

TOWN OF CEDAR POINT

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Report to the Joint Legislative Administrative Procedure Oversight Committee **Re: Ordinance Violations Subject to Criminal Prosecution**

The Town of Cedar Point's Ordinances are contained in two separate volumes, a Unified Development Ordinance (UDO) that regulates development under Article 19 of Chapter 160A, and a Code of Ordinances that regulates items other than development. This report is also divided into two sections, one for each of the ordinance volumes referenced above.

The Town of Cedar Point Code of Ordinances

Section 1-5(b) provides that any person who violates any provision of the Town Code shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00. Therefore, violation of any of the following provisions would constitute a misdemeanor.

Chapter 3- Animals

Section 3-2.1- Allowing animals (other than cats not considered a nuisance) to freely roam in the Town.

Section 3-2.2- Certain animals are prohibited within the Town except on a bona fide farm or with the issuance of a special use permit.

Section 3-2.3- The permanent keeping of more than three dogs or cats.

Section 3-2.4- Failure to remove pet excrement from public property.

Section 3-2.6- Failure to maintain a collar on a dog or cat.

Section 3-4- With certain exceptions, hunting and trapping are prohibited in the Town.

Section 3-5- The keeping of animals, other than traditional household pets and chickens for domestic egg production are prohibited, unless on a bona fide farm or issuance of a special use permit.

Chapter 4- Building and Fire Codes and Regulations

Section 4.9- Prohibits: the standing in a street or alley near a fire in progress in such a way as to interfere with the duties of fire and emergency personnel; the interference with a firefighter in the discharge of his or her duties; the unauthorized meddling with fire equipment; the driving over or causing damage to firehoses at a fire scene; the entry into areas marked off by tape without permission; the obstruction of fire hydrants or other firefighting apparatus; and the giving of a false fire or emergency alarm.

Chapter 5- Licenses and Business Regulations

Division I- Sexually Oriented Businesses.

This division sets forth a host of regulations of this particular business type, the violation of any of which would constitute a misdemeanor. Due to the number of detailed provisions, they are not individually included in this report. However, if necessary, more detailed information can be provided upon request.

Division III- Yard/ Garage Sales and Occasional Sales

This division prohibits: yard or similar type sales from being conducted for more than 3 consecutive days, more frequently than once every three weeks, and/or outside the hours of 8:00 am to 8:00 pm (§ 5-42); the display of items for sale on the right-of-way (§ 5-43); certain directional signs for such sales (§ 5-45); signs exceeding certain sizes at the sale location (§5-46); and the leaving of sales signs up for more than 2 hours after the conclusion of a sale (§ 5-47).

Division V- Occasional Sales

This division prohibits: occasional sales from being conducted for more than three consecutive days, more than twice in a calendar year, or any closer than 3 weeks between them, even if in different years (§ 5-61); and displaying of goods beyond the property lines of the residential property where the sale is located (§ 5-63).

Division VI- Itinerant Merchants, Mobile Food Vendors and Solicitors

This division prohibits: conducting certain itinerant type sales/events without the submission of an application and issuance of a permit (§ 5-72,73); mobile food units from operating without proper permits, in violation of administrative rules re the same, without specified insurance, or in areas within the town not zoned commercial (§5-74a); food carts from serving only specified types of food and only on the same day as the date the food was prepared (§5-74b); operators of specialty markets from allowing unlicensed vendors from conducting business at their market (§5-75); and door to door

sales without the issuance of permit from the town and/or outside the hours of 8 am to 8 pm (§ 5-76).

Chapter 6- Emergency Management

Section 6-13 prohibits the violation of any prohibition or restriction imposed by a proclamation authorized by Chapter 6 of the Town Code concerning Emergency Declarations.

Chapter 9- Offenses and Miscellaneous Provisions

Section 9-1 prohibits the maintenance of nuisances as specified therein, including but not limited to: tall grass and weeds, accumulations of animal or vegetable matter, accumulations of rubbish, conditions violating health department rules, burned or partially burned buildings and structures, and storm or erosion damaged structures and resulting debris.

Section 9-7 requires the compliance with properly issued orders concerning abatement of nuisances. Failure to comply constitutes a violation subject to misdemeanor enforcement.

