, possession of at least 5,000 grams but less than 20,000 grams of marijuana bears a presumption under State law of a prison term of between one to five years, with a driving suspension and a fine of up to \$ 10,000.00. Possession of at least 20,000 grams but less than 40,000 grams is punishable under State law by a mandatory prison term of between five to eight years, driving suspension, and a \$15,000.00 fine. And under State law, possession of forty thousand or more grams of marijuana carries a mandatory eight year prison sentence, a driving suspension, and a \$15,000 fine. *See* R.C. 2925.11(C)(3)(e)-(g).

59. To take but a few other examples under State law, possession of at least 250 grams but less than 1,000 grams of solid hashish, or of at least 50 grams but less than 200 grams of liquid hashish, carries the presumption of a 1 -5 year prison term; the possession of at least 1,000 but less than 2,000 grams of solid hashish, or of at least 200 grams but less than 400 grams of hashish in liquid form entails a mandatory prison term of between five to eight years; and the possession of 2,000 grams or more of solid form hashish, or of 400 or more grams of liquid form hashish, brings a mandatory eight year prison sentence, all with fines, driving suspension, and other sanctions. R.C. 2925.11(C)(7)(e-g).

60. But the Ordinance says that such offenders shall not be fined, incarcerated, placed on probation, or subject to “any other punitive or rehabilitative measure.”

61. Because the Ordinance's large scale marijuana and hashish possession provisions conflict with the general law of Ohio in violation of Section 3 of Article XVIII of the Constitution of Ohio, those particular Ordinance provisions are invalid in full, and Ohio is entitled to a declaration to that effect from this Court.

**COUNT FOUR – The Ordinance's provisions renewing parts of Section 513.03 of the Toledo Municipal Code purporting to establish a city drug abuse offense under which (among other matters) illegal possession of large quantities of Schedule III, IV, or V drugs is set at a misdemeanor level, despite State law making various such offenses felonies of the second degree carrying mandatory prison terms, conflict with Ohio law and are invalid to that extent.**

62. Plaintiffs restate and reallege each of the statements and allegations set forth in paragraphs 1 - 61 above.

63. Section 2 of the Ordinance purports to reenact much of repealed Section 513.03 of the Toledo Municipal Code, again as Section 513.03.

64. As adopted under the Ordinance, these provisions recite that a person who possesses a "controlled substance" is guilty of (misdemeanor) drug abuse.

65. Section 513.01(b) of the Ordinance defines "controlled substance" to mean "a drug, compound, mixture, preparation or substance included in Schedule I, II, III, IV, or V." To the extent that this section defines what are State felony drug offenses to be misdemeanor offenses with lower or no penalties under the Toledo Municipal Code, this Section 513.03 conflicts with the general law of Ohio and is invalid.

66. More specifically, Section 2 of the Ordinance recites as Section 513.03(d)(1) that "If the drug involved is a compound, mixture, preparation or substance included in Schedule III, IV or V[,] drug abuse is a misdemeanor of the third degree, and if the offender has previously been convicted of a drug abuse offense, drug abuse is a misdemeanor of the second degree."

67. Under Ohio Revised Code § 2925.11(C)(2), possession of such Schedule III, IV, or V drugs (including various non-prescribed depressants, pain killers, or anabolic steroids) can be a felony offense of the second, third, fourth, or fifth degree, depending on amount or whether the offender has a previous drug abuse conviction. Thus, to take but two examples, if the amount of the drug involved is less than bulk, a second offender is guilty of a fifth degree felony, while if the amount of the drug involved equals or exceeds fifty times the bulk amount, possession of the drugs is a second degree felony carrying a mandatory prison term.

68. These provisions of the Ordinance create a “significant discrepancy between the punishments imposed” for possession of these drugs and the felony provisions of general Ohio law. They “contravene the expressed policy of the state with respect to crimes by deliberately changing an act which constitutes a felony under state law” into a municipal offense that “entails relatively minor consequences.”

