2019 DELAWARE COUNTY TOWNSHIP OFFICIALS TRAINING

November 16, 2019

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DISCLAIMER

Please note that this manual is a best effort by the Delaware County Prosecutor's Office to provide you, as township officials, with easy-to-understand information on the positions, duties, and responsibilities of various township officials and relevant township law. *It is intended to be informational only and is not a legal authority. This manual is not intended to be and should not be construed as a substitute for the Ohio Revised Code, Ohio case law, or any other legal authority.* The Ohio Revised Code and Ohio case law ALWAYS take precedence over this manual. Every effort has been made to provide the most current information as of November 2019, the publication date of this manual. Should you have questions about any of the information contained in this manual, or any other matter concerning township law, please contact the Delaware County Prosecutor's Office before acting.

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November 16, 2019

Dear Delaware County Township Officials:

It is my honor to serve as your legal advisor. A priority of my administration is to continue the lasting relationships you have all built with this office and to continue the level of service you've come to expect. Often times the role of our civil division may seem overshadowed by the seriousness of our criminal duties, but to me, the representation of our civil clients is as important as our prosecution of serious crimes. The civil division is one avenue to ensure that we continue our smart growth in the number one fastest growing county in the State and also to serve as a way to maintain the way of life our citizens have come to love.

As I a travel to each township this year, I have heard repeatedly how each of you look forward to this training. I hope it continues to provide you with useful information and that this manual is a useful tool. If you have questions or concerns that are not addressed at this training or in this manual, please feel free to contact my office for assistance. I am glad you are here and look forward to working with you and your township in the future.

Sincerely,

Melissa A. Schiffel

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Delaware County Prosecuting Attorney

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HARLEM

General Overview

Each county in Ohio is divided into townships. Townships are the most basic political subdivisions of the state.[1] They are creations of the state and are intended generally to "serve as an agency or instrumentality of the state for purposes of political organization and local administration."[2]

The Ohio Constitution requires the general assembly to provide, by law, for the election of "such township officials as may be necessary."[3] In each township the law provides for the election of three (3) township trustees and a fiscal officer.[4] Township trustees are the individuals who comprise the board of trustees and are vested with leadership of the township as its legislative body. Essentially, they are the ultimate decision making body of local township government.

The Ohio Revised Code

Because townships are created by the state and, essentially, are an extension of state government, township officials and employees are limited in their authority and actions. They are empowered only by the provisions of the Ohio Revised Code or that which can necessarily be implied from the Ohio Revised Code.[5] In short, the Ohio Revised Code contains both the inner and outer limits of township authority. As a township trustee or official, this is a basic rule of thumb to keep in mind when contemplating any act on behalf of the township.

Thus, all actions of township trustees, as well as other township officials, must be both derived from and permitted by the Ohio Revised Code. In other words, the Ohio Revised Code must contain a positive statement conferring authority to take action. Where the Ohio Revised Code is silent and does not state that a township or township official has a particular power or ability to act, the township, trustee and/or township official does not possess the power or ability to perform that act. Only where the Revised Code contains positive language conferring the power or ability to take action or perform a particular act may the township or township official take action.

The majority of sections of the Ohio Revised Code that address townships, township issues, and township officials are concentrated in Title 5 of the Ohio Revised Code. As a result, many of the sections related to townships have a statute number that is in the 500's. When consulting the Ohio Revised Code for guidance, a township trustee or official should consider looking in Title 5. However, keep in mind that the Ohio Revised Code contains titles generally numbered with the odd numbers "1" through "63," each containing numberous statutes. Therefore, issues concerning or relevant to townships or township officials may be containiend or discussed in other titles or

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[1] *See* REBECCA C. PRINCEHORN BASED ON WORK BY WILLIAM B. SHIMP, BALDWIN'S OHIO PRACTICE, LOCAL GOVERNMENT LAW—TOWNSHIP, § 2:1 (Oct. 2016 update) (defining political subdivision as "a limited geographical area wherein a public agency is authorized to exercise some governmental function…") [hereinafter LOCAL GOVERNMENT LAW] (citing 1972 Ohio Op. Att'y Gen. No. 72-035).

[2] 20 JAMES BUCHWALTER ET AL., OHIO JURISPRUDENCE 3D § 297 (updated June 2019) [hereinafter 20 O JUR. 3D COUNTIES]. *See also Dunn v. Brown County Agr. Soc*., 46 Ohio St. 93, 96-97, 18 N.E. 496, 497-98 (1888).

[3] LOCAL GOVERNMENT LAW, *supra* note 1, at § 6:1.

[4] OHIO REV. CODE ANN. §§ 505.01 and 507.01.

[5] 20 O JUR. 3D COUNTIES, *supra* note 2, at §297; *Dunn v. Brown County Agr. Soc*., 46 Ohio St. 93, 96-97, 18 N.E. 496, 497-98 (1888).

statutes elsewhere in the Revised Code.[6] For help with legal questions concerning the Ohio Revised Code or other matters, contact the Delaware County Prosecutor's Office.

Term of Office, Oath, and Bond

In Ohio, each township has three (3) elected township trustees.[7] To hold the position of township trustee, a person must be an elector (a qualified and registered voter) in the township where he or she holds office.[8] An elector is a person who is eighteen years of age or older, has been a resident of Ohio thirty (30) days immediately preceding the election at which the he or she offers to vote, a resident of the county and precinct in which the he or she offers to vote, and has been registered to vote for thirty (30) days.[9] Additionally, one may not hold concurrently an office incompatible with the office of township trustee.[10]

Each of the three (3) elected trustees holds a four-year term of office. Terms of office for the three (3) trustees are staggered so that, generally, all three trustees' positions are not up for election in the same year. Pursuant to R.C. § 505.01, two (2) trustee positions were to be elected in 1949 and every four (4) years thereafter.[11] The third trustee position was to be elected in 1951 and every four (4) years thereafter.[12] After their election, all three (3) trustees begin their terms on the first day of January immediately following their election.[13] These staggered terms provide that at least two (2) experienced township officials, including the township fiscal officer, remain in office.[14]

Before taking office, a newly elected trustee must take an oath of office and post a bond to the state "for the use of the township."[15]

The oath administered need not be of a particular form and an affirmation may be made in place of an oath if a person has "conscientious scruples" against taking one, however the oath must be in writing, may be administered by any person holding an elected office under the constitution or laws of Ohio if that person is elected or appointed to offices within the geographical limits of the elected officer's constituency, and must be to support the constitution of the United States and the constitution of this state, and to faithfully discharge the duties of the office.[16] (See sample oath in the Sample Forms Section.) The oath should be signed by both the person taking the oath and the person adminisntering the oath.

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[6] Titles or topical volumes of the Ohio Revised Code are numbered with odd numbers only, with one exception; thus, there are thirty-three actual titles that comprise the Ohio Revised Code.
[7] OHIO REV. CODE ANN. § 505.01.
[8] OH. CONST. ART. V, § 1; OH. CONST. ART. XV, § 4; 20 O JUR. 3D COUNTIES, *supra* note 2, at § 321.
[9] OHIO REV. CODE ANN. § 3501.01(N) and 3503.01.
[10] LOCAL GOVERNMENT LAW, *supra* note 1, at § 6:3.
[11] OHIO REV. CODE ANN. § 505.01.
[12] OHIO REV. CODE ANN. § 505.01.
[13] OHIO REV. CODE ANN. § 505.01.
[14] LOCAL GOVERNMENT LAW, *supra* note 1, at § 6:4. Formerly, the office was known as that of the "township clerk." Effective December 20, 2005, the officer's title was changed to "township fiscal officer." *See* S. Substitute B. 107, 126th Gen. Assem. Reg. Sess. (Ohio 2005); OHIO REV. CODE ANN. § 507.01.
[15] OHIO REV. CODE ANN. §§ 3.22, 505.02.
[16] LOCAL GOVERNMENT LAW, *supra* note 1, at § 6:7; OHIO REV. CODE ANN. §§ 3.22, 3.23, 3.24, 503.25; OH CONST. ART. XV, § 7.

If the oath is taken before an officer other than the township fiscal officer, the officer before whom it is taken shall immediately deposit with the fiscal officer a certificate of the oath. The fiscal officer shall make a record of all official oaths.[17]

The bond must be in the sum of $1,000.00 and must be conditioned on "the faithful performance of [the person's] official duties as a trustee."[18] At least two (2) sureties must back the bond, both of which must be residents of the same township as the trustee.[19] Alternatively, a corporate surety authorized to do business in Ohio may back the bond.[20] To be acceptable, the bond must be approved by a judge of the county court or judge of a municipal court having jurisdiction in the township (i.e. Delaware Municipal Court).[21] The bond must be deposited with the township fiscal officer and recorded by the fiscal officer.[22]

Vacancy

For the process and necessary forms for filling a vacancy in the office of township trustee, see the Vacancy section in the Forms Section of this manual.

Powers and Duties

It is important to remember that the powers of a township board of trustees are limited. A board of township trustees is empowered only with that authority either expressly provided by law or necessarily implied therefrom. Accordingly, a board of township trustees has only as much authority and power as is conferred upon it by the Ohio Revised Code.[23] By law, a board of township trustees has various powers and duties.[24] Examples of such powers include the ability to appoint and remove certain employees,[25] pass zoning resolutions,[26] acquire, maintain, and/or construct buildings for the benefit of the township, [27] construct and maintain township roads, [28] and provide for fire protection for the township's citizens.[29] There are many other powers and duties that a board of township trustees enjoys, but all of those powers and duties are given and limited by the language of the Ohio Revised Code.[30]

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[17] OHIO REV. CODE ANN. § 503.26.
[18] OHIO REV. CODE ANN. § 505.02.
[19] OHIO REV. CODE ANN. § 505.02.
[20] OHIO REV. CODE ANN. § 505.02.
[21] OHIO REV. CODE ANN. § 505.02.
[22] OHIO REV. CODE ANN. § 505.03.
[23] *See Henn v. Universal Atlas Cement Co.*, 76 Ohio Law Abs. 439, 144 N.E.2d 917, 919-20 (C.P. 1957).
[24] 20 O JUR. 3D COUNTIES, *supra* note 2, at § 327.
[25] OHIO REV. CODE ANN. § 511.10; 20 O JUR. 3D COUNTIES, *supra* note 2, at § 329.
[26] OHIO REV. CODE ANN. § 519.02(A).
[27] OHIO REV. CODE ANN. §§ 505.26, 505.262.
[28] OHIO REV. CODE ANN. § 5575.01.
[29] OHIO REV. CODE ANN. § 505.37; 20 O Jur. 3D COUNTIES, *supra* note 2, at § 330.
[30] *See* LOCAL GOVERNMENT LAW, *supra* note 1, at § 7:11 (citing examples of other powers conferred to township trustees by the Ohio Revised Code).

It is also important to remember that a township board of trustees acts through the vote of a majority of its members or, in some instances where required by statute, the unanimous vote of its members. Indvidual trustees have no authority to act on their own.
On a more personal level, an individual trustee's power and authority may be limited by a conflict of interest.[31] Under such circumstances, a trustee should recuse (i.e., excuse) himself or herself from deliberations and voting on the matter on which he or she is conflicted.[32]

Compensation of Trustees

Township trustees are entitled to compensation for their services as fixed by law. Compensation may be either per diem (i.e., each day of service in the business of the township) or by annual salary.[33] Unless the board of trustees unanimously resolves to compensate the trustees with an annual salary, a trustee will be compensated per diem.[34] The per diem rate of compensation is based on the amount of the township budget. Per diem rates are listed in R.C. §§ 505.24(A),(B) and (C). If the per diem method of compensation is used, the board of trustees must establish, by resolution, a method by which each board member regularly accounts for and reports his or her trustee activities and the time spent doing those activities.[35] Such reports are to be submitted to the township fiscal officer and are to be made available to the public.[36] Under the per diem method, a trustee's compensation is to be paid from the township's general fund and/or from other township funds in relation to and in proportion to the kinds of activities performed.[37]

As an alternative to the per diem method, the board of trustees may, by unanimous vote, resolve to compensate the trustees through an annual salary.[38] The amount of the annual salary approved by the board is to be no more than the maximum amount that could be received annually by a trustee if he or she were to be paid on a per diem basis pursuant to R.C. §§ 505.24(A),(B) and (C).[39] The trustees' annual salary "shall be paid from the township general fund or from other township funds in such proportions as the board may specify by resolution."[40] Furthermore, "[e]ach trustee shall certify the percentage of time spent working on matters to be paid from the township general fund and from other township funds in such proportions as the kinds of services performed."[41] As under the per diem method, a trustee's compensation is to be paid from the township's general fund and/or from other township funds in relation to and in proportion to the kinds of activities performed.[42]

[31] 20 O JUR. 3D COUNTIES, *supra* note 2, at § 340.
[32] *See* Conflicts of Interest, *infra* pp. 155-156.
[33] OHIO REV. CODE ANN. § 505.24.
[34] OHIO REV. CODE ANN. § 505.24.
[35] OHIO REV. CODE ANN. § 505.24.
[36] OHIO REV. CODE ANN. § 505.24.
[37] OHIO REV. CODE ANN. § 505.24.
[38] OHIO REV. CODE ANN. § 505.24.
[39] OHIO REV. CODE ANN. § 505.24.
[40] OHIO REV. CODE ANN. § 505.24.
[41] OHIO REV. CODE ANN. § 505.24.
[42] OHIO REV. CODE ANN. § 505.24.

A board of trustees that has adopted a salary method of compensation may return to the per diem method.[43] In order to do so, a resolution to return to the per diem method must be passed by a majority vote of the board.[44]

Any change in the method of compensation will take effect on the first day of January following the vote.[45]

Prohibition on In-Term Changes in Compensation. Regardless of the method of compensation used to compensate trustees, if a board of township trustees passes a resolution changing (increase or decrease) the compensation of a township trustee or elected official, the trustee or elected official is constitutionally prohibited from receiving the change in compensation during his or her current term in office.[46] It is important to note that a change in compensation includes changes in benefits, such an insurance benefits. Only upon the trustee's commencement of a new term of office or the election of a new trustee following the approval of a change in compensation may a trustee actually receive the changed compensation.

The Board of Trustees Meeting

Regular trustees meetings serve various functions. Broadly, they are public gatherings of the township trustees where township business is conducted. However, this generalization does not begin to scratch the surface of what actually comprises and occurs during a board of township trustees meeting.

Generally, township trustees hold regular meetings at least once a month at a regularly scheduled time and place. Due to the volume of public business, some townships have more than one regularly scheduled meeting per month. Though there is no limit on the number of regular trustee meetings that can be held per month, the meeting must conform to the requirements set forth in the Ohio Revised Code.

The most important of these requirements is that the meeting must be properly noticed (i.e. advertised) and open to attendance by the public (i.e., open meeting) in compliance with Ohio's Open Meetings Law (i.e. Sunshine Law).[47] The Ohio Revised Code contains specific criteria that must be met in order for a meeting to be considered an open meeting.[48] Monetary and other penalties, including the invalidity of actions taken at a meeting that is not an open meeting, apply for failing to observe these requirements.[49] For example, a trustee meeting must be properly noticed (i.e. advertised) so that the public knows in advance the time and place of the meeting and also, in the event of a special or emergency meeting, the purpose of the meeting.[50]

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[43] OHIO REV. CODE ANN. § 505.24.
[44] OHIO REV. CODE ANN. § 505.24.
[45] OHIO REV. CODE ANN. § 505.24.
[46] OH CONST. ART. II, § 20; LOCAL GOVERNMENT LAW, *supra* note 1, at § 7:12.
[47] OHIO REV. CODE ANN. § 121.22(C); 20 O JUR. 3D COUNTIES, *supra* note 2, at § 325.
[48] OHIO REV. CODE ANN. § 121.22(F).
[49] OHIO REV. CODE ANN. §§ 121.22(H)-121.22(I).
[50] OHIO REV. CODE ANN. § 121.22(F).

Because holding open meetings is such an immensely important requirement, it is discussed separately in the "Open Meetings and Ohio's Sunshine Law" section in the Trustee's section of this manual.[51]

As a part of and in addition to conducting an open meeting, the trustees meeting must be held in a public location[52] as determined by the board of trustees in its fair and impartial discretion.[53] For most townships, this is likely the township hall. If the township does not have a township hall or is unable to meet at the township hall, another location may be used for the meeting, as long as it is open to the public and the location is properly noticed (i.e. advertised.)

Another prerequisite for conducting a trustees meeting is attendance by the trustees.[54] In order to vote on and pass any resolutions, a quorum of trustees must be present.[55] Generally, a quorum consists of a majority of the members of the board or two (2) trustees,[56] but every effort should be made to have all three (3) trustees present.[57]

The township fiscal officer's presence is also required to take proper minutes of the meeting.[58] Minutes of the meeting must be recorded and promptly prepared, filed, and maintained.[59] This includes having the minutes signed by the president of the board of trustees after they have been read and approved.[60] Additionally, the township fiscal officer must attest to the minutes and make the minutes of each meeting available to the public for inspection.[61]

The fiscal officer should also assist the trustees in efficiently proceeding through township business transacted at the meeting, including accurately recording resolutions, taking roll call votes, recording votes, and maintaining township financial accounts. The specific duties of a township fiscal officer, as relating to township trustees meetings as well as other duties and responsibilities, are discussed in detail in the "Township Fiscal Officer" section of this manual.

1. General Meeting Procedures

The Ohio Revised Code sets forth no exact format or formula for how a township trustees meeting must proceed. Though strict compliance with the traditional rules of parliamentary procedure is not required by law, the meeting should be run in an orderly and controlled fashion.[62]

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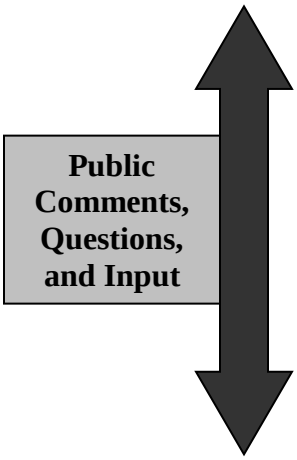
[51] *See* Open Meetings, *infra* pp. 19-24.
[52] 20 O JUR. 3D COUNTIES, *supra* note 2, at § 325.
[53] *See* LOCAL GOVERNMENT LAW, *supra* note 1, at §§ 9:1, 9:3.
[54] OHIO REV. CODE ANN. § 121.22(C).
[55] 20 O JUR. 3D COUNTIES, *supra* note 2, at § 32640.
[56] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:10.
[57] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:10.
[58] *See* Township Fiscal Officer, *infra* pp. 53-67; OHIO REV. CODE ANN. §§ 507.01, 507.04.
[59] OHIO REV. CODE ANN. § 121.22(C); LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:11.
[60] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:11.
[61] 20 O JUR. 3D COUNTIES, *supra* note 2, at § 350; OHIO REV. CODE ANN. § 121.22(C).
[62] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:9 (citing Ohio Op. Att'y Gen. No. 724). Please note that it remains helpful to refer to standard works on parliamentary procedure such as "Robert's Rules of Order."

Generally, there are certain events that should occur at each meeting as detailed below. These include the prior creation of a written agenda detailing old and new business items.[63] Copies of this written agenda should be made available to the attending public in advance. When called to order, the Pledge of Allegiance often begins the trustees meeting, followed by a roll call and the fiscal officer's acknowledgment of the proper advertisement of the meeting. Afterwards, the previous meeting's minutes are read and approved. Then, each member of the board is called upon to give reports, including the fiscal officer's report concerning the township books and finances. Usually, checks to be issued are approved and signed by the trustees at this time. Old business issues are raised and addressed afterwards. This is most often followed by new business and the conclusion and adjournment of the meeting.

Meeting Checklist:



- Distribute the Written Agenda
- Call to Order and Pledge of Allegiance
- Call the Roll
- Fiscal Officer Acknowledgement of Proper Advertisement of Meeting
- Reading and Approval of Minutes from Previous Meeting
- Giving of Reports from All Officers, Including:
  - Fiscal Officer's Review of Township Finances
  - The Review/Signing of Checks to be Issued
- Old Business
- New Business
- Conclusion and Adjournment

In the spirit of keeping the meeting open, comments from the public should be entertained throughout the meeting. Members of the public should not be discouraged from speaking or denied the ability to raise issues or concerns at the appropriate time. Individuals raising issues or concerns at inappropriate times should be informed politely of when it is appropriate to do so and encouraged to re-raise their issue or comment at the appropriate time.

2. January Organizational Meeting

The first trustees' meeting of the year, held in January, is organizational in nature (i.e., organizational meeting). This meeting allows for the election of officers and, if in a year following election, for new trustees to take office and conduct business for the first time.[64]

[63] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:17.
[64] LOCAL GOVERNMENT LAW, *supra* note 1, at §§ 9:13-9:16.

If in a year following election, certificates of election of the newly elected officers are called for and presented at the organizational meeting.[65] These certificates are to be received and expressly made part of the minutes.[66]

If there is a newly elected fiscal officer, he or she presents his or her bond at the organizational meeting.[67] The bond must be in the appropriate amount specified in R.C. § 507.03.[68] The board of trustees must then approve the sureties securing the township fiscal officer's bond and receive the bond, followed by the bond being recorded by the fiscal officer and filed with the county treasurer.[69]

Newly elected trustees must also present their bond(s) at the organizational meeting.[70] The bonds must have been approved by a county or municipal court judge.[71] Such bonds are to be received by the board and recorded by the fiscal officer.[72]

If the organizational meeting is in a year following the election of a new fiscal officer, the newly elected fiscal officer will present a certificate stating that the oath of office has been administered to him or her, and having been qualified for the position, assume the duties of the township fiscal officer and administer the oath to the newly elected trustee. [73] The board then sets the township fiscal officer's salary consistent with the appropriate amount specified in R.C. § 507.09.[74]

At the organizational meeting, the outgoing fiscal officer shall plan for the surrender, in good order, of all township books and records to the newly elected fiscal officer on April 1st (the date on which the fiscal officer actually takes office).[75] The outgoing fiscal officer "should be certain that all accounts are in balance as of March 31 and that the cash journal plus outstanding warrants equal the balance in the township bank" upon the surrender of the books.[76] However, the new fiscal officer should not accept the township books until April 1st.[77]

The election of officers should also take place at the organizational meeting.[78] This is accomplished by the prior chairperson, president, or trustee conducting the meeting to this point relinquishing his or her position and turning the conduct of the meeting over to the fiscal officer.[79] The fiscal officer should then call for nominations for chairperson or president.[80] Nominations

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[65] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.
[66] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.
[67] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.
[68] OHIO REV. CODE ANN. § 507.03.
[69] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.
[70] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.
[71] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.
[72] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.
[73] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.
[74] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14; OHIO REV. CODE ANN. § 507.09.
[75] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.
[76] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.
[77] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:14.
[78] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.
[79] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.
[80] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.

need not be seconded, but there is no harm in a nomination being seconded.[81] Following all nominations, the fiscal officer shall call for a motion to close nominations and, upon the motion being seconded, hold a roll-call vote to close nominations.[82] Once the nominations are closed, a roll call is then taken and each trustee states his or her choice for chairperson or president.[83] There is no secret ballot.[84] The person receiving the most votes becomes the new chairperson or president.[85]

The same procedure for electing a chairperson or president is then followed for electing a vice chairperson or vice president if this position is desired.[86]

After elections, the meeting proceeds on to other organizational and/or other business. This should include establishing by resolution a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings.[87]

Open Meetings and Public Records ("Sunshine Laws")

1. Open Meetings

Ohio law demands that all meetings and deliberations by public officials conducting public business, unless specifically excepted by law, be open to public attendance.[88] More specifically, R.C. § 121.22(C) states that "[a]ll meetings of any public body are declared to be public meetings open to the public at all times…[t]he minutes of the regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection."[89] This section is commonly known as or referred to as "Ohio's Open Meetings Law" or "Sunshine Law"[90] and includes meetings by all township officials and boards.

R.C. § 121.22 provides specific criteria that must be met in order for a meeting to be considered "open" and includes limited exceptions to open meetings.[91] Also, this section contains provisions to force compliance with the "open meeting" requirements, including financial and personal penalties.[92] Additionally, any action taken by a public body is invalid if not conducted in an open meeting in compliance with R.C. § 121.22.[93]

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[81] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.
[82] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.
[83] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.
[84] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.
[85] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.
[86] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:15.
[87] OHIO REV. CODE ANN. § 121.22(F)
[88] OHIO REV. CODE ANN. § 121.22.
[89] OHIO REV. CODE ANN. § 121.22(C).
[90] OHIO REV. CODE ANN. § 121.22. Dave Yost et al., *Ohio Sunshine Laws 2019: An Open Government Resource Manual* ii (2019), http://www.ohioattorneygeneral.gov/yellowbook.
[91] OHIO REV. CODE ANN. §§ 121.22(F)-121.22(G).
[92] OHIO REV. CODE ANN. §§ 121.22(H)-121.22(I).
[93] LOCAL GOVERNMENT LAW, *supra* note 1, at § 9:3.

Pursuant to R.C. § 121.22(B)(1)(a), a township board of trustees is a "public body." When a "public body," such as a board of trustees, holds a meeting, it must do so in strict compliance with the open meetings provisions of R.C. § 121.22. Under R.C. § 121.22(B)(2), a "meeting" is defined as "any prearranged discussion of the public business of the public body by a majority of its members."[94] In the case of a board of trustees, generally, an arranged gathering of two (2) or more trustees to discuss trustee and/or township business of any type would constitute a "meeting" under this definition.[95]

In accordance with R.C. § 121.22(A) and (C), public officials, including township trustees and officials, are required "to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law."[96] This requirement and all other provisions of R.C. § 121.22 are to be "liberally construed,"[97] meaning that all interpretations of R.C. § 121.22, including those made by a court of law, are to be made in favor of open meetings. [98]

Aside from "executive sessions," discussed in both this section and in a separate section of this manual,[99] there remains one exception to open meetings that applies to townships. Pursuant to R.C. § 121.22(D)(2), the Open Meetings Law or Sunshine Law does not apply to "[a]n audit conference conducted by the auditor of state or independent certified public accountants with officials of the public office that is the subject of the audit."[100] In other words, such conferences are not held in an open meeting.

To conduct open meetings:

> Every public body, by rule, shall establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place, and purpose of the meeting.[101]

Established by resolution, these rules for holding meetings are generally adopted at the January organizational meeting. Contact the Delaware County Prosecutor's Office to obtain a resolution to establish these rules. A sample resolution is also included in the forms section of this manual.

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[94] OHIO REV. CODE ANN. § 121.22(B)(2).
[95] OHIO REV. CODE ANN. § 121.22(B)(2).
[96] OHIO REV. CODE ANN. § 121.22(A).
[97] OHIO REV. CODE ANN. § 121.22(A).
[98] OHIO REV. CODE ANN. § 121.22(A).
[99] *See* Executive Session, *infra* pp. 21-24.
[100] OHIO REV. CODE ANN. § 121.22(D)(2).
[101] OHIO REV. CODE ANN. § 121.22(F).

All meetings must be noticed (i.e. advertised) to the public. The board may determine, by resolution, how to notice and advertise their meetings.[102] Regular meetings are generally noticed following the January organizational meeting at which meeting the time and place of regular meetings are established. Special and emergency meeting are noticed when there is a need for such meetings. Normally, advertisements are placed in a newspaper of general circulation in the township, such as the *Delaware Gazette*. Any notice must state that a trustees meeting is to be held (if it is a regular meeting, the day of each month when the regular meeting is held (i.e., first Monday of each month)), where it is to be held, the time it is to be held and, if it is a special or emergency meeting, the purpose of the meeting.[103] If it is a special or emergency meeting (when a real and present emergency exists), the news media that have requested notification must immediately be notified of the time, place, and purpose of the meeting. [104]

Additionally, R.C. § 121.22 provides that any person, upon request, may "obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed."[105] Persons wishing to receive either an agenda or advanced notice of a meeting when a specified topic is to be discussed may, at their choice, be placed on a mailing or email list and mailed or emailed such information. That person is to pay "a reasonable fee" for this service.[106]

Executive sessions are permissible only under very specific circumstances. Executive sessions may be held "only after a majority of a quorum of the public body determines, by roll call vote, to hold an executive session and only at a regular or special meeting."[107] Executive sessions may be held only for the purpose of considering the matters specifically listed in R.C. §§ 121.22(G)(1)-(8).[108] Please refer to the "Executive Session" section of this manual for the purposes for which an executive session may be held and the procedures for entering and exiting executive sessions.

If a public body does not comply with the open meeting provisions of R.C. § 121.22, it may be subject to various penalties. Pursuant to R.C. § 121.22(H), "[a] resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body."[109] Moreover, "[a] resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations…[took place in a properly declared executive session that was held for a proper purpose]."[110] Also, a resolution, rule, or formal action taken at a meeting not properly noticed (i.e. advertised) is invalid.[111]

A civil action may be brought against the township for not complying with the open meeting provisions of R.C. § 121.22.[112] Such an action could result in the issuance of an injunction, or court order, against the township ordering it to comply with R.C. § 121.22. If the court issues such

[102] OHIO REV. CODE ANN. § 121.22(F).
[103] OHIO REV. CODE ANN. § 121.22(F).
[104] OHIO REV. CODE ANN. § 121.22(F).
[105] OHIO REV. CODE ANN. § 121.22(F).
[106] OHIO REV. CODE ANN. § 121.22(F).
[107] OHIO REV. CODE ANN. § 121.22(G).
[108] OHIO REV. CODE ANN. § 121.22(G)(1)-(8).
[109] OHIO REV. CODE ANN. § 121.22(H).
[110] OHIO REV. CODE ANN. § 121.22(H).
[111] OHIO REV. CODE ANN. § 121.22(H).
[112] OHIO REV. CODE ANN. § 121.22(I).

an order, the township could be subject to fines, court costs, and payment of the attorney's fees of the party bringing the action.[113] Additionally, a public official or a trustee that fails to comply with such a court order may be removed from office by the court.[114]

Pursuant to R.C. 149.43(E)(1), all elected officials, including trustees and fiscal officers, or their appropriate designees, are required to attend three (3) hours per term of office of training on public records and open meetings.[115] If a designee is appointed to attend, the township should generate a written record of appointment of the designee. Known as "certified training" or "certified public records training," these trainings are approved by the attorney general in accordance with R.C. § 109.43 and are generally conducted by the attorney general's office or the auditor of state's office. Trustees and fiscal officers need to be sure either they or their appointed designee attend this training each term of office. Certificates from the training and, if applicable, the written record appointing a designee should be retained as they may be requested as a part of an audit.

The Ohio Attorney General annually publishes the Ohio Sunshine Laws, An Open Government Resource Manual or "Yellow Book." It contains helpful information regarding public records laws and open meetings laws. This book is available online at the following address:

https://www.ohioattorneygeneral.gov/Legal/Sunshine-Laws.

You may want to consult this book for additional information.

2. Executive Session (Generally)

From time to time, a board of trustees will experience the need to hold a portion of its meeting in private away from the public. Such a closed meeting is permissible under very limited circumstances. These closed meetings are called executive sessions, and attendance is limited to the members of the governmental body and such other persons specifically invited.[116] Executive sessions are a limited exception to the Open Meetings Law/Ohio's Sunshine Law under R.C. § 121.22.[117] An executive session must be entered and exited according to a statutorily defined procedure and must be held for a statutorily approved purpose.[118]

Pursuant to R.C. § 121.22(G), both a motion and a vote are required for a board of trustees to adjourn into executive session. Executive sessions may be held "only after a majority of a quorum of the public body determines, by roll call vote, to hold an executive session and only at a regular or special meeting."[119] The motion to go into executive session must state one or more of the purposes listed in R.C. §§ 121.22(G)(1)-(8) as the reason for holding executive session. [120] Also,

[113] OHIO REV. CODE ANN. § 121.22(I)(2)(a).
[114] OHIO REV. CODE ANN. § 121.22(I)(4).
[115] OHIO REV. CODE ANN. §§ 109.43 and 149.43(E)(1).
[116] *See Thomas v. Bd. of Trustees*, 5 Ohio App. 2d 265, 268, 215 N.E.2d 434, 436 (7th Dist. 1966).
[117] *See* Open Meetings, *supra* pp. 19-24.
[118] OHIO REV. CODE ANN. § 121.22(G).
[119] OHIO REV. CODE ANN. § 121.22(G).
[120] OHIO REV. CODE ANN. § 121.22(G).

it must contain the specific topic to be considered in that executive session.[121] If the executive session is to be held pursuant to R.C. 121.22(G)(1), often refered to as a "personnel matters" executive session, the motion must specifically state one or more of the reasons in R.C. § 121.22(G)(1) as the reason(s) for going int o executive session.[122] The minutes of the executive session "need only reflect the general subject matter of discussion in executive sessions."[123]

No decisions can be made in executive session (i.e., no straw polls or votes) and no motions or resolutions may be voted upon in executive session.[124] All resolutions and motions must be voted upon in open session in order to be valid.[125] Thus, a board must properly exit executive session by motion before taking any action or voting.

3. Purposes for Which Executive Session May Occur (R.C. § 121.22(G)(1)-(8))

The purposes for which a board of trustees can adjourn into executive session are very limited. The Ohio Revised Code includes eight (8) purposes pursuant to which a public body, such as a board of township trustees, may hold an executive session.[126] Not all of the purposes listed in R.C. §§ 121.22(G)(1)-(8) are applicable to townships.[127] Those purposes that may generally be applicable to townships and which require strict compliance are as follows:

1. To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of the elected official's official duties or for the elected official's removal from office. If a public body holds an executive session pursuant to division (G)(1) [this subsection] . . . the motion and vote to hold that executive session shall state which one of the approved purposes listed in division (G)(1) [this subsection] . . . are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting. R.C. § 121.22(G)(1).

2. To consider the purchase of property for public purposes, the sale of property at competitive bidding, or the sale or other disposition of unneeded, obsolete, or unfit-for-use property in accordance with R.C. § 505.10, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use division (G)(2) of this

[121] OHIO REV. CODE ANN. § 121.22(G).
[122] OHIO REV. CODE ANN. § 121.22(G)(1).
[123] OHIO REV. CODE ANN. § 121.22(C).
[124] OHIO REV. CODE ANN. § 121.22(H).
[125] OHIO REV. CODE ANN. § 121.22(H).
[126] OHIO REV. CODE ANN. § 121.22(G)(1)-(8).
[127] The purpose listed under OHIO REV. CODE ANN. § 121.22(G)(7) is not generally applicable to townships.

section as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers. R.C. § 121.22(G)(2).

3. Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action. R.C. § 121.22(G)(3).

4. Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment. R.C. § 121.22(G)(4).

5. Matters required to be kept confidential by federal law or regulations or state statutes. R.C. § 121.22(G)(5).

6. Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office. R.C. § 121.22(G)(6).

7. [NOT APPLICABLE]

8. To consider confidential information related to the marketing plans, specific business strategies, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

    a. The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

    b. A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project.[128] R.C. § 121.22(G)(8).

[128] OHIO REV. CODE ANN. § 121.22(G)(1)-(8).

Ohio law strongly favors open meetings, encourages interpretation of the law against closed meetings, and provides penalties to ensure compliance.[129] Therefore, entering executive session carelessly for a reason other than those listed may result in penalties to the township or individual township office holders. According to R.C. § 121.22(H), "[a] resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body."[130] Additionally, "[a] resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations" took place in a properly declared executive session that was held for a proper purpose.[131] Thus, all votes must occur in open session.