Section 9-21 prohibits any person or persons from making, permitting, continuing or causing to be made or to create any unreasonably loud, disturbing and unnecessary noise in the town subject to certain specified provisions.

Section 9-22 prohibits commercial establishments from playing or operating any amplified musical instrument or amplified sound reproduction device in a manner that causes a noise disturbance on any neighboring premises or public area subject to certain specified provisions.

Section 9-24 prohibits any person from operating or causing to be operated, a recreational or off-road motor vehicle individually, in a group, or in an organized racing event, on public or private property in such a manner that the sound level creates an identified nuisance as described therein and from using off-road vehicles between the hours of 11 pm and 7 am except for emergency purposes.

Section 9-25 prohibits any person from making any noise upon a public street or in such proximity thereto as to be distinctly and loudly audible upon such street by any kind of crying, calling or shouting or by means of any whistle, rattle, bell, gong, clapper, horn, hammer, drum, musical instrument or other device for the purpose of attracting attention or of inviting patronage of any persons to any business whatsoever.

Chapter 11- Solid Waste

Section 11-9 specifies that any violation of the provisions of Chapter 11 subjects the violator to certain specified civil penalties distinct from the penalties set forth in Section 1-5. Although not clearly stated, it appears that the intent was to avoid criminal prosecution for violations of this chapter. However, in the event that criminal prosecution was possible for this chapter, it

generally regulates the method of placement, removal, and collection of solid waste within the Town. More information is available upon request.

Chapter 12- Streets, Sidewalks and Other Public Property

Section 12-2 prohibits the digging or excavation within the right-of-way without a Town permit or, if applicable, NCDOT approval; imposes certain requirements for excavations; and prohibits the creation of obstructions in the right-of-way.

Section 12-11 Prohibits the cutting of, or damage to, Town sidewalks.

Section 12-22 prohibits smoking in any Town owned or Town controlled building except in designated smoking areas.

Section 12-23 prohibits smoking in Town vehicles.

Section 12-31 prohibits the carrying or possession of a concealed firearm on municipal owned property.

Chapter 14- Utilities

Section 14-2 prohibits the connection to, or use of, any fire hydrants of the water company for any purpose other than firefighting and emergency purposes.

Chapter 15- Parades and Demonstrations

Section 15-2 prohibits the organization of, conducting of, or participation in a parade without a permit having been issued for the parade.

Section 15-5 prohibits the carrying of firearms or other weapons at or in conjunction with a parade, with certain specified exceptions.

Section 15-6 prohibits the hampering, obstruction, or interference with any parade, picket line, or demonstration for which a permit has been issued.

Section 15-7 sets forth a number of regulations concerning picket line and group demonstrations, the violation of which would constitute a misdemeanor.

Town of Cedar Point Unified Development Ordinance

Section 4.8.B states that "If any person shall violate any provision of this Article, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00."

The Town of Cedar Point Unified Development Ordinance was adopted on July 31, 2019. The bulk of its content was pulled from the Town's previous Zoning Ordinance. The Zoning Ordinance was arranged by Articles rather than Chapters, whereas the Unified Development

Ordinance is arranged by Chapters. Thus, from an interpretation standpoint, the word "Article" in Section 4.8.B should have been replaced with the word "Chapter". Upon a thorough review of Chapter 4, the only provision that could be subject to violation is the erection, construction, reconstruction, alteration, repair, conversion, or maintenance of any building, structure or land in violation of the Unified Development Ordinance. Such a violation would be subject to criminal prosecution as a misdemeanor.

Section 5A.1.C.3(p) makes the violation of a stop-work order issued by the floodplain administrator a misdemeanor.

Section 5A.1.C.4(e) makes the failure to comply with 1) an order of the Town Board of Commissioners following an appeal of a decision by the floodplain administrator or, 2) an order of the floodplain administrator where no appeal has been taken, a misdemeanor.

To the best of my knowledge, the foregoing list contains all of the Town of Cedar Point's Ordinances that may be enforced by criminal prosecution as of the date of this report. Should further information be necessary, please feel free to contact me.

Respectfully Submitted,

A handwritten signature in cursive script that reads "David M. Rief". The signature is written in black ink and is positioned above the printed name and title.

David M. Rief
Town Administrator