69. To the full extent that they conflict with the general laws of Ohio in violation of Section 3 of Article XVIII of the Constitution of Ohio, they are invalid, and Plaintiffs are entitled to a declaration to that effect from this Court.

**COUNT FIVE – Plaintiffs are entitled to injunctive relief against the operation of those provisions of the Ordinance as identified above that conflict with Ohio general law in violation of Article XVIII, Section 3 of the Ohio Constitution.**

70. Plaintiffs restate and reallege each of the statements and allegations set forth in paragraphs 1 - 69 above.

71. The provisions of the Ordinance identified above that conflict with the general laws of Ohio violate the Ohio Constitution and pose an imminent threat of irreparable harm to the State and its criminal law enforcement system, for which there is no adequate remedy at law if they are not enjoined from operation and effect.

72. Injunctive relief precluding the operation of the identified provisions of the Ordinance that conflict with the general laws of Ohio is in the public interest, best serves the expressed public policy of the State of Ohio, and advances the requirements of the Ohio Constitution. Defendants can advance no legitimate interest in pursuing Ordinance provisions that conflict with the general law of the State and that therefore cannot withstand scrutiny under Ohio Constitution Article XVIII, Section 3. Plaintiffs are entitled to the injunctive relief they seek.

### **PRAYER FOR RELIEF**

Plaintiffs therefore respectfully request that this Court:

- Enter judgment in their favor on each Count of this Complaint;
- Declare that the provisions of the Ordinance identified above as in conflict with the general laws of the State of Ohio – those Ordinance provisions creating Toledo Revised Code Sections 513.15(j) (the gag rule); 513.15(e)-(g) (no fine, incarceration, probation, or rehabilitation for trafficking even in massive amounts of marijuana or hashish); 513.15(b)(3) and (d)(3) (same for possession of felony and even unlimited amounts of marijuana or hashish); 513.03 (establishing as misdemeanors various State law felony drug offenses, to the extent that the section conflicts with State law on drug felonies for Schedule I, II, III, IV, or V drugs) – are illegal, invalid, without effect, and null and void;
- Preliminarily and permanently enjoin the effect and operation of these specific Ordinance provisions as identified above and restrain Defendants from observing, exercising, and putting them into effect; and
- Grant them such other relief as the Court finds just and appropriate.

Respectfully submitted,

MICHAEL DEWINE (0009181)  
Ohio Attorney General



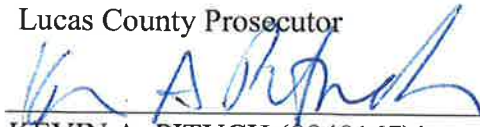
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Julia R. Bates and Lucas County Sheriff John Tharp*



**COPY**

**NOTICE**

Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter is liable to prosecution.

Repealing Section 513.01 entitled "Definitions"; Section 513.02 entitled "Gift of marihuana"; Section 513.03 entitled "Drug abuse; controlled substance possession or use"; Section 513.05 entitled "Permitting drug abuse"; Section 513.08 entitled "Illegally dispensing drug samples"; Section 513.12 entitled "Sale of marihuana paraphernalia to juveniles"; Section 513.14 entitled "Possession, manufacture and sale of drug paraphernalia"; Section 333.01 entitled "Driving or physical control while under the influence; evidence"; Section 749.08 entitled "Drugs prohibited" of the Toledo Municipal Code and enacting new Section 513.01 entitled "Definitions"; Section 513.02 entitled "Gift of Marihuana"; Section 513.03 entitled "Drug abuse; controlled substance possession or use"; Section 513.15 entitled "Marihuana Laws"; Section 333.01 entitled "Driving or physical control while under the influence; evidence"

To the Clerk of Council of the City of Toledo and to the Council of the City of Toledo, Lucas County, Ohio:

We, the undersigned qualified electors of the City of Toledo, Lucas County, Ohio, hereby present by initiative petition, a request that there be submitted for consideration of the people and electors of the City of Toledo, Ohio for their approval or rejection, at an election in accordance with the law and the Toledo City Charter, the following Ordinance. A full and correct copy of the title and text of said Ordinance is as follows:

**THE SENSIBLE MARIHUANA ORDINANCE**

Be it ordained by the people of the City of Toledo that:

Section 1. The Toledo Municipal Code shall be and is hereby amended and supplemented by the repeal of Toledo Municipal Code Section 513.01, Section 513.02, Section 513.03, Section 513.05, Section 513.08, Section 513.12, Section 513.14, Section 333.01, Section 749.08 be and the same is hereby repealed.