4. Public Records

All "records," as that term is defined in the Ohio Revised Code,[132] kept by any public office, regardless of form, including a township, constitute a "public record," except those records specifically excepted by law or defined by law as not being a public record.[133] Upon request, a township must provide prompt inspection of public records and must provide copies of public records within a reasonable period of time.[134] The Ohio Public Records Act, located in R.C. § 149.43, requires each public office to adopt a public records policy and requires all elected officials, or a designee, to attend an approved public records training session.[135]

Specifically, pursuant to R.C. 149.43(E)(1), all elected officials, including trustees and fiscal officers, or their appropriate designees, are required to attend three (3) hours per term of office of training on public records and open meetings. Known as "certified training" or "certified public records training," these trainings are approved by the attorney general in accordance with R.C. § 109.43 and are generally conducted by the attorney general's office or the auditor of state's office. Trustees and fisal officers need to be sure either they or their appointed designee attend this training each term of office. If a designee is appointed to attend, the township should generate a written record of appointment of the designee. Certificates from the training and, if applicable, the written record appointing a designee should be retained as they may be requested as a part of an audit.

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https://www.ohioattorneygeneral.gov/Legal/Sunshine-Laws.

You may want to consult this book for additional information. Also, please see the Public Records and Records Retention section of this manual for more information on public records.

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[129] OHIO REV. CODE ANN. §§ 121.22(A), 121.22(I).
[130] OHIO REV. CODE ANN. § 121.22(H).
[131] OHIO REV. CODE ANN. § 121.22(H).
[132] OHIO REV. CODE ANN. § 149.011(G).
[133] OHIO REV. CODE ANN. § 149.43(A)(1).
[134] OHIO REV. CODE ANN. § 149.43(B).
[135] OHIO REV. CODE ANN. § 149.43(E)(1).

Resolutions (Generally)

The resolution is the means by which a board of trustees takes action. The action taken may be either large or small and may be related to any legitimate subject that the board of trustees considers. A resolution is properly raised by motion and, considered, debated, made, and adopted only at an open trustees meeting.[136]

Resolutions raised, considered, debated, made, or adopted outside of an open meeting are invalid.[137] Penalties to the board, township, or individual trustee, monetary and otherwise, may be levied for resolutions raised, considered, debated, made, or adopted outside of open session.[138]

The specific wording of a resolution should be recorded as a part of the minutes of the trustees meeting. After a resolution is proposed by motion, a motion should be seconded by another trustee. A roll call vote of the trustees should then be taken. Depending on the subject of the motion, either a simple majority or unanimous vote will be required for its passage and passage of the resolution. The requirements of the Ohio Revised Code relevant to the particular subject of the resolution generally dictate when a unanimous vote is required.

Remember that the power of a board of township trustees remains rooted in the authority granted to it either expressly by statute or necessarily implied therefrom.[139] "If a board of township trustees attempts to do something [by resolution] which is not specifically authorized by statute, nor reasonably implied as necessary to accomplish something which is authorized, it is acting illegally and beyond its powers."[140] Simply put, a board may not, by resolution, go beyond the bounds of its powers and authority under the law.

Township Property

Townships possess various types of both real and personal property. Due to the wide variety of property possessed by townships, township trustees hold various roles and responsibilities in relation to that property. The board of trustees and their successors hold title to township property for the township and are responsible for its maintenance, care, and management.

Because there are many different types of property that a township may possess and be responsible for, it is not possible to address every type of property in this manual. However, the next few subsections address some of the common types of property that may be possessed by a township.

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[136] OHIO REV. CODE ANN. § 121.22(H). *See also* Open Meetings, *supra* pp. 19-24.
[137] OHIO REV. CODE ANN. § 121.22(H). *See also* Open Meetings, *supra* pp.19-24.
[138] OHIO REV. CODE ANN. §§ 121.22(H)-121.22(I). *See also* Open Meetings, *supra* pp. 19-24.
[139] LOCAL GOVERNMENT LAW, *supra* note 1, at § 7:11.
[140] LOCAL GOVERNMENT LAW, *supra* note 1, at § 7:11.

1. Cemeteries

Chapter 517 of the Ohio Revised Code addresses township cemeteries. Specifically, it addresses the purchase or acquisition of a cemetery, the sale of lots/plots, the care of the cemetery, and other issues affecting the operation of a cemetery.

According to R.C. § 517.01, a "board of township trustees may accept a conveyance of, or purchase, and enclose, improve, and protect lands in one or more places within the township as it deems necessary and proper for cemetery purposes."[141] If the trustees are unable to secure land for a cemetery through a contractual purchase on reasonable terms, they may appropriate land pursuant to eminent domain procedures specified in R.C. §§ 163.01-163.22.[142] Unless funds are set aside and available under R.C. § 517.08 for the purchase or acquisition of a cemetery, the question of the establishment of a cemetery may be put to a vote at a regular annual election "on the order of the board of township trustees or the written application of any six electors of the township."[143] To help defray the costs of such an acquisition or to help in the enclosing, care, supervision, repair, or improving of lands for a cemetery, the trustees may also levy a tax sufficient for that purpose.[144]

A. Lots

When acquired, the board of trustees shall have the land purchased for the cemetery "laid out in lots, avenues, and paths, [and] shall number the lots…"[145] A plat map of the cemetery should be "carefully kept" by the township fiscal officer.[146]

Once the land for the cemetery has been acquired and laid out, the board of trustees will be responsible for the sale of lots within the cemetery. R.C. § 517.07 addresses the sale of cemetery lots. According to that section, the trustees "shall sell at a reasonable price the number of lots" to meet public demands.[147] After the terms of the sale have been met, a deed for these lots should be executed and issued by the trustees to the purchasers of lots or other interment rights.[148] The township fiscal officer should record the deed in a book dedicated exclusively to that purpose.[149] The cost of recording the deed shall be paid by the person who receives it.[150]

Under special circumstances, payment for a cemetery lot can be waived. Specifically, "[u]pon the application of a head of a family living in the township, the board shall, without charge, make and deliver to the applicant a deed for a suitable lot or right for the interment of the applicant's family,

[141] OHIO REV. CODE ANN. § 517.01.
[142] OHIO REV. CODE ANN. § 517.01.
[143] OHIO REV. CODE ANN. § 517.04.
[144] OHIO REV. CODE ANN. § 517.03.
[145] OHIO REV. CODE ANN. § 517.06.
[146] OHIO REV. CODE ANN. § 517.06.
[147] OHIO REV. CODE ANN. § 517.07.
[148] OHIO REV. CODE ANN. § 517.07.
[149] OHIO REV. CODE ANN. § 517.07.
[150] OHIO REV. CODE ANN. § 517.07.

if, in the opinion of the board and by reason of the circumstances of the family, the payment would be oppressive."[151]

To better maintain cemetery records, R.C. § 517.07 allows a township the option of including three conditions within the terms of sale and in any deed issued for a cemetery lot. These conditions include:

1. The buyer providing to the board of township trustees, in writing, a list of names and addresses of the persons to whom the buyer's property would pass by if the buyer dies and the property passes without a will.

2. The buyer notifying the board of township trustees, in writing, of any subsequent changes in the name and address of any person to whom the property would be passed if the buyer dies and the property passes without a will.

3. Any person who receives a township cemetery lot or right by gift, inheritance, or any other means other than the original conveyance shall, within one year after receiving such interest, give written notice of his or her name and address to the township board of trustees having control of the cemetery, and shall notify the board of trustees of any subsequent changes in the person's name or address.

Additionally, the terms of sale and any deed for any lots or rights executed in compliance with the above notification requirements shall state that the board of township trustees shall have right of reentry to the cemetery lot or right if the notification requirements are not met. [152]

Where these conditions are imposed and not met, R.C. § 517.07 allows the township certain remedies and provides certain steps to follow to gain a right of re-entry to the lot.[153] Specifically, at least ninety (90) days before establishing reentry, notice must be sent by the board of trustees to the last known owner at the last known owner's address by certified mail, stating that the owner's interest in the lot or right will cease unless the above notification requirements are met.[154] If the last known owner's address cannot be ascertained, notice may be published in a newspaper of general circulation in the county.[155] The board of trustees must then pass a resolution stating that the conditions of the sale have not been fulfilled in order for the board to reclaim its interest in the lot or right.[156]

Aside from or in addition to these conditions, the board of trustees may also limit the terms of sale to allow re-entry to the lot or right where the lot, tomb, columbarium or portion thereof is not used by the owner, a member of the owner's family, or an owner's descendant within a specified period of time.[157] The specified period of time must be at least twenty (20) years, but no more than fifty

[151] OHIO REV. CODE ANN. § 517.07.
[152] OHIO REV. CODE ANN. § 517.07.
[153] OHIO REV. CODE ANN. § 517.07.
[154] OHIO REV. CODE ANN. § 517.07.
[155] OHIO REV. CODE ANN. § 517.07.
[156] OHIO REV. CODE ANN. § 517.07.
[157] OHIO REV. CODE ANN. § 517.07.

(50) years, with a right of renewal at no cost.[158] Pursuant to R.C. § 517.07, "the terms of sale and any deed for lots or rights conveyed with a termination date shall state that the board shall have right of reentry to the lot or right at the end of the specified time period if the lot, tomb, including a mausoleum, or columbarium, is not used within this time period or renewed for an extended period." At least ninety (90) days prior to the expiration of the specified period of time, the board must inform the lot owner, either by certified mail (if his or her address is known) or by one publication (if his or her address is not known) that his or her rights are about to expire.[159] In accordance with R.C. § 517.07, "[i]n order to establish reentry, the board shall pass a resolution stating that the conditions of the sale or of the deed have not been fulfilled, and that the board reclaims its interest in the lot or right." .[160] The board must compensate owners of unused lots or rights who do not renew the terms of sale or the deed with eighty-percent (80%) of the purchase price of the right or lot.[161]

The board may also repurchase a lot at any time at a price that is mutually agreeable to the board and the owner of the lot.[162] Any such repurchase must be negotiated with the lot owner.[163]

B. Maintenance and Care

A board of township trustees is charged with the care and maintenance of cemeteries under its control.[164] Care and maintenance includes making of rules and regulations concerning the cemetery, setting cemetery hours, cutting the grass, killing weeds, maintaining the fences, and righting fallen tombstones or headstones.[165] For such expenses, "[t]he board may levy a tax…not to exceed one-half mill in any one year, upon all taxable property of the township.[166]

In addition, R.C. § 517.06 specifically permits the board of township trustees to "make and enforce all needful rules and regulations for burial, interment, reinterment, or disinterment."[167]

2. Township Hall

Most townships have a township hall which serves the primary function of being a place for conducting township business, such as trustee meetings and meetings of other township boards and committees. Township halls often have secondary functions as well, such as serving as a center of various community activities, including voting. Because the township hall serves many important functions in both township government and life in general in the township, the Ohio Revised Code specifically addresses its construction and use.

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[158] OHIO REV. CODE ANN. § 517.07.
[159] OHIO REV. CODE ANN. § 517.07.
[160] OHIO REV. CODE ANN. § 517.07.
[161] OHIO REV. CODE ANN. § 517.07.
[162] OHIO REV. CODE ANN. § 517.07.
[163] OHIO REV. CODE ANN. § 517.073.
[164] OHIO REV. CODE ANN. §§ 517.11, 517.06.
[165] OHIO REV. CODE ANN. §§ 517.06, 517.11, 517.12, 517.32.
[166] OHIO REV. CODE ANN. § 517.11.
[167] OHIO REV. CODE ANN. § 517.06.

A. Construction and Finance:

Sections 511.01-511.07 of the Ohio Revised Code specifically address the township hall or "town hall," as it is often referred to in the Revised Code.[168] These sections primarily focus on the construction and financing of a township hall. The construction and financing of a township hall is also addressed by R.C. §§ 505.26 and 505.262.

When considering the specifics of township hall construction and financing, it is important to remember that all contracts for supplies, materials, equipment, and/or contractors are subject to a competitive bidding process if the total estimated cost of the contract exceeds $50,000.00.[169] If the total cost of the contract is less than or equal to $50,000.00, competitive bidding may be undertaken at the board's discretion.[170]

The competitive bidding process for counties is described in R.C. § 307.86 *et seq.*, and although this process is not expressly applicable to townships, it should be used as a guide. These sections of the Ohio Revised Code prescribe specific procedures for notification, advertising, and reception of bids.[171] Due to the involved nature of the competitive bidding process, it is discussed separately in a later section of this manual.[172]

The services of an architect are an exception to the requirement of competitive bidding.[173] Specifically, if the architect is engaged for the purpose of rendering architectural services, the services of the architect are generally exempt from the competitive bidding requirements.[174] Contracts for "professional design services," which include the services of an architect, landscape architect, professional engineer, or surveyor are, however, subject to a separate qualification process that must be followed.[175]

With this in mind, R.C. § 505.26 empowers a board of trustees to "purchase, appropriate, construct, enlarge, improve, rebuild, repair, furnish, and equip a township hall."[176] The construction, improvement, enlargement, removal and financing of a township hall may be achieved by one of two methods described in the Ohio Revised Code. Though these methods vary, the most significant difference concerns the submission of the issue of construction of the township hall to the voters.[177]

The first method, subject to the conditions delineated by R.C. § 505.262, allows the trustees, by resolution and unanimous vote, to purchase or construct any building for a lawful purpose, including a township hall, and to finance that purchase or construction through the issuance of

[168] OHIO REV. CODE ANN. §§ 511.01-511.07.
[169] OHIO REV. CODE ANN. §§ 307.86, 511.12.
[170] OHIO REV. CODE ANN. § 511.12.
[171] OHIO REV. CODE ANN. § 307.86 *et seq.*
[172] *See* Competitive Bidding, *infra* pp.38-41.
[173] OHIO REV. CODE ANN. § 307.86.
[174] OHIO REV. CODE ANN. § 307.86.
[175] OHIO REV. CODE ANN. §§ 153.65 *et seq*.
[176] OHIO REV. CODE ANN. § 505.26; 1993 Ohio Op. Att'y Gen. No. 93-039.
[177] 1993 Ohio Op. Att'y Gen. 93-039.

securities of the township without submitting the issue to the voters for approval.[178] Under the first method, the conditions that must be met for the purchase or construction of the building are as follows:

1. A unanimous resolution by the trustees for the purchase or construction of a township hall,[179] and;

2. If securities of the township to finance purchases and construction are to be issued, the following requirements must be observed:

    - A unanimous resolution by the township trustees to issue securities of the township;
    - The securities must be signed by the board and attested to by the signature of the township fiscal officer;
    - The maximum maturity of the securities is subject to the limitations in R.C. § 133.20;
    - The securities shall bear interest not to exceed the rate determined under R.C. § 9.95;[180]
    - The resolution authorizing the issuance of the securities must provide for annual taxation in the amount sufficient to pay the interest on and the principal of the securities;
    - The securities shall be offered for sale on the open market or given to the vendor or contractor if no sale is made, and
    - Certification by the county auditor that the debt service charge in the first year of the purchase, together with the debt service charge for that same year for any other purchase or construction already undertaken pursuant to R.C. § 505.262(A) does not exceed one-tenth of the township's total revenue from all sources.[181]

"When all the conditions set forth in R.C. [§] 505.262 are satisfied, neither the question of the purchase nor the question of the issuance of the securities need be submitted to the electorate."[182] Additionally, "[t]he securities may contain a clause permitting prepayment at the option of the board."[183]

If the conditions in R.C. § 505.262 are unable to be met or the township wishes to finance the purchase by a means other than the issuance of securities, R.C. §§ 511.01-511.02 apply. These

[178] OHIO REV. CODE ANN. § 505.262; 1993 Ohio Op. Att'y Gen. No. 93-039.
[179] OHIO REV. CODE ANN. § 505.262; 1993 Ohio Op. Att'y Gen. No. 93-039.
[180] *See* OHIO REV. CODE ANN. § 9.95 (stating that "[s]ecurities…shall bear interest…not to exceed the maximum or maximum average annual interest rate per annum determined in or pursuant to the proceedings for the securities by the legislative authority, taxing authority, subdivision, governing body, officer, or other issuer, board, authority, commission, district, agency, body, or entity that is the issuer, or governing body or officer of the issuer, of those securities.").
[181] OHIO REV. CODE ANN. § 505.262; 1993 Ohio Op. Att'y Gen. No. 93-039.
[182] 1993 Ohio Op. Att'y Gen. No. 93-039.
[183] OHIO REV. CODE ANN. § 505.262.

sections require both the issue of construction and of the financing of the construction to be submitted to the electorate if the cost of the township hall exceeds $50,000.00.[184] Note that the resolution authorizing such a vote must be submitted to the board of elections "not later than four p.m. of the ninetieth day before the day of the election."[185] After approval by the majority of voters, the trustees "may make all contracts necessary for the purchase of a site, and the erection, improvement, or enlargement of such [a] building."[186]

Under any circumstances where the board of trustees is considering the issuance of securities, notes, and/or bonds to finance the purchase or construction of a township hall, the board should consult bond counsel. The issuance of securities, notes, and/or bonds is a highly specialized area of law that requires the specific expertise of bond counsel to effectively guide the township through the process of issuing securities, notes, and/or bonds.

When a board of township trustees, pursuant to an affirmative vote, is authorized to purchase land for a township hall and build a township hall on that purchased land, but cannot procure the appropriate land through a contractual purchase, it may appropriate up to one acre of land for this purpose.[187] In other words, under such circumstances, eminent domain may be used to obtain the property pursuant to R.C. §§ 163.01-163.22.[188]

B. Control and Rental

After the township hall is built, the board of township trustees will have control of the township hall.[189] The trustees may rent or lease all or any part of the township hall to any person or organization.[190] All rent must be paid in advance or fully secured.[191] Rent monies received may be used for the improvement or repair of the township hall and the balance of funds remaining must be used for general township purposes.[192]

Terms of the rental or lease are decided by the trustees and may be anything that the trustees consider proper.[193] The terms of any rental or lease agreement "may give preference to persons who are residents of or organizations that are headquartered in the township or that are charitable or fraternal in nature."[194] Nevertheless, all persons and organizations "shall be treated on a like or similar basis, and no differentiation shall be made on the basis of race, color, religion, national origin, sex, or political affiliation."[195]

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[184] OHIO REV. CODE ANN. § 511.01.
[185] OHIO REV. CODE ANN. § 511.01.
[186] OHIO REV. CODE ANN. §§ 511.02-511.03.
[187] OHIO REV. CODE ANN. § 511.04.
[188] OHIO REV. CODE ANN. § 511.04.
[189] OHIO REV. CODE ANN. § 511.03.
[190] OHIO REV. CODE ANN. § 511.03.
[191] OHIO REV. CODE ANN. § 511.03.
[192] OHIO REV. CODE ANN. § 511.03.
[193] OHIO REV. CODE ANN. § 511.03.
[194] OHIO REV. CODE ANN. § 511.03.
[195] OHIO REV. CODE ANN. § 511.03.

3. Equipment and Personal Property

From trucks and shovels to chairs and computers, townships possess many types of equipment and personal property. Because townships are limited in their authority and actions by the provisions of the Ohio Revised Code or that which can necessarily be implied therefrom, the types of equipment and personal property that can be possessed, acquired, or disposed of by the township are limited to what the Revised Code authorizes a township to acquire. The means of acquisition is also limited by what the Revised Code permits.

A. Acquisition

Generally, "the board of township trustees of any township, by unanimous vote, may adopt a resolution allowing the township to contract for the purchase of equipment . . . for any lawful township purpose."[196] Although this is a very broad statement, it is not a *carte blanche*. When the township contemplates the purchase of equipment, it must be established that there is a legitimate lawful purpose for the purchase of the equipment and approval must be by a unanimous vote of the board.[197]

Aside from the general purchasing provisions of R.C. § 505.262, the Ohio Revised Code contains many sections that allow a township to purchase specific types of equipment or personal property. According to R.C. § 505.261, a township can purchase materials and recreation equipment to establish a township park under R.C. § 505.26. If the township has a police or fire department, subject to meeting certain requirements and meeting applicable competitive bidding requirements, it can purchase equipment for police and fire protection.[198] A township may acquire equipment for the disposal of tree leaves.[199] It may purchase equipment for the construction, repair and maintenance of township roads as well as equipment for the removal of snow and ice from them.[200] It may purchase furnishings and equipment for a township hall.[201] Additional sections of the Ohio Revised Code allow for the purchase of various other types of equipment and personal property.

With limited exceptions, a township must acquire property costing $50,000.00 or more through a competitive bidding process.[202] There is no general competitive bidding statute applicable to townships. Instead competitive bidding requirements are found in separate individual statutes; generally those authorizing the purchase. The process for competitive bidding may or may not be specified in the authorizing statute. Where a process is not or is only partially specified in the authorizing statute, the process in the county general competitive bidding statute should be used as a guide or should supplement where the processes is only partially specified. The county general competitive bidding statute is found in R.C. § 307.86. It prescribes specific procedures for

[196] OHIO REV. CODE ANN. § 505.262(A).
[197] OHIO REV. CODE ANN. § 505.262(A).
[198] OHIO REV. CODE ANN. §§ 505.50, 505.37(A).
[199] OHIO REV. CODE ANN. § 505.79.
[200] OHIO REV. CODE ANN. §§ 5501.41, 5549.021.
[201] OHIO REV. CODE ANN. § 505.26.
[202] OHIO REV. CODE ANN. §§ 505.37(A), 307.86.

notification, advertising, and reception of bids.[203] Due to the involved nature of the competitive bidding process, it is discussed separately in a later section of this manual.[204]

There are, however, certain exceptions to competitive bidding that are appropriate for discussion here. As an example, R.C. § 505.08 allows a township to make purchases without advertising or bidding when a real and present emergency situation exists. The purchase must consist of "services, materials, equipment, or supplies needed to meet the emergency" and must cost less than $50,000.00.[205] In order to make such a purchase, the board of trustees must first pass by "a unanimous vote a resolution declaring a real and present emergency in connection with the administration of township services or the execution of duties assigned by law to any officer of a township…"[206] Only then can the trustees resolve to enter into a contract for such a purchase.[207]

Another exception to competitive bidding is when the purchase or sale of materials, equipment, or supplies is to be made from or to "any department, agency, or political subdivision of the state."[208] Such exception also applies to the "purchase of services with a soil and water conservation district," the "purchase of supplies, services, materials, and equipment with a regional planning commission pursuant to division (D) of section 713.23 of the Revised Code," and for "the purchase of services from an educational service center under section 3313.846 of the Revised Code".[209] A resolution for making such a purchase shall meet the requirements of R.C. § 505.101(A)-(C), which requires the inclusion of a statement of the maximum amount to be paid, a description of the items to be purchased, and making the appropriation of funds.[210]

Competitive bidding is also not required when a board of township trustees purchases real or personal property at public auction. The township board of trustees by resolution may "designate an individual, officer, or employee to represent the board and tender bids at the auction."[211] Purchases made at public auctions must be subject to a maximum purchase price established by board resolution or an appraisal approved by the board of trustees prior to the auction.[212]

Still further, competitive biding is not required by a township if the purchase is made through a cooperative purchasing program, as long as a competive bidding procedure was used to obtain pricing.[213] Such programs include, but are not limited to, the Ohio Department of Administrative Services Cooperative Purchasing Program[214] and the Ohio Department of Transportation (ODOT) Cooperative Purchasing Program.[215] There are certain prerequisite requirements that must be met

[203] OHIO REV. CODE ANN. § 307.86 *et seq*.
[204] *See* Competitive Bidding, *infra* pp. 38-41.
[205] OHIO REV. CODE ANN. § 505.08.
[206] OHIO REV. CODE ANN. § 505.08.
[207] OHIO REV. CODE ANN. § 505.08.
[208] OHIO REV. CODE ANN. § 505.101.
[209] OHIO REV. CODE ANN. § 505.101.
[210] OHIO REV. CODE ANN. §§ 505.101(A)-505.101(C).
[211] OHIO REV. CODE ANN. § 505.1010.
[212] OHIO REV. CODE ANN. § 505.1010.
[213] OHIO REV. CODE ANN. §§ 125.04, 5513.01, 5549.21.
[214] OHIO REV. CODE ANN. § 125.04.
[215] OHIO REV. CODE ANN. §§ 5513.01, 5549.21.

for these programs before purchases can be made. Contacting the programs directly or contacting the Prosecutor's Office first for program requirements is recommended.

Concerning any contract for the purchase of equipment, materials, supplies, insurance, services, or a public improvement, the township board of trustees by resolution, may establish a "model system of preferences for products mined or produced in Ohio and the United States and for Ohio-based contractors promulgated pursuant to division (E) of section 125.11 of the Revised Code."[216] The resolution establishing such a system must meet certain requirements before it can be considered and passed.[217] Where such a preference system is approved and effective, no contract may be awarded by the township or trustees that is contrary to the preferential system.[218]

B. Financing

If the township is not able to afford the full purchase price of a piece of equipment, the Ohio Revised Code provides townships with certain financing options. When specific requirements are met, the township may issue securities for the purchase and/or place a tax levy before voters.[219] In other instances, the township may enter into a lease or lease-purchase agreement to acquire certain property.[220] Townships may also reduce the initial purchase costs of some items of property by disposing of other property, such as trading-in old vehicles or equipment for value credited against the purchase price.[221]

A township may divide the purchase price of equipment or materials with another jurisdiction.[222] It may jointly enter into purchase contracts with one or more counties or townships or participate in a joint purchasing program for the purchase of equipment or materials.[223]

The township should contact the Prosecutor's Office with any questions about financing or financing options. Under any circumstances where the board of trustees is considering the issuance of securities, notes, and/or bonds to finance a purchase, the board should consult bond counsel. The issuance of securities, notes, and/or bonds is a highly specialized area of law that requires the specific expertise of bond counsel to effectively guide the township through the process of issuing securities, notes, and/or bonds.

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[216] OHIO REV. CODE ANN. § 505.103.
[217] OHIO REV. CODE ANN. § 505.103.
[218] OHIO REV. CODE ANN. § 505.103.
[219] OHIO REV. CODE ANN. §§ 133.18, 505.262, 5705.19.
[220] OHIO REV. CODE ANN. § 505.267. *See also* OHIO REV. CODE ANN. §§ 505.37 (describing the "lease… [or] lease with an option to purchase, … any fire apparatus, mechanical resuscitators, underwater rescue and recovery equipment, or other fire equipment, appliances, materials, fire hydrants, and water supply for fire-fighting and fire and rescue purposes that seems advisable to the board."), 505.50 (describing the "lease…[or] lease with an option to purchase…any police apparatus, equipment, including a public communications system, or materials that the township …[or] township police district…requires), 5549.021(B) (describing the "lease…[of] machinery, tools, trucks, and other equipment for use in constructing, maintaining, and repairing roads…").
[221] OHIO REV. CODE ANN. § 505.10(A)(3).
[222] OHIO REV. CODE ANN. § 9.48.
[223] OHIO REV. CODE ANN. § 9.48.

C. Receipt of Donations

When a township receives an offer of donated property, the trustees "may accept, on behalf of the township, the donation by bequest, devise, deed of gift, or otherwise, of any real or personal property for any township use."[224]

D. Tracking

Once a purchase of property has been made, it is the duty of the township to keep track of that property. Pursuant to R.C. § 505.04, the "board of township trustees shall make an inventory on the second Monday of January, each year, of all the materials, machinery, tools, and other township supplies in its possession."[225] The inventory shall be filed with the township fiscal officer.[226] Also, the inventory is public record and must be available for public inspection.[227]

E. Disposal

When township property, including motor vehicles, road machinery, equipment, and tools are no longer needed by the township or are worn-out or obsolete, the township may sell or otherwise dispose of the property in accordance with R.C. § 505.10.[228] The board of trustees, by resolution, must determine the lack of need or obsolescence of the property and authorize its sale.[229] If, in the opinion of the board of trustees, the property is valued at more than $2,500.00, the property shall be sold by either public auction or sealed bid following the procedures specified in R.C. § 505.10(A)(1).[230] On the other hand, if it is the opinion of the trustees that the property is worth less than or equal to $2,500.00, the trustees may resolve to either sell the property at private sale without advertising or notification or donate it to an eligible nonprofit organization (one both located in Ohio and exempted from federal income taxation).[231] (Note that there are certain requirements under Ohio Revised Code section 505.10(A)(2)(b) that must be met before property may be donated. Contact the Prosecutor's Office before proceeding to donate property.) Additionally, if the board believes that the property is unfit for its acquired purpose, unneeded for public use, or is obsolete and has no value, the trustees may resolve to either discard or salvage the property.[232]

When selling or discarding worn-out or obsolete equipment, ethics are an important consideration. According to R.C. § 102.03(D):

> [n]o public official or employee shall use or authorize the use of the

[224] OHIO REV. CODE ANN. § 505.10.
[225] OHIO REV. CODE ANN. § 505.04.
[226] OHIO REV. CODE ANN. § 505.04.
[227] OHIO REV. CODE ANN. § 505.04.
[228] Other procedures may apply aside from the procedures in OHIO REV. CODE ANN. § 505.10. *See also* OHIO REV. CODE ANN. §§ 505.101 (describing the purchase or sale with departments, agencies, subdivisions, educational centers or regional planning commissions), 505.102 (describing leases to senior citizen organizations).
[229] OHIO REV. CODE ANN. § 505.10(A).
[230] OHIO REV. CODE ANN. § 505.10(A)(1).
[231] OHIO REV. CODE ANN. § 505.10(A)(2)(a)-(b).
[232] OHIO REV. CODE ANN. § 505.10(A)(7).

> authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.[233]

Trustees and township officials, therefore, should be careful to avoid using their office or position to, in any way, improperly influence or take advantage of the sale or disposition of township equipment or property. For example, when deciding to sell or dispose of property, a dollar value, reasonably supported by current market demands for such property, should be assigned to the piece of property. Additionally, trustees and township officials should remain on one side of the transaction, as the seller, and not the purchaser. This avoids all appearances of impropriety. These examples are not exhaustive; they are meant to illustrate some situations that raise ethical concerns. Trustees and township officials should be cautious and ever vigilant to avoid placing themselves in situations that raise ethical concerns.

If, after following the auction and notification procedures described in R.C. § 505.10, no acceptable bid is received for the property, the board may resolve to enter into a contract to sell the property without bidding or advertising.[234]

Regardless of the property's value, R.C. § 505.10(D) allows the board of trustees to sell property via Internet auction.[235] Certain requirements must be met before an item of property may be sold through an Internet auction.[236] Contact the Prosecutor's Office before proceeding to sell items via Internet auctions.

4. Acquisition of Land/Real Property

As with all powers of a township, the authority to acquire and hold land is derived from the Ohio Revised Code, which provides townships with statutory authority to acquire or possess land for specific purposes.[237] As discussed in other sections of this manual, such purposes often include land on which to place a township hall or a cemetery.[238] However, there are various other purposes for which the Ohio Revised Code allows a township to acquire or hold land.

Some purposes for which a township may acquire and hold land generally include the following:

1) Township hall[239]
2) Township park[240]
3) Public library[241]

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[233] OHIO REV. CODE ANN. § 102.03(D).
[234] OHIO REV. CODE ANN. § 505.10(B).
[235] OHIO REV. CODE ANN. § 505.10(D).
[236] OHIO REV. CODE ANN. § 505.10(D).
[237]. OHIO REV. CODE ANN. § 505 26.
[238] *See* Cemeteries and/or Township Hall, *supra* pp. 26-31.
[239] OHIO REV. CODE ANN. § 505.26.
[240] OHIO REV. CODE ANN. § 505.26.
[241] OHIO REV. CODE ANN. § 505.26.

4) Bridges[242]
5) Viaducts[243]
6) Space for township offices[244]
7) Site for firefighting purposes[245]
8) Site for township police district[246]
9) Cemetery[247]

Additionally, if a board of township trustees seeks land to construct a building, it may, subject to certain limitations, resolve unanimously to contract for sites to construct a building for any "lawful township purpose."[248] Moreover, pursuant to R.C. § 511.11, "[t]he board of township trustees may acquire by purchase, appropriation, or otherwise, any private or public lands which it might deem necessary for its use."[249] Property taken pursuant to R.C. § 511.11 is taken in the name of the trustees and their successors.[250]

It is important to keep in mind that the authority to acquire land granted under R.C. § 511.11 is not unlimited. The property acquired pursuant to R.C. § 511.11 must be "for [the township's] use."[251] As an example, the township may not acquire property for the purpose of promoting current or future industrial use, as land acquired for this purpose would presumably not be for the use of the township.[252]

A. Park

Pursuant to R.C. § 505.261, the trustees "may acquire suitable lands . . . to establish a township park."[253] Various financing options are available to township trustees when considering the purchase of a park.[254] Additionally, if the trustees purchase a park, they may purchase items to improve the land acquired for the park including landscape planting, playground equipment, athletic equipment, and recreational equipment.[255]

B. Preserve

As opposed to recreational use, trustees may acquire land, other than by appropriation, to protect and preserve it.[256] Specifically, R.C. § 505.26 allows a board of township trustees to acquire land "for the purposes of protecting and preserving the natural, scenic, open, or wooded condition of

[242] OHIO REV. CODE ANN. § 505.26.
[243] OHIO REV. CODE ANN. § 505.26.
[244] OHIO REV. CODE ANN. § 505.26.
[245] OHIO REV. CODE ANN. § 505.37.
[246] OHIO REV. CODE ANN. § 505.50.
[247] OHIO REV. CODE ANN. § 517.01.
[248] OHIO REV. CODE ANN. § 505.262.
[249] OHIO REV. CODE ANN. § 511.11.
[250] OHIO REV. CODE ANN. § 511.11.
[251] OHIO REV. CODE ANN. § 511.11; 1985 Ohio Op. Att'y Gen. No. 85-024.
[252] 1985 Ohio Op. Att'y Gen. No. 85-024.
[253] OHIO REV. CODE ANN. § 505.261.
[254] OHIO REV. CODE ANN. § 505.261.
[255] OHIO REV. CODE ANN. § 505.261.
[256] OHIO REV. CODE ANN. § 505.26.

land, water, or wetlands against modification or encroachment resulting from occupation, development, or other use."[257] Once the township acquires land for such a purpose, the township may "restore and maintain" those lands.[258]

Sale of Land/Real Property

Occasionally, a township may wish to sell real property to which it holds title. If the real property is to be sold to another political subdivision in Ohio, the trustees may, by resolution, authorize the transfer and conveyance of the property "upon such terms as are agreed to between the board and the legislative authority of that political subdivision."[259]

If the real property is to be sold to a person or entity other than another political subdivision in Ohio, "the board, upon a unanimous vote of its members and by resolution, may authorize the transfer and conveyance of that real property to any person upon whatever terms are agreed to between the board and that person."[260]

When the purchaser is not another political subdivision in Ohio and a unanimous vote of the trustees to sell to another person or entity cannot be achieved, the real property, if, based on a majority vote of the board, is still to be sold, it should be sold at public auction pursuant to the procedure in R.C. § 505.10(A)(1). A minimum reserve price should be set in the resolution to sell the real property at public auction. If the real property fails to sell at auction, the trustees, "by resolution, may enter into a contract, without advertising or bidding, for the sale of that property."[261] Such a resolution must contain the "minimum acceptable price [which shall not be lower than the minimum reserve price set for the public auction] and the minimum acceptable terms for the contract."[262]

Note that many steps are involved in the sale or purchase of real property. Legal counsel should be consulted throughout the purchase and/or sale process, beginning at the time when the board of trustees is first contemplating the purchase or sale and before the board approves any resolution to purchase or sell real property.

Competitive Bidding

Competitive bidding is the process by which government entities and/or agencies, including townships, purchase many goods and services. In terms of government, when it comes to purchasing, it is the general rule rather than the exception. Competitive bidding ensures that all interested sellers have a fair opportunity of being awarded a government contract and that the purchasing government entity or agency receives the lowest and best price for the product or

[257] OHIO REV. CODE ANN. § 505.26.
[258] OHIO REV. CODE ANN. § 505.26.
[259] OHIO REV. CODE ANN. § 505.10(A)(5).
[260] OHIO REV. CODE ANN. § 505.10(A)(6).
[261] OHIO REV. CODE ANN. § 505.10(B).
[262] OHIO REV. CODE ANN. § 505.10(B).

service. The concept of competitive bidding and the procedure to be followed in seeking and awarding competitive bids should become very familiar to township trustees and fiscal officers.