Section 2. The new Toledo Municipal Code Section 513.01, Section 513.02, Section 513.03, Section 513.15, Section 333.01 be enacted to read as follows:

**513.01. DEFINITIONS.**

- (a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means to a person or an animal.
- (b) "Controlled substance" means a drug, compound, mixture, preparation or substance included in Schedule I, II, III, IV or V.
- (c) "Dispense" means sell, leave with, give away, dispose of or deliver.

LUCAS COUNTY

2015 OCT 15 5 08 PM

BOARD OF ELECTIONS

Attest  
Shirley J. ...  
10-5-15



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

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

(f) "Hypodermic" means a hypodermic syringe or needle, or other instrument or device for the subcutaneous injection of medication.

(g) "Manufacture" means a person who plants, cultivates, harvests, processes, makes, prepares or otherwise engages in any part of the production of a controlled substance by propagation, compounding, conversion or processing, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container and other activities incident to production, except that this term does not include a pharmacist who prepares, compounds, packages or labels a controlled substance as an incident to dispensing a controlled substance in accordance with a prescription and in the usual course of professional practice.

(h) "Marihuana" means all parts of a plant of the genus cannabis, whether growing or not; the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin. "Marihuana" does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination; except that it does not include hashish.

(i) "Noxious additive" means any element or compound designated by the State Board of Pharmacy for use as a safe and effective ingredient in any product containing the ingredient toluene, the gas, fumes or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation or other harmful physiological effects, which will discourage the intentional smelling or inhaling of the fumes of such product. A noxious additive shall not be added to such product if such addition would make the product unsuitable for its intended use or adversely affect the performance of the product. The addition of a noxious additive to such product is not required if the Board determines that the normal chemical composition of the product creates a level of noxiousness that is sufficient to discourage the intentional smelling or inhaling of the product's fumes.

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

(k) "Pharmacist" means a person registered with the State Board of Pharmacy as a compounder and dispenser of drugs.

(l) "Pharmacy" means any area, room, rooms, place of business, department or portion of any of the foregoing, where prescriptions are filled or where drugs, dangerous drugs or poisons are compounded, sold, offered, or displayed for sale, dispensed or distributed to the public.

(m) "Practitioner" means a person who is licensed pursuant to Ohio R.C. Chapter 4715, 4731 or 4741 and authorized by law to write prescriptions for drugs or dangerous drugs.

(n) "Prescription" means a written or oral order for a controlled substance for the use of a particular person or a particular animal given by a practitioner in the course of professional practice and in accordance with the regulations promulgated by the Director of the United States Drug Enforcement Administration, pursuant to the Federal drug abuse control laws.

(o) "Sale" includes delivery, barter, exchange, transfer or gift, or offer thereof, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee.

(p) "Schedule I", "Schedule II", "Schedule III", "Schedule IV" and "Schedule V" means controlled substance Schedules I, II, III, IV, and V respectively, established pursuant to Ohio R.C. 3719.41, as amended pursuant to Ohio R.C. 3719.43 or 3719.44.

(q) "Wholesaler" means a person who, on official written orders other than prescriptions, supplies controlled substances that he himself has not manufactured, produced or prepared and includes "wholesale distributor of dangerous drugs" as this term is defined in Ohio R.C. 4729.02.

(ORC 3719.01)

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

(ORC 3719.01)

(s) "Dangerous drug" means:

(1) Any drug which, under the "Federal Food, Drug and Cosmetic Act", Federal narcotic law, Ohio R.C. 3715.01 to 3715.72 or Chapter 3719, may be dispensed only upon a prescription;

(2) Any drug which contains a Schedule V narcotic drug and which is exempt from Ohio R.C. Chapter 3719 or to which such chapter does not apply;

(3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body.

(t) "Bulk amount" of a controlled substance means any of the following:

(1) An amount equal to or exceeding ten grams or twenty-five unit doses of a compound, mixture, preparation or substance which is, or which contains any amount of, a Schedule I opiate or opium derivative, or cocaine;

(2) An amount equal to or exceeding ten grams of a compound, mixture, preparation or substance which is, or contains any amount of, raw or gum opium;

(3) An amount equal to or exceeding thirty grams or ten unit doses of a compound, mixture, preparation or substance which is, or contains any amount of, a Schedule I hallucinogen other

than tetrahydrocannabinol, lysergic acid diethylamide, lysergic acid amide or marijuana or a Schedule I depressant.

(4) An amount equal to or exceeding twenty grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation or substance which is, or contains any amount of, a Schedule II opiate or opium derivative;

(5) An amount equal to or exceeding one gram or ten unit doses of a compound, mixture, preparation or substance which is, or contains any amount of lysergic acid diethylamide, lysergic acid amide;

(6) An amount equal to or exceeding five grams or ten unit doses of a compound, mixture, preparation or substance which is, or contains any amount of, phencyclidine;

(7) An amount equal to or exceeding 120 grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation or substance which is, or contains any amount of, a Schedule II stimulant or depressant substance, or a Schedule III or IV substance;

(8) An amount equal to or exceeding 250 milliliters or 250 grams of a compound, mixture, preparation or substance which is, or contains any amount of, a Schedule V substance.

(u) "Unit dose" means an amount or unit of a compound, mixture or preparation containing a controlled substance, such amount or unit being separately identifiable and in such form as to indicate that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.

(v) "Harmful intoxicant" does not include beer or intoxicating liquor, but means any compound, mixture, preparation or substance the gas, fumes or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation or other harmful physiological effects, and includes without limitation any of the following:

(1) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, and any other preparation containing a volatile organic solvent;

(2) Any aerosol propellant;

(3) Any fluorocarbon refrigerant;

(4) Any anesthetic gas.

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

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

(y) "Sample drug" means a drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a practitioner, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.

(z) "Standard pharmaceutical reference manual" means the current edition, with cumulative changes if any, of any of the following reference works:

(1) "The National Formulary";

(2) "The United States Pharmacopeia", prepared by authority of the United States Pharmacopeial Convention Inc.;

(3) Other standard references that are approved by the State Board of Pharmacy.

(aa) "Juvenile" means a person under eighteen years of age.

(bb) "Counterfeit controlled substance" means any of the following:

(1) Any drug that bears, or whose container or label bears, a trademark, trade name or other identifying mark used without authorization of the owner of rights to such trademark, trade name or identifying mark;

(2) Any unmarked or unlabeled substance that is represented to be a controlled substance manufactured, processed, packed or distributed by a person other than the person that manufactured, processed, packed or distributed it;

(3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance.

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

(ORC 2925.01. Ord. 485-83. Passed 5-24-83.)

(cc) "Drug paraphernalia" means any of the following:

(1) All equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this section. It includes, but is not limited to:

- A. Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- B. Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
- C. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;
- D. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;
- E. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;
- F. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances;
- G. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining, marihuana;
- H. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;
- I. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;
- J. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;
- K. Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body;
- L. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:
  - 1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;
  - 2. Water pipes;
  - 3. Carburetion tubes and devices;
  - 4. Smoking and carburetion masks;
  - 5. Roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

6. Miniature cocaine spoons and cocaine vials;
7. Chamber pipes;
8. Carburetor pipes;
9. Electric pipes;
10. Air-driven pipes;
11. Chillums;
12. Bongs;
13. Ice pipes or chillers.