Generally, the Ohio Revised Code makes competitive bidding mandatory in the following areas:

1. The sale of school lands,
2. The sale or trade–in of property and equipment,
3. The purchase of either firefighting equipment or buildings at a cost of more than $50,000.00,[263]
4. The building of memorials, monuments, or statues at a cost of 50,000.00 or more,[264]
5. The lighting of an unincorporated district and the equipment necessary to do so at a cost of $50,000.00 or more,[265]
6. The purchase of road machinery, materials, and supplies and buildings at a cost of $50,000.00 or more,[266]
7. Contracts for work on, and materials necessary for, the erection, repair, alteration, or rebuilding of a public building,[267]
8. The maintenance and repair of township roads and bridges where the cost of the project exceeds $45,000 or the construction or reconstruction of township roads and bridges at a cost exceeding $15,000 per mile.[268]
9. Exclusive provision, maintencne, and/or operation of facilities for collection, transfer, recycling, and disposal of solid waste in the township.[269]

This list is not intended to be exhaustive, but rather to provide some examples of items for which competitive bidding is required. If in doubt whether competitive bidding is required, please contact the Prosecuting Attorney's Office.

Competitive Bidding Procedures

There is no general competitive bidding statute applicable to townships. Instead competitive bidding requirements are found in separate individual statutes; generally those authorizing the purchase. The process for competitive bidding may or may not be specified in the authorizing statute. Where a process is not or is only partially specified in the authorizing statute, the process in the county general competitive bidding statute should be used as a guide or should supplement where the processes is only partially specified. The county general competitive bidding statute is found in R.C. § 307.86. It prescribes specific procedures for notification, advertising, and reception of bids. Generally, the procedures are as follows:

[263] OHIO REV. CODE ANN. § 505.37(A).
[264] OHIO REV. CODE ANN. § 511.12.
[265] OHIO REV. CODE ANN. §§ 515.01; 515.07.
[266] OHIO REV. CODE ANN. § 5549.21.
[267] OHIO REV. CODE ANN. §§ 153.50; 153.52.
[268] OHIO REV. CODE ANN. § 5575.01(A), (B).
[269] OHIO REV. CODE ANN. § 505.27.

A. Notice:

- Notices for competitive bidding must include:

    1. A general description of the subject of the proposed contract;
    2. The time and place where the plans and specifications or itemized list of supplies, facilities, or equipment and estimated quantities can be obtained or examined;
    3. The time and place where bids will be opened;
    4. The time and place for filing bids;
    5. The terms of the proposed purchase,
    6. The conditions under which bids will be received; and,
    7. The existence of a system of performance, if any, for products mined and produced in Ohio and the United States adopted pursuant to R.C. § 505.103.[270]

- Notice must be published once a week for at least two (2) consecutive weeks before the day of the opening of bids in a newspaper of general circulation in the county (i.e., the *Delaware Gazette*)[271]. Additional notice may also be placed in trade papers or other designated publications.

- Additionally, notices/advertisements should be posted on a bulletin board in a suitable public place in the township offices for at least two (2) weeks before the day bids are opened.[272]

- Note that advertisements may be placed on the township's official internet web site. If the township does post the notice/advertisement on its internet web site, it can eliminate the second week of notice to be published in the newspaper, provided that the first notice published in the newspaper meets all of the above listed requirements, plus includes the following additional four (4) requirements:

    1. It is published at least two (2) weeks before the opening of bids;

[270] OHIO REV. CODE ANN. § 307.87.

[271] Pursuant to R.C. § 7.12, a newspaper of general circulation is defined as "a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements: (1) It is printed in the English language using standard printing methods, being not less than eight [8] pages in the broadsheet format or sixteen [16] pages in the tabloid format; (2) It contains at least twenty-five per cent [25%] editorial content, which includes, but is not limited to, local news, political information, and local sports; (3) It has been published continuously for at least three [3] years immediately preceding legal publication by the state agency or political subdivision; (4) The publication has the ability to add subscribers to its distribution list; and (5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States Postal Service 'Statement of Ownership, Management, and Circulation' (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve [12] months immediately preceding legal publication."

[272] OHIO REV. CODE ANN. § 307.87(C).

2. It includes a statement that the notice/advertisement is posted on the township's official internet web site;
3. It includes the internet web site address for the township's official web page; and,
4. It includes instructions describing how the notice/advertisement can be accessed on the township's official Internet web page.[273]

B. Request for Bids (RFB)

A request for bids (RFB) or bid package containing all purchase or project specifications, bidding procedures, bonding requirements, a description of the award process, and bid blanks must be drafted and available to potential bidders.

C. Award:

A contract that has been competitively bid should be awarded or not awarded as follows:

1. To the lowest and best bidder (in certain instances lowest responsible bidder – See R.C. §§ 5549.21 and 5575.01(A));[274] or,
2. All bids shall be rejected.[275]

Bids submitted by potential contractors shall be submitted at the time and place advertised, and be in the form prescribed by the trustees.[276] All bids shall contain the full name of the person submitting the bid.[277] The trustees should open the bids at the time and place advertised.[278]

Bids in excess of $50,000.00 for the construction, demolition, alteration, repair, or reconstruction of an improvement must file a bid guarantee in accordance with R.C. § 153.54.[279] Bids for any other contract in excess of $50,000 may be accompanied by "a bond or certified check, cashier's check, or money order on a solvent bank or savings and loan association in a reasonable amount stated in the notice but not to exceed five per cent of the bid, conditioned that the bidder, if the bidder's bid is accepted, shall execute a contract in conformity to the invitation and the bid."[280]

[273] OHIO REV. CODE ANN. § 307.87(A).
[274] OHIO REV. CODE ANN. § 307.90(A).
[275] OHIO REV. CODE ANN. §§ 307.90(A), 307.91.
[276] OHIO REV. CODE ANN. § 307.88(A).
[277] OHIO REV. CODE ANN. § 307.88(A).
[278] OHIO REV. CODE ANN. § 307.88(A).
[279] OHIO REV. CODE ANN. § 307.88(A). *See also* OHIO REV. CODE ANN. § 153.54 (describing bid guaranties, alternative forms, conditions, liabilities, and withdrawal of a bid if bonding capacity would be exceeded).
[280] OHIO REV. CODE ANN. §§ 307.88(A), 153.54.

Note that all bids may be rejected.[281] The bond or bid guarantee of any unsuccessful bidder shall be returned to the bidder if rejected.[282]

Upon acceptance of a bid for a contract other than for the construction, demolition, alteration, repair, or reconstruction of an improvement, the township shall require, as a condition of entering into a contract with the successful bidder, "faithful performance of all things to be done under the contract."[283] As an additional requirement to entering a contract, the township shall require "the [performance] bond provided for by section 153.57 of the Revised Code, with good and sufficient surety in an amount not to exceed the amount of the bid."[284]

There are additional bidding and awarding requirements that apply when the contract is for a public improvement or the construction, demolition, alteration, or repair of a building. These requirements can be complicated. Any township considering such a project should consult with the Prosecutor's Office before bidding, proceeding with, or awarding such a contract.

Roads

Townships are responsible for constructing, repairing, and maintaining township roads within their jurisdictional boundaries. Township roads include "all public highways other than state or county roads."[285] It is the duty of the board of township trustees to maintain all township roads within the jurisdictional boundaries of the township.[286] The county commissioners, by agreement, may assist the township in this duty.[287] Also, as a part of its duties related to road maintenance, the township must clear and remove snow and ice from township roads.[288]

Work on township roads is addressed in R.C. § 5575.01. This section divides the issue into two categories: 1) "maintenance and repair" and 2) "construction or reconstruction."[289] Under either category, the township may proceed either by means of a contract or by means of a force account.[290] As discussed later, there are certain requirements that must be met before proceeding by force account.

Generally, proceeding by force account means "[i]nstead of entering into a contract for the performance of the road work, the trustees may themselves employ the [workers], buy the materials, and proceed to do the road work without a contract, if they deem this method is in the

[281] OHIO REV. CODE ANN. § 307.90(A).
[282] OHIO REV. CODE ANN. § 307.90(A).
[283] OHIO REV. CODE ANN. § 307.89.
[284] OHIO REV. CODE ANN. § 307.89.
[285] OHIO REV. CODE ANN. § 5535.01.
[286] OHIO REV. CODE ANN. §§ 5535.01, 5535.08.
[287] OHIO REV. CODE ANN. §§ 5535.01, 5535.08.
[288] OHIO REV. CODE ANN. § 5501.41.
[289] OHIO REV. CODE ANN. § 5575.01.
[290] OHIO REV. CODE ANN. § 5575.01.

best interest of the public."[291] All roadwork done by force account must be completed under the direction of the board of trustees or the road supervisor.[292]

The competitive bidding process is to be followed in securing contractors and/or materials for the construction, repair, and maintenance of roads. Ohio Revised Code Sections 5575.01-5575.02 prescribe the specific procedures for notification, advertising, and reception of bids for contracts regarding township roadwork.[293]

According to R.C. § 5575.02, the competitive bidding procedure to be followed for contracts involving roadwork is as follows:

A. Advertise:

- Once in a newspaper published in the county and of general circulation in the township (i.e., the *Delaware Gazette*)[294].
- The notice/advertisement should appear not less than two (2) weeks prior to the date for letting contracts.

B. Notice:

- Notices must state: [295]

  1. That copies of the surveys, plans, profiles, cross sections, estimates, and specifications for such improvement are on file with the board; and,
  2. The time within which bids will be received.

- It should also include (See R.C. § 307.87(B):

  1. A general description of the subject of the proposed contract;

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[291] LOCAL GOVERNMENT LAW, *supra* note 1, at § 26:10 (citing OHIO REV. CODE ANN. § 5575.01). *See also* OHIO REV. CODE ANN. § 5575.01(B).
[292] OHIO REV. CODE ANN. § 5575.01(D).
[293] OHIO REV. CODE ANN. §§ 5575.01-5575.02.
[294] Pursuant to R.C. § 7.12, a newspaper of general circulation is defined as "a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements: (1) It is printed in the English language using standard printing methods, being not less than eight [8] pages in the broadsheet format or sixteen [16] pages in the tabloid format; (2) It contains at least twenty-five per cent [25%] editorial content, which includes, but is not limited to, local news, political information, and local sports; (3) It has been published continuously for at least three [3] years immediately preceding legal publication by the state agency or political subdivision; (4) The publication has the ability to add subscribers to its distribution list; and (5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States Postal Service 'Statement of Ownership, Management, and Circulation' (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve [12] months immediately preceding legal publication."
[295] OHIO REV. CODE ANN. §§ 5575.02, 307.87(B).

2. The time and place where the plans and specifications or itemized list of supplies, facilities, or equipment and estimated quantities can be obtained or examined;
3. The time and place where bids will be opened;
4. The time and place for filing bids (the time within which bids will be received);
5. The terms of the proposed purchase;
6. The conditions under which bids will be received; and,
7. The existence of a system of preference, if any, for products mined and produced in Ohio and the United States adopted pursuant to R.C. § 505.103.

C. Request for Bids (RFB)

A request for bids (RFB) or bid package containing all purchase or project specifications, bidding procedures, bonding requirements, a description of the award process, and bid blanks must be drafted and available to potential bidders.

D. Award:

- The board may let the work as a whole or in convenient sections as it determines,

- Award to lowest and best bidder who meets requirements of R.C. § 153.54 (bid guarantee) (in the case of R.C. § 5575.01(A) – maintenance and repair of township roads – award to the lowest responsible bidder),[296]

- Bids shall be let on the basis of lump sum bids, unless the board orders it to be let upon the basis of unit price.[297]

There are two primary exceptions to the competitive bidding requirement based on the amount of the estimated cost of the project. If the estimated amount is below a set threshold amount, then the contract does not have to be competitively bid. The threshold amounts differ depending on whether the project is considered "maintenance and repair" or "construction or reconstruction."

Concerning the "maintenance and repair" of roads, the township trustees should first have the county engineer estimate the cost of the project and "complete the force account assessment form developed by the auditor of state."[298] If the estimated cost of the project is greater than $45,000, the board must use competitive bidding and the contract should be left to the lowest responsible bidder.[299] On the other hand, if the estimated cost is less than $45,000, the contract may be let without competitive bidding or the work may be done on force account.[300]

[296] OHIO REV. CODE ANN. §§ 5575.01(A), 5575.02, 153.54 (describing bid guaranties, alternative forms, conditions, liabilities, and withdrawal of a bid if bonding capacity would be exceeded).
[297] OHIO REV. CODE ANN. § 5575.02.
[298] OHIO REV. CODE ANN. § 5575.01(A).
[299] OHIO REV. CODE ANN. § 5575.01(A).
[300] OHIO REV. CODE ANN. § 5575.01(A).

When considering undertaking the "construction or reconstruction" of a road, the trustees shall have the county engineer estimate the cost of the project, including "labor, material, freight, fuel, hauling, use of machinery, and equipment, and all other items of cost."[301] In lieu of proceeding by contract, the board may proceed by force account if the trustees find that to be in the best interest of the public.[302] Except as provided by R.C. §§ 505.08 and 505.101, where the total estimated cost of the project exceeds $15,000 per mile, the project must be competitively bid.[303] Under such circumstances, and before proceeding by force account, the trustees must invite and receive competitive bids and must consider and reject those bids pursuant to competitive bidding procedures.[304] Only then can the township proceed by force account.[305] Under such circumstances, all work must conform to the plans and specifications upon which the bids were based.[306]

The final applicable exception to competitive bidding concerning roadwork is where an emergency exists. Pursuant to R.C. § 505.08, the trustees, "by a unanimous vote [on] a resolution declaring a real and present emergency in connection with the administration of township services or the execution of duties assigned by law to any officer of a township," may resolve to enter into a contract without either competitive bidding or advertising for "…services, materials, equipment, or supplies needed to meet the emergency" if the estimated cost of such a contract is less than $50,000.00.[307]

Zoning

Township zoning is addressed in Chapter 519 of the Ohio Revised Code.

A township, "in the interest of the public health and safety," by resolution, in accordance with a comprehensive plan, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- location,
- height,
- bulk,
- number of stories, and
- size of buildings and other structures.

Lots or Parcels:

- percentages of lot areas which may be occupied,
- set back building lines,

[301] OHIO REV. CODE ANN. § 5575.01(B).
[302] OHIO REV. CODE ANN. § 5575.01(B).
[303] OHIO REV. CODE ANN. § 5575.01(B).
[304] OHIO REV. CODE ANN. § 5575.01(B).
[305] OHIO REV. CODE ANN. § 5575.01(B).
[306] OHIO REV. CODE ANN. § 5575.01(B).
[307] OHIO REV. CODE ANN. § 505.08.

- sizes of yards, courts, and other open spaces,
- the density of population.

Uses:

- the uses of buildings and other structures including tents, cabins, and trailer coaches, and
- the uses of land for trade, industry, residence, recreation, or other purposes.[308]

A township, "in the interest of the public convenience, comfort, prosperity, or general welfare," by resolution, in accordance with a comprehensive plan, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- location
- setback lines

Uses:

- uses of buildings and other structures including tents, cabins, and trailer coaches.
- uses of land for trade, industry, residence, recreation, or other purposes.

Landscaping and Architectural Standards:

- reasonable landscaping standards and architectural standards excluding exterior building materials.[309]

A township, "in the interest of the public convenience, comfort, prosperity, or general welfare," by resolution and in accordance with a comprehensive plan, *for non-residential property only*, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- height
- bulk
- number of stories
- size

Lots or Parcels:

- percentages of lot areas that may be occupied
- sizes of yards, courts, and other open spaces
- density of population[310]

Note that the Ohio Revised Code differentiates among the various interests of the public in allowing for the regulation of residential and non-residential property through zoning. The interests listed above must correlate with the type of property sought to be regulated by zoning.

[308] OHIO REV. CODE ANN. § 519.02(A).
[309] OHIO REV. CODE ANN. § 519.02(A).
[310] OHIO REV. CODE ANN. § 519.02(A).

For purpose of regulating the above listed criteria, the trustees "may divide all or any part of the unincorporated territory of the township into districts or zones of such number, shape, and area as the board determines."[311]

However, zoning districts must "be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones."[312] This means that regulations adopted by the trustees and applicable to a specific zoning category (i.e., FR-1) must be applied equally to all land in the township that is classified or designated under that particular zoning category. Yet, nothing prohibits the board of trustees from creating additional zoning categories if the board of trustees determines there is a need.

In order to proceed with and act under the zoning powers granted to townships pursuant to R.C. §§ 519.02-519.25, the board must pass a resolution expressing an intent to adopt zoning.[313] This resolution may be brought and adopted either upon the board of trustee's own volition or by petition.[314] The petition must be signed by a number of qualified voters residing in the unincorporated area of the township or areas of the township to be included in the zoning plan. This number must be equal to eight percent (8%) of the total votes cast for any candidate for governor in the relevant unincorporated territory of the township during the last gubernatorial election.[315] The board of trustees must adopt any such petitions. [316]

1. Zoning Resolutions

Zoning resolutions are the embodiment of township zoning. They are created pursuant to authority granted under R.C. § 519.02 and act as a comprehensive guide to zoning regulations within the township. Typically, zoning resolutions are divided into various articles, each of which address regulations concerning, but not limited to, individual zoning districts (FR-1), zoned items (signs), standards (general development standards), the functions of the zoning boards and officials, and enforcement of the zoning resolution.

Generally, the zoning commission acts to create and draft zoning resolutions. However, the board of trustees has the ultimate authority to approve and adopt the resolution.[317] If adopted by the board, "the question of whether or not the proposed plan of zoning shall be put into effect … [shall] be submitted to the electors residing in the unincorporated area of the township included in the proposed plan of zoning for their approval or rejection at the next primary or general election, or a special election . . . called for this purpose."[318] If the majority of voters favor zoning, the resolution shall be put into effect.[319]

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[311] OHIO REV. CODE ANN. § 519.02(A).
[312] OHIO REV. CODE ANN. § 519.02(A).
[313] OHIO REV. CODE ANN. § 519.03.
[314] OHIO REV. CODE ANN. § 519.03.
[315] OHIO REV. CODE ANN. § 519.03.
[316] OHIO REV. CODE ANN. § 519.03(B).
[317] *See e.g.*, OHIO REV. CODE ANN. §§ 519.02, 519.04-519.05.
[318] OHIO REV. CODE ANN. § 519.11.
[319] OHIO REV. CODE ANN. § 519.11.

The township zoning commission, the board of trustees (by passage of a resolution), or a property owner or lessee (by application) may initiate amendments to the zoning resolution.[320] The procedure for approving amendments is addressed in R.C. § 519.12. As the process for amending a zoning resolution involves many steps, it is addressed later in this manual in the Board of Zoning Commission section.

2. Board of Zoning Commission (BZC), Board of Zoning Appeals (BZA), and Township Zoning Inspector.

To aid in the development and enforcement of township zoning, the board of trustees must hire employees and appoint boards to assist them in this task. These boards and employees generally consist of a township zoning inspector,[321] a board of zoning commission (BZC),[322] and a board of zoning appeals (BZA).[323]

When a township board of trustees seeks to proceed with zoning pursuant to Chapter 519 of the Ohio Revised Code, it must create and establish a township zoning commission, [324] often referred to as the board of zoning commission or "BZC." A BZC must consist of five (5) members, all residents of the unincorporated territory of the township, who serve terms "of such length and so arranged that the term of one member will expire each year."[325] Each BZC member serves until his or her successor is appointed and qualified.[326]

Pursuant to R.C. § 519.04, the board may also "appoint two alternate members to the township zoning commission, for terms to be determined by the board of township trustees." Alternates must meet the same qualifications as regular members. Alternates take the place of an absent regular member at any meeting of the township zoning commission and may vote on any matter on which the absent member is authorized to vote. Alternates serve until the member's successor is appointed and qualified.

BZC members may be expelled from the board for nonperformance of duty, misconduct in office, or for other cause by the board of trustees.[327] Under such circumstances, written charges must be filed with the board of trustees and served on the BZC member in accordance with R.C. § 519.04.[328] The BZC member must be given a public hearing on the charges, which is to be held a minimum of ten (10) days after the BZC member is served with the written charges.[329] To fill a

[320] OHIO REV. CODE ANN. § 519.12(A)(1).
[321] *See* OHIO REV. CODE ANN. §§ 519.16-519.161.
[322] *See* OHIO REV. CODE ANN. §§ 519.04-519.122.
[323] *See* OHIO REV. CODE ANN. §§ 519.13-519.15.
[324] OHIO REV. CODE ANN. § 519.04.
[325] OHIO REV. CODE ANN. § 519.04.
[326] OHIO REV. CODE ANN. § 519.04.
[327] OHIO REV. CODE ANN. § 519.04.
[328] OHIO REV. CODE ANN. § 519.04.
[329] OHIO REV. CODE ANN. § 519.04.

vacancy on the BZC, the trustees must appoint a new BZC member to fill the unexpired term of the BZC member being replaced.[330]

The powers and duties of the BZC generally consist of, among other things, the development of the initial zoning resolution and maps, recommendations of changes or amendments to the zoning resolution and maps, and recommendations concerning changes in existing zoning designations.[331] Because these duties and powers are extensive and detailed, they will be more fully addressed in a later section of this manual.[332] (See the section entitled "Board of Zoning Commission"). Also, the role of the township board of trustees in the zoning process is better addressed in conjunction with the BZC and will be addressed in this later section as well. (See the section entitled "Board of Zoning Commission").

Aside from the BZC, the board of township trustees of "any township which adopts zoning regulations . . . shall appoint a township board of zoning appeals," [333] or "BZA." Like the BZC, the BZA consists of five (5) members, all of whom must live in the unincorporated territory of the township.[334] Each of the members serve terms "of such length and so arranged that the term of one member will expire each year" and serve until their successor is appointed and qualified.[335] BZA members are generally removable for similar reasons and in a manner similar to that of members of the BZC.[336]

Pursuant to R.C. § 519.13, the board "may appoint two alternate members to the township board of zoning appeals, for terms to be determined by the board of township trustees." Alternates shall take the place of an absent regular member at any meeting of the BZA and may vote on any matter on which the absent member is authorized to vote. Alternates shall meet the same appointment criteria as a regular member. Alternates shall serve until the member's successor is appointed and qualified.

Generally, the powers and duties of the BZA consist of hearing applications for variances and conditional uses and deciding appeals. Appeals heard by the BZA include those "where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official [(i.e., zoning inspector)] in the enforcement of sections 519.02 to 519.25 of the Revised Code, or of any resolution adopted pursuant thereto."[337] Hearings are on applications for variances,[338] conditional uses,[339] and, in certain instances, to revoke an authorized variance or conditional use "granted for the extraction of minerals".[340] Again, as these powers and duties are

[330] OHIO REV. CODE ANN. § 519.04.
[331] *See* OHIO REV. CODE ANN. §§ 519.04-519.122.
[332] *See* Board of Zoning Commission, *infra* pp. 74-87.
[333] OHIO REV. CODE ANN. § 519.13.
[334] OHIO REV. CODE ANN. § 519.13.
[335] OHIO REV. CODE ANN. § 519.13.
[336] OHIO REV. CODE ANN. § 519.13. *See also* OHIO REV. CODE ANN. § 519.04.
[337] OHIO REV. CODE ANN. § 519.14(A).
[338] OHIO REV. CODE ANN. § 519.14(B).
[339] OHIO REV. CODE ANN. § 519.14(C).
[340] OHIO REV. CODE ANN. § 519.14(D).

extensive, they are addressed in a later section of this manual.[341] (See the section entitled "Board of Zoning Appeals").

In addition to the BZC and BZA, the board of township trustees may hire, as an unclassified, at-will employee, a township zoning inspector.[342] It is the duty of the zoning inspector to issue zoning permits and to enforce the zoning resolution.[343] Despite these powers of enforcement, the zoning inspector is not a law enforcement officer and "may not enter and inspect private property without consent unless there is an emergency, the property is open to the public, or the activity conducted on the property has a history of government oversight so that no expectation of privacy exists."[344] Because the powers and duties of the township zoning inspector are extensive, they are more fully addressed in a later section of this manual.[345] (See the section entitled "Zoning Inspector"). The authority that township trustees can exercise over township employees, such as the township zoning inspector, is also addressed in a latter section of this manual.[346]

Township Employees

A township board of trustees may hire employees to perform tasks and assist in the efficient operation of the township. Such employees may include road supervisors, secretaries, laborers, and township zoning inspectors.[347] Typically, these are unclassified, at-will employees that, generally, may be hired or fired at the discretion of the board of trustees.[348] Also, police officers may be township employees and are employed and removed pursuant to R.C. § 509.01 and §§ 505.49-505.495.[349] Fire chiefs and chiefs of police are employed by the board of trustees pursuant

[341] *See* Board of Zoning Appeals, *infra* pp. 88-95.
[342] OHIO REV. CODE ANN. § 519.16; *Merritt v. Canton Twp. Bd. of Trs*., 125 Ohio App.3d 533, 536-37 708 N.E.2d 1082, 1084 (5th Dist. 1998). *See also Deoma v. Shaker Hts.*, 68 Ohio App.3d 72, 81, 587 N.E.2d 425, 430-431 (8th Dist. 1990) (discussing an appointing authority's dismissal of an unclassified employee); *Eudela v. Ohio Dept. of Mental Health & Mental Retardation*, 30 Ohio App.3d 113, 116, 506 N.E.2d 947, 950 (10th Dist. 1986) (discussing dismissal of an unclassified employee); *Lee v. Cuyahoga Cty. Court of Common Pleas*, 76 Ohio App.3d 620, 622, 602. N.E.2d 761, 762-763 (8th Dist. 1990) (finding that "…an unclassified employee is appointed at the discretion of the appointing authority and serves at the pleasure of such authority.").
[343] OHIO REV. CODE ANN. §§ 519.16-519.17.
[344] STUART MECK ET AL., OHIO PLANNING & ZONING LAW--BALDWIN'S OHIO HANDBOOK, § 8:47 (2019 ed., June update) [hereinafter PLANNING & ZONING LAW]; 1998 Ohio Op. Att'y Gen. No. 98-018.
[345] *See* Zoning Inspector, *infra* pp. 68-73.
[346] *See* Township Employees, *infra* p. 50.
[347] OHIO REV. CODE ANN. §§ 511.10, 519.16.
[348] *See* OHIO REV. CODE ANN. § 124.11(A)-(B); *Merritt v. Canton Township Bd. of Trs*., 125 Ohio App.3d 533, 536-37, 708 N.E.2d 1082, 1084 (5th Dist. 1998). *See also Deoma v. Shaker Hts.*, 68 Ohio App.3d 72, 81, 587 N.E.2d 425, 430-431 (8th Dist. 1990) (discussing an appointing authority's dismissal of an unclassified employee); *Eudela v. Ohio Dept. of Mental Health & Mental Retardation*, 30 Ohio App.3d 113, 116, 506 N.E.2d 947, 950 (10th Dist. 1986) (discussing dismissal of an unclassified employee); *Lee v. Cuyahoga Cty. Court of Common Pleas*, 76 Ohio App.3d 620, 622, 602. N.E.2d 761, 762-763 (8th Dist. 1990) (finding that "an unclassified employee is appointed at the discretion of the appointing authority and serves at the pleasure of such authority.").
[349] OHIO REV. CODE ANN. §§ 124.11(B), 509.01, 505.49-505.495

to R.C. § 505.38 and R.C. § 505.49, respectively. Firefighters may also be employed by the board pursuant to R.C. § 505.38(A) and may be removed as provided by R.C. §§ 733.35 to 733.39. [350]

According to R.C. § 511.10, "[t]he board of township trustees may appoint . . . employees as are necessary and fix their compensation." [351] The board of trustees is not limited in terms of fixing the compensation of its employees and may fix the compensation of its employees as it sees fit, within reason.

Just as the board of trustees may hire an employee, they may also fire any appointed at-will employee. A single trustee, acting unilaterally, may not fire a township employee. A majority vote of the board of trustees is required to remove an employee.[352]

Note that different hiring and firing procedures may apply to unionized and civil service employees. Please contact the Prosecutor's Office with specific questions concerning the employment or removal of unionized and civil service employees.

Employee Health Insurance Coverage

Townships may provide health insurance coverage for their employees and officers, subject to some restrictions. R.C. § 505.60(A) allows:

> the board of township trustees of any township may procure and pay all or any part of the cost of insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance, or a combination of any of the foregoing types of insurance for township officers and employees.[353]

The Ohio Attorney General has noted this subsection and recognized the ability of townships to provide such insurance benefits.[354]

Pursuant to R.C. § 505.60(E), the board of trustees may provide health insurance benefits "through an individual self-insurance program or a joint self-insurance program as provided in section 9.833

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[350] OHIO REV. CODE ANN. §505.38(A) *See also* OHIO REV. CODE ANN. § 505.38; OHIO REV. CODE ANN. § 124.11(B) (specifying that where a civil service township has been adopted by the board of trustees, a firefighter, when certain conditions are met, is a classified, or civil service, employee).

[351] OHIO REV. CODE ANN. § 511.10. See also OHIO REV. CODE ANN. §§ 505.38 (granting authority to employ firefighters), 509.01, 505.49-505.495(granting authority to employ police).

[352] *Merritt v. Canton Twp. Bd. of Trs*., 125 Ohio App.3d 533, 539, 708 N.E.2d 1082, 1085 (5th Dist. 1998). *See also Deoma v. Shaker Hts.*, 68 Ohio App.3d 72, 81, 587 N.E.2d 425, 430-431 (8th Dist. 1990) (discussing an appointing authority's dismissal of an unclassified employee); *Eudela v. Ohio Dept. of Mental Health & Mental Retardation*, 30 Ohio App.3d 113, 116, 506 N.E.2d 947, 950 (10th Dist. 1986) (discussing dismissal of an unclassified employee); *Lee v. Cuyahoga Cty. Court of Common Pleas*, 76 Ohio App.3d 620, 622, 602. N.E.2d 761, 762-763 (8th Dist. 1990) (finding that "…an unclassified employee is appointed at the discretion of the appointing authority and serves at the pleasure of such authority.").

[353] OHIO REV. CODE ANN. § 505.60(A).

[354] 2003 Ohio Op. Att'y Gen. No. 2003-026; 1992 Ohio Op. Att'y Gen. No. 92-068; 1990 Ohio Op. Att'y Gen. No. 90-064; 1998 Ohio Op. Att'y Gen. No. 98-019; 1984 Ohio Op. Att'y Gen. No. 84-086.

of the Revised Code."[355] R.C. § 9.833 states how political subdivisions, including townships, establish individual or joint self-insurance programs. Specifically, R.C. §§ 9.833(B)(1)-(5), states how a political subdivision may establish and maintain such insurance programs and how joint agreements between political subdivisions can be made to procure, establish, and maintain health insurance benefits. Ohio Revised Code Section 9.833(C), depending on the type of insurance program selected, provides requirements for the township for managing a health insurance program. Note that R.C. § 9.833(E) excludes townships from some of the requirements listed in R.C. § 9.833 if an individual self-insurance program is selected, and created solely by municipal corporations as defined in § 5705.01 of the Revised Code.

Competitive bidding is not required to purchase health insurance benefits from a private company for township officers and employees.[356] However, the company providing the insurance must be licensed to do business in Ohio.[357]

If the township procures health insurance benefits for its employees, the policies must provide "uniform coverage" for all township officers and full-time employees and their immediate dependents.[358] In other words, if insurance is procured, it must offer "the same benefits to its officers and full-time employees and their immediate dependents."[359] Additionally, the township "may provide coverage" for part-time township employees and their immediate dependents.[360] If the benefits are offered to part-time employees, they too must be offered the same coverage.[361] According to the Ohio Attorney General, "in providing hospital and medical insurance under R.C. § 505.60, a board of township trustees may not distinguish between part-time and full-time employees."[362] Although coverage must be the same for all officers and employees, "there is no requirement that the premium charged or amount paid must be the same for each township trustee."[363]

In addition, R.C. § 3901.56 permits health and life insurers, including public employee benefit plans, to offer a "wellness or health improvement program that provides rewards or incentives" in order to encourage or reward participation.[364] Rewards and incentives may include, but are not limited to: "merchandise; gift cards; debit cards; premium discounts or rebates; contributions to a health savings account; modifications to copayment, deductible, or coinsurance amounts; or any combination of these incentives, to encourage participation or to reward participation in the program."[365]

In order for an elected fficial (i.e. trustee or fiscal officer) to receive health or hospitalization insurance, the purchase of the insurance must have been authorized prior to the officer's existing

[355] OHIO REV. CODE ANN. § 505.60(E).
[356] OHIO REV. CODE ANN. § 505.60(E).
[357] OHIO REV. CODE ANN. § 505.60(A).
[358] OHIO REV. CODE ANN. § 505.60; 1998 Op. Att'y Gen. No. 98-019.
[359] 1998 Ohio Op. Att'y Gen. No. 98-019.
[360] 1998 Ohio Op. Att'y Gen. No. 98-019.
[361] 1984 Ohio Op. Att'y Gen. No. 84-086.
[362] 1984 Ohio Op. Ohio Att'y Gen. No. 84-086.
[363] 1992 Ohio Op. Att'y Gen. No. 92-068.
[364] OHIO REV. CODE ANN. § 3901.56.
[365] OHIO REV. CODE ANN. § 3901.56.

term in office.[366] The reason for this is because the Ohio Constitution, Article II, Section 20 states that the salary or compensation of an officer is fixed and cannot be changed during the officer's existing term.[367] Trustees and fiscal officers are considered officers.[368] The provision of health insurance is a fringe benefit to employment and, therefore, constitutes part of the offcier's compensation.[369] Thus, "the township is not permitted, during an existing term of a township trustee, to authorize the purchase of health or hospitalization insurance for the trustee during that term."[370] Accordingly, "the purchase of health or hospitalization insurance must be authorized by resolution before a particular term begins."[371]

For further discussion regarding employee health insurance coverage, including information regarding the impact of the federal Affordable Care Act ("ACA" or "Obamacare"), see "Township Employee Health Insurance Benefits" under the Common Issues chapter of this manual and/or contact the Prosecuting Attorney's Office.

[366] 1992 Ohio Op. Att'y Gen. No. 92-068.
[367] 1992 Ohio Op. Att'y Gen. No. 92-068.
[368] 1992 Ohio Op. Att'y Gen. No. 92-068 (citing 1981 Ohio Op. Att'y Gen. No. 81-099).
[369] 1992 Ohio Op. Att'y Gen. No. 92-068 (citing *State ex rel. Parsons v. Ferguson*, 46 Ohio St.2d 389, 391 348 N.E.2d 692, 694 (1975)).
[370] 1992 Ohio Op. Att'y Gen. No. 92-068.
[371] 1992 Ohio Op. Att'y Gen. No. 92-068.

TOWNSHIP FISCAL OFFICER

General Overview

The township fiscal officer generally functions as the township fiscal manager and record keeper.[372] In this capacity, the township fiscal officer, among other responsibilities, generally has the following primary responsibilities:

- Keeping the minutes of township trustees meetings,
- Keeping and maintaining the township financial records,
- Keeping and maintaining all other official township records,
- Keeping the records of any and all township cemeteries,
- Administration of oaths, and
- Communicating between the township and the board of elections.

In addition to the above listed general responsibilities, the township fiscal officer may and does have additional responsibilities.