(2) In determining whether an object is "drug paraphernalia", a court or other authority should consider, in addition to all other logically relevant factors, the following:

- A. Statements by an owner or by anyone in control of the object concerning its use;
- B. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or Federal law relating to any controlled substance;
- C. The proximity of the object, in time and space, to a direct violation of this section;
- D. The proximity of the object to controlled substances;
- E. The existence of any residue of controlled substances on the object;
- F. Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object, to deliver it to persons whom he knows intend to use the object to facilitate a violation of this section; the innocence of an owner or of anyone in control of the object, as to a direct violation of this section, shall not prevent a finding that the object is intended for use or is designed for use as drug paraphernalia;
- G. Instructions, oral or written, provided with the object concerning its use;
- H. Descriptive materials accompanying the object which explain or depict its use;
- I. National and local advertising concerning its use;
- J. The manner in which the object is displayed for sale;
- K. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
- L. The existence and scope of legitimate uses for the object in the community;
- M. Expert testimony concerning its use.

### 513.02 . GIFT OF MARIHUANA.

(a) No person shall knowingly give or offer to make a gift of twenty grams or less of marihuana.

(b) Whoever violates this section, anywhere inside city limits, is guilty of trafficking in marihuana, a minor misdemeanor drug abuse offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

### 513.03. DRUG ABUSE; CONTROLLED SUBSTANCE POSSESSION OR USE.

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

(b) This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct was in accordance with Ohio R.C. Chapters 3719, 4715, 4729, 4731 and 4741. This section does not apply to any person who obtained the controlled substance pursuant to a prescription issued by a practitioner, where the drug is in the original container in which it was dispensed to such person.

(c) This section does not apply to marihuana or hashish.

(d) Whoever violates this section is guilty of drug abuse:

(1) If the drug involved is a compound, mixture, preparation or substance included in Schedule III, IV or V drug abuse is a misdemeanor of the third degree, and if the offender has previously been convicted of a drug abuse offense, drug abuse is a misdemeanor of the second degree.

### 513.15. MARIHUANA LAWS

(a) No person shall knowingly obtain, possess, or use marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:

(b) Whoever violates section (a) of this section, anywhere inside city limits, is guilty of one of the following:

(1) Except as otherwise provided in (b)(3) of this section, possession of marihuana is a minor misdemeanor drug abuse offense.

(2) If the amount of the drug involved is less than two hundred grams, possession of marihuana is a minor misdemeanor drug abuse offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.



(3) If the amount of the drug involved equals or exceeds two hundred grams, possession of marihuana is a fifth degree felony drug abuse offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

(c) No person shall knowingly obtain, possess, or use hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates this section is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(d) Whoever violates section (c) of this section, anywhere inside city limits, is guilty of one of the following:

(1) Except as otherwise provided in (d)(3) of this section, possession of hashish is a minor misdemeanor drug abuse offense.

(2) If the amount of the drug involved is less than ten grams of solid hashish or less than two grams of liquid hashish, possession of hashish is a minor misdemeanor drug abuse offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

(3) If the amount of the drug involved is over ten grams of solid hashish or over two grams of liquid hashish, possession of hashish is a fifth degree felony drug abuse offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

(e) No person shall knowingly do any of the following:

(1) Sell or offer to sell marihuana or hashish;

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute marihuana or hashish, when the offender knows or has reasonable cause to believe that the marihuana or hashish is intended for sale or resale by the offender or another person.

(f) Whoever violates section (e) of this section, anywhere inside city limits, is guilty of trafficking in marihuana.

(g) Trafficking in marihuana shall be a fifth degree felony drug offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

(h) No person shall possess, sell, manufacture or use marihuana or hashish paraphernalia. The penalty for the offense shall be as follows:

(i) Whoever violates section (h) of this section shall be guilty of a minor misdemeanor drug abuse offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

(j) No Toledo police officer, or his or her agent, shall report the possession, sale, distribution, trafficking, control, use, or giving away of marihuana or hashish to any other authority except the Toledo City Attorney; and the City Attorney shall not refer any said report to any other authority for prosecution or for any other reason.

(k) Should the State of Ohio enact lesser penalties than that set forth above, or entirely repeal penalties for the possession, sales, distribution, trafficking, control, use, or giving away of marihuana or hashish, then this ordinance, or the relevant portions thereof, shall be null and void.

(l) Criminal or Civil Asset Forfeiture due to any violation of these sections herein is not authorized and is strictly prohibited by any authority.

(m) 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.

(ORC 2925.11)

(n) All court costs to be suspended for minor misdemeanor violations of these sections herein.

(o) Severability. The sections of this ordinance are severable. The invalidity of a section shall not affect the validity of the remaining sections. Invalid sections shall be revised to the minimum extent necessary to maintain validity and enforceability.

**333.01 . DRIVING OR PHYSICAL CONTROL WHILE UNDER THE INFLUENCE;  
EVIDENCE.**

(a) (1) Operation generally. No person shall operate any vehicle, streetcar, or trackless trolley within this Municipality, if, at the time of the operation, any of the following apply:

A. The person is under the influence of alcohol, a drug of abuse, or a combination of them;

B. The person has a concentration of eight-hundredths of one per cent (0.08%) but less than seventeen-hundredths of one percent (0.17%) by weight per unit volume of alcohol in the person's whole blood;

C. The person has a concentration of ninety-six thousandths of one percent (0.096%) or more but less than two hundred four-thousandths of one percent (0.204%) by weight per unit volume of alcohol in the person's blood serum or plasma;

D. The person has a concentration of eight-hundredths (0.08) of one gram or more but less than seventeen-hundredths (0.17) of one gram by weight of alcohol per 210 liters of the person's breath;

E. The person has a concentration of eleven-hundredths (0.11) of one gram or more but less than two hundred thirty-eight-thousandths (0.238) of one gram by weight of alcohol per 100 milliliters of the person's urine;

F. The person has a concentration of seventeen-hundredths of one per cent (0.17%) or more by weight per unit volume of alcohol in the person's whole blood;

G. The person has a concentration of two hundred four-thousandths of one percent (0.204%) or more by weight per unit volume of alcohol in the person's blood serum or plasma;

H. The person has a concentration of seventeen-hundredths (0.17) of one gram or more by weight of alcohol per 210 liters of the person's breath;

I. The person has a concentration of two hundred thirty-eight thousandths (0.238) of one gram or more by weight of alcohol per 100 milliliters of the person's urine.

J. Except as provided in division (K) of this section, the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following:

(i) The person has a concentration of amphetamine in the person's urine of at least five hundred nanograms of amphetamine per milliliter of the person's urine or has a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma.

(ii) The person has a concentration of cocaine in the person's urine of at least one hundred fifty nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma.

(iii) The person has a concentration of cocaine metabolite in the person's urine of at least one hundred fifty nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma.

(iv) The person has a concentration of heroin in the person's urine of at least two thousand nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the person's whole blood or blood serum or plasma of at least fifty nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma.

(v) The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma.

(vi) The person has a concentration of L.S.D. in the person's urine of at least twenty-five nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the

person's whole blood or blood serum or plasma of at least ten nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma.

(vii) The person has a concentration of methamphetamine in the person's urine of at least five hundred nanograms of methamphetamine per milliliter of the person's urine or has a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma.

(viii) The person has a concentration of phencyclidine in the person's urine of at least twenty-five nanograms of phencyclidine per milliliter of the person's urine or has a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least ten nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.

K. Subsection J. does not apply to a person who operates a vehicle, streetcar, or trackless trolley while the person has a concentration of a listed controlled substance or of a listed metabolite of a controlled substance in the person's whole blood, blood serum, or plasma, or urine that equals or exceeds the amount specified in that prohibition, if the person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and the person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.