Qualifications

In order to hold the office of township fiscal officer, a person must first have and maintain the following qualifications:

- The person must be an elector; and,
- The person must be a resident of the township.[373]

Before taking any action as the township fiscal officer, a township fiscal officer must do the following:

- Take the oath of office, which must be in writing, may be administered by any person holding an elected office under the constitution or laws of this state if that person is elected or appointed to offices within the geographical limits of the elected officer's constituency, and must be to support the constitution of the United States and the constitution of this state, and to faithfully discharge the duties of the office; and,
- Give bond.[374]

It is important to note that despite having the above qualifications, a person may be disqualified from simultaneously holding the office of township fiscal officer and another office or position, whether or not the other office or position is with the township, as a result of the office of fiscal officer being incompatible with the other office or position.[375]

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[372] OHIO REV. CODE ANN. § 507.01 *et seq*.
[373] LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:1.
[374] LOCAL GOVERNMENT LAW, *supra* note 1, at §§ 8.1, 8:5-8:6; OHIO REV. CODE ANN. §§ 3.22, 3.23, 3.24 and 503.25; OH CONST. ART. XV, § 7.
[375] LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:1.

Term of Office

A township fiscal officer is elected every four (4) years at the general election for a four (4) year term of office.[376] The general election is "the election held on the first Tuesday after the first Monday in each November."[377] Given the four (4) year term of office, beginning with the general election held in November 2007, an election for township fiscal officer will occur in every other odd numbered year.[378] Following election, the term of the office for the township fiscal officer begins "on the first day of April . . . after [the] election."[379]

Vacancy

A Vacancy occurs by a person's nonacceptance of the position, the fiscal officer's death, the fiscal officer's removal or resignation from office, the fiscal officer's cessation of living in the township, and other causes.[380]For the process and necessary forms for filling a vacancy in the office of township fiscal officer, see the Vacancy section in the Forms Section of this manual.

Compensation

The compensation of the township fiscal officer is set annually by resolution of the board of township trustees.[381] The amount of compensation as set by such resolution shall be consistent with the amounts set in the schedule set forth in R.C. § 507.09(A) through (D).[382] Such schedule sets the amount of the township fiscal officer's compensation based upon the size of the township's budget and accounts for annual increases.[383]

The township fiscal officer may elect to take less than the amount of the statutorily set compensation by notifying the board of township trustees in writing.[384] The board of trustees shall include this notice in the minutes of its next board meeting.[385]

In accordance with R.C. § 507.09(D), the township fiscal officer's compensation is to be paid in equal monthly installments.[386] The township fiscal officer may be paid from the township's general fund as well as from other funds, depending upon "the proportion of time the township fiscal officer spends providing services related to each fund."[387] R.C. 507.09(D) requires that the fiscal officer document the amount of time he or she spends "providing services related to each fund by certification specifying the percentage of time spent working on matters to be paid from

[376] OHIO REV. CODE ANN. § 507.01.
[377] OHIO REV. CODE ANN. § 3501.01(A).
[378] OHIO REV. CODE ANN. § 507.01.
[379] OHIO REV. CODE ANN. § 507.01.
[380] OHIO REV. CODE ANN. § 503.24.
[381] *See* OHIO REV. CODE ANN. § 507.09; LOCAL GOVERNMENT LAW, *supra* note 1, at § 15:20.
[382] OHIO REV. CODE ANN. § 507.09(A)-(D).
[383] OHIO REV. CODE ANN. § 507.09(A)-(D).
[384] OHIO REV. CODE ANN. § 507.09(C).
[385] OHIO REV. CODE ANN. § 507.09(C).
[386] OHIO REV. CODE ANN. § 507.09(D).
[387] OHIO REV. CODE ANN. § 507.09(D).

the township general fund or from other township funds in such proportions as the kinds of services performed."[388]

The compensation of the township fiscal officer shall increase annually in accordance with R.C. § 507.09(B) and (C).[389] Such increases shall be provided for and included in a resolution of the board of trustees.

Bond

Before the township fiscal officer takes office, he or she must give bond payable to the board of township trustees with sureties approved by the board.[390] The amount of the bond is determined by the board of trustees, but shall not be less than the amounts provided in the schedule in R.C. § 507.03(A)-(J).[391] The bond amounts included in the schedule are based upon the overall township budget.[392]

The bond is given by the township fiscal officer for the purpose of ensuring the faithful performance of his or her duties.[393] Thus the bond shall be conditioned on "the faithful performance of the duties of the office of township fiscal officer."[394]

The bond must be obtained from licensed sureties approved by the board of trustees.[395] The premium of any licensed surety company on the bond must be paid with township funds. [396]

Once the bond is purchased and given, it shall be recorded by the township fiscal officer and filed with the county treasurer and carefully preserved. [397]

Hours and Meeting Attendance

The township fiscal officer is able to set his or her own hours. [398] The board of township trustees may not require the fiscal officer to hold specific hours.[399] However, the township fiscal officer is required by statute to "personally attend at least one meeting of the board [of trustees] during each quarter of every year, unless prevented by the occurrence of an emergency from attending."[400]

Fiscal Officer's Relationship to the Trustees

[388] OHIO REV. CODE ANN. § 507.09(D).
[389] OHIO REV. CODE ANN. § 507.09(B) and (C).
[390] OHIO REV. CODE ANN. § 507.03.
[391] OHIO REV. CODE ANN. § 507.03.
[392] OHIO REV. CODE ANN. § 507.03(A)-507.03(J).
[393] OHIO REV. CODE ANN. § 507.03.
[394] OHIO REV. CODE ANN. § 507.03.
[395] OHIO REV. CODE ANN. §§ 507.03, 3929.17.
[396] OHIO REV. CODE ANN. § 3929.17.
[397] OHIO REV. CODE ANN. § 507.03.
[398] 1986 Ohio Op. Att'y Gen. No. 86-057.
[399] 1986 Ohio Op. Att'y Gen. No. 86-057.
[400] OHIO REV. CODE ANN. § 507.04(A).

The township fiscal officer is elected by the people of the township and is "like the trustees, responsible only to the people."[401] It has been noted that the township fiscal officer is an officer *to the board of trustees*.[402] Thus, a trustee lacks authority to direct the actions of the fiscal officer, who is considered to be a co-equal elected official responsible to the people.

General Duties

The powers and duties of a township fiscal officer are limited. Specifically, a township fiscal officer is a creature of statute and is empowered only with that authority as provided by statute, or necessarily implied therefrom. In other words, a statute (Ohio Revised Code) must affirmatively impose a duty or permit an action before a township fiscal officer may engage in such duty or action.

The township fiscal officer's main duties include keeping "an accurate record of the proceedings of the board of township trustees at all of its meetings, and of all its accounts and transactions, including the acceptance of the bonds of township officers."[403] Included within these duties is the keeping of accurate township records, minutes of trustees meetings, and township financial records.[404]

In addition, the township fiscal officer is required to keep communication with the board of elections. The fiscal officer is required to notify the board of elections when there is a vacancy in an elected township office.[405] This notice needs to be given in writing, no later than ten (10) days after the vacancy occurs.[406] The fiscal officer should also notify the Ohio Secretary of State of the vacancy within the same window of time. See the Vacancy section in the Forms Section of this manual for more infomration on filling vacancies.

Also, the township fiscal officer is required to notify the board of elections of any changes in boundaries of the township (i.e., if part of the township is annexed into a village or city). This must be done in writing within ten (10) days after the effective date of the change in boundaries and the notification must contain a plat showing the boundary changes.[407]

Aside from the above specified duties, the township fiscal officer also has other varied and numerous ministerial duties. Such duties may include, but are not limited to, keeping cemetery records, writing checks, ordering supplies, and the like.

Fiscal Responsibilities

The fiscal officer is responsible for and must maintain the accounts and financial records of the township.[408] Accordingly, no money belonging to the township may be paid-out, except pursuant

[401] 1960 Ohio Op. Att'y Gen. No. 1151.
[402] *See State ex rel. Osborn v. Mitchell*, 22 Ohio C.C. 208, 210 (Ohio Cir. Ct. 1901) (emphasis added).
[403] OHIO REV. CODE ANN. § 507.04(A).
[404] OHIO REV. CODE ANN. § 507.04(A).
[405] OHIO REV. CODE ANN. § 507.051.
[406] OHIO REV. CODE ANN. § 507.051.
[407] OHIO REV. CODE ANN. § 507.051.
[408] OHIO REV. CODE ANN. § 507.04.

to an order signed by at least two (2) township trustees and countersigned by the township fiscal officer.[409] Alternatively, the board of township trustees may by resolution authorize the payment of lawful obligations of the township "by direct deposit of funds by electronic transfer in accordance with section 9.37 of the Revised Code."[410]

Given the vast number of relatively small expenditures made by a township, the board of trustees, by resolution, may authorize township officers and employees to incur obligations of $10,000.00 or less on behalf of the township.[411] Alternatively, the board of trustees, by resolution, may authorize the township administrator, if such a position exists, to authorize township officers and employees to incur obligations of $10,000.00 or less on behalf of the township.[412] Any and all such transactions incurred on behalf of the township by a township officer or employee pursuant to any such resolution must subsequently be approved by the adoption of a formal resolution of the board of trustees. [413]

Contractual Requirements

1. Certificate of Availability of Funds

Whenever the township makes a contract to expend money, the township fiscal officer must attach a certificate stating that money is available for such a purpose.[414] Specifically, the certificate shall be attached to the contract and state that:

> The amount required to meet the obligation or, in the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the obligation in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrances.[415]

If a contract is made without this certificate from the fiscal officer, the contract will be declared void, and no warrant shall be issued in payment of any amount due thereon.[416] Remedies may be available to correct situations where a contract is inadvertently entered without such a certificate being attached.[417]

2. Findings for Recovery (Certificates)

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[409] OHIO REV. CODE ANN. § 507.11.(B)(1).
[410] OHIO REV. CODE ANN. § 507.11(B)(2).
[411] OHIO REV. CODE ANN. § 507.11.
[412] OHIO REV. CODE ANN. § 507.11.
[413] OHIO REV. CODE ANN. § 507.11.
[414] OHIO REV. CODE ANN. § 5705.41(D); 20 O. JUR. 3D COUNTIES, *supra* note 2, § 395; LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:15.
[415] OHIO REV. CODE ANN. § 5705.41(D)(1).
[416] OHIO REV. CODE ANN. § 5705.41(D)(1); LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:15.
[417] *See* OHIO REV. CODE ANN. § 5705.41(D)(1); *See also* 21 JAMES BUCHWALTER ET AL., OHIO JURISPRUDENCE 3D COUNTIES § 756 (updated June 2019).

Pursuant to R.C. § 9.24, townships are required to perform what are called "findings for recovery" check/verifications before awarding certain contracts paid for in whole or in part with state funds.[418] A "finding for recovery" is defined as:

> A determination issued by the auditor of state . . . that public money has been illegally expended, public money has been collected but not been accounted for, public money is due but has not been collected, or public money has been converted or misappropriated.[419]

The types of contracts, as listed in R.C. § 9.24(G)(1), to which this verification/check applies are those for goods, services, or construction that meet the following criteria:[420]

A. The cost for the goods, services, or construction provided under the contract is estimated to exceed $25,000.00; or,
B. The aggregate cost for the goods, services, or construction provided under multiple contracts entered into by the . . . political subdivision and a single person within the fiscal year preceding the fiscal year within which a contract is being entered into by that same . . . political subdivision and the same single person, exceeded $50,000.00; or,
C. The contract is a renewal of a contract previously entered into and renewed pursuant to that preceding contract. [421]

Subsection C above only applies provided that the contract meets either subsection A or B above.[422]

According to R.C. § 9.24(A):

> no political subdivision shall award a contract described in division (G)(1) of . . . [R.C. § 9.24 (see above)] for goods, services, or construction, paid for in whole or in part with state funds, to a person against whom a finding for recovery has been issued by the auditor of state on or after January 1, 2001, if the finding for recovery is unresolved.[423]

Moreover, according to R.C. § 9.24(E):

> Before awarding a contract described in division (G)(1) of . . . [R.C. § 9.24 (see above)] for goods, services, or construction, paid for in whole or in part with state funds, a . . . political subdivision shall verify that the person to whom the . . . political subdivision plans to award the contract has no

[418] OHIO REV. CODE ANN. § 9.24.
[419] OHIO REV. CODE ANN. § 9.24(H)(3).
[420] OHIO REV. CODE ANN. § 9.24(G)(1).
[421] OHIO REV. CODE ANN. § 9.24(G).
[422] OHIO REV. CODE ANN. § 9.24(G)(1).
[423] OHIO REV. CODE ANN. § 9.24(A).

> unresolved finding for recovery issued against the person. A . . . political subdivision shall verify that the person does not appear in the database described in division (D) . . . [R.C. § 9.24] or shall obtain other proof that the person has no unresolved finding for recovery issued against the person.[424]

Thus, in preparation for entering a contract for which a check for a "finding for recovery" check/verification is required, a "finding for recovery" check must be performed. The township fiscal officer will likely be the person responsible for performing the task of verifying that there is no unresolved finding for recovery against the person with whom the township proposes to contact. The apparent purpose of creating and requiring that the database be checked before awarding a contract is to avoid awarding new contracts to those who have unresolved obligations involving state money or property and in doing so encourage complete fulfillment of those prior unfulfilled obligations to the state.

The database described in R.C. § 9.24(D) is the "Findings for Recovery" Database, which can be found on the auditor of state's web page at:

http://www.auditor.state.oh.us/findings.html

A certified search of the "Findings for Recovery" Database should be performed at this website. The result should be a certificate. The certificate should be printed and attached to the contract.

A statement in which the contractor certifies that he or she is not the subject of any unresolved findings for recovery should also be included in the body of the contract.

Failure of a township to actually check the "Findings for Recovery" Database before awarding a contract or the award of a contract to a person who has an unresolved "finding for recovery" in the "Findings for Recovery" Database could result in the contract being void. It is, therefore, very important to check all contracts meeting the above listed criteria (see R.C. § 9.24(G)(1)) involving state funds against the "Findings for Recovery" Database. As previously stated, a certification that indicates a check has been performed should be printed from the "Findings for Recovery" Database after an actual check/verification has been performed. This form should be printed and attached to the contract.

3. OPERS Independent Contractor Acknowledgement Form

The law now requires that a contractor classified as an independent contractor acknowledge the contractor's status as an independent contractor and the fact that no contributions will be made to the Ohio Public Employees Retirement System ("OPERS"). This acknowledgement is made by completion of the OPERS Independent Contractor Acknowledgement form ("OPERS Form"). (See "OPERS Independent Contractor Acknowledgement" form in the Sample Forms Section.) The OPERS Form only needs to be completed if the contractor is an individual or has less than

[424] OHIO REV. CODE ANN. § 9.24(E).

five (5) employees. The original completed OPERS Form(s) should be attached to the back of the Contract. A copy(ies) of the completed OPERS Form should be sent to OPERS.

If the contractor has five (5) or more employees, a statement in which the contractor certifies that fact should also be included in the body of the contract in lieu of the contractor completing the OPERS Form.

Records to be Maintained

The township fiscal officer is responsible for accurately recording the minutes of all meetings held by the board of township trustees. In addition to the meeting minutes, the township fiscal officer is responsible for keeping three (3) books. These books are as follows:

- a book for the record of township roads;
- a book for the record of marks and brands; and,
- a book for the record of official oaths and bonds of township officers.[425]

The township shall provide the fiscal officer with these books.[426] In addition to keeping minutes and the above referenced books, the township fiscal officer is responsible for keeping an exact record of all township accounts and transactions.

Oath

Each person chosen or appointed to an office shall take an oath of office before entering upon the discharge of the duties of that office.[427] The township fiscal officer may administer such oath of office to township officers.[428] Additionally, the township fiscal officer may certify affidavits that pertain to the business of the township or the board of education of the local school district.[429]

Although the township fiscal officer generally administers the oath of office to township officials, the township fiscal officer is unable to administer the oath to him or herself. Therefore, the oath must be administered to the fiscal officer by some other authorized person. The person may be any person holding an elected office under the constitution or laws of Ohio, if the township is within the geographical limits of the elected officer's constituency.[430] Further, a judge or a notary public commissioned in Ohio may administer the oath.[431] The certificate of the oath must be filed and recorded.[432]

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[425] OHIO REV. CODE ANN. § 507.05.
[426] LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:12.
[427] OHIO REV. CODE ANN. § 3.22.
[428] OHIO REV. CODE ANN. § 507.06.
[429] OHIO REV. CODE ANN. § 507.06.
[430] OHIO REV. CODE ANN. § 3.24. *See also* LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:6.
[431] OHIO REV. CODE ANN. § 3.24. *See also* LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:6.
[432] LOCAL GOVERNMENT LAW, *supra* note 1, at § 8:6.

The oath of office shall be to support the constitution of the United States and the constitution of this state, and to faithfully discharge the duties of the office.[433] (See sample oath in the Sample Forms Section.)

The oath shall be in writing. The person taking the oath shall write the person's signature immediately under the text of the oath. The person administering the oath under authority of R.C. §§ 3.24 or 507.06 (i.e., fiscal officer) shall then write the administering person's signature, the title of the elected office that the administering person holds, and the date; and shall affix the seal of office if a seal is prescribed for, or has been adopted by, the administering person's office.[434]

Deputy Fiscal Officer

When a township fiscal officer is unable to carry out the duties of the office of township fiscal officer due to illness, entering the military service of the United States, because of a court ordered suspension as provided for under section 507.13 of the Revised Code or because the fiscal officer is otherwise incapacitated or disqualified, the board of township trustees shall appoint a deputy fiscal officer.[435] Once appointed, a deputy fiscal officer has the full power to discharge the duties of the office of township fiscal officer.[436] In accordance with R.C. § 507.02, a deputy fiscal officer shall serve during the actual fiscal officer's absence until his or her return or a successor fiscal officer is elected and qualified.[437]

Like the actual fiscal officer, before entering on the discharge of official duties, the deputy fiscal officer shall give bond for the faithful discharge of official duties, as required under R.C. § 507.03.[438] The bond shall be payable to the board of trustees and is to consist of the same minimum amount as that of the actual fiscal officer.[439] Such bond amount is provided in 507.03(A) through (J) and is based, as with the actual fiscal officer, upon the total amount of the township budget.[440] The bond shall be recorded and filed with the county treasurer.

By resolution, the board of trustees shall adjust and determine the compensation of the actual fiscal officer and deputy fiscal officer.[441] The total of such compensation for both the actual fiscal officer and any deputy fiscal officer shall not exceed the total annual compensation of the actual fiscal officer as fixed by resolution of the board of trustees pursuant to the schedule in R.C. § 507.09.[442]

Assistants to Aid the Fiscal Officer in the Performance of Duties

[433] OHIO REV. CODE ANN. § 3.23; OHIO CONST. ART. XV, § 7.
[434] OHIO REV. CODE ANN. § 3.24.
[435] OHIO REV. CODE ANN. § 507.02.
[436] OHIO REV. CODE ANN. § 507.02.
[437] OHIO REV. CODE ANN. § 507.02.
[438] OHIO REV. CODE ANN. § 507.02.
[439] OHIO REV. CODE ANN. §§ 507.02, 507.03.
[440] OHIO REV. CODE ANN. §§ 507.02, 507.03.
[441] OHIO REV. CODE ANN. § 507.02.
[442] OHIO REV. CODE ANN. § 507.02.

If the fiscal officer needs assistance performing his or her duties, he or she has the power to employ such persons as he or she deems necessary as assistants.[443] The assistants serve at the pleasure of the fiscal officer or, in the absence of the fiscal officer, the deputy fiscal officer.[444] The township fiscal officer may delegate to an assistant and an assistant my perform any of the duties the fiscal officer is otherwise required to perform.[445] The fiscal officer may set the compensation of assistants subject to the prior approval of the board of trustees.[446] However, through the hiring of assistants, the fiscal officer is in no way relieved of the responsibilities of office and must discharge the duties of office in accordance with the law.[447]

Compensation of an assistant to the fiscal officer must be included in the estimate of contemplated expenditures for the fiscal officer's office that is submitted to the board of trustees for approval pursuant to R.C. § 5705.28.[448]

Before serving as an assistant to the fiscal officer, all assistants to the fiscal officer must give bond for the faithful discharge of the duties of the office as may be delegated by the fiscal officer.[449] The bond shall be payable to the board of township trustees and must be for the same sum as required by R.C. § 507.03 for the fiscal officer.[450] The bond shall be from licensed sureties approved by the board of trustees.[451] The bond shall be recorded by the township fiscal officer and filed with the county treasurer.[452]

Fiscal Integrity Act

The Fiscal Integrity Act requires fiscal integrity of municipal corporations, counties, and townships.[453] The purpose of the Fiscal Integrity Act is to, "enact procedures, provide powers, and impose restrictions to assure fiscal integrity."[454] A township experiencing fiscal issues may be classified as follows:

- **Fiscal Caution** - The township's fiscal practices and budgetary conditions meet certain criteria established by the auditor of state that, if uncorrected, could result in a future declaration of a fiscal watch or fiscal emergency.[455]

- **Fiscal Watch** – Any of the fiscal watch conditions as listed in R.C. §118.022(A) exist.[456]

[443] OHIO REV. CODE ANN. § 507.021(A).
[444] OHIO REV. CODE ANN. § 507.021(A).
[445] OHIO REV. CODE ANN. § 507.021(A).
[446] OHIO REV. CODE ANN. § 507.021(A).
[447] OHIO REV. CODE ANN. § 507.021(A).
[448] OHIO REV. CODE ANN. § 507.021(B).
[449] OHIO REV. CODE ANN. § 507.021(C).
[450] OHIO REV. CODE ANN. § 507.021(C).
[451] OHIO REV. CODE ANN. §§ 507.021(C), 3929.17.
[452] OHIO REV. CODE ANN. § 507.021(C).
[453] OHIO REV. CODE ANN. § 118.02(A).
[454] OHIO REV. CODE ANN. § 118.02(B).
[455] OHIO REV. CODE ANN. § 118.025(A), (B).
[456] OHIO REV. CODE ANN. §§ 118.01(T), 118.022(A).

- **Fiscal Emergency** - Any of the fiscal emergency conditions as listed in R.C. §118.03(A) exist[457]. A fiscal emergency is determined pursuant to R.C. § 118.04[458].

A fiscal watch review is the method by which the state will determine if a township is approaching a state of fiscal emergency.[459] The board of township trustees or the auditor of state may initiate proceedings by submitting a written request to the auditor of state.[460] The auditor of state will acknowledges receipt of the written request for a fiscal watch review by sending a stamped and dated copy to the board of township trustees requesting a review.[461]

Several conditions may exist constituting grounds for a fiscal watch.[462] Upon determining that one or more of these conditions are present, the auditor of state shall issue a written declaration of the existence of a fiscal watch to the board of township trustees.[463] The fiscal watch shall remain in place until the auditor of state determines that none of the conditions which gave rise to the fiscal watch are in existence and cancels the watch, or until the auditor of state determines that a fiscal emergency is present.[464] During the fiscal watch, the auditor of state or a designee will provide "such technical and support services to the…township after a fiscal watch has been declared to exist as the auditor of state considers necessary."[465]

Upon receiving the written declaration from the auditor of state, the board of township trustees for which a fiscal watch has been declared must submit a financial recovery plan to the auditor of state within ninety (90) days after a fiscal watch is declared. This recovery plan shall identify the following:

- actions to be taken to eliminate the conditions which led to the fiscal watch;
- schedule detailing approximate dates of beginning and completing corrective actions to be taken;
- a five-year forecast on the effects of the actions; and,
- evaluate the feasibility of entering into shared services agreements with other political subdivisions.[466]

[457] OHIO REV. CODE ANN. §§ 118.01(R), 118.03(A).
[458] OHIO REV. CODE ANN. §§ 118.01(Q), 118.04.
[459] OHIO REV. CODE ANN. § 118.021. *See also* LOCAL GOVERNMENT LAW, *supra* note 1, at § 15:6.50.
[460] OHIO REV. CODE ANN. § 118.021.
[461] OHIO REV. CODE ANN. § 118.021.
[462] OHIO REV. CODE ANN. § 118.022.
[463] OHIO REV. CODE ANN. § 118.023.
[464] OHIO REV. CODE ANN. § 118.023.
[465] OHIO REV. CODE ANN. § 118.023.
[466] OHIO REV. CODE ANN. § 118.023.

If the board of township trustees fails to submit a feasible recovery plan within ninety (90) days or within any extension of time granted, or the auditor of state determines a fiscal emergency declaration is necessary to prevent further decline, the auditor of state shall declare that a fiscal emergency condition exists under R.C. § 118.04.[467] In effect, the existence of a fiscal emergency condition constitutes a fiscal emergency.[468] Such determination can be initiated by the auditor of state or upon written request filed by the board of township trustees.[469] Any determination made by the auditor of state that a fiscal emergency exists is final, but the board of township trustees may appeal the determination to the court of appeals having territorial jurisdiction over the township.[470]

The auditor of state's authority also extends to conducting performance audits of townships. Upon its own initiative, the auditor of state may conduct a performance audit of a township that is currently under a fiscal caution, fiscal watch, or fiscal emergency.[471]

Continuing Education

Fiscal officers are required to participate in continuing education programs and courses.[472] The purpose of these programs and courses are "[t]o enhance the background and working knowledge of township fiscal officers in government accounting, budgeting and financing, financial report preparation, and the rules adopted by the auditor of state."[473]

The auditor of state is required to conduct these education programs and continuing education courses.[474] The Ohio Township Association may also conduct these programs and courses if approved by the auditor of state.[475] The manner and content of the programs and course are to be determined by the auditor of state, in conjunction with the Ohio Township Association.[476]

The programs and courses are intended for individuals elected or appointed for the first time to the office of township fiscal officer and for individuals who continue to hold the office in a subsequent term.[477] Fiscal officers are required to complete the following number of hours of programs and courses:

Status of Fiscal Officer	**Initial Education** (before commencing term or during 1st year of office)	**Continuing Education** (during first or subsequent term of office as applicable)
Newly Elected	6[478]	18[479]
Appointed[480]	6[481]	As Determined by Auditor[482]
Elected to Subsequent Term	N/A	12[483]

At least two hours of ethics instruction shall be included in the required continuing education hours.[484]

A township fiscal officer who participates in a certified public records training program or seminar established under section R.C. § 109.43 may apply the three (3) hours of such training to the required continuing education hours.[485]

A certified public accountant (CPA) who serves as a township fiscal officer may apply to the required continuing education hours any hours of continuing education completed under R.C. § 4701.11 after being elected or appointed as a township fiscal officer.[486] Additionally, a township

[467]OHIO REV. CODE ANN. §§ 118.023, 118.025.
[468] OHIO REV. CODE ANN. §§ 118.03, 118.04.
[469] OHIO REV. CODE ANN. § 118.04.
[470] OHIO REV. CODE ANN. § 118.04.
[471] OHIO REV. CODE ANN. § 118.041.
[472] OHIO REV. CODE ANN. § 507.12.
[473] OHIO REV. CODE ANN. § 507.12(A).
[474] OHIO REV. CODE ANN. § 507.12(A).
[475] OHIO REV. CODE ANN. § 507.12(A).
[476] OHIO REV. CODE ANN. § 507.12(A).
[477] OHIO REV. CODE ANN. § 507.12(A).
[478] OHIO REV. CODE ANN. § 507.12(B). "A newly elected or appointed township fiscal officer shall complete at least six hours of initial education programs before commencing, or during the first year of, office. A township fiscal officer who participates in a training program held under section 117.44 of the Revised Code may apply those hours taken before commencing office toward this requirement." Pursuant to R.C. § 117.44, the auditor of state shall hold training programs for persons elected for the first time as township fiscal officers between the first day of December and the first day of April immediately following a general election for the office of fiscal officer. Similar training may also be provided to any township fiscal officer who is appointed to fill a vacancy or who is elected in a special election.
[479] OHIO REV. CODE ANN. § 507.12(C)(1). In addition to the required six (6) hours of initial education, a newly elected township fiscal officer shall complete at least a total of eighteen (18) continuing education hours during the township fiscal officer's first term of office.[479]
[480] OHIO REV. CODE ANN. § 507.12(C)(3). "The auditor of state shall adopt rules specifying the initial education programs and continuing education courses that are required for a township fiscal officer who has been appointed to fill a vacancy. The requirements shall be proportionally equivalent, based on the time remaining in the vacated office, to the requirements for a newly elected township fiscal officer."
[481] OHIO REV. CODE ANN. § 507.12(B). "A newly elected or appointed township fiscal officer shall complete at least six hours of initial education programs before commencing, or during the first year of, office. A township fiscal officer who participates in a training program held under section 117.44 of the Revised Code may apply those hours taken before commencing office toward this requirement". Pursuant to R.C. § 117.44, the auditor of state shall hold training programs for persons elected for the first time as township fiscal officers between the first day of December and the first day of April immediately following a general election for the office of fiscal officer. Similar training may also be provided to any township fiscal officer who is appointed to fill a vacancy or who is elected in a special election.
[482] OHIO REV. CODE ANN. § 507.12(C)(3). "The auditor of state shall adopt rules specifying the initial education programs and continuing education courses that are required for a township fiscal officer who has been appointed to fill a vacancy. The requirements shall be proportionally equivalent, based on the time remaining in the vacated office, to the requirements for a newly elected township fiscal officer."
[483] OHIO REV. CODE ANN. § 507.12(C)(2). "A township fiscal officer who is elected to a subsequent term of office shall complete twelve (12) hours of continuing education courses in each subsequent term of office."
[484] OHIO REV. CODE ANN. § 507.12(C)(4).
[485] OHIO REV. CODE ANN. § 507.12(C)(5).
[486] OHIO REV. CODE ANN. § 507.12(D)(1).

fiscal officer may apply to the required continuing education hours any hours of continuing education completed under R.C. § 135.22 (treasurer continuing education) after being elected or appointed as a township fiscal officer.[487]

A township fiscal officer who teaches an approved continuing education course under R.C. § 507.12(C) is entitled to credit for the course in the same manner as if the township fiscal officer had attended the course.[488]

The auditor of state shall adopt rules for verifying the completion of initial education programs and continuing education courses required by R.C. § 507.12.[489] The auditor of state shall issue a certificate of completion to each township fiscal officer who completes the initial education programs and continuing education courses.[490] The auditor of state shall issue a "failure to complete" notice to any township fiscal officer who is required to complete initial education programs and continuing education courses under R.C. § 507.12, but who fails to do so.[491] The notice is for informational purposes only and does not affect any individual's ability to hold the office of township fiscal officer.[492]

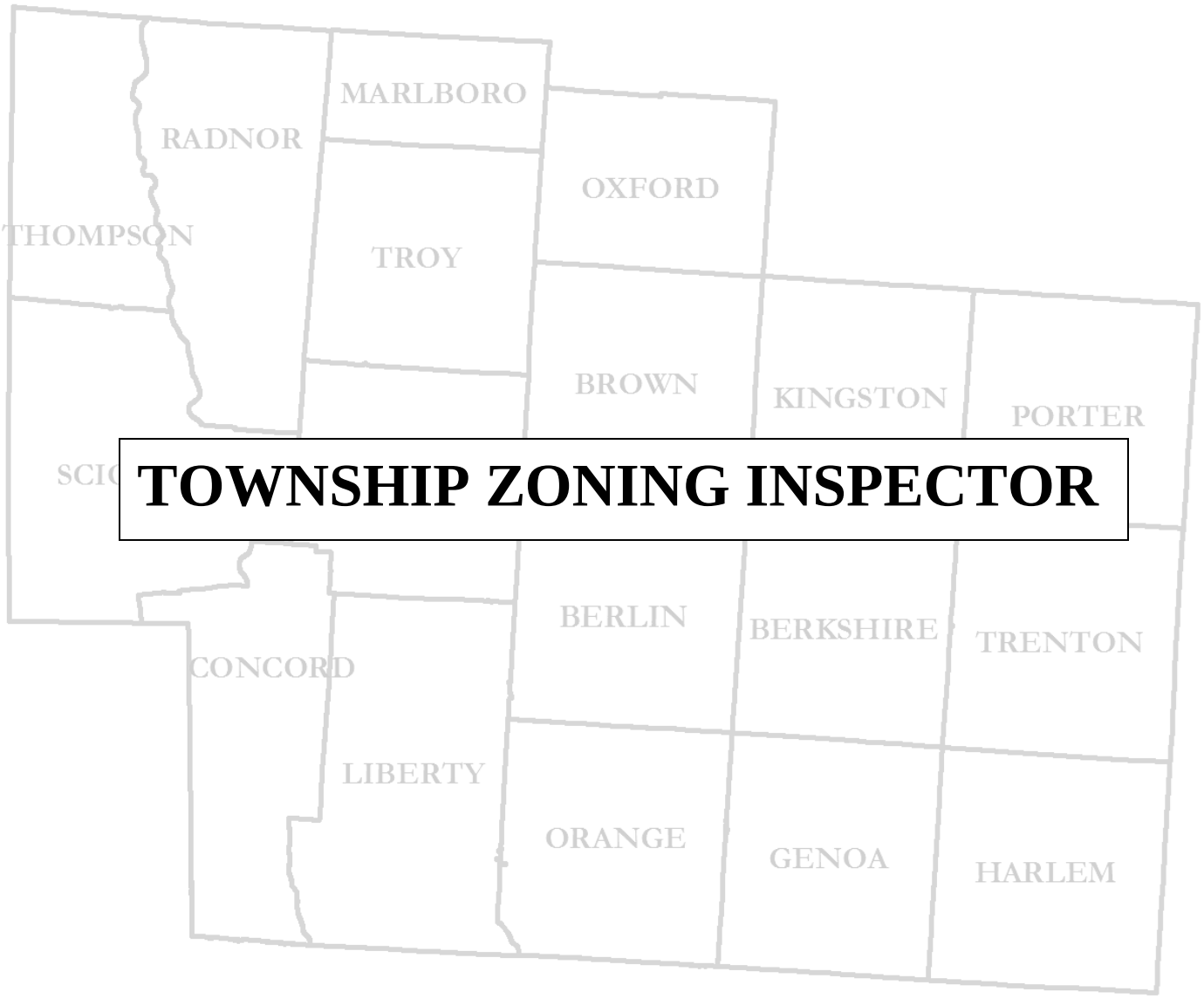
Each board of township trustees shall approve a reasonable amount requested by the township fiscal officer to cover the costs the township fiscal officer is required to incur to meet the requirements of R.C. § 507.12, including registration fees, lodging and meal expenses, and travel expenses.[493]

Additional Sources of Information

The Office of the Auditor of State routinely releases publications on its website which are of particular interest to township fiscal officers. Particularly useful works include:

- Ohio Township Manual[494]
- Technical Bulletins[495]

[487] OHIO REV. CODE ANN. § 507.12(D)(2).
[488] OHIO REV. CODE ANN. § 507.12(D)(3).
[489] OHIO REV. CODE ANN. § 507.12(E).
[490] OHIO REV. CODE ANN. § 507.12(E).
[491] OHIO REV. CODE ANN. § 507.12(E).
[492] OHIO REV. CODE ANN. § 507.12(E).
[493] OHIO REV. CODE ANN. § 507.12(F).
[494] *Available at* https://ohioauditor.gov/publications/TownshipHandbook%202-27-19.pdf.
[495] *Available at* https://ohioauditor.gov/publications/bulletins/2019/default.html.



TOWNSHIP ZONING INSPECTOR

General Overview and Compensation

Enforcing the township zoning resolution can be a monumental task. The Ohio Legislature has given boards of township trustees the ability to delegate portions of this task. According to R.C. § 519.16, a township "may establish and fill the position of township zoning inspector, together with assistants as the board deems necessary."[496] As a township employees, the board of trustees "…may fix the compensation for those positions, and may make disbursements for them."[497] Accordingly, the township zoning inspector, pursuant to R.C. § 124.11(B), is an unclassified employee that may be dismissed from his or her position at-will, without cause, absent discrimination or malfeasance.[498]

Before assuming the position, the township zoning inspector must give a bond "conditioned upon the faithful performance of the zoning inspector's official duties."[499] The bond must be "signed by a bonding or surety company authorized to do business in this state, or, at the inspector's option, signed by two or more freeholders having real estate in the value of double the amount of the bond, over and above all encumbrances to the state."[500] In order to be acceptable, the surety company or real estate bond must be approved by the trustees.[501] The amount of the bond must be at least $1,000.00 and not more than $5,000.00, as fixed or determined by the township board of trustees.[502] The township fiscal officer is charged with accepting deposit of the bond.[503]

The zoning inspector is a creature of statute. As a result, all actions of the township zoning inspector must be both derived from and permitted by statute (Ohio Revised Code) or necessarily implied therefrom. Most sections of the Ohio Revised Code that address township zoning are concentrated in Chapter 519. As a result, many of the sections related to township zoning have a statute number that begins with "519." When consulting the Ohio Revised Code for guidance, a township zoning inspector should consider looking in Chapter 519. However, keep in mind that the Ohio Revised Code contains titles numbered 1 through 63,[504] therefore issues concerning or relevant to township zoning may be discussed elsewhere in the Ohio Revised Code. For help with legal questions concerning the Ohio Revised Code or other matters, call the Delaware County Prosecuting Attorney's Office.