(b) Operation by underage persons. No person under twenty-one years of age shall operate any vehicle, streetcar, or trackless trolley within this Municipality, if, at the time of the operation, any of the following apply:

(1) The person has a concentration of at least two-hundredths of one percent (0.02%) but less than eight-hundredths of one percent (0.08%) by weight per unit volume of alcohol in the person's whole blood;

(2) The person has a concentration of at least three-hundredths of one percent (0.03%) but less than ninety-six thousandths of one percent (0.096%) by weight per unit volume of alcohol in the person's blood serum or plasma;

(3) The person has a concentration of at least two-hundredths (0.02) of one gram but less than eight-hundredths (0.08) of one gram by weight of alcohol per 210 liters of the person's breath;

(4) The person has a concentration of at least twenty-eight one-thousandths (0.028) of one gram but less than eleven-hundredths (0.11) of one gram by weight of alcohol per 100 milliliters of the person's urine.

(c) (1) Physical control generally. No person shall be in physical control of a vehicle, streetcar, or trackless trolley while under the influence of alcohol, a drug of abuse, controlled substances, metabolites of a controlled substance, or a combination of them or while the person's whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol specified in division (a)(1)B., C., D., or E., of Section 333.01 of the Municipal Code.

A. As used in Section 333.01 (c), "physical control" means being in the driver's position of the front seat of a vehicle or in the driver's position of a streetcar or trackless trolley and

having possession of the vehicle's, streetcar's, or trackless trolley's ignition key or other ignition device.

(d) (1) In any proceeding arising out of one incident, a person may be charged with a violation of division (a)(1)A. and a violation of division (b)(1)(2) or (3) of this section, but the person may not be convicted of more than one violation of these divisions.

(e) Evidence; tests; immunity.

(1) In any criminal prosecution or juvenile court proceeding for a violation of division (a), (b) or (c) of this section, the court may admit evidence on the concentration of alcohol, drugs of abuse, controlled substances, metabolites of a controlled substance, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within three hours of the time of the alleged violation. The three-hour time limit specified in this division regarding the admission of evidence does not extend or affect the two hour limit specified in division (A) of section 4511.192 of the Ohio Revised Code as the maximum period of time during which a person may consent to a chemical test or tests as described in that section.

When a person submits to a blood test at the request of a law enforcement officer under Section 333.01, only a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist shall withdraw blood for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance or combination content of the whole blood, blood serum, or blood plasma. This limitation does not apply to the taking of breath or urine specimens. A person authorized to withdraw blood under this division may refuse to withdraw blood under this division, for the purpose of determining the alcohol, drug, or alcohol if in that person's opinion the physical welfare of the person would be endangered by the withdrawing of blood.

The bodily substance withdrawn shall be analyzed in accordance with methods approved by the Ohio Director of Health by an individual possessing a valid permit issued by the Director pursuant to Ohio R.C. 3701.143.

(2) In a criminal prosecution or juvenile court proceeding for a violation of division (a) of this section or for an equivalent offense, if there was at the time the bodily substance was withdrawn a concentration of less than the applicable concentration of alcohol specified in divisions (a)(1), B., C., D., and E. of this section, or less than the applicable concentration of a listed controlled substance or listed metabolite of a controlled substance specified for a violation of division (a)(1)J. of this section, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This division does not limit or affect a criminal prosecution or juvenile court proceeding for a violation of division (b) of this section or for an equivalent offense that is substantially equivalent to that division.

(3) Upon the request of the person who was tested, the results of the chemical test shall be made available to the person or the person's attorney, immediately upon the completion of the chemical test analysis.

The person tested may have a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test or tests, at the person's expense, in addition to any administered at the request of a law enforcement officer. The form to be read to the person to be tested, as required under Ohio R.C. 4511.192, shall state that the

person may have an independent test performed at the person's expense. The failure or inability to obtain an additional chemical test by a person shall not preclude the admission of evidence relating to the chemical test or tests taken at the request of a law enforcement officer.

(4) A. As used in divisions (e)(4)B. and C. of this section, "national highway traffic safety administration" means the national highway traffic safety administration established as an administration of the United States Department of Transportation under 96 Stat. 2415 (1983), 49 U.S.C.A. 105.