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[496] OHIO REV. CODE ANN. § 519.16.
[497] OHIO REV. CODE ANN. § 519.16.
[498] *Merritt v. Canton Twp. Bd. of Trs.*, 125 Ohio App.3d 533, 536-37, 708 N.E.2d 1082, 1084 (5th Dist. 1998). *See also Deoma v. Shaker Hts.*, 68 Ohio App.3d 72, 81, 587 N.E.2d 425, 430-431 (8th Dist. 1990) (discussing an appointing authority's dismissal of an unclassified employee); *Eudela v. Ohio Dept. of Mental Health & Mental Retardation*, 30 Ohio App.3d 113, 116, 506 N.E.2d 947, 950 (10th Dist. 1986) (discussing dismissal of an unclassified employee); *Lee v. Cuyahoga Cty. Court of Common Pleas*, 76 Ohio App.3d 620, 622, 602. N.E.2d 761, 762-763 (8th Dist. 1990) (finding that "…an unclassified employee is appointed at the discretion of the appointing authority and serves at the pleasure of such authority.").
[499] OHIO REV. CODE ANN. § 519.161.
[500] OHIO REV. CODE ANN. § 519.161.
[501] OHIO REV. CODE ANN. § 519.161.
[502] OHIO REV. CODE ANN. § 519.161.
[503] OHIO REV. CODE ANN. § 519.161.
[504] Titles or topical volumes of the Ohio Revised Code are numbered with odd numbers only, with one exception; thus there are thirty-three actual titles that comprise the Ohio Revised Code.

Powers and Duties

Generally, the township zoning inspector enforces the township zoning resolution.[505] Although some degree of discretion obviously is necessary in terms of enforcement, it is largely the job of the township zoning inspector to implement the township zoning resolution.[506] In fact, the responsibilities of the zoning inspector have been described as "ministerial in nature."[507] In short, if a project meets all the requirements of the zoning resolution, it should be approved; if it does not, it should not be.[508]

A township zoning inspector has no responsibility or authority to create the township zoning resolution that he or she is charged with enforcing.[509] That responsibility is shared by the board of zoning commission (BZC) and the board of township trustees. Additionally, the township zoning inspector may not grant variances or conditional uses. Although the township zoning inspector may *distribute* applications for variances and conditional uses, the board of zoning appeals (BZA) hears and decides requests for both variances and conditional uses.[510]

Enforcement of the township zoning resolution includes, among other things, issuing permits and inspecting properties for compliance with the zoning resolution.[511] In performing these duties, it is important for a township zoning inspector to remember that they are "not a "[l]aw enforcement officer" under R.C. § 2901.01(A)(11) or [Ohio Rules of Criminal Procedure] 2(J)."[512] As a result:

> [p]ursuant to the fourth amendment to the United States Constitution, a township zoning inspector may not enter and inspect private property without a search warrant where the owner or occupant of the property does not give consent, unless there is an emergency, the property is open to the public, or the industry conducted on the property has a history of government oversight such that no reasonable expectation of privacy exists.[513]

Compliance inspections must be conducted with this premise in mind.

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[505] PLANNING AND ZONING LAW, *supra* note 335, at § 8:47.
[506] PLANNING AND ZONING LAW, *supra* note 335, at § 8:47.
[507] PLANNING AND ZONING LAW, *supra* note 335, at § 8:47 (citing *State ex rel. Ross v. Guion*, 82 Ohio Law Abs. 1, 161 N.E.2d 800, 802 (8th Dist. 1959)).
[508] PLANNING AND ZONING LAW, *supra* note 335, at § 8:47.
[509] PLANNING AND ZONING LAW, *supra* note 335, at § 8:47.
[510] OHIO REV. CODE ANN. §§ 519.14(B)-(C).
[511] PLANNING AND ZONING LAW, *supra* note 335, at § 8:47.
[512] 1998 Ohio Op. Att'y Gen. No. 98-018.
[513] 1998 Ohio Op. Att'y Gen. No. 98-018, *overruling in part* 1973 Ohio Op. Att'y Gen. No. 73-116.

Zoning Resolutions

Zoning resolutions are the embodiment of township zoning. They are created pursuant to authority granted under R.C. § 519.02 and act as a comprehensive guide to zoning regulations within the township. Generally, zoning resolutions are divided into various articles, each of which address regulations concerning, but not limited to, individual zoning districts or categories (i.e., FR-1), zoned items (i.e., signs), standards (i.e., general development standards), or enforcement of the zoning resolution.

Though the board of zoning commission (BZC) generally acts to create and draft the zoning resolution, the board of trustees, as the legislative body of the township, has the ultimate authority to approve and adopt the resolution.[514] If adopted by the board of trustees, "the question of whether or not the proposed plan of zoning shall be put into effect" is submitted to the voters.[515] If the majority of voters favor zoning, the resolution shall be put into effect.[516]

As the township zoning inspector is only charged with enforcing the township zoning resolution, he or she generally has no responsibility for creating or changing the resolution.[517]

Amendments to the zoning resolution are initiated by either the board of zoning commission (BZC) by motion, the trustees by passage of a resolution, or an application by a property owner.[518] The procedure for approving amendments is addressed in R.C. § 519.12. As the procedure for amending the zoning resolution involves many steps, it is addressed in another section of this manual. For further discussion, see the chapter entitled "Board of Zoning Commission."

Zoning Certificates (Permits)

For purposes of enforcing the township zoning resolution, the township board of trustees "may provide for a system of zoning certificates".[519] Zoning certificates, commonly referred to as "permits" or "zoning permits," are required by anyone who wants to use land pursuant to a zoning resolution.[520]

As with all aspects of its power and authority, "[t]ownships…are constrained to live within the strictures of the Revised Code" in providing for a system of zoning certificates.[521] R.C. § 519.17 generally provides when a zoning certificate is required. According to that section, "[n]o person shall locate, erect, construct, reconstruct, enlarge, or structurally alter any building or structure within the territory included in a zoning resolution without obtaining a zoning certificate"[522] Before a zoning certificate is issued, "the plans for the proposed building or structure [must] fully

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[514] *See* OHIO REV. CODE ANN. §§ 519.02-519.05.
[515] OHIO REV. CODE ANN. § 519.11.
[516] OHIO REV. CODE ANN. § 519.11.
[517] *See* PLANNING AND ZONING LAW, *supra* note 335, at § 8:47.
[518] OHIO REV. CODE ANN. § 519.12(A)(2).
[519] OHIO REV. CODE ANN. § 519.16.
[520] PLANNING AND ZONING LAW, *supra* note 335, at § 8:48.
[521] PLANNING AND ZONING LAW, *supra* note 335, at § 8:48.
[522] OHIO REV. CODE ANN. § 519.17.

comply with the zoning regulations then in effect."[523] Generally, this means that the current, not the past or proposed, zoning regulations govern the structure or building for which the applicant seeks a certificate. However, there may be rare, fact-specific, instances where this is not the case.

Generally, to obtain a zoning certificate, an application form must be obtained and completed.[524] Often, the zoning resolution will specify the process to be followed. Normally, the zoning inspector is the individual charged with distributing these application forms. Fees may be charged for submission of zoning certificate applications as long as those fees are reasonable.[525] The Ohio Revised Code, in certain instances, may dictate the amount of the fee to be charged.

Review of Development Plans (Planned Unit Developments)

The township zoning inspector may review or assist in the review of preliminary and final development plans submitted for approval in connection with a planned unit development (PUD) pursuant to R.C. § 519.021. The nature and extent of this review may be provided by the terms for approval of a PUD in the township zoning resolution.

For more information on planned unit developments and the process for approving such developments, see the "Common Issues" chapter of this manual.

Enforcement

It is the duty of the zoning inspector to implement and enforce the township zoning resolution *as written*.[526] This means that the zoning inspector may only enforce the terms of the zoning resolution presently in effect. He or she may not add, delete, or substitute any terms, phrases, or provisions into the zoning resolution. Therefore, the enforcement authority of the township zoning inspector is limited solely to the language appearing in the current effective zoning resolution.

In the same respect, the zoning inspector may only refuse to issue or hold a zoning certificate (or permit) when the subject property does not meet the requirements in the zoning resolution for issuing the requested certificate. In other words, a zoning certificate must be issued where a proposed project complies with the terms of the township zoning resolution for issuing the certificate. Note that "courts have been clear that a denial of a permit will not be allowed where there is no regulation prohibiting the sought-after activity."[527]

Violations

Violations of the township zoning resolution should be dealt with on a case-by-case basis. A zoning inspector may issue a written notice of a zoning violation to the property owner. Such notice shall state the nature of the violation, the specific section of the zoning resolution that is

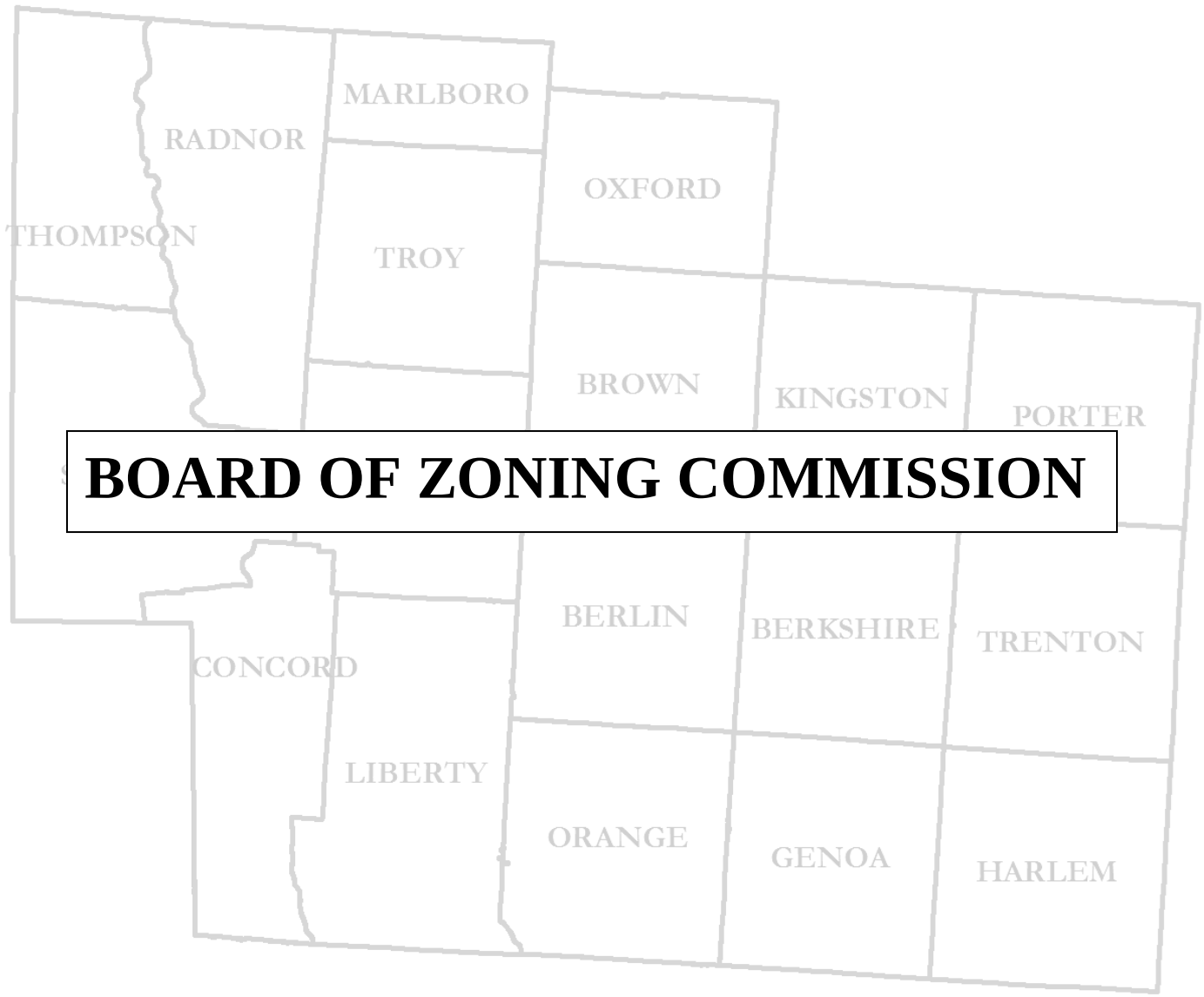
[523] OHIO REV. CODE ANN. § 519.17.
[524] *See* Sample Forms.
[525] PLANNING AND ZONING LAW, *supra* note 335, at § 8:48; 1998 Ohio Op. Att'y Gen. No. 98-018.
[526] *See* PLANNING AND ZONING LAW, *supra* note 335, at § 8:47.
[527] PLANNING AND ZONING LAW, *supra* note 335, at § 8:48 (citing *Dingeman Advertising, Inc. v. Bd. of Zoning Appeals of Troy Tp.*, 4th Dist. Richland No. 92-CA-39, 1993 WL 135698, *2 (Apr. 23, 1993)).

being violated (preferably both a section number(s) and the actual language from the zoning resolution should be cited), and provide a specific date by which the violation must be remedied.

Aside from and in addition to issuing a written notice of zoning violation, various other remedies and a penalty for violations are available in R.C. § 519.23 to R.C. § 519.24 and R.C. § 519.99. To avoid unnecessary court action, the township zoning inspector can attempt to resolve the violation on his or her own (i.e., working directly with the property owner to explain the violation and possible remedies and/or issuing a written notice of zoning violation).

In certain instances where the township zoning inspector is unsure how to act, has acted, and been unsuccessful in achieving satisfactory results, or feels immediate action is needed, he or she should consult with the Delaware County Prosecuting Attorney's Office.[528]

[528] *See* OHIO REV. CODE ANN. § 519.24 (stating that "the township zoning inspector…may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use.").



BOARD OF ZONING COMMISSION

General Overview and Term of Office

The township zoning commission (BZC) is the origin of most zoning in the township. In making decisions concerning zoning, the BZC must work closely with the township trustees and the county regional planning commission.

The township board of trustees "shall create and establish a township zoning commission" when they enact zoning.[529] The BZC must consist of five (5) members, each of whom are appointed by the board of township trustees.[530] Each member of the BZC must be a resident of the unincorporated territory of the township.[531] If there is a regional planning commission, the board of township trustees may appoint a member of the regional planning commission to the BZC as long as the member is a resident of the unincorporated territory of the township.[532]

The township trustees shall establish the terms of the regular BZC members to be of such length and so arranged that the term of one member will expire each year.[533] If there is a vacancy on the BZC, the board of township trustees shall fill the vacancy for the unexpired term.[534] Each member or alternate member shall serve until his or her successor is appointed and qualified.[535]

BZC members may be expelled from their positions in accordance with R.C. § 519.04 for nonperformance of duty, misconduct in office, or for cause by the board.[536] Under such circumstances, written charges must be filed with the board of trustees and served on the BZC member in accordance with R.C. § 519.04.[537] The BZC member must be given a public hearing on the charges.[538] If the BZC member is expelled, the board of trustees must appoint a new BZC member to fill the unexpired term of the BZC member being replaced.[539]

Once created, the BZC "shall organize, adopt rules for the transaction of its business, and keep a record of its actions and determinations."[540]

The BZC must have a majority (quorum) of its membership present in order to conduct a meeting/hearing and act. Some zoning resolutions require a majority of the BZC members to vote in order to act, refer to your township's zoning resolution for more information.

[529] OHIO REV. CODE ANN. § 519.04.
[530] OHIO REV. CODE ANN. § 519.04.
[531] OHIO REV. CODE ANN. § 519.04.
[532] OHIO REV. CODE ANN. § 519.04.
[533] OHIO REV. CODE ANN. § 519.04.
[534] OHIO REV. CODE ANN. § 519.04.
[535] OHIO REV. CODE ANN. § 519.04.
[536] OHIO REV. CODE ANN. § 519.04.
[537] OHIO REV. CODE ANN. § 519.04.
[538] OHIO REV. CODE ANN. § 519.04.
[539] OHIO REV. CODE ANN. § 519.04.
[540] OHIO REV. CODE ANN. § 519.05.

Compensation

The board of township trustees may approve and provide for the expenses and compensation of the members of the zoning commission.[541]

Powers and Duties

The powers of the BZC are limited. As with all aspects of a township's power and authority, the BZC is a creature of statute and is empowered only with that authority provided by statute (Ohio Revised Code) or necessarily implied therefrom. It is firmly established that townships have no inherent or constitutionally-granted police power to enact zoning legislation and are limited to such zoning authority as they are granted by statute.[542] By statute, the BZC's main duty is to prepare a zoning plan for the township.[543] This zoning plan should include text and maps describing each zoned area of the township. [544] The township zoning plan shall be written in accordance with a comprehensive plan.[545]

In preparing a zoning plan, the BZC should make use of all resources available.[546] These resources include the regional planning commission and various county personnel.[547] Additionally, if funds are available, the BZC may employ outside experts and planning consultants.[548] The township zoning commission is responsible for keeping records of its actions and business.[549]

Alternate Members

The board of trustees may also appoint two alternate members to the BZC for terms to be decided by the board of trustees.[550] The alternate members must meet the same qualifications as regular BZC members, including residing in the unincorporated territory of the township.[551] An alternate BZC member will serve until his or her successor is appointed and qualified.[552]

The purpose of alternate BZC members is to take the place of a regular BZC member at any BZC meeting when a regular member is unable to attend or a conflict of interest arises.[553] The procedure for having an alternate member attend a meeting shall be established by resolution by the

[541] OHIO REV. CODE ANN. § 519.05.
[542] *Bd. of Bainbridge Township Trs. v. Funtime, Inc.*, 55 Ohio St. 3d 106, 108 563 N.E.2d 717, 719 (1990).
[543] OHIO REV. CODE ANN. § 519.05.
[544] OHIO REV. CODE ANN. § 519.05.
[545] OHIO REV. CODE ANN. § 519.02.
[546] OHIO REV. CODE ANN. § 519.05.
[547] OHIO REV. CODE ANN. § 519.05.
[548] OHIO REV. CODE ANN. § 519.05.
[549] OHIO REV. CODE ANN. § 519.05.
[550] OHIO REV. CODE ANN. § 519.04.
[551] OHIO REV. CODE ANN. § 519.04.
[552] OHIO REV. CODE ANN. § 519.04.
[553] OHIO REV. CODE ANN. § 519.04.

trustees.[554] When attending a meeting in place of a regular member, an alternate BZC member has the power to vote on any matter upon which the absent member has the ability to vote.[555]

Adoption of a Township Zoning Plan (Resolution and Maps)

After the board of township trustees approves a resolution pursuant to R.C. § 519.03 (establishing the intention to proceed with township zoning), the following procedure should be followed in creating a zoning resolution and maps:

1. The township trustees must create and establish a BZC pursuant to R.C. § 519.04.

2. The newly organized BZC should create and prepare a zoning plan, including both text and maps, for the unincorporated territory of the township.[556] This zoning plan is to be written in accordance with a comprehensive plan.[557] The plan should represent the BZC's recommendations for carrying out by the board of trustees the powers, purposes, and provisions set forth in R.C. §§ 519.01-519.99.[558] The BZC should work with county regional planning to develop a zoning plan and maps.[559] Services, expertise, and resources of other public offices should also be used and consulted in developing the zoning plan and maps. Also, within the limits of funds appropriated by the trustees, the BZC may employ or contract with outside experts and planning consultants to assist in creating the zoning plan.[560]

3. After creating its recommended zoning plan and maps, the BZC must hold at least one public hearing. Notice of the hearing shall be given by one (1) publication in one (1) or more newspapers of general circulation[561] in the township at least thirty (30) days before the date of such hearing.[562] The notice must "state the place and time at which the text and maps of the proposed zoning resolution may be examined."[563] It should also include the date, time, place, and reason for the public hearing.

[554] OHIO REV. CODE ANN. § 519.04.
[555] OHIO REV. CODE ANN. § 519.04.
[556] OHIO REV. CODE ANN. § 519.05.
[557] OHIO REV. CODE ANN. § 519.02.
[558] OHIO REV. CODE ANN. § 519.05.
[559] OHIO REV. CODE ANN. § 519.05.
[560] OHIO REV. CODE ANN. § 519.05.
[561] Pursuant to R.C. § 7.12, a newspaper of general circulation is defined as "a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements: (1) It is printed in the English language using standard printing methods, being not less than eight [8] pages in the broadsheet format or sixteen [16] pages in the tabloid format; (2) It contains at least twenty-five per cent [25%] editorial content, which includes, but is not limited to, local news, political information, and local sports; (3) It has been published continuously for at least three [3] years immediately preceding legal publication by the state agency or political subdivision; (4) The publication has the ability to add subscribers to its distribution list; and (5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States Postal Service 'Statement of Ownership, Management, and Circulation' (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve [12] months immediately preceding legal publication."
[562] OHIO REV. CODE ANN. § 519.06.
[563] OHIO REV. CODE ANN. § 519.06.

4. After holding a public hearing, the BZC must submit the proposed zoning resolution and maps to the county regional planning commission for their "approval, disapproval, or suggestions."[564] Approval of the county regional planning commission can be assumed, unless county regional planning states otherwise within twenty (20) days after it received the proposed zoning resolution.[565]

    - *Note: If county regional planning disapproves of or suggests any material change to the proposed zoning resolution, the BZC must hold another public hearing on the resolution.[566] Notice of the hearing must be given by one (1) publication in one (1) or more newspapers of general circulation in the township[567]. The publication must occur at least thirty (30) days before the hearing. The published notice must state the place and time at which the text and maps of the proposed zoning plan may be examined.[568] It should also include the date, time, place, and reason for the public hearing.*

5. When the BZC has completed its recommendations, it should certify its recommendation on the proposed zoning (plan) resolution and maps to the board of township trustees.[569]

6. Upon receiving certification of the proposed (plan) resolution and maps from the BZC, the board of township trustees shall hold a public hearing on the proposed resolution.[570]

    - *Notice of the hearing must be given by one (1) publication in one (1) or more newspapers of general circulation in the township[571]. The publication must occur*

[564] OHIO REV. CODE ANN. § 519.07.
[565] OHIO REV. CODE ANN. § 519.07.
[566] OHIO REV. CODE ANN. § 519.07.
[567] Pursuant to R.C. § 7.12, a newspaper of general circulation is defined as "a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements: (1) It is printed in the English language using standard printing methods, being not less than eight [8] pages in the broadsheet format or sixteen [16] pages in the tabloid format; (2) It contains at least twenty-five per cent [25%] editorial content, which includes, but is not limited to, local news, political information, and local sports; (3) It has been published continuously for at least three [3] years immediately preceding legal publication by the state agency or political subdivision; (4) The publication has the ability to add subscribers to its distribution list; and (5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States Postal Service 'Statement of Ownership, Management, and Circulation' (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve [12] months immediately preceding legal publication."
[568] OHIO REV. CODE ANN. §§ 519.06-519.07.
[569] OHIO REV. CODE ANN. §§ 519.05, 519.07.
[570] OHIO REV. CODE ANN. § 519.08.
[571] Pursuant to R.C. § 7.12, a newspaper of general circulation is defined as "a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements: (1) It is printed in the English language using standard printing methods, being not less than eight [8] pages in the broadsheet format or sixteen [16] pages in the tabloid format; (2) It contains at least twenty-five per cent [25%] editorial content, which includes, but is not limited to, local news, political information, and local sports; (3) It has been published continuously for at least three [3] years immediately preceding legal publication by the state agency or political subdivision; (4) The publication has the ability to add subscribers to its distribution list; and (5) The publication is circulated generally by United States

at least thirty (30) days before the hearing. It should also include the date, time, place, and reason for the public hearing.[572]

7. The board of township trustees may approve of the proposed (plan) resolution and maps.[573] If the board of township trustees seeks to make any changes to the proposed resolution and maps, the proposed resolution and maps along with the changes must be resubmitted to the BZC before the trustees may approve of the plan.[574]

8. The BZC may then approve, disapprove, or make suggestions concerning the changes.[575] The BZC should then re-certify the proposed (plan) resolution and maps and their comments on the changes to the board of township trustees.

9. The board of township trustees, upon receipt of the re-certified proposed (plan) resolution and maps and BZC recommendations on the changes, shall hold a second public hearing.[576]

    - *Notice of the hearing must be given by one (1) publication in one (1) or more newspapers of general circulation in the township*[577]*. The publication must occur at least ten (10) days before the hearing. It should also include the date, time, place and reason for the public hearing.*[578]

10. If the BZC approved of the changes, the board of township trustees may approve of the proposed (plan) resolution and maps.[579] If the BZC disapproved of the changes, the board of township trustees may approve of the proposed (plan) resolution and maps, but only with a favorable *unanimous* vote of the entire membership of the board regarding the provision(s) disapproved by the BZC.[580]

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mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States Postal Service 'Statement of Ownership, Management, and Circulation' (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve [12] months immediately preceding legal publication."

[572] OHIO REV. CODE ANN. § 519.08.

[573] OHIO REV. CODE ANN. §§ 519.10-519.11.

[574] OHIO REV. CODE ANN. § 519.09.

[575] OHIO REV. CODE ANN. § 519.09.

[576] OHIO REV. CODE ANN. § 519.09.

[577] Pursuant to R.C. § 7.12, a newspaper of general circulation is defined as "a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements: (1) It is printed in the English language using standard printing methods, being not less than eight [8] pages in the broadsheet format or sixteen [16] pages in the tabloid format; (2) It contains at least twenty-five per cent [25%] editorial content, which includes, but is not limited to, local news, political information, and local sports; (3) It has been published continuously for at least three [3] years immediately preceding legal publication by the state agency or political subdivision; (4) The publication has the ability to add subscribers to its distribution list; and (5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States Postal Service 'Statement of Ownership, Management, and Circulation' (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve [12] months immediately preceding legal publication."

[578] OHIO REV. CODE ANN. § 519.09.

[579] OHIO REV. CODE ANN. §§ 519.10-519.11.

[580] OHIO REV. CODE ANN. § 519.09.

11. After approval by the board of township trustees, the "question of whether or not the proposed plan of zoning [resolution and maps] shall be put into effect" shall be placed on the ballot and submitted for approval or rejection at the next primary or general election by the voters of the unincorporated territory of the township included in the proposed plan of zoning.[581] A special election may also be called for this purpose.[582] The resolution must be filed with the board of elections no later than 4:00 p.m. of the ninetieth (90th) day before the election.[583] The zoning resolution will be effective immediately if approved by a majority of the voters.[584]

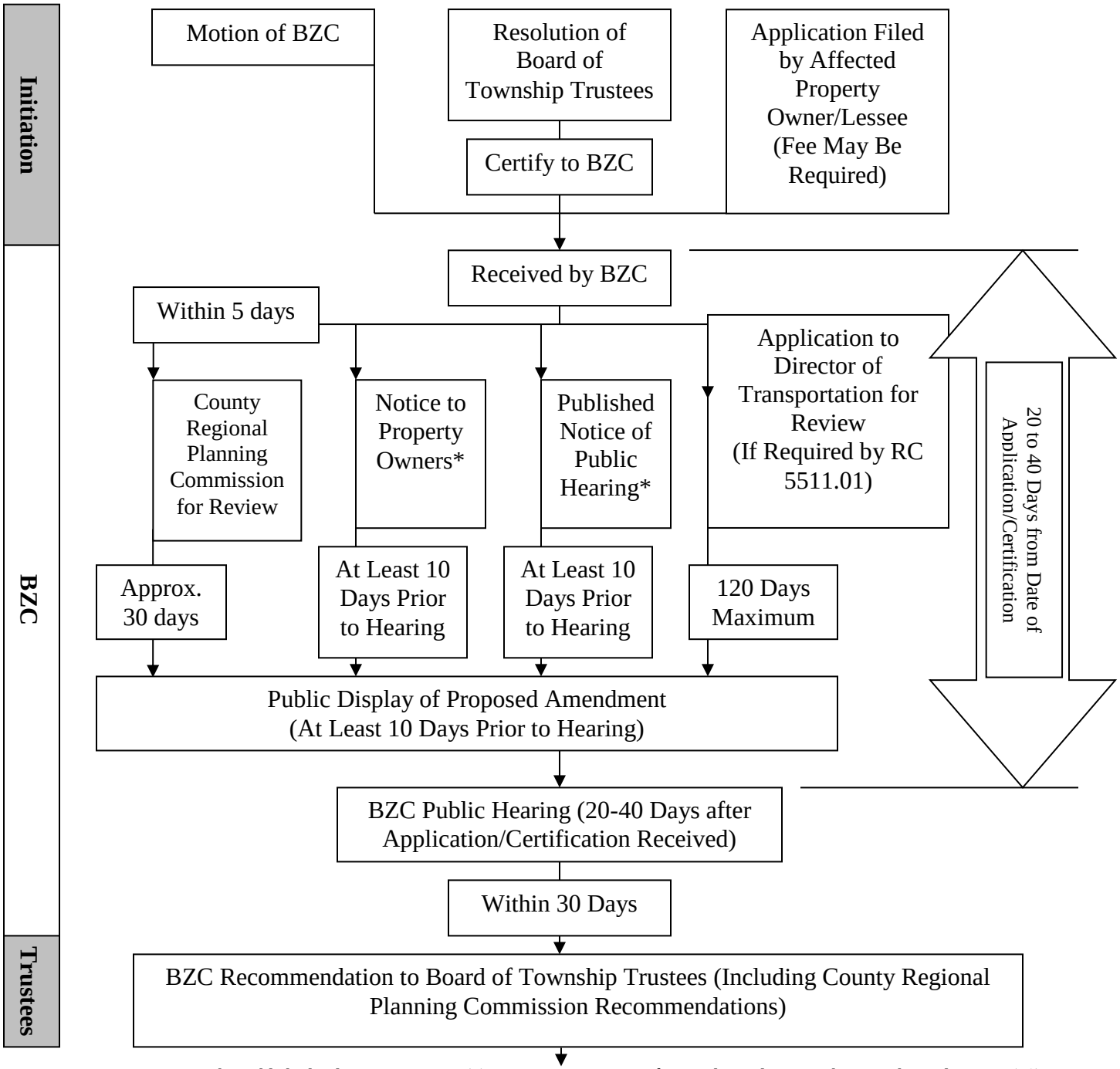
12. Within five (5) business days after the date the resolution becomes effective, the board of trustees shall file the resolution and maps in the office of the county recorder.[585] Also, within five (5) business days after the date the resolution becomes effective, the board of trustees shall file the resolution and maps with the county regional planning commission.[586]

Amendments to the Zoning Resolution

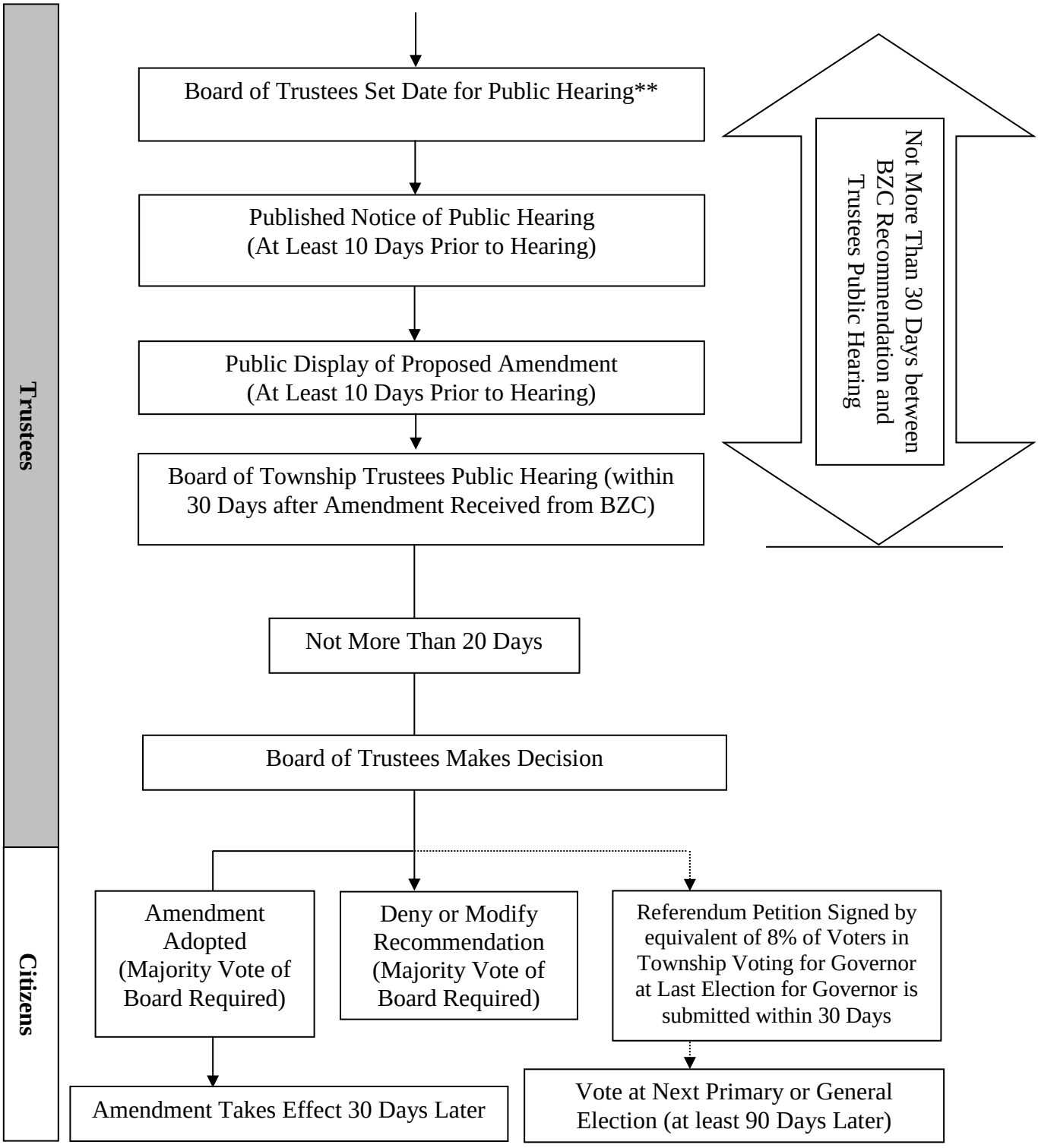
Amendments to a township zoning resolution should be proposed and added according to R.C. § 519.12. The flowchart on the next two pages is a diagram of the procedure in R.C. § 519.12 for amending a zoning resolution.[587]

[581] OHIO REV. CODE ANN. § 519.11.
[582] OHIO REV. CODE ANN. § 519.11.
[583] OHIO REV. CODE ANN. § 519.11.
[584] OHIO REV. CODE ANN. § 519.11.
[585] OHIO REV. CODE ANN. § 519.11.
[586] OHIO REV. CODE ANN. § 519.11.
[587] OHIO REV. CODE ANN. § 519.12.