B. In any criminal prosecution or juvenile court proceeding for a violation of division (a), (b) or (c) of this section, if a law enforcement officer has administered a field sobriety test to the operator of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that were set by the national highway traffic safety administration, all of the following apply:

(i) The officer may testify concerning the results of the field sobriety test so administered.

(ii) The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.

(iii) If testimony is presented or evidence is introduced under division (e)(4)B.(i) or (ii) of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

C. Division (e)(4)B. of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (e)(4)B. of this section.

(f) (1) Subject to division (f)(3) of this section, in any criminal prosecution or juvenile court proceeding for a violation of division (a)(1), B., C., D., E., F., G., H., I., or J. or (b)(1), (2), (3), (4) or (c) of this section, a laboratory report from any laboratory personnel issued a permit by the State of Ohio Department of Health authorizing an analysis as described in this division that contains an analysis of the whole blood, blood serum or plasma, breath, urine, or other bodily substance tested and that contain all of the information specified in this division shall be admitted as prima facie evidence of the information and statements that the report contains. The laboratory report shall contain all of the following:

A. The signature, under oath, of any person who performed the analysis;

B. Any findings as to the identity and quantity of alcohol, a drug of abuse, a controlled substance, a metabolite of a controlled substance, or a combination of them that was found;

C. A copy of a notarized statement by the laboratory director or a designee of the director that contains the name of each certified analyst or test performer involved with the report, the analyst's or test performer's employment relationship with the laboratory that issued the report, and a notation that performing an analysis of the type involved is part of the analyst's or test performer's regular duties;

D. An outline of the analyst's or test performer's education, training, and experience in performing the type of analysis involved and a certification that the laboratory satisfies appropriate quality control standards in general, and in this particular analysis, under rules of the Department of Health.

(2) Notwithstanding any other provision of law regarding the admission of evidence, a report of this type described in division (f)(1) of this section is not admissible against the defendant to whom it pertains in any proceeding, other than a preliminary hearing or a grand jury proceeding, unless the prosecutor has served a copy of the report on the defendant's attorney, or if the defendant has no attorney, on the defendant.

(3) A report of the type described in division (f)(1) of this section shall not be prima facie evidence of the contents, identity, or amount of any substance if, within seven (7) days after the defendant to whom the report pertains or the defendant's attorney receives a copy of the report, the defendant or the defendant's attorney demands the testimony of the person who signed the report. The judge in the case may extend the seven (7) day time limit in the interest of justice.

(Ord. 606-06. Passed 9-5-06.)

Section 3. The form of the ballot by which this ordinance shall be submitted to the electors of the City of Toledo at the regular election to be held in November of 2014 shall be substantially as follows:

Shall the City of Toledo adopt the sensible marihuana ordinance which protects individual citizen's rights and saves taxpayer's money by lowering the penalty for marijuana to the lowest penalty allowed by state law?

	For the ordinance
	Against the ordinance

Section 4. This Ordinance shall become effective on the fifth day after the day on which the board of elections certifies the official vote on such question.

Each of the undersigned electors hereby request that said ordinance hereinbefore set forth be certified to the proper election authorities and submitted to the electors of the City of Toledo, Ohio for approval or rejection, and the proper notices be published, all as required by law and the provisions of the Charter of the City of Toledo, Ohio.

The undersigned hereby designate the following electors of the City of Toledo, Ohio signers of this petition as proponents of this Petition and as the Committee in charge thereof:

Chad M. Thompson  
4926 Swanbrook Ct  
Toledo, OH 43614

Mary Elizabeth Smith  
320 Champion St  
Toledo, OH 43609

Brian M. Glonek  
2002 W. Crest Dr.  
Toledo, OH 43614

Sean M. Nestor  
4640 288<sup>th</sup> St  
Toledo, OH 43611

Carol L. Hayes-Grocki  
548 Knowler St  
Toledo, OH 43609

LUCAS COUNTY  
2015 OCT 5 PM 11 35  
BOARD OF ELECTIONS