ZONING CHANGE/AMENDMENT FLOWCHART – R.C. § 519.12



*Notice must be published at least once in one (1) or more newspapers of general circulation in the township at least ten (10) days prior to the public hearing and include the time, date and place for the public hearing and all information required by R.C. § 519.12(C). If ten (10) or fewer parcels are included within a rezone or redistrict, notice, including the time date and place of the public hearing and all information in R.C. § 519.12(C), must also be mailed via first class mail at least ten (10) days prior to the public hearing to all owners of property within and contiguous to and directly across the street from the area proposed to be rezoned or redistricted to the addresses of those owners appearing on the county auditor's current tax list. If ten (10) or more parcels are included within the rezone or redistrict, or if the amendment alters the text of the zoning resolution, the published notice must include the time date, and place of the public hearing and all of the information in R.C. § 519.12(D).



** Note that notice must be published at least once in one or more newspapers of general circulation in the township at least ten (10) days prior to the public hearing and include the time, date, and place for the public hearing and all information required by R.C. § 519.12(F) or R.C. § 519.12(G) depending on whether ten (10) or fewer or more than ten (10) parcels or a text amendment are the subject of the proposed amendment.

Additional Notice Requirements (BZC Hearing)

Besides specifying the time, date, and place of a BZC hearing during which a zoning amendment will be considered, R.C. §§ 519.12(C)-(D) mandate that notices must include additional information.

If the proposed amendment seeks to ***rezone ten (10) or fewer parcels*** of land, the published and mailed notices (notices are to be mailed by first class mail to owners and/or neighbors of the affected parcels (within and continuous to and directly across the street from such area proposed to be rezoned)) must contain the following information (in addition to the time, date, and place of the BZC hearing during which the zoning amendment will be considered):

1. The name of the BZC that will conduct the hearing;
2. A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;
3. A list of the addresses of all the properties to be rezoned by the proposed amendment and the names of the owners of the properties (as they appear on the county auditor's current tax list);
4. The current zoning classification of the property named in the amendment and the proposed zoning classification of that property;
5. The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for at least ten (10) days prior to the public hearing;
6. The name of the person responsible for giving notice of the public hearing (by mail and by publication);
7. A statement that the matter will be submitted to the board of township trustees after the conclusion of the hearing; and,
8. Any other information requested by the BZC.[588]

If the proposed amendment ***alters the text of the zoning resolution*** or seeks to ***rezone more than ten (10) parcels*** of land, the notice need only be published and must contain the following (again, in addition to the time, date, and place of a BZC hearing during which the zoning amendment will be considered):

1. The name of the BZC that will conduct the hearing;
2. A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;
3. The time and place where the text and maps of the proposed amendment will be available for examination for at least ten (10) days prior to the public hearing;
4. The name of the person responsible for giving notice of the public hearing by publication;
5. A statement that the matter will be submitted to the board of township trustees after the conclusion of the hearing; and,
6. Any other information requested by the BZC.[589]

[588] OHIO REV. CODE ANN. § 519.12(C).
[589] OHIO REV. CODE ANN. § 519.12(D).

Additional Notice Requirements (Board of Trustees Hearing)

Similarly, once a BZC makes its recommendation on a proposed amendment and submits it to the board of trustees for consideration, R.C. §§ 519.12(F) and 519.12(G) mandate that the board of trustees, besides specifying the time, date, and place of the hearing during which a zoning amendment will be considered, include additional information in its published notice. Again, the content of the notice depends upon the number of parcels affected by the proposed zoning amendment. Such notices need only be published.

If the proposed amendment seeks to ***rezone ten (10) or fewer parcels*** of land, the published notice, in addition to specifying the time, date, and place of the hearing during which the amendment will be considered, must contain the following:

1. The name of the board of trustees that will conduct the hearing;
2. A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;
3. A list of the addresses of all the properties to be rezoned by the proposed amendment and the names of the owners of the properties (as they appear on the county auditor's current tax list);
4. The current zoning classification of the property named in the amendment and the proposed zoning classification of that property;
5. The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for at least ten (10) days prior to the public hearing;
6. The name of the person responsible for giving notice of the public hearing (by mail and by publication); and,
7. Any other information requested by the board.[590]

If the proposed amendment ***alters the text of the zoning resolution*** or seeks to ***rezone more than ten (10) parcels*** of land, the published notice, in addition to specifying the time, date, and place of the hearing during which the amendment will be considered, must contain the following:

1. The name of the board of trustees that will conduct the hearing;
2. A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;
3. The time and place where the text and maps of the proposed amendment will be available for examination for at least ten (10) days prior to the public hearing;
4. The name of the person responsible for giving notice of the public hearing by publication; and,
5. Any other information requested by the board.[591]

To make preparation of notices easier, checklists containing the above notice requirements are contained in the Sample Forms chapter of this manual.

[590] OHIO REV. CODE ANN. § 519.12(F).
[591] OHIO REV. CODE ANN. § 519.12(G).

Appropriate Considerations for Reviewing Resolutions/Amendments

When drafting or preparing a zoning resolution or a text amendment to a zoning resolution, the purposes for which a township can zone must be considered. Specifically, such purposes include the following:

A township, "in the interest of the public health and safety," by resolution, in accordance with a comprehensive plan, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- location,
- height,
- bulk,
- number of stories, and
- size of buildings and other structures.

Lots or Parcels:

- percentages of lot areas which may be occupied,
- set back building lines,
- sizes of yards, courts, and other open spaces,
- the density of population.

Uses:

- the uses of buildings and other structures including tents, cabins, and trailer coaches, and
- the uses of land for trade, industry, residence, recreation, or other purposes.[592]

A township, "in the interest of the public convenience, comfort, prosperity, or general welfare," by resolution, in accordance with a comprehensive plan, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- Location
- Setback lines.

Uses:

- Uses of buildings and other structures (including tents, cabins, and trailer coaches).
- Uses of land for trade, industry, residence, recreation, or other purposes.

Landscaping and Architectural Standards:

- Reasonable landscaping standards and architectural standards excluding exterior building materials.[593]

[592] OHIO REV. CODE ANN. § 519.02.
[593] OHIO REV. CODE ANN. § 519.02.

A township, "in the interest of the public convenience, comfort, prosperity, or general welfare," by resolution and in accordance with a comprehensive plan, *for non-residential property only*, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- Height
- Bulk
- Number of stories
- Size of buildings and other structures.

Lots or Parcels:

- Percentages of lot areas that may be occupied
- Sizes of yards, courts, and other open spaces
- Density of population[594]

Note that the Ohio Revised Code differentiates among the various interests of the public in allowing for the regulation of residential and non-residential property through zoning. The interests listed above must correlate with the type of property sought to be regulated by zoning.

Vote of the Board of Trustees on Recommendations of the BZC

According to R.C. § 519.12, the township board of trustees shall, within twenty days after the public hearing, "either adopt or deny the recommendations of the zoning commission or adopt some modification of them."[595] In the event "the board denies or modifies the commission's recommendations, a majority vote of the board shall be required."[596]

Referendum

If, within thirty (30) days after the adoption of the amendment, the board of township trustees is presented a petition for a referendum, the zoning amendment shall be certified to the board of elections and put to a vote.[597] This petition must be signed by registered electors residing in the unincorporated area of the township equal to eight-percent (8%) of the total vote cast for all candidates for governor in the township at the most recent general election at which a governor was elected.[598] The special election for approval or rejection of the amendment must be held "on the day of the next primary or general election that occurs at least ninety [90] days after the petition is filed."[599]

[594] OHIO REV. CODE ANN. § 519.02.
[595] OHIO REV. CODE ANN. § 519.12(H).
[596] OHIO REV. CODE ANN. § 519.12(H).
[597] OHIO REV. CODE ANN. § 519.12(H).
[598] OHIO REV. CODE ANN. § 519.12(H).
[599] OHIO REV. CODE ANN. § 519.12(H).

Before certifying the petitions to the board of elections and in accordance with R.C. § 519.12(H), the board of trustees must determine, by resolution adopted at an open meeting, that the petition is valid on its face.[600] Pursuant to R.C. § 519.12(H) and consistent with the interpretations of this law by Ohio courts and the Ohio Attorney General, a board of trustees has the "duty to determine whether petitions requesting a referendum on the zoning amendment filed with the board are valid on their face for presentation to the board of elections".[601]

Thus, the board of trustees has the responsibility to determine the sufficiency of the petitions on their face, such that they should or should not be presented to the board of elections.[602]

This duty of the board of trustees is limited. The board of trustees "does not have the power to inquire into other matters" other than what is apparent from the face of the petitions.[603]

The process for determining validity generally involves the board of trustees satisfying itself that a petition is in the proper form and that it contains the requisite number of signatures.[604] In terms of the form of the petition, each part of the petition shall contain "the number and the full and correct title, if any, of the zoning amendment resolution, motion, or application, furnishing the name by which the amendment is known and a brief summary of its contents."[605] It should also include an appropriate map of the area affected by the zoning.[606]

In terms of the number of signatures, the board of trustees will determine if the petition contains at least a number of signatures equal to eight-percent (8%) of the total vote cast for all candidates for governor in the township at the last preceding general election at which a governor was elected.[607] This number is available from the board of elections. Note that it is the responsibility of the board of elections to determine if the signatures are valid.[608]

It will be necessary for the board of trustees to determine the validity of the petitions in an open public meeting. A resolution should be approved either finding the petitions valid on their face and certifying the petitions to the board of elections or finding the petitions invalid on their face and rejecting certification to the board of elections. A form resolution for this purpose is available from the Delaware County Prosecuting Attorney's Office. Any certification to the board of elections shall occur within two (2) weeks of receipt of the referendum petition and not less than ninety (90) days prior to the election at which the question is to be voted upon.[609]

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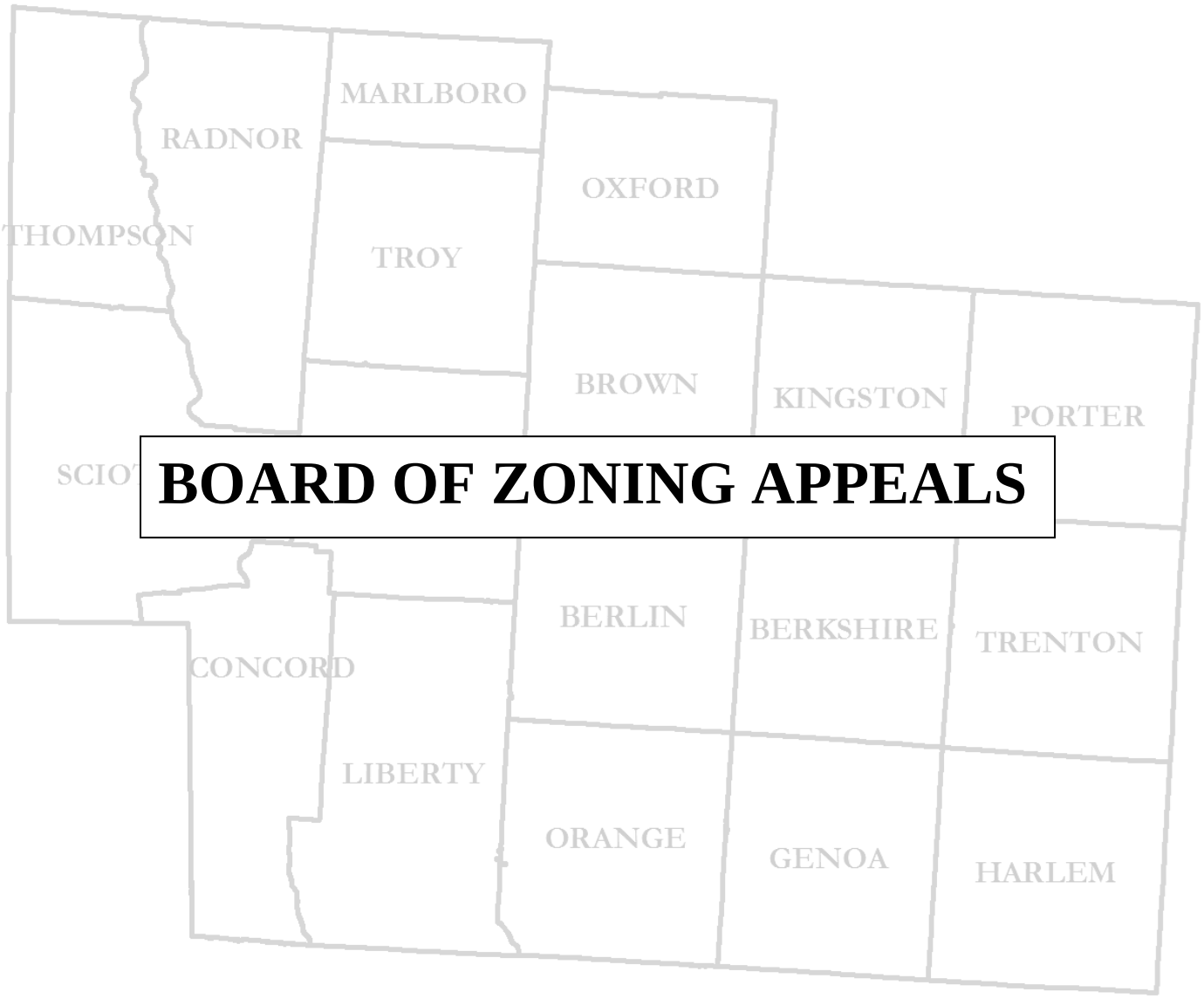
[600] OHIO REV. CODE ANN. § 519.12(H); 1971 Ohio Op. Att'y Gen. No. 71-052.
[601] 1971 Ohio Op. Att'y Gen. No. 71-052.
[602] 1971 Ohio Op. Att'y Gen. No. 71-052.
[603] 1971 Ohio Op. Att'y Gen. No. 71-052.
[604] 1971 Ohio Op. Att'y Gen. No. 71-052 (citing *State ex rel. v. Lauderbaugh*, 77 Ohio L. Abs. 93, 96, 149 N.E.2d 33, 35 (1957)).
[605] OHIO REV. CODE ANN. § 519.12(H).
[606] OHIO REV. CODE ANN. § 519.12(H).
[607] OHIO REV. CODE ANN. § 519.12(H).
[608] 1971 Ohio Op. Att'y Gen. 71-052 (citing *Fried v. Augspurger*, 83 Ohio L. Abs. 321, 164 N.E.2d 466, 468 (1959)).
[609] OHIO REV. CODE ANN. § 519.12(H).



BOARD OF ZONING APPEALS

General Overview and Term of Office

In any township that has adopted zoning, the board of township trustees must appoint a township board of zoning appeals,[610] or "BZA." The BZA must consist of five (5) members who are required to live in the unincorporated territory of the township.[611] Each member of the BZA is appointed for a term "of such length and so arranged that the term of one member will expire each year."[612] He or she shall serve until a successor is appointed and qualified.[613]

Also, the board of trustees may appoint two alternate members to the BZA for terms to be determined by the board of trustees.[614] To be appointed, alternate members must meet the same eligibility requirements as regular members.[615] Alternate members may serve in place of a regular member at any BZA meeting/hearing.[616] The board of trustees shall prescribe, in a resolution appointing alternate BZA members, the procedure by which an alternate BZA member may serve at BZA meetings.[617] When replacing a regular BZA member at a BZA meeting/hearing, an alternate BZA member may vote upon anything that the regular BZA member they replace would be eligible to vote upon.[618] Like regular members, alternate BZA members shall serve until their successor is appointed and qualified.[619]

BZA members may be expelled from their positions for the same reasons for which members of the board of zoning commission (BZC) can be removed from their positions. These reasons can be found in R.C. § 519.04. Pursuant to that section, members can be expelled from the BZA for nonperformance of duty, misconduct in office, or for cause by the board of trustees.[620] Under such circumstances, written charges must be filed with the board of trustees and served on the BZA member in accordance with R.C. § 519.04.[621] The BZA member must be given a public hearing on the charges.[622]

In filling a vacancy on the BZA, the trustees appoint a new BZA member to serve out the remainder of the departed BZA member's term.[623]

To assist in their duties and responsibilities, the BZA, "within the limits of the moneys appropriated by the board of township trustees for the purpose, [may] employ such executive, professional, technical, and other assistants as it considers necessary."[624]

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[610] OHIO REV. CODE ANN. § 519.13.
[611] OHIO REV. CODE ANN. § 519.13.
[612] OHIO REV. CODE ANN. § 519.13.
[613] OHIO REV. CODE ANN. § 519.13.
[614] OHIO REV. CODE ANN. § 519.13.
[615] OHIO REV. CODE ANN. § 519.13.
[616] OHIO REV. CODE ANN. § 519.13.
[617] OHIO REV. CODE ANN. § 519.13.
[618] OHIO REV. CODE ANN. § 519.13.
[619] OHIO REV. CODE ANN. § 519.13.
[620] OHIO REV. CODE ANN. § 519.04.
[621] OHIO REV. CODE ANN. § 519.04.
[622] OHIO REV. CODE ANN. § 519.04.
[623] OHIO REV. CODE ANN. § 519.04.
[624] OHIO REV. CODE ANN. § 519.13.

Compensation

BZA members "may be allowed their expenses, or such compensation, or both, as the board of township trustees may approve and provide."[625]

Powers and Duties

By statute, the BZA generally is given authority to do four (4) things. According to R.C. §§ 519.14(A)-(D), they include the following:

A. **Hear and decide appeals where it is alleged there is an error** in any order, requirement, decision, or determination made by an administrative official in the enforcement of R.C. §§ 519.02 to 519.25, or of any resolution adopted pursuant thereto;
B. **Authorize**, upon appeal, in specific cases, such **variance** from the terms of the zoning resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done;
C. **Grant conditional zoning certificates** for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution;
D. **Revoke** an authorized variance or conditional zoning certificate granted for the extraction of minerals, if any condition of the variance or certificate is violated.[626]

Specific statutory procedures must be followed if the BZA intends to revoke a variance of a conditional zoning certificate pursuant to R.C. § 519.14(D) as set forth above.[627] This includes notifying the holder of the variance or certificate by certified mail of both the BZA's intent to revoke and the holder's right to a hearing before the BZA within thirty (30) days of the notice's mailing, if the holder so desires.[628]

Note that a gathering of BZA members to exercise their authority pursuant to R.C. § 519.14 is a quasi-judicial proceeding.[629] As such, a recording should be made of the BZA hearings so that a record exists in the event that the BZA's decision is appealed to the court of common pleas. Often, such recording consists of having a court reporter present to take down a verbatim transcript of the hearing.

[625] OHIO REV. CODE ANN. § 519.13.
[626] OHIO REV. CODE ANN. § 519.14(A)-519.14(D) (emphasis added).
[627] *See* OHIO REV. CODE ANN. § 519.14.
[628] OHIO REV. CODE ANN. § 519.14.
[629] 2000 Ohio Op. Att'y Gen. No. 2000-035.

In exercising its authority pursuant to R.C. § 519.14(A)-(D), the BZA

> may, in conformity with such sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end has all powers of the officer from whom the appeal is taken.[630]

Thus, the decision of the BZA may take the form of a reversal, affirmation, or modification of an administrative official's decision concerning the enforcement of sections R.C. §§ 519.02-519.25.[631] In addition, the BZA is granted authority to make the "order, requirement, decision, or determination" that "ought to be made".[632] This provision allows the BZA to make a decision on alternative grounds, based on the evidence available. However, this decision-making authority does not extend to determining the constitutionality of the zoning resolution or a regulation contained therein.[633]

Variances

A variance is a "minor departure or exception from the strict rule or literal enforcement or interpretation of zoning provisions."[634] It is intended to allow slight deviations from the zoning resolution as applied on an individual or case-by-case basis.[635] A variance is related to an individual hardship that is or will be suffered on particular property without a deviation from the strict provisions of the zoning resolution.[636]

Variances are not substitutes for rezoning; they "are to be granted for problems related to particular parcels."[637] In other words, if changing the zoning designation of the property can alleviate the hardship experienced on a particular piece of property, rezoning the property is the more appropriate avenue for the property owner to pursue.

There are two types of variances: "area or bulk variances" and "use variances."

Generally, an area or bulk variance does not alter the character of the surrounding neighborhood and concerns the technical measurements required by zoning, such as "departures from yard and

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[630] OHIO REV. CODE ANN. § 519.14.
[631] PLANNING AND ZONING LAW, *supra* note 335, at § 9:16.
[632] OHIO REV. CODE ANN. § 519.14.
[633] *FRC of Kamms Corner, Inc. v. Cleveland Bd. of Zoning Appeals*, 14 Ohio App.3d 372, 373, 471 N.E.2d 845, 847 (8th Dist. 1984); *Northampton Bldg. Co. v. Sharon Twp. Bd. Of Zoning Appeals*, 109 Ohio App.3d 193, 202, 671 N.E.2d 1309, 1315 (9th Dist. 1996).
[634] PLANNING AND ZONING LAW, *supra* note 335, at § 9:1.
[635] PLANNING AND ZONING LAW, *supra* note 335, at § 9:1.
[636] PLANNING AND ZONING LAW, *supra* note 335, at § 9:1.
[637] PLANNING AND ZONING LAW, *supra* note 335, at § 9:1 (citing *Perrico Property Sys. v. Independence*, 96 Ohio App.3d 134, 141-42, 644 N.E.2d 714, 719 (8th Dist. 1994)).

height requirements."[638] Usually, area or bulk variances include parking and sign code regulations.[639] Setbacks are often the subject of an area variance.

The standard for granting an area variance is whether the owner has encountered "practical difficulties."[640] According to the Supreme Court of Ohio in *Duncan v. Village of Middlefield*, the factors to be considered when considering an area variance under the practical difficulties standard include but are not limited to the following:

1) Whether the property in question will yield a reasonable return or whether there can be a beneficial use of the property without the variance;
2) Whether the variance is substantial;
3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
4) Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
5) Whether the property owner purchased the property with knowledge of the zoning restriction;
6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.[641]

Use variances, on the other hand, typically concern the actual use of the property and "authorize uses not expressly or impliedly permitted by the zoning code."[642] Generally, the standard to be applied for granting a use variance is whether the owner would suffer "unnecessary hardship."[643]

Though self-imposed hardship is often fatal to the granting of a use variance, it is not necessarily fatal to an area variance. With an area variance, the fact that the hardship was self-imposed should be considered, along with the above seven factors from the *Duncan* case.[644]

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[638] PLANNING AND ZONING LAW, *supra* note 335, at § 9:1.
[639] PLANNING AND ZONING LAW, *supra* note 335, at § 9:1.
[640] *Kisil v. City of Sandusky*, 12 Ohio St.3d 30, 465 N.E.2d 848 (1984), cited in *Flynn v. Boardman Twp. Bd. of Zoning Appeals*, 110 Ohio App. 3d 149, 152, 673 N.E. 2d 928, 930 (7th Dist. 1995) (finding that "the…standard of unnecessary hardship should…be used in regard to requests for use variances"); *Duncan v. Vill. of Middlefield*, 23 Ohio St.3d 83, 491 N.E.2d 692, 693 (1986) (finding that area zoning variances are subject to the practical difficulties standard).
[641] *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83, 491 N.E.2d 692, 693 (1986). *See also Briggs v. Dinsmore Twp. Bd. of Zoning Appeals*, 161 Ohio App.3d 704, 709, 831 N.E.2d 1063, 1066 (3rd Dist. 2005) (affirming the standard set forth in *Duncan*).
[642] PLANNING AND ZONING LAW, *supra* note 335, at § 9:1.
[643] *Kisil v. City of Sandusky*, 12 Ohio St.3d 30, 465 N.E.2d 848 (1984), cited in *Flynn v. Boardman Twp. Bd. of Zoning Appeals*, 110 Ohio App. 3d 149, 152, 673 N.E. 2d 928, 930 (7th Dist. 1995) (finding that "the…standard of unnecessary hardship should…be used in regard to requests for use variances"); *Duncan v. Vill. of Middlefield*, 23 Ohio St.3d 83, 491 N.E.2d 692, 693 (1986) (finding that area zoning variances are subject to the practical difficulties standard).
[644] *Kandell v. City Council of Kent, Ohio*, 11th Dist. Portage No. 90-P-2255, 1991 WL 147448, *6 (Aug. 2, 1991).

Conditional Use

A conditional use differs from a variance. Unlike a variance, which requests a deviation from the provisions of the zoning resolution, a conditional use (or special exception) is a legitimate use of property pursuant to the terms of the zoning resolution, yet the use may have a significant impact upon the zoned property. Therefore, certain prescribed conditions must be met before the use will be allowed.[645] These conditions, which distinguish a permitted use (a use expressly permitted by the zoning resolution) from a conditional use, are set forth within the zoning code.

In issuing a conditional zoning certificate, a BZA is governed by the terms and conditions of the zoning resolution itself.[646] Thus, "[t]he standards for granting or denying each use will differ from ordinance to ordinance."[647] It remains the responsibility of the BZA to interpret and apply the standards in the resolution.[648]

Procedures

The township zoning resolution often provides rules and regulations pertaining to the BZA. The BZA, in accordance with these rules and regulations, can organize and adopt rules.[649]

BZA meetings/hearings are called by the chairperson, and at such other times as the board determines appropriate, and shall be open to the public.[650] The BZA must have a majority (quorum) of its membership present in order to conduct a meeting/hearing and act. Some zoning resolutions require a majority of the BZA members to vote in order to act, refer to your township's zoning resolution for more information. The chair, and if the chairperson is absent the acting chairperson, may administer oaths.[651] The BZA may compel the attendance of witnesses.[652] Minutes of BZA hearings shall be kept by the BZA secretary or clerk and shall include the vote of each member upon each question.[653] In addition to minutes, a court reporter is generally present to take a verbatim transcript of the proceedings. If a member is either not present or fails to vote, the minutes should note this fact.[654] The BZA should keep "records of its examinations and other official actions, all of which shall be immediately filed in the office of the board of trustees and be a public record."[655]

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[645] PLANNING AND ZONING LAW, *supra* note 335, at §§ 9:2, 9:11.
[646] PLANNING AND ZONING LAW, *supra* note 335, at § 9:12 (citing *Nunamaker v. Bd. of Zoning Appeals of Jerusalem Twp.*, 2 Ohio St.3d 115, 118 443 N.E.2d 172, 175 (1982)).
[647] PLANNING AND ZONING LAW, *supra* note 335, at § 9:12.
[648] PLANNING AND ZONING LAW, *supra* note 335, at § 9:12.
[649] OHIO REV. CODE ANN. § 519.15.
[650] OHIO REV. CODE ANN. § 519.15.
[651] OHIO REV. CODE ANN. § 519.15.
[652] OHIO REV. CODE ANN. § 519.15.
[653] OHIO REV. CODE ANN. § 519.15.
[654] OHIO REV. CODE ANN. § 519.15.
[655] OHIO REV. CODE ANN. § 519.15.

Procedure for Appeal of Decision of Administrative Official

"[A]ny person aggrieved or…any officer of the township affected by any decision of the administrative officer" may appeal to the BZA.[656] Such appeals must be taken within twenty (20) days following the decision that is the reason for the appeal.[657] The filing must include a notice of appeal and state the grounds for the appeal. It must be filed with the officer from whom the appeal is taken and with the BZA.[658] After the filing of the notice of appeal, the officer whose decision is being appealed shall immediately send all documents pertaining to the decision to the BZA.[659]

The BZA shall then "fix a reasonable time for the public hearing of the appeal."[660] Each interested party shall receive ten (10) days' notice in writing of the public hearing.[661] Notice of the hearing shall also be published once in one or more newspapers of general circulation[662] in the county at least ten (10) days prior to the hearing.[663] Parties may represent themselves at the hearing or be represented by an attorney.[664]

Following the hearing, the BZA shall render a written decision and its findings of fact and conclusions within a "reasonable time" after the appeal has been submitted to the board.[665] Such a written decision and findings of fact and conclusions shall be delivered to each of the parties to the appeal.

Decision

The BZA should issue a written decision and its findings of fact and conclusions. Such a written decision and findings of fact and conclusions shall be delivered to each of the parties to the appeal.

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[656] OHIO REV. CODE ANN. § 519.15.
[657] OHIO REV. CODE ANN. § 519.15.
[658] OHIO REV. CODE ANN. § 519.15.
[659] OHIO REV. CODE ANN. § 519.15.
[660] OHIO REV. CODE ANN. § 519.15.
[661] OHIO REV. CODE ANN. § 519.15.
[662] Pursuant to R.C. § 7.12, a newspaper of general circulation is defined as "a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements: (1) It is printed in the English language using standard printing methods, being not less than eight [8] pages in the broadsheet format or sixteen [16] pages in the tabloid format; (2) It contains at least twenty-five per cent [25%] editorial content, which includes, but is not limited to, local news, political information, and local sports; (3) It has been published continuously for at least three [3] years immediately preceding legal publication by the state agency or political subdivision; (4) The publication has the ability to add subscribers to its distribution list; and (5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States postal service 'Statement of Ownership, Management, and Circulation' (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve [12] months immediately preceding legal publication."
[663] OHIO REV. CODE ANN. § 519.15.
[664] OHIO REV. CODE ANN. § 519.15.
[665] OHIO REV. CODE ANN. § 519.15.

Appeal From BZA Decision

If a party is aggrieved by the decision of the BZA, the BZA's decision may be appealed to the Court of Common Pleas.[666]

[666] See OHIO REV. CODE ANN CH. 2506.

PUBLIC RECORDS AND RECORDS RETENTION

Ohio's Public Records Law

Ohio's Public Records Law is codified in R.C. § 149.43.

Definitions

As provided by the Ohio Revised Code, the following definitions apply concerning public records:

- "Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.[667]

- "Public Record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the records listed in R.C. § 149.43(A)(1)(a) through (mm).[668]

General Application of Ohio's Public Records Law

Unless exempted by law from being a public record, all records kept and maintained by a township are public records.[669]

Availability of Public Records

Upon receipt of a request for public records, townships are under a duty to produce public records for inspection and/or copying/reproduction. Concerning inspection of public records, R.C. § 149.43(B)(1) states that "[u]pon request . . . all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours."[670] Upon request for copies and/or reproduction of a public record, R.C. § 149.43(B)(1) states that "a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time."[671] There is no requirement that the township or person responsible for the public record permit or allow the person seeking the copy of the public record to, themselves, make the copy of the public record.[672]

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[667] OHIO REV. CODE ANN. § 149.011(G).
[668] OHIO REV. CODE ANN. § 149.43(A)(1).
[669] OHIO REV. CODE ANN. § 149.43.
[670] OHIO REV. CODE ANN. § 149.43(B)(1).
[671] OHIO REV. CODE ANN. § 149.43(B)(1).
[672] OHIO REV. CODE ANN. § 149.43(B)(6).

Maintenance of Records

Consistent with the express, statutory goal "[t]o facilitate broader access to public records" and consistent with the requirements and duties under R.C. § 149.43(B) to produce public records, a township "shall organize and maintain public records in a manner that they can be made available for inspection or copying."[673] In addition, the township shall have a copy of its current records retention schedule available "at a location readily available to the public."[674]

Requests for Public Records

There are no requirements governing the means, format, style or content of public records requests. In other words, a public records request can be made by any means, be in any format, be in any style, and does not have to contain any specific information.

A. Prohibition Against Placing Conditions on Requests

Except as required or authorized by state or federal law, conditions cannot be placed on requests for public records. According to R.C. § 149.43(B)(4):

> no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requestor's identity or the intended use of the requested public record constitutes a denial of the request.[675]

B. Written Requests, Identification, Purpose

In accordance with R.C. § 149.43(B)(5), a township may ask the person making the public records request to:

- Make the request in writing
- Ask the requester's identity
- Inquire about the intended use of the information.[676]

These requests may only be made **after** disclosing to the person making the request that:

> a written request is not mandatory and that the requester may decline to reveal the requester's identity or the intended use and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.[677]

[673] OHIO REV. CODE ANN. § 149.43(B)(2).
[674] OHIO REV. CODE ANN. § 149.43(B)(2).
[675] OHIO REV. CODE ANN. § 149.43(B)(4).
[676] OHIO REV. CODE ANN. § 149.43(B)(5).
[677] OHIO REV. CODE ANN. § 149.43(B)(5).

C. Ambiguous and/or Overly Broad Requests

If a public records request is ambiguous or overly broad or where the person making the request has difficulty in making the request, "such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request."[678] Under such circumstances, the township "shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties."[679]

Choice of Media

A person requesting a copy/reproduction of a public record shall have a choice of media upon which the public record is copied/reproduced.[680] Specifically:

> The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy.[681]

Cost

A township may charge the actual cost of copying or reproducing the public record.[682] The cost encompasses materials, but does not include labor.[683] The township may require the person making the request "to pay in advance the cost involved in providing the copy of the public record."[684]

Postage/Delivery

Pursuant to R.C. § 149.43(B)(7), a person making a request for public records may request that copies of the public records be delivered to that person or any other person via U.S. mail or other

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[678] OHIO REV. CODE ANN. § 149.43(B)(2).
[679] OHIO REV. CODE ANN. § 149.43(B)(2).
[680] OHIO REV. CODE ANN. § 149.43(B)(6).
[681] OHIO REV. CODE ANN. § 149.43(B)(6).
[682] OHIO REV. CODE ANN. § 149.43(B)(6).
[683] 80 KARL OAKES, OHIO JURISPRUDENCE 3D § 31 (updated June 2019) (citing *State ex rel. The Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 625, N.E.2d 174, 180 (1994)).
[684] OHIO REV. CODE ANN. § 149.43(B)(6).

means of delivery or transmission.[685] Under such circumstances, "a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy."[686]

Costs incurred in the mailing, delivery, or transmission of public records in response to a public records request may be collected from the individual making the public records request. Specifically, a township

> may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.[687]

Denial of a Request for Public Records

A. Non-Existent Record

Where a request is made for a record that the township does not have or that the township has not maintained or does not maintain, R.C. § 149.43 does not require the creation of new documents to satisfy the demands of a requester.[688] Such a request should be denied with an explanation that the requested record does not exist.

B. Denial of Entire Record

In accordance with R.C. § 149.43(B)(3), if a public records request is ultimately denied, the township or person responsible for the public record "shall provide the requester with an explanation, including legal authority, setting forth why the request was denied."[689] If the initial request for the records was made in writing, the explanation shall be provided in writing.[690]

C. Redaction

Where a public record exists, but "contains information that is exempt from the duty to permit public inspection or to copy the public record," R.C. § 149.43(B)(1) states that:

> the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the

[685] OHIO REV. CODE ANN. § 149.43(B)(7).
[686] OHIO REV. CODE ANN. § 149.43(B)(7).
[687] OHIO REV. CODE ANN. § 149.43(B)(7).
[688] *State ex rel. Fant v. Mengel*, 62 Ohio St.3d 197, 198, 580 N.E.2d 1085, 1086 (1991).
[689] OHIO REV. CODE ANN. § 149.43(B)(3).
[690] OHIO REV. CODE ANN. § 149.43(B)(3).

public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible.[691]

Pursuant to R.C. § 149.43(A)(13), "redaction" as related to public records means "obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code."[692]

According to R.C. § 149.43(B)(1), "[a] redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction."[693] As a denial of a request for a public record, all redactions must be supported with an explanation of the redaction that includes legal authority setting forth why the request was denied.[694] Such explanation, including legal authority, must be provided to the person who made the public records request.[695] If the initial request for the records was made in writing, the explanation shall be provided in writing.[696]

Records Requests for Peace Officer, Parole Officer, Probation Officer, Bailiff, Prosecuting Attorney, Assistant Prosecuting Attorney, Correctional Employee, Community-Based Correctional Facility Employee, Youth Services Employee, Firefighter, EMT, Investigator of the Bureau of Criminal Identification and Investigation, or Federal Law Enforcement Officer Residential or Familial Information

Pursuant to R.C. § 149.43(A)(1)(p), peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer residential and familial information are not a public records.[697] These individuals are known as "designated public service workers."[698]

Pursuant to R.C. § 149.43(A)(8), Designated public service worker residential and familial information" means any information that discloses any of the following about these positions:

- The address of the actual personal residence of a peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, an investigator of the bureau of criminal identification and investigation, or federal law enforcement officer, except for the state or political subdivision in which the peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter,

[691] OHIO REV. CODE ANN. § 149.43(B)(1).
[692] OHIO REV. CODE ANN. § 149.43(A)(11).
[693] OHIO REV. CODE ANN. § 149.43(B)(1).
[694] OHIO REV. CODE ANN. § 149.43(B)(3).
[695] OHIO REV. CODE ANN. § 149.43(B)(3).
[696] OHIO REV. CODE ANN. § 149.43(B)(3).
[697] OHIO REV. CODE ANN. § 149.43(A)(1)(p).
[698] OHIO REV. CODE ANN. § 149.43(A)(7)

EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer resides;

- Information compiled from referral to or participation in an employee assistance program;

- The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer;

- The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, investigator of the bureau of criminal identification and investigation's, or federal law enforcement officer's employer;

- The identity and amount of any charitable or employment benefit deduction made by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, investigator of the bureau of criminal identification and investigation's, or federal law enforcement officer's employer from the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's compensation unless the amount of the deduction is required by state or federal law;

- The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer;

- A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.[699]

For purposes of the Ohio Public Record Law, "peace officer" has the same meaning as in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff..[700] Also, "firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.[701] Additionally, "'EMT' means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the same meanings as in section 4765.01 of the Revised Code."[702]

Consequences of Failing to Comply with Ohio's Public Records Law

A person that is aggrieved by an alleged failure of a public office or person to comply with Ohio's Public Records Law may either (but not both)"[f]ile a complaint with the clerk of the court of claims or the clerk of the court of common pleas under section 2743.75 of the Revised Code" or file an action for mandamus.[703] A mandamus action is a court action to force a public office or person to comply with the law. Such an action may be brought in the court of common pleas, the appellate court, or the Supreme Court of Ohio.[704] If the person prevails in the mandamus action, such person may be awarded court costs, attorney's fees, and, if applicable, statutory damages.[705] According to R.C. § 149.43(C)(2), statutory damages amounts to one hundred dollars ($100.00) per business day for every day the request was not complied with, beginning with the date the mandamus action was filed, up to a maximum of one thousand dollars ($1,000.00).

Furthermore, R.C. § 149.351 requires that public records shall not be "removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of" unless explicitly provided for by law, or established "under the rules adopted by the records commissions provided for under sections 149.38 to 149.42 of the Revised Code."[706] A person who is aggrieved by the wrongful removal, destruction, mutilation or transfer of such a public record may file a civil action "to recover a forfeiture in the amount of one thousand dollars for each violation, but not to exceed a cumulative total of ten thousand dollars, regardless of the number of violations, and to obtain an award of the reasonable attorney's fees incurred by the person in the civil action not to exceed the forfeiture amount recovered."[707] Thus, the amounts that can be recovered in forfeiture for the destruction or

[699] OHIO REV. CODE ANN. § 149.43(A)(8)(a)-(g).
[700] OHIO REV. CODE ANN. § 149.43(A)(9).
[701] OHIO REV. CODE ANN. § 149.43(A)(9).
[702] OHIO REV. CODE ANN. § 149.43(A)(9).
[703] OHIO REV. CODE ANN. § 149.43(C)(1).
[704] OHIO REV. CODE ANN. § 149.43(C)(1)(b).
[705] OHIO REV. CODE ANN. § 149.43(C)(1)(b).
[706] OHIO REV. CODE ANN. § 149.351(A).
[707] OHIO REV. CODE ANN. § 149.351(B)(2).

damage of records, as well as the amount of attorney's fees which can be recovered, are limited to ten thousand ($10,000.00).

Training Requirement

In accordance with R.C. § 149.43(E)(1), all elected officials, including township officials or their appropriate designees, shall attend training on Ohio's Public Records Law as approved by the Ohio Attorney General.[708] The training shall be for a minimum of three (3) hours "for every term of office for which the elected official was appointed or elected to the public office involved."[709] For a list of training sessions being offered by the Attorney General, see the Ohio Attorney General's website:

http://www.ohioattorneygeneral.gov/Training-and-Education

Required Public Records Policy

Pursuant to R.C. § 149.43(E)(2), all public offices shall adopt a public records policy for responding to requests for public records.[710] Such policy shall be in compliance with Ohio's Public Records Law.[711] Except as otherwise permitted by R.C. § 149.43, the policy shall not do any of the following:

- limit the number of public records that the public office will make available to a single person,
- limit the number of public records that it will make available during a fixed period of time,
- establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight (8) hours.[712]

The policy shall be distributed to "the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office."[713] In the case of a township, this employee is most likely the township fiscal officer. Whether the fiscal officer or another employee, the records custodian or records manager or other employee that has custody of the records shall be required to acknowledge receipt of a copy of the public records policy.[714]

The public records policy shall be posted on a poster in a conspicuous place within the office of each branch and main location of the public office.[715] If the office has a website, the policy may be posted thereto.[716] The public records policy shall also be included in any handbook or manual of general policies and procedures for all employees of the public office, if such a manual or

[708] OHIO REV. CODE ANN. § 149.43(E)(1).
[709] OHIO REV. CODE ANN. § 109.43(B).
[710] OHIO REV. CODE ANN. § 149.43(E)(2).
[711] OHIO REV. CODE ANN. § 149.43(E)(2).
[712] OHIO REV. CODE ANN. § 149.43(E)(2).
[713] OHIO REV. CODE ANN. § 149.43(E)(2).
[714] OHIO REV. CODE ANN. § 149.43(E)(2).
[715] OHIO REV. CODE ANN. § 149.43(E)(2).
[716] OHIO REV. CODE ANN. § 149.43(E)(2).

handbook exists or is maintained.[717] This is most likely an employee handbook or manual provided to all employees.

Pursuant to R.C. § 109.43, the Ohio Attorney General is charged, for purposes of providing guidance to public offices in drafting a public records policy as required by R.C. § 149.43(E)(2), with drafting a model public records policy. Such policy is available on the Ohio Attorney General's website at:

https://www.ohioattorneygeneral.gov/Files/Government-Entities/Model-Public-Records-Policy.aspx.

While a model policy is available from the Ohio Attorney General, the Delaware County Prosecuting Attorney has drafted a model policy for use throughout Delaware County. This model policy appears on the following pages.

[717] OHIO REV. CODE ANN. § 149.43(E)(2).

_____ TOWNSHIP PUBLIC RECORDS POLICY

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I. Introduction:

It is the policy of the _____ Township, Delaware County, Ohio Board of Township Trustees ("Board") that openness leads to a better informed citizenry, which leads to better government and better public policy. It is therefore the policy of the Board and the government of _____ Township, Delaware County, Ohio ("_____ Township") to strictly adhere to the State of Ohio's Public Records Act.

II. Purpose:

The Board acknowledges that _____ Township maintains many records including, but not limited to, both fixed medium (i.e., paper, film, etc.) and electronic (i.e., email) that are used in the administration and operation of _____ Township. The records maintained by the Board and/or _____ Township and the ability to access them are a means to provide trust between the public and _____ Township. To foster, maintain, and continue to build such trust, the Board and _____ Township, in accordance with state law, adopts this Public Records Policy ("Policy"). (R.C. § 149.43(E)(2)).

III. Definitions:

As provided by the Ohio Revised Code, the following definitions apply to this Policy:

- "Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. (R.C. § 149.011(G)).

- "Public Record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the records listed in R.C. § 149.43(A)(1)(a) through (mm). (R.C. § 149.43(A)(1)).

IV. Scope:

All records of the Board and _____ Township are public records unless they do not meet either or both of the definitions of "Records" or "Public Record" as defined by the Ohio Revised Code (R.C. § 149.011(G) and R.C. § 149.43(A)(1)) or are otherwise specifically exempt from disclosure pursuant to the Ohio Revised Code or applicable federal law.

V. Internal Procedure:

- Each office, department, or function that maintains records shall designate and maintain a designated employee who serves as the custodian of all records maintained by that office, department, or function.

- Each such designated employee and/or record custodian shall have a copy of this Policy or, in lieu of this Policy, a public records policy developed by that individual office, department, or function. The designated employee and/or record custodian shall, in writing, acknowledge receipt of this Policy or the public records policy developed by that individual office, department, or function in lieu of this Policy. (See Form 1) (R.C. 149.43(E)(2)).

- This Policy, as well as the Schedules of Records Retention and Disposition (RC-2) applicable to that office, department, or function are located at every location of that office in which the public may be given access to records.

- This Policy is a part of and shall be located in and/or attached to the _____ Township Employee Handbook.

- A poster which generally describes this Policy shall be displayed at every location in which the public may access records.

VI. Fees and Costs:

- Unless a different fee is required by law, in accordance with R.C § 149.43, the following fee schedule is established for providing copies or reproductions of public records:

Media Type	Unit	Cost Per Unit
Letter or Legal Sized Paper Copy (Single Side)	Page	$0.05
Letter or Legal Sized Paper Copy (Double Side)	Two Sided Page	$0.05
Certified Paper Copy	Page	$1.00
Microfiche	Fiche	$0.50
Film Duplication	16mm Roll	$15.00
Film Duplication	35mm Roll	$20.00
Computer Diskette	3.5" Diskette	$1.00
Audio Cassette Tape	Tape	$1.00
Video Cassette Tape	Tape	$2.50
CD/CD Rom	Disk	$1.00
Email Documents	Various Forms	See Cost Per Unit Above

- The above fee schedule shall be clearly posted and visible to the public at all locations authorized to provide copies of public records. (See Form 2).

- Advance payment is required before any copies are prepared.

- The Board and/or _____ Township shall charge the actual cost of material for media not listed in the fee schedule above.

- As a result of security issues and to preserve the integrity of _____ Township's computer systems, the Board and/or _____ Township will not accept blank media supplied by the requesting party. The Board or _____ Township will supply the media. The cost of the media is included in the fee schedule above or, if not contemplated in the fee schedule above, the media will be supplied at cost.

- The Board and/or _____ Township shall notify the requesting party in advance in writing of any costs for labor or materials in situations where an outside vendor must be hired to fulfill the request(s).

- The Board and/or _____ Township will charge the actual costs of postage and mailing supplies when the requesting party requires the public records to be transmitted via the United States Postal Service or any type of priority mail service.

VII. Availability/Inspection

- Upon request and subject to R.C. § 149.43(B)(1), all public records shall be promptly prepared and made available for inspection to any person during regular business hours, with the exception of legal holidays.

- Copies or reproductions of the requested records shall be made available at cost (See Fee Schedule) and within a reasonable period of time.

- "Promptly" and "Reasonable," as used above and in connection with the preparation and production of the requested records, is to be determined by the facts and circumstances of each public records request and should take into account the following:

    1. The opportunity for legal review,
    2. The volume of records requested, and,
    3. The proximity of the location where the records are stored.

VIII. Requests for Public Records

- Any person, including corporations, individuals, and even governmental agencies, may request public records, and will be allowed prompt inspection of public records and copies within a reasonable amount of time upon request.

- No specific language is required to make a request for public records. The requester must, however, identify the records requested with sufficient clarity to allow the Board and/or _____ Township to identify, retrieve, and review the records.

- If it is not clear what records are being sought, the records custodian shall contact the requester for clarification and should inform the requester of the manner in which the office keeps its records.

- To help identify, locate, or deliver the desired public records, the requester may be asked, but is not required, to:

    1. Put a records request in writing,
    2. Provide his or her identity, or
    3. Provide the intended use of the requested public record.

    If the requester is asked for any of this information, he or she shall first be advised of the following:

    1. The requester does not have to answer any of the above questions or provide a written request, and
    2. The requester's refusal to provide any of this information does not impair the requester's right to inspect and/or receive copies of the requested public records. (R.C. 149.43(B)(5)).

- For the purpose of enhancing the ability of the Board and/or _____ Township to identify and provide for prompt inspection and/or copies of the requested records in a reasonable period of time, the requester shall be provided with Form 3 for the requester to complete. In providing Form 3 to the requester, the requester shall be informed:

1. The requester does not have to complete Form 3, and
2. The requester's refusal to complete or provide any and/or all information on Form 3 does not impair the requestor's right to inspect and/or receive copies of the requested public records. (R.C. 149.43(B)(5)).

IX. Response/Release

- Requests for public records shall be processed the same regardless of the means by which the request was made. (Note Section X - Special Provisions for Public Records Requests Received by Email, Regular Mail, or Other Delivery Service.)

- The records custodian shall complete the public records request using Form 4.

- Requests for records that are capable of being satisfied immediately and about which there are no issues concerning release should be satisfied immediately.

- Requests for public records that are not capable of being satisfied immediately shall be dealt with as follows:

    1. Voluminous/Copying or Reproduction Time Required Request: (Form 5)

        a. Each such request for public records should be evaluated for the estimated number of copies required to satisfy the request and/or an estimated length of time required to gather the records.
        b. The requester shall be informed of the estimated length of time required to respond.
        c. The requester shall be informed of the estimated total fee/cost associated with copying or reproducing and delivery of the record(s) and that such estimated total cost must be paid in full prior to the record(s) being copied or reproduced.
        d. The requester shall be informed that any difference between the total estimated cost and the total actual cost shall be settled either by _____ Township re-paying any overage or, prior to the delivery of the records, the requester paying any deficit.
        e. The requester shall be informed of any items within the request that may be exempt from disclosure.
        f. If the request is made verbally the above information shall be provided to the requester either verbally or in writing. If the request is made in writing, the requester shall be informed of the above information in writing.
        g. All such information as required above shall be provided to the

requester no more than three (3) days after receiving the request.

h. Considering the volume of records requested, the requested records should be made available to the requester within a reasonable period of time.

2. Legal Issue Concerning Release: (Form 6)

a. In the event a request for public records is made to inspect and/or obtain a copy of a record whose release may be prohibited or exempted by either state or federal law, the request shall be forwarded to legal counsel (i.e., Delaware County Prosecuting Attorney or other township legal counsel) for research and/or review.
b. The person submitting the request shall be advised that their request is being reviewed by legal counsel to ensure that protected and/or exempted information is not improperly released. If the request is made verbally this information shall be provided to the requester either verbally or in writing. If the request is made in writing, the requester shall be informed in writing.
c. If after review, it is determined that the record shall be released, refer to the procedures in subsection (A) and (B) above, whichever, depending on the record(s) requested, is applicable.
d. If after review, it is determined that the record shall NOT be released, refer to Section XIII.

- Copied records may be forwarded to the requestor by any means reasonably acceptable to the requester.

- Records whose release is prohibited or exempted by either state or federal law, or which are not considered public records as defined by R.C. 149.43(A)(1), shall NOT be subject to public inspection. Refer to Section XIII.

X. Special Provisions for Public Records Requests Received by Email, Regular Mail, or Other Delivery Service

- Requests for public records received by email, regular mail, or other delivery service shall be responded to in the same manner as public records requests received via any other means, except that the records custodian, upon receipt of the request, shall, by any means practical, contact the requester and advise them as follows:

1. Advance payment is required prior to providing copies of public records,
2. The estimated total fee/cost associated with copying or reproducing and delivery of the record(s) and that such estimated total cost must be paid in full prior to the record(s) being copied or reproduced.
3. That any difference between the total estimated cost and the total actual

cost shall be settled either by _____ Township re-paying any overage or, prior to the delivery of the records, the requester paying any deficit.

4. Any items within the request that may be exempt from disclosure.

- Upon receipt of the fees/costs and where no issues concerning release exist, the copied or reproduced records shall be forwarded to the requester by any means reasonably acceptable to the requester.

- Voluminous requests, requests requiring time for copying or reproduction, and/or requests involving legal issues concerning release shall in all other respects be handled in accordance with Section IX.

XI. Medium

- The requester shall be permitted to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or record custodian determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or records custodian. When the requester makes a choice, the public office or records custodian shall provide a copy of it in accordance with the choice made by the requester. (R.C. 149.43(B)(6)).

- Persons seeking copies of public records are not permitted to make their own copies of the requested records regardless of means or media. (R.C. 149.43(B)(6)).

XII. Limited Requests

- In accordance with section 149.43(B)(7) of the Ohio Revised Code, the Board and _____ Township limits the number of requested public records to be transmitted through United States mail to a maximum of ten records per month, unless the requester certifies that the records or information in them will not be used for commercial purposes.

- For purposes of this section, "commercial purposes" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

XIII. Response/Denial

- Records Not Maintained by the Office Where the Request is Made

    1. The requested records have never been maintained by the office where the request is made,
    2. The requested records are no longer maintained or have been disposed of or transferred pursuant to applicable Schedules of Record Retention and Disposition (RC-2),
    3. The requested record is a record that has been disposed of pursuant to an Application of the One-Time Records Disposal (RC-1) or Certificate of Records Disposal (RC-3),
    4. The requested record is not a record used or maintained by the office where the request is made. In such case, the requester shall be notified that in accordance with Ohio Revised Code Section 149.40, that there is no requirement to create records to meet public record requests.

- Ambiguous or Overly Broad Request for Public Records (R.C. 149.43(B)(2))

    If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records such that the office responsible for the requested public record cannot reasonably identify what public records are being requested:

    1. The request may be denied.
    2. However, the requestor shall be provided with an opportunity to revise the request. In such case, the records custodian shall inform the requester of the manner in which records are maintained by the office and accessed in the ordinary course of the office's or records custodian's duties.

- Denial of the Public Records Request

    1. The request for a record or public record maintained by the office where the request is made may be denied if the record that is requested is prohibited from release due to applicable state or federal law.

        a. Any denial of public records requested must include an explanation, including legal authority.

b. If portions of a record are public and portions are exempt, the exempt portions are to be redacted and the rest released. If there are redactions, each redaction must be accompanied by a supporting explanation, including legal authority.
c. Employees shall consult legal counsel if they are unsure of whether the record requested should be withheld from disclosure.

2. As governed by R.C. 149.43(B)(3), if a request is ultimately denied, in whole or in part, the requester shall be provided with an explanation, including legal authority, setting forth why the request was denied.
3. If the initial request was provided in writing, then the explanation shall also be provided in writing.
4. The explanation shall not preclude the Board or _____ Township from relying upon additional reasons or legal authority in defending an action commenced pursuant to R.C. 149.43.

- Redaction/Procedure

1. Definition and Effect of a Redaction

a. "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Ohio Revised Code. (R.C. 149.43 (A)(13)).
b. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction. (R.C. 149.43(B)(1)).

2. Redaction Procedure

a. If a public record contains certain information that is exempt from the duty to permit public inspection or to copy the public record, the information within the public record that is exempt shall be redacted and that information in the record which is not exempt shall be made available.
b. Where a redaction is to be made, the records custodian shall reproduce a copy of the page where the redaction is to be made. The redaction shall be made on the copied page. The copied page shall then be re-copied with the redactions. The resulting copy shall be the page that is released to the requester.

c. The first reproduction page with the original redactions made by the employee is the work sheet. It shall be attached to the original record, and maintained in accordance with the retention period established for the original document.
d. When making that public record available for public inspection or copying, the records custodian shall notify the requester of any and all redactions and/or make any and all redactions plainly visible. (R.C. 149.43(B)(1)).
e. As governed by R.C. 149.43(B)(3), if a request is ultimately denied, in whole or in part, including redactions, the requester shall be provided with an explanation, including legal authority, setting forth why the request was denied.
f. If the initial request was provided in writing, then the explanation shall also be provided in writing.
g. The explanation shall not preclude the Board or _____ Township from relying upon additional reasons or legal authority in defending an action commenced pursuant to R.C. 149.43.

XIV. Special Provisions Related to Email

Documents in electronic mail format are records as defined by the Ohio Revised Code when their content relates to the business of the office. Email shall be treated in the same fashion as records in any other format and should follow the same retention schedules.

- Records in private email accounts used to conduct public business are subject to disclosure, and all employees or representatives of the Board and _____ Township are instructed to retain their e-mails that relate to public business and to copy them to their business email accounts and/or to the office's records custodian.

- The records custodian is to treat the emails from private accounts as records of the public office, filing them in the appropriate way, retaining them per established schedules and making them available for inspection and copying in accordance with the Public Records Act.

XV. Grievances

- If a person allegedly is aggrieved due to the inability to inspect a public record or due to the inability to receive a copy of the public record, the person shall be advised that they may contact the senior representative of the office where the request was made.

- If the person is not satisfied after contacting the senior representative of the office where the request was made, they shall be advised that Ohio Revised Code section

149.43 provides a legal means for addressing their complaint in these disputes. (R.C. 149.43(C)(1)-(3)).

XVI. Failure to Respond to a Public Records Request

The Board and _____ Township recognize the legal and non-legal consequences of failure to properly respond to a public records request. In addition to the distrust in government that failure to comply may cause, the failure to comply with a request may result in a court ordering the Board and/or _____ Township to comply with the law and to pay the requester's attorney's fees and damages.

XVII. Training and Education

The Board and _____ Township continue to update and address all education, training, disclosure, and policy requirements mandated by R.C. 109.43 and R.C. 149.43(E)(1)-(2).

FORM 1

ACKNOWLEDGEMENT OF RECEIPT OF THE _____ TOWNSHIP PUBLIC RECORDS POLICY

I, _____ am the designated employee and/or record custodian for _____ Township. I hereby acknowledge that I have received on this _____ day of _____, 20_____ a copy of the _____ Township Public Records Policy dated _____.

DATE: _____

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

FORM 2

FEE SCHEDULE AND POLICY REGARDING FEES FOR COPIES AND REPRODUCTIONS OF PUBLIC RECORDS

Unless a different fee is required by law, in accordance with R.C § 149.43, the following fee schedule is established for providing copies or reproductions of public records:

Media Type	Unit	Cost Per Unit
Letter or Legal Sized Paper Copy (Single Side)	Page	$0.05
Letter or Legal Sized Paper Copy (Double Side)	Two-Sided Page	$0.05
Certified Paper Copy	Page	$1.00
Microfiche	Fiche	$0.50
Film Duplication	16mm Roll	$15.00
Film Duplication	35mm Roll	$20.00
Computer Diskette	3.5" Diskette	$1.00
Audio Cassette Tape	Tape	$1.00
Video Cassette Tape	Tape	$2.50
CD/CD Rom	Disk	$1.00
Email Documents	Various Formats	See Cost Per Unit Above

- The above fee schedule shall be clearly posted and visible to the public at all locations authorized to provide copies of public records.
- Advance payment is required before any copies are prepared.
- The Board and/or _____ Township shall charge the actual cost of material for media not listed in the fee schedule above.
- As a result of security issues and to preserve the integrity of _____ Township's computer systems, the Board and/or _____ Township will not accept blank media supplied by the requesting party. The Board or _____ Township will supply the media. The cost of the media is included in the fee schedule above or, if not contemplated in the fee schedule above, the media will be supplied at cost.
- The Board and/or _____ Township shall notify the requesting party in advance in writing of any costs for labor or materials in situations where an outside vendor must be hired to fulfill the request(s).
- The Board and/or _____ Township will charge the actual costs of postage and mailing supplies when the requesting party requires the public records be transmitted via the United States Postal Service or any type of priority mail service.

FORM 3

_____ TOWNSHIP, OHIO
REQUEST FOR PUBLIC RECORDS
(FORM 3)

The _____ Township, Ohio government belongs to the citizens of _____ Township, Ohio. We conduct our government activities in the open and we are proud of our strong commitment to this important principle of democracy.

IMPORTANT:

COMPLETION OF THIS FORM IS NOT MANDATORY. YOUR REFUSAL TO COMPLETE OR PROVIDE ANY AND/OR ALL INFORMATION ON THIS FORM WILL NOT AFFECT YOUR RIGHT AND/OR ABILITY TO INSPECT AND/OR RECEIVE COPIES OR REPRODUCTIONS OF THE REQUESTED RECORDS. (R.C. 149.43(B)(5)).

IF YOU CHOOSE TO COMPLETE THIS FORM, IT WILL HELP US TO BETTER AND MORE EFFECTIVELY SERVE YOU IN PROVIDING YOU WITH THE RECORDS YOU ARE REQUESTING.

1. GENERAL INFORMATION: (Please Print.)

Today's Date	
Name	
Street Address	
City	
State	
Zip Code	
Telephone Number	
Facsimile Number	

2. INFORMATION ON RECORD REQUESTED: (Please Print.)

With as much specificity as possible, please describe what records you are requesting. (Use the back or attach other sheets as needed.)

3. INSPECTION OF RECORD: (Check your preference below.)

There is no charge to inspect public records while in the _____ Township, Ohio office where the records are kept. _____ Township, Ohio has adopted and provides photocopies and reproductions of public records in accordance with the Fee Schedule and Policy Regarding Fees for Copies and Reproductions of Public Records.

	I would like to inspect these records in the office when they are ready.
	I would like these records copies/reproduced and I will pick them up when they are ready.
	I would like these records copied and mailed to me at the address on this form.

4. MEDIUM:

Preferred Medium (i.e., paper, email (pdf or locked format only), CD-ROM, etc. . . .) for Copy/Reproduction.[718]	

[718] Medium is limited by the determination of the record custodian as to the types of media upon which the record can reasonably be duplicated as an integral part of the normal operations of the public office or records custodian.

FORM 4

PROCESSING FORM FOR REQUESTS FOR PUBLIC RECORDS

Name of Requester	
Date Request Received	
Date Request Completed	

Name of Employee Handling Request	

1. ESTIMATED NUMBER OF COPIES/FEES

Type of Unit	Estimated Number of Units	Cost Per Unit	Estimated Total of Fees/Costs

2. PREPAYMENT (REQUIRED)

	Prepaid

Amount of Prepayment	
Receipt Number	

3. ACTUAL NUMBER OF COPIES/FEES

Type of Unit	Actual Number of Units	Cost Per Unit	Actual Total of Fees/Costs

4. SETTLEMENT WITH REQUESTOR

Yes / No / Not Applicable	**Settlement Necessary**
Yes / No / Not Applicable	**Settlement Made**

Amount of Refund to Requester	
Check/Warrant Number	

OR

Amount Due From Requester	
Paid	**Yes / No**

5. RECORDS NOT AVAILABLE

	Record has never been maintained by the Township.
	Record is no longer maintained or has been disposed of or transferred pursuant to RC-2
	Record has been disposed of pursuant to an application of One-Time Records Disposal RC-1 or Certificate of Records Disposal (RC-3)
	Record is prohibited from release due to applicable state or federal law. **Cite for the applicable state or federal law.** |

6. LEGAL ISSUE

	Record has been forwarded to legal counsel for research/review.
	Record has been reviewed by legal counsel and records are to be released in their entirety.
	Record has been reviewed by legal counsel and contained non-releasable material. ☐ **Non-releasable material has been redacted** **Cite for the applicable state or federal law permitting redaction.** |
	Record has been reviewed and release of the entire record has been denied by legal counsel. **Cite for the applicable state or federal law.** |

FORM 5

Date

Mr. John Requester
123 North Sandusky Street
Delaware, Ohio 43015

Re: Public Request to _____

Dear Mr. Requester:

This letter is to acknowledge receipt by _____ of your public records request dated _____. Be assured, this office has every intent of fulfilling your request, however, your request has been determined to be voluminous and/or requires time to copy and/or reproduce the requested records. As a result, the purpose of this letter is to advise you of the following concerning your request:

1. The estimated length of time required to respond to your request is _____. Therefore, you can expect your request to be completed by this office on _____, 20 _____.

2. The estimated total fee/cost associated with copying or reproducing and delivery of the requested records is _____. This amount must be paid to this office in advance of any copying or reproduction of the requested records. If you have not done so already, please forward this amount to this office as soon as possible so that this office may proceed with your request and have your records ready for you on the date specified above. A failure to forward this amount will result in a delay or the requested records not being produced. Any difference between the total estimated cost and the actual total cost shall be settled either by: a) _____ Township re-paying any overage to you; or b) prior to the delivery of the records, you paying _____ Township any deficit.

3. There are/are not items within your request that may be exempt from disclosure. These items which may be exempt are as follows.

   _____
   _____
   _____

   Should you have any questions, please feel free to contact me at (740) _____, or email me at _____, or send mail to or meet with me personally at the above address.

Sincerely,

Records Custodian

FORM 6

Date

Mr. John Requester
123 North Sandusky Street
Delaware, Ohio 43015

Re: Public Request to _____

Dear Mr. Requester:

This letter is to acknowledge receipt by _____ of your public records request dated _____. Please be advised your request is being reviewed by legal counsel. I will contact you regarding your request as soon as legal counsel completes its review and advises me regarding your request.

Should you have any questions, please feel free to contact me at (740) _____, or email me at _____, or send mail to or meet with me personally at the above address.

Sincerely,

Records Custodian

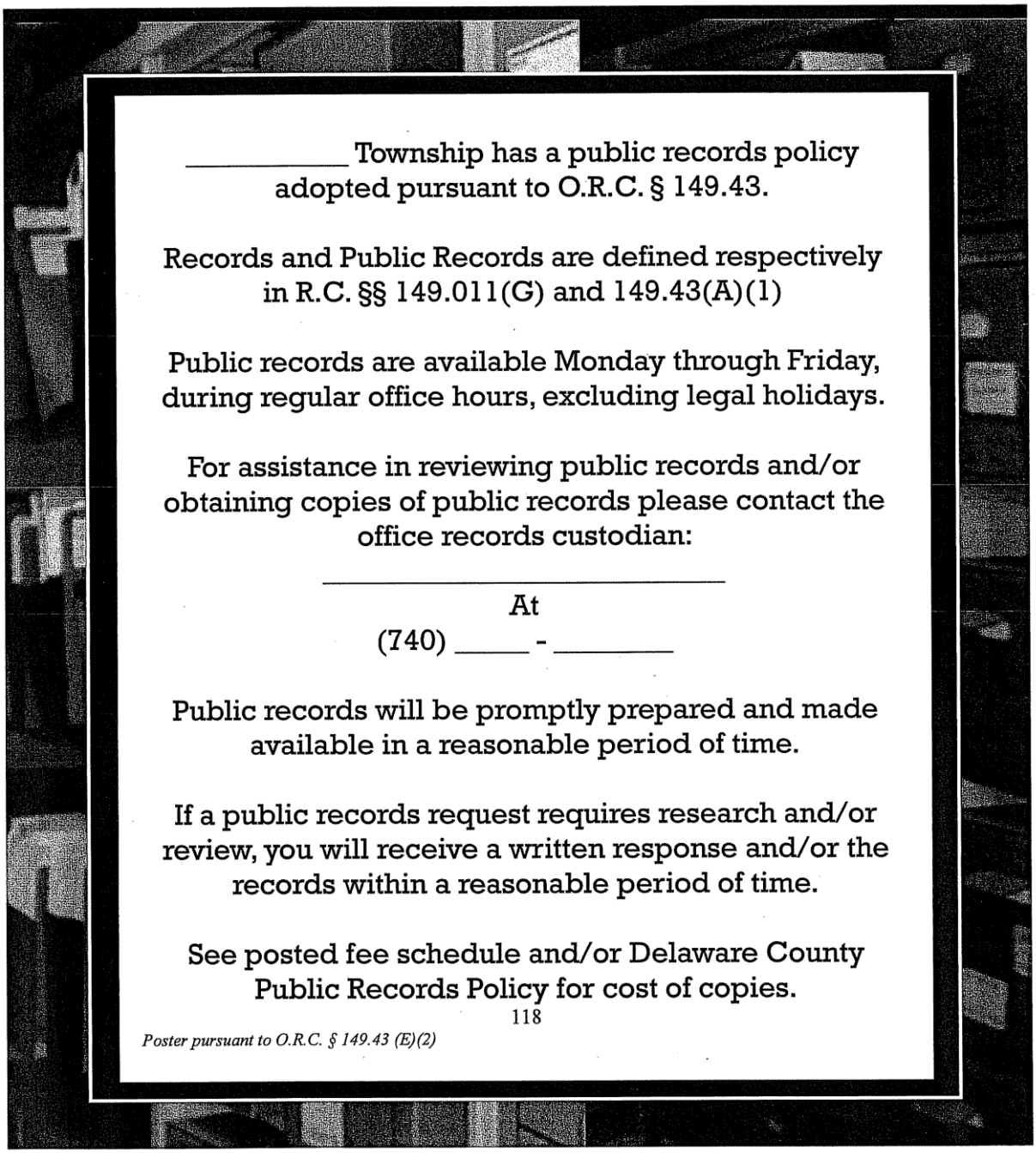
Required Public Records Policy Poster

Pursuant to R.C. § 149.43(E)(2), every public office shall have a "poster that describes its public records policy."[719] The poster shall be posted "in a conspicuous place in the public office and in all locations where the public office has branch offices."[720]

To be used in conjunction with the model public records policy on the preceding pages, the Delaware County Prosecuting Attorney has created the model poster which appears on the following page:

[719] OHIO REV. CODE ANN. § 149.43(E)(2).
[720] OHIO REV. CODE ANN. § 149.43(E)(2).

_____ Township
Public Records Policy



_____ Township has a public records policy adopted pursuant to O.R.C. § 149.43.

Records and Public Records are defined respectively in R.C. §§ 149.011(G) and 149.43(A)(1)

Public records are available Monday through Friday, during regular office hours, excluding legal holidays.

For assistance in reviewing public records and/or obtaining copies of public records please contact the office records custodian:

_____

At

(740) _____ - _____

Public records will be promptly prepared and made available in a reasonable period of time.

If a public records request requires research and/or review, you will receive a written response and/or the records within a reasonable period of time.

See posted fee schedule and/or Delaware County Public Records Policy for cost of copies.

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Poster pursuant to O.R.C. § 149.43 (E)(2)

Log of Public Records Requests

The State of Ohio Auditor plans to step up efforts to ensure that public offices are complying with requests for public records. According to the Auditor, those efforts will include spot-checks for compliance, timeliness, and accuracy of records releases. While the practice of tracking and maintaining records of public records requests has always been recommended, in light of the Auditor's plan, such practices become even more important.

The Auditor has recommended that all local governments maintain a log of all public records requests. At a minimum, the log should contain the date the request is received, the date of the response to the request, the name of the person or entity making the request (if given by the requester), the name of the person fulfilling the request, a description of the records requested, and, if the request is denied in whole or in part, the legal authority supporting the denial of the record (i.e., exemption or redaction). In connection with the log, the Auditor also suggests that copies of the records released be kept and maintained.

In order to avoid audit issues, boards of township trustees should consider adopting policies requiring the use of a log of public records requests. The log should be similar to the chart below. The purpose of the chart is to track and log public records requests. This chart contains the information that the Auditor would likely request in conducting an audit to check for compliance with requests for public records. In connection with this chart, it is recommended that copies of the released records be kept and maintained in a file separate and apart from where the requested records are ordinarily kept and maintained. This segregation of files allows for the retention of exact copies of what was released or, as the case may be, not released (i.e., exemptions and redactions).

(NAME OF AGENCY/DEPARTMENT/SUBDIVISION)
LOG OF PUBLIC RECORDS REQUESTS
(PERIOD OF TIME COVERED BY LOG)

	DATE RECEIVED	DATE OF RESPONSE	NAME OF REQUESTING PERSON OR ENTITY	DESCRIPTION OF RECORDS REQUESTED	COPY OF RELEASED RECORDS KEPT		EXEMPTION/ REDACTION		LEGAL AUTHORITY FOR EXEMPTION/ REDACTION	NAME OF PERSON FULFILLING REQUEST
					YES	NO	YES	NO		
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
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20										

Township Records Commission

Pursuant to R.C. § 149.42, in each township there is established a township records commission.[721] The township records commission consists of the chairperson of the board of township trustees and the township fiscal officer.[722] The commission shall meet at least once every twelve (12) months and upon the call of the chairperson.[723]

The purpose of the township records commission is to "review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by township offices."[724]

Records Retention

When the township records commission has approved any township application for one-time disposal of obsolete records or any schedule of records retention and disposition, the commission may dispose of records as follows:

- The commission shall send that application or schedule to the Ohio History Connection (formerly known as the Ohio Historical Society) for its review.
- The Ohio History Connection shall review the application or schedule within a period of not more than sixty (60) days after its receipt, and may select for its custody any records it considers to be of continuing historical value.
- Upon completion of its review, the Ohio History Connection shall forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition to the Auditor of State for the Auditor's approval or disapproval.
- The Auditor shall approve or disapprove the application or schedule within a period of not more than sixty (60) days after receipt of it.
- Before public records are to be disposed of, the commission shall inform the Ohio History Connection of the disposal through the submission of a certificate of records disposal and shall give the History Connection, for a period of fifteen (15) business days, the opportunity to select for its custody those public records that it considers to be of continuing historical value.[725]

The township records commission at any time may review any schedule it has previously approved and for good cause shown may revise that schedule.[726]

[721] OHIO REV. CODE ANN. § 149.42.
[722] OHIO REV. CODE ANN. § 149.42.
[723] OHIO REV. CODE ANN. § 149.42.
[724] OHIO REV. CODE ANN. § 149.42.
[725] OHIO REV. CODE ANN. § 149.381.
[726] OHIO REV. CODE ANN. § 149.42.

Ohio Sunshine Laws Manual

The Ohio Attorney General regularly publishes a manual about Ohio's Public Records Law entitled "Sunshine Laws Manual" or "Yellow Book." The manual is intended to be used on a local level by local public officials. Townships are highly advised to obtain a copy of the manual. It is available upon request from the Ohio Attorney General and is available online at the address below:

http://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Legal/Sunshine-Law-Publications/Sunshine-Laws-Manual

COMMON QUESTIONS AND ISSUES

Cellular Towers and Zoning

Generally, R.C. § 519.211 states that township zoning cannot regulate or control public utilities. In *Campanelli v. AT&T Wireless Services*, the Ohio Supreme Court found that wireless telecommunications companies are public utilities.[727] Thus, their towers cannot be regulated by township zoning in most circumstances.[728] However, R.C. § 519.211(B) specifically addresses telecommunications towers and allows a township, under very specific circumstances, to regulate them.[729]

Largely, the ability of townships to regulate telecommunications towers through zoning depends upon whether a proposed new tower meets the definition of "telecommunications tower" found in R.C. § 519.211(B)(1). Specifically, the most common type of telecommunications tower is a "free-standing telecommunications tower," is defined as "any free-standing structure…that meets *all* of the following criteria [emphasis added]:

a) The free-standing…structure is proposed to be constructed on or after October 31, 1996,
b) The free-standing…structure is proposed to be owned or principally used by a public utility engaged in the provision of telecommunications services,
c) The free-standing…structure is proposed to be located in an unincorporated area of a township, in an area zoned for residential use, …
d) The free-standing structure is proposed to top at a height that is greater than either the maximum allowable height of residential structures within the zoned area as set forth in the applicable zoning regulations, or the maximum allowable height of such a free-standing structure as set forth in any applicable zoning regulations in effect immediately prior to October 31, 1996, or as those regulations subsequently are amended.
e) The free-standing structure…is proposed to have attached to it radio frequency transmission or reception equipment."[730]

In determining if a proposed telecommunications tower meets these requirements, the township must examine how the area surrounding the tower is zoned. Under R.C. § 519.211(B)(1), the area must be zoned for "residential use." Accordingly, the Ohio Supreme Court in *Symmes Twp. Board of Trustees v. Smyth* held that the area surrounding the tower must actually be zoned and designated for some type of residential use.[731]

Assuming that a telecommunications tower meets this definition, R.C. § 519.211 (B)(2) addresses the erection of telecommunications towers. Under that subsection, a township has zoning authority "with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower…" [732] But this authority is limited. First, it is not

[727] *Campanelli v. AT&T Wireless Services*, 85 Ohio St.3d 103, 107, 706 N.E.2d 1267, 1270 (1999).
[728] *Campanelli v. AT&T Wireless Services*, 85 Ohio St.3d 103, 105, 706 N.E.2d 1267, 1270 (1999).
[729] *See* OHIO REV. CODE ANN. § 519.211(B)(1).
[730] OHIO REV. CODE ANN. § 519.211(B)(1)(a)-(e).
[731] *Symmes Twp. Bd. of Trustees v. Smyth*, 87 Ohio St.3d 549, 558, 721 N.E.2d 1057, 1065 (2000).
[732] OHIO REV. CODE ANN. § 519.211(B)(2).

applicable to the maintenance or use of the tower or to any change or alteration that does not substantially increase the tower's height.[733] Second, it requires that both the board of trustees and property owners adjacent to the location of the proposed tower receive advance notice of the tower via certified mail, and the notice must meet the requirements of R.C. § 519.211(B)(3)(a).[734] Notice must also be sent to owners of and people occupying a residential dwelling within 100 feet of the planned tower.[735]

Note that once notice has been received, there is a very short time frame within which a neighbor or trustee may object to the tower. If no objection is made within *fifteen* (15) days from the date of mailing of the notice, the township does not have zoning authority to regulate erection of the tower. If the trustees receive an objection or if a trustee makes an objection within fifteen (15) days, the trustees must act within *five* (5) days of receipt of the objection and have the township fiscal officer send notice to the person or company proposing to construct the tower. The notice must indicate that R.C. §§ 519.02-519.25 applies to the tower and that the township has zoning authority over it. Otherwise, the township has no zoning authority over erection of the tower.[736]

Agriculture and Zoning

Agriculture is defined broadly by R.C. § 519.01.[737] This definition includes an extensive, though not exhaustive, list of what constitutes agriculture or agricultural activities under Ohio law.[738]

Case law has expanded the already broad statutory definition of what constitutes agriculture. Common activities associated with agriculture, such as "animal husbandry," have come to be accepted within the statute's purview.[739] Thus, "agriculture" includes rodeos,[740] riding stables,[741] and the breeding, raising, and care of dogs.[742]

Except under limited circumstances, townships may not use zoning to regulate the use of land utilized for agricultural purposes.[743] This includes buildings or structures incident to the use of the land for agricultural purposes.[744]

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[733] OHIO REV. CODE ANN. § 519.211(B)(2).
[734] OHIO REV. CODE ANN. § 519.211(B)(3)(b).
[735] OHIO REV. CODE ANN. §519.211(E).
[736] OHIO REV. CODE ANN. § 519.211.
[737] *See* OHIO REV. CODE ANN. § 519.01.
[738] OHIO REV. CODE ANN. § 519.01.
[739] *See Mentor Lagoons, Inc. v. Zoning Bd. of Appeals of Mentor Township*, 168 Ohio St. 113, 119-20, 151 N.E.2d 533. 538 (1958).
[740] *Griebling v. Troy Township*, 5th Dist. Richland No. CA-2794, 1991 WL 87144, *2 (May 15, 1991)(citing *Mentor Lagoons, Inc. v. Zoning Bd. of Appeals of Mentor Township*, 168 Ohio St. 113, 119-20, 151 N.E.2d 533. 538 (1958)).
[741] *Griebling v. Troy Township*, 5th Dist. Richland No. CA-2794, 1991 WL 87144, *2 (May 15, 1991)(citing *Mentor Lagoons, Inc. v. Zoning Bd. of Appeals of Mentor Township*, 168 Ohio St. 113, 119-20, 151 N.E.2d 533. 538 (1958)).
[742] *Harris v. Rootstown Twp Zoning Bd. of Appeals*, 44 Ohio St.2d 144, 338 N.E.2d 763 (1975).
[743] OHIO REV. CODE ANN. § 519.21(A).
[744] OHIO REV. CODE ANN. § 519.21(A).

The limited circumstances include in platted subdivisions approved under R.C. §§ 711.05, 711.09, or 711.10, or in any area consisting of fifteen (15) or more contiguous lots approved under R.C. § 711.131 under the following circumstances:

1) Agriculture on lots of one (1) acre or less,[745]
2) Buildings or structures incident to the use of land for agricultural purposes on lots greater than one (1) acre but not greater than five (5) acres by: set back building lines, height, and size,[746]
3) Dairying and animal and poultry husbandry on lots greater than one (1) acre but not greater than five (5) acres when at least thirty-five (35%) percent of the lots in the subdivision are developed with at least one (1) building, structure, or improvement that is subject to real estate tax or tax on mobile homes under R.C. § 4503.06.[747]

The above exceptions do not apply to lots that are five (5) acres or greater.[748] Thus, agriculture is not subject to zoning when conducted on lots that are five (5) acres or larger.

Farm markets are subject to some limited zoning regulations. The aspects and limitations on regulating farm markets through township zoning are stated in R.C. § 519.21(C).

There remains the concern that simple agriculture may become commercial activity. No bright-line test exists that unequivocally distinguishes "agriculture" from "commercial activity." Nevertheless, there are particular land uses and activities that, either directly or by interpretation, may be deemed to be "agriculture." Questions about particular activities falling under the definition of "agriculture" must be addressed on a case-by-case basis.

Farm residences and homes for farm workers do not fall under the definition of agriculture.[749] Although the Revised Code includes both farming and ranching under the definition of agriculture, a residence does not fall under the definition of agriculture and, therefore, may be regulated through zoning.[750]

Cooperative Agreements

Under R.C. § 9.482, political subdivisions, including townships, are permitted to contract with any other political subdivision or state agency for joint services, whereby one subdivision or state agency will perform for the recipient subdivision or state agency any service that the recipient subdivision or state agency is otherwise legally authorized to exercise, perform or render. In other words, R.C. § 9.482 authorizes townships to contractually agree "to exercise any power, perform any function, or render any service" for another contracting political subdivision or state agency, so long as the recipient subdivision or state agency is lawfully authorized to perform the service

[745] OHIO REV. CODE ANN. § 519.21(B)(1).
[746] OHIO REV. CODE ANN. § 519.21(B)(2).
[747] OHIO REV. CODE ANN. § 519.21(B)(3).
[748] OHIO REV. CODE ANN. § 519.21(B).
[749] 1962 Ohio Op. Att'y Gen. No. 62-3440.
[750] OHIO REV. CODE ANN. § 519.01; 1962 Ohio Op. Att'y Gen. No. 62-3440.

itself.[751] Note that an agreement by one township to perform services for another subdivision or state agency does not, under any circumstances, deprive the recipient subdivision or state agency of its powers, functions, or authority, even if the recipient subdivision or state agency agrees that the power or function will be performed on its behalf by the other under a contract.[752]

In addition, R.C. § 9.482 permits a township to contract for the collection, administration, or enforcement of any tax on behalf of another subdivision, so long as the contracting subdivisions do not enter into any agreement "to levy any tax or to exercise, with regard to public moneys, any investment powers, perform any investment function, or render any investment service on behalf of a contracting subdivision."[753]

Townships are required to obtain the written consent of any non-participating political subdivision in the event that any service contracted for will take place within the jurisdiction of the non-participating subdivision.[754]

Junk Motor Vehicles

A) Definitions

The Ohio Revised Code defines the following terms as follows:

1) Collector's Vehicle

"Collector's vehicle" means any motor vehicle or agricultural tractor or traction engine that is of special interest, that has a fair market value of one hundred dollars or more, whether operable or not, and that is owned, operated, collected, preserved, restored, maintained, or used essentially as a collector's item, leisure pursuit, or investment, but not as the owner's principal means of transportation.[755]

2) Junk Motor Vehicle

"Junk motor vehicle" means a motor vehicle that meets all of the following criteria:

a) Three model years old, or older;

b) Apparently inoperable;

c) Extensively damaged, including, but not limited to, any of the following: missing wheels, tires, engine, or transmission.[756]

[751] OHIO REV. CODE ANN. § 9.482.
[752] OHIO REV. CODE ANN. § 9.482(C).
[753] OHIO REV. CODE ANN. § 9.482(C).
[754] OHIO REV. CODE ANN. § 9.482(C).
[755] OHIO REV. CODE ANN. § 4501.01(F).
[756] OHIO REV. CODE ANN. § 505.173(E).

B) Storage of Junk Motor Vehicles

A "board of township trustees may adopt resolutions as the board considers necessary to regulate the storage of junk motor vehicles on private or public property within the unincorporated area of the township."[757] Such resolution shall not restrict any of the following:

1) operation of a scrap metal processing facility licensed under authority of R.C. § 4737.05 to 4737.12;

2) operation as a motor vehicle salvage dealer, salvage motor vehicle auction, or salvage motor vehicle pool of a person licensed under Chapter 4738. of the Revised Code;

3) provision of towing and recovery services conducted under R.C. § 4513.60 to 4513.63, including the storage and disposal of junk motor vehicles removed from public or private property in accordance with those sections.[758]

Whoever violates any such resolution is guilty of a minor misdemeanor.[759] Each day that a violation of such resolution continues constitutes a separate offense.[760] Fines levied and collected as a result of any such violations shall be paid into the township general revenue fund.[761]

In addition to imposing a penalty, a board of trustees may institute "an action for injunction, mandamus, or abatement, or any other appropriate action or proceeding to prohibit the storage of junk motor vehicles in violation" of the resolution.[762]

C) Storage of Collectors' Vehicles

No resolution regulating the storage of junk motor vehicles shall "prevent a person from storing or keeping, or restrict a person in the method of storing or keeping, any collector's vehicle on private property."[763] The resolution may require any unlicensed collector's vehicle to be concealed, by means of buildings, fences, vegetation, terrain, or other suitable screening.[764]

Regardless of whether it is licensed or unlicensed, a collector's vehicle is a "junk motor vehicle" if the collector's vehicle meets the definition of "junk motor vehicle" as that term is defined in the Ohio Revised Code.[765] If a collector's vehicle meets all of the criteria for being a "junk motor vehicle," then "a board of township trustees . . . may regulate the storage of that motor vehicle on private or public property in the same manner that the board may regulate the storage of any other

[757] OHIO REV. CODE ANN. § 505.173(A).
[758] OHIO REV. CODE ANN. § 505.173(A).
[759] OHIO REV. CODE ANN. § 505.173(D).
[760] OHIO REV. CODE ANN. § 505.173(D).
[761] OHIO REV. CODE ANN. § 505.173(D).
[762] OHIO REV. CODE ANN. § 505.173(B).
[763] OHIO REV. CODE ANN. § 505.173(A).
[764] OHIO REV. CODE ANN. § 505.173(A).
[765] OHIO REV. CODE ANN. § 505.173(C).

junk motor vehicle and, in case of a violation of [any such regulation] . . . , may pursue any remedy provided by law."[766]

D) Removal of Junk Motor Vehicles

Subject to certain restrictions (See R.C. §§ 505.871(D) and 505.173), the "board of township trustees may provide, by resolution, for the removal of any vehicle in the unincorporated territory of the township that the board determines is a junk motor vehicle," including collector's vehicles that meet the definition of a "junk motor vehicle."[767] In order for the board of trustees to find that a vehicle is a junk motor vehicle, the vehicle must meet all of the criteria of being a "junk motor vehicle" as that term is specifically defined by the Ohio Revised Code.

1) Removal from Public Property

"If a junk motor vehicle is located on public property, the board of township trustees may provide in the resolution for the immediate removal of the vehicle."[768]

2) Removal from Private Property

"If a junk motor vehicle is located on private property, the board of township trustees may provide in the resolution for the removal of the vehicle not sooner than fourteen (14) days after the board serves written notice of its intention to remove or cause the removal of the vehicle on the owner of the land and any holders of liens of record on the land."[769]

The notice required to remove a junk motor vehicle from private property shall include all of the following:

a) General description of the vehicle to be removed;

b) A statement that the board has determined that the vehicle is a junk motor vehicle;

c) A statement that if the owner of the land fails to remove the vehicle within fourteen (14) days after service of the notice, the board may remove or cause the removal of the vehicle;

d) A statement that any expenses the board incurs in removing or causing the removal of the vehicle may be entered upon the tax duplicate and become a lien upon the land from the date of entry.[770]

Notice shall be sent by certified mail, return receipt requested, to the owner of the land (if the owner either lives in the township or if the owner's address is known) where the junk motor vehicle

[766] OHIO REV. CODE ANN. § 505.173(C).
[767] OHIO REV. CODE ANN. § 505.871(A), (F).
[768] OHIO REV. CODE ANN. § 505.871(B).
[769] OHIO REV. CODE ANN. § 505.871(C)(1).
[770] OHIO REV. CODE ANN. § 505.871(C)(2).

is located and to any holders of liens of record on the land.[771] Where notice is sent by certified mail and is refused or unclaimed, or if an owner's address is unknown and cannot reasonably be ascertained by an exercise of reasonable diligence, the notice shall be published once in a newspaper of general circulation in the township before the removal of the vehicle.[772] If the land where the vehicle is located contains a house or other structures, the notice shall also be posted on the house and/or other principal structure on the land.[773]

"A notice sent by certified mail shall be deemed to be served for purpose of this section on the date it was received as indicated by the date on a signed return receipt."[774] "A notice given by publication shall be deemed to be served for purposes of this section on the date of the newspaper publication."[775]

If the junk motor vehicle remains fourteen (14) days after notice has been served, the "board of township trustees may cause the removal or may employ the labor, materials, and equipment necessary to remove . . . [the] junk motor vehicle."[776] Any and

> all expenses incurred in removing or causing the removal of . . . [the] junk motor vehicle, when approved by the board, shall be paid out of the township general fund from moneys not otherwise appropriated, except that if the expenses exceed five hundred dollars [($500.00)], the board may borrow moneys from a financial institution to pay the expenses in whole or in part.[777]

The board of trustees, through any lawful means, may collect the expenses, including any fees or interest paid to borrow moneys, incurred in removing or causing the removal of the junk motor vehicle.[778] The board of trustees "may direct the township fiscal officer to certify the expenses and a description of the land to the county auditor, who shall place the expenses upon the tax duplicate as a lien upon the land to be collected as other taxes and returned to the township general fund."[779]

Noise

Ohio Revised Code sections 505.17 and 505.172 are relevant to control of noise. Each section provides at least one option for the township to regulate noise.

Under R.C. § 505.17(A), a township may regulate, pursuant to R.C. § 4513.221, noise from passenger cars, motorcycles, and internal combustion engines in any areas outside of municipal

[771] OHIO REV. CODE ANN. § 505.871(C)(3).
[772] OHIO REV. CODE ANN. § 505.871(C)(3); *see supra* note 262 (containing definition for "newspaper of general circulation).
[773] OHIO REV. CODE ANN. § 505. 871(C)(3).
[774] OHIO REV. CODE ANN. § 505.871(C)(3).
[775] OHIO REV. CODE ANN. § 505.871(C)(3).
[776] OHIO REV. CODE ANN. § 505.871(C), (D).
[777] OHIO REV. CODE ANN. § 505.871(D).
[778] OHIO REV. CODE ANN. § 505.871(E).
[779] OHIO REV. CODE ANN. § 505.871(E).

limits in two ways. First, pursuant to R.C. § 4513.221(A)-(B), a township may regulate noise from passenger cars or motorcycles operating on streets and highways under its jurisdiction. This type of regulation establishes a maximum decibel level at a distance of at least fifty feet from the noise source.[780] The maximum decibel levels and how such levels are to be measured are specified by R.C. § 4513.221(B). No regulation under R.C. § 4513.221(B) may be enforced unless signs giving notice of the regulation are posted along the roads and streets.[781] The second type of regulation, described in R.C. § 4513.221(E), prohibits the operation of passenger cars, motorcycles, and other devices using internal combustion engines without proper mufflers. This provision applies to vehicles and devices operated anywhere within the unincorporated areas of the township.[782] See R.C. § 4513.221(E)(1)-(4) for what may be controlled through this type of regulation.

Both types of regulations under R.C. § 4513.221 must be enacted by resolution. R.C. § 505.17(B)(1) requires the township fiscal officer to post copies of the regulation in five (5) conspicuous public places in the township for thirty (30) days before becoming effective. Also, the regulation must be published in a newspaper of general circulation in the township for three (3) consecutive weeks.[783]

R.C. § 505.172(B) provides another option for the township to regulate noise. According to that section:

> [A] board of township trustees may adopt regulations and orders that are necessary to control noise within the unincorporated territory of the township that is generated at any premises to which a D permit has been issued by the division of liquor control or that is generated within any areas zoned for residential use.[784]

Thus, a township may regulate noise pursuant to R.C. § 505.172(A) only within areas zoned residential or on any premises for which the Department of Liquor Control has issued a "D" permit.[785] A regulation pursuant to R.C. § 507.172 may be adopted by resolution.[786]

Note that the statute creates exceptions to noise regulations. Specifically, R.C. § 505.172 excepts the following from noise regulations: agricultural activities (as described in R.C. § 1.61), mining (as described in R.C. § 1513.01), and drilling for either oil or gas (as described in R.C. § 1514.01).[787]

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[780] OHIO REV. CODE ANN. § 4513.221(B).
[781] OHIO REV. CODE ANN. § 4513.221(D).
[782] OHIO REV. CODE ANN. § 4513.221(E).
[783] OHIO REV. CODE ANN. § 505.17(B)(1); *see supra* note 262 (containing definition for "newspaper of general circulation).
[784] OHIO REV. CODE ANN. § 505.172(B).
[785] OHIO REV. CODE ANN. § 505.172(B).
[786] *See* Sample Forms.
[787] OHIO REV. CODE ANN. § 505.172(C).

HIPAA

HIPAA is the "Health Insurance Portability and Accountability Act of 1996" and consists of a set of regulations designed to guard the privacy of medical patients.[788]

Some townships have Fire Departments with EMT's and police departments that need to keep in mind that any records of medical care must be kept within HIPAA guidelines. This usually means that no medical record should be disclosed without the consent of the individual to whom it pertains. However, individuals have the right to inspect their own medical records.

If the township keeps any employee medical records, these records must also be maintained in a HIPAA-compliant manner. Generally, only those with a need to know the information should have access to it. Even then, they must have access only to as much information as is minimally necessary. These records need to be kept under lock and key with access given only to those who require it.

If you have any questions regarding the release of a medical record or about complying with HIPAA regulations, please contact the Delaware County Prosecutor's Office.

Nuisance Abatement

Generally, the Ohio Revised Code allows a township, after giving proper notice and meeting certain specified conditions, to correct particular nuisance conditions occurring on properties within the township. Specifically, the township can abate nuisances such as noxious weeds and junk pursuant to R.C. § 505.87 and abate dangerous structures pursuant to R.C. § 505.86.

Under R.C. § 505.86(B), a board of township trustees, by resolution:

> "may provide for the removal, repair, or securance of buildings or other structures in the township that have been declared insecure, unsafe, or structurally defective by any fire department under contract with the township or by the county building department or other authority responsible under Chapter 3781. of the Revised Code for the enforcement of building regulations or the performance of building inspections in the township, or buildings or other structures that have been declared to be in a condition dangerous to life or health, or unfit for human habitation by the board of health of the general health district of which the township is a part."[789]

[788] *See* Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1955, 42 U.S.C. 300(gg)(21) (2005).
[789] OHIO REV. CODE ANN. § 505.86(B).

Costs incurred by the township in taking such action may be certified to the county auditor to be placed on the tax duplicate and collected as taxes on that property.[790] Costs incurred by the township may also be recovered in a civil action.[791]

Particular conditions and notice requirements must be met before a township can abate nuisances created by such structures and certify the costs to the tax list.[792] Additionally, the parties in interest of the property must be given the opportunity for a hearing before the board of township trustees.[793] See R.C. § 505.86 and contact the Delaware County Prosecutor's Office before taking any action.

Under R.C. § 505.87(A), "[a] board of township trustees may provide for the abatement, control, or removal of vegetation, garbage, refuse, and other debris from land in the township, if the board [through a resolution] determines that the owner's maintenance of that vegetation, garbage, refuse, and other debris constitutes a nuisance."[794] Costs incurred by the township in taking such action can be certified to the county auditor to be placed on the tax duplicate and collected as taxes on that property.[795]

Planned Unit Development (PUD)

A planned unit development (PUD) is "a development which is planned to integrate residential, commercial, industrial, or any other use,"[796] including open spaces, lakes, ponds, and common areas.[797] Therefore, PUD's permit various land uses on the same tract, both allowing for a mixture of dwelling units and providing for a means of gathering, improving, and maintaining usable open space.[798] They allow for local planning and zoning techniques that facilitate the planned development of large tracts and encourage greater creativity in land use.[799]

In adopting PUD regulations, aspects of land development normally regulated by zoning may vary within an area with a single zoning classification;[800] they need not be uniform in order to both accommodate unified development and promote the purposes of zoning.[801] Thus, within a PUD area, there may be found "single-family dwellings, multi-family units, schools, open spaces, recreational facilities and other collateral nonresidential uses."[802]

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[790] OHIO REV. CODE ANN. § 505.86(F)(1).
[791] OHIO REV. CODE ANN. § 505.86(F)(2).
[792] OHIO REV. CODE ANN. § 505.86(B).
[793] OHIO REV. CODE ANN. § 505.86(C).
[794] OHIO REV. CODE ANN. § 505.87(A).
[795] OHIO REV. CODE ANN. § 505.87(F).
[796] OHIO REV. CODE ANN. § 519.021.
[797] *State ex rel. Zonders v. Delaware County Bd. of Elections*, 69 Ohio St.3d 5, 10, 630 N.E.2d 313, 317 (1994).
[798] *State ex rel. Zonders v. Delaware County Bd. of Elections*, 69 Ohio St.3d 5, 8, 630 N.E.2d 313,316 (1994).
[799] *State ex rel. Zonders v. Delaware County Bd. of Elections*, 69 Ohio St.3d 5, 9, 630 N.E.2d 313,316 (1994) (citing HAUSSER & VAN AKEN, Ohio Real Estate Practice and Law (1993) 1020, Section T 77.04)).
[800] *State ex rel. Zonders v. Delaware County Bd. of Elections*, 69 Ohio St.3d 5, 9, 630 N.E.2d 313,316 (1994).
[801] OHIO REV. CODE ANN. § 519.021; 10 CHRISTINE M. G. DAVIS ET AL., OHIO JURISPRUDENCE BUILDINGS, ZONING, AND LAND CONTROLS 3D § 89 (updated June 2019).
[802] *State ex rel. Zonders v. Delaware County Bd. of Elections*, 69 Ohio St.3d 5, 9, 630 N.E.2d 313,316 (1994) (citing *Gray v. Trustees of Monclova Twp.*, 38 Ohio St.2d 310, 311, 67 O.O.2d 365, 366, 313 N.E.2d 366, 367 (1974)).

Revised Code section 519.021 requires that regulations adopted by a board of trustees for a PUD "further the purpose of promoting the general public welfare, encourag[e] the efficient use of land and resources, promot[e] greater efficiency in providing public and utility services, and encourag[e] innovation in the planning and building of all types of development."[803] Note that any such regulations apply to the property *only at the election of the property's owner* and *must include standards to guide the board of township trustees and/or BZC in approving or disapproving development within the PUD*.[804]

Under R.C. § 519.021, PUD's may be adopted in the township zoning resolution using *one* of the following *four* procedures:

1) Pursuant to section 519.021(A), a board of township trustees may adopt PUD regulations that establish standards that *will* apply to property that becomes a part of a PUD, but *do not automatically apply to any property in the township.*[805] In this instance, once PUD regulations have been adopted, *property owners may apply to have their property rezoned as a PUD.*[806] Once PUD has been approved for the property, all prior zoning classifications for the property cease to exist. [807] The actual change to the zoning plan and zoning map is legislative and is subject to referendum pursuant to R.C. § 519.12. Once property is rezoned as a PUD, it must comply with the regulations associated with the PUD.[808] Any approval or disapproval of subsequent uses or development of the property in the PUD are not amendments to or supplements to a township zoning resolution.[809] Such approval or disapproval of subsequent uses is administrative and subject to appeal pursuant to Ohio Revised Code Chapter 2506.

2) Pursuant to section 519.021(B), upon *application of a property owner or owners*, a board of trustees *simultaneously may both establish a PUD for a property and adopt regulations that will apply to that PUD*.[810] Once such a PUD has been approved for the property, all prior zoning classifications for the property cease to exist. [811] The actual change to the zoning plan and zoning map is legislative and is subject to referendum pursuant to R.C. § 519.12. Any approval or disapproval of subsequent uses or development of the property are not amendments to or supplements to a township zoning resolution.[812] Such approval or disapproval of subsequent uses is administrative and subject to appeal pursuant to R.C. Chapter 2506.

3) Pursuant to section 519.021(C), the board of township trustees may rezone property as PUD and adopt regulations for the PUD. Such rezoning is legislative in nature and is subject to referendum pursuant to R.C. § 519.12. Although approved, such zoning

[803] OHIO REV. CODE ANN. § 519.021.
[804] OHIO REV. CODE ANN. § 519.021 (emphasis added).
[805] OHIO REV. CODE ANN. § 519.021(A).
[806] OHIO REV. CODE ANN. § 519.021(A)-519.021(B).
[807] OHIO REV. CODE ANN. § 519.021(A).
[808] OHIO REV. CODE ANN. § 519.021(A).
[809] OHIO REV. CODE ANN. § 519.021(A).
[810] OHIO REV. CODE ANN. § 519.021(B).
[811] OHIO REV. CODE ANN. § 519.021(B).
[812] OHIO REV. CODE ANN. § 519.021(B).

regulations will not automatically apply to the rezoned property, but will act as a secondary layer of zoning that may be administratively applied at a later time ("Float the Cloud"). Thus, *any other prior or existing zoning regulations will continue to apply to the rezoned property until the property owner requests and the board of trustees or the BZC approves an owner's application to subject his property to the PUD regulations*.[813] Any latter application to apply PUD zoning to the already rezoned property "shall not be considered to be an amendment to a township zoning resolution for purposes of section 519.02 of the Revised Code, but may be appealed pursuant to Chapter 2506."[814] All plans submitted to actually apply the PUD zoning shall include a plan that complies with the regulations adopted for the PUD as set forth in the zoning resolution.[815] The actual removal of the previous "zoning district from the zoning map is a ministerial act and shall not be considered to be an amendment or supplement to a township resolution for the purposes of section 519.12 of the Revised Code and may not be appealed pursuant to Chapter 2506. of the Revised Code."[816]

4) The board of township trustees may authorize a PUD as a conditional use in the township zoning resolution pursuant to R.C. § 519.14.[817]

Road Vacation/Abandonment

A board of trustees' responsibility to improve and maintain public roads in the township ceases when a road has been abandoned and/or vacated. Generally, "[a] township shall lose all rights in and to any public road, highway, street, or alley which has been abandoned and not used for a period of *twenty-one years*, after *formal proceedings* for vacation…have been taken."[818] Note that Ohio courts have considered a road "not in use" when, for over twenty-one years, the road has not been maintained or improved and used solely by abutting landowners, their guests, and service suppliers.[819]

The formal proceedings specified in the Ohio Revised Code call for the board of trustees to petition the board of county commissioners, by resolution, to vacate a road or some portion of it.[820] The petition must include "a description of the general route and termini of the road or portion" to be vacated.[821] The township fiscal officer is responsible for filing the resolution with the board of county commissioners and certifying another copy of it to the county engineer for their consideration.[822]

[813] OHIO REV. CODE ANN. § 519.021(C).
[814] OHIO REV. CODE ANN. § 519.021(C).
[815] OHIO REV. CODE ANN. § 519.021(C).
[816] OHIO REV. CODE ANN. § 519.021(C).
[817] OHIO REV. CODE ANN. § 519.021(C).
[818] OHIO REV. CODE ANN. § 5553.042(B) (emphasis added).
[819] 1976 Ohio Op. Att'y Gen. No. 76-043 (overruled on other grounds by 1977 Ohio Op. Att'y Gen. No. 77-028).
[820] OHIO REV. CODE ANN. § 5553.045(B).
[821] OHIO REV. CODE ANN. § 5553.045(B).
[822] OHIO REV. CODE ANN. § 5553.045(B).

Upon approving the petition, the board of commissioners will, by resolution, declare the road or portion vacated and file a certified copy of that resolution with the board of trustees.[823]

If the petition is not considered by the board of county commissioners within sixty (60) days of its filing, the road or portion thereof described in the petition will be deemed vacated. Under those circumstances, the board of trustees must adopt another resolution describing the vacated road and explaining that the vacation is an act pursuant to R.C. § 5553.045(D).[824] Such a resolution must be filed with the board of county commissioners, the county recorder, and the county engineer. Once so filed, the board of township trustees may, by resolution, order the road vacated.[825]

If declared vacated, the road will pass to all the abutting landowners.[826] R.C. § 5553.042(B) specifies that, in certain circumstances, others still may share in the vacated road's use. Thus, even though vacated (or abandoned) roads become private property, they may be used by the public in the following instances:

1) As a right of way for the services facilities of a public utility or electric cooperative, so long as the vacated road previously existed as such and the public utility or electric cooperative continues to render service to the public,
2) As ingress and egress for a public utility or electric cooperative to service and maintain its service facilities,[827]
3) To trim or remove trees, shrubs, or brush, or other obstacles growing in or encroaching onto the right of way that may affect the operation, use, or access to service facilities,
4) As a right of way for public non-motorized vehicular recreational use.[828]

Other than the process described above or a successful action brought by an abutting landowner to acquire title to an abandoned road, the Revised Code provides no other means for a township to divest itself of road maintenance.[829] Thus, absent either of these proceedings, a township must fulfill its duties of road maintenance.

Township Employee Insurance Health Benefits

In discussing the provision of health care benefits to township officers and employees, it is appropriate to remember that a board of township trustees is empowered only with that authority either provided by law or necessarily implied therefrom. Accordingly, a board of township trustees has only as much authority and power as conferred to it by the Ohio Revised Code.[830]

R.C. § 505.60 allows a board of trustees to provide insurance for its officers and employees. More specifically, pursuant to R.C. § 505.60(A):

[823] OHIO REV. CODE ANN. § 5553.045(D).
[824] OHIO REV. CODE ANN. § 5553.045(D).
[825] OHIO REV. CODE ANN. § 5553.045(D)-5553.045(E).
[826] OHIO REV. CODE ANN. § 5553.045(E).
[827] *See* OHIO REV. CODE ANN. § 5553.043.
[828] OHIO REV. CODE ANN. § 5553.042(B)(1)-(4). *See* OHIO REV. CODE ANN. § 5553.044.
[829] 1977 Ohio Op. Att'y Gen. No. 028 (1977).
[830] *See Henn v. Universal Atlas Cement Co.*, 76 Ohio Law Abs. 439, 144 N.E.2d 917, 119-20 (C.P. 1957).

> [t]he board of township trustees of any township may procure and pay all or any part of the cost of insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance, or a combination of any of the foregoing types of insurance for township officers and employees.[831]

As such, a board of trustees may negotiate and contract for the purchase of a long-term insurance policy for township officers and employees.[832] This includes contracting for group health care services with insuring health corporations holding certificates of authority under Chapter 1751 of the Revised Code,[833] such as health maintenance organizations.[834] Only an insurance company authorized to do business in Ohio must issue the policies.[835] Also, competitive bidding need not be used to purchase health insurance benefits from a private company under R.C. § 505.60.[836]

A board of township trustees is limited to the provisions of the Revised Code and, thus, the requirements of R.C. § 505.60. As such, in providing for these benefits, R.C. § 505.60(B) requires that coverage among township employees be uniform. That is, "township officers and full-time township employees and their immediate dependents" must be offered "the same benefits."[837] Thus, "[e]very township officer and employee who receives health insurance benefits under R.C. 505.60 is entitled…to receive benefits which are uniform with respect to those granted to every other officer and employee under that section."[838]

If benefits are offered to part-time employees and their immediate dependents pursuant to R.C. § 505.60(B), they too must receive the "same benefits" offered to full-time employees.[839]

R.C. § 505.60 "does not require that the premium charged or the amount paid for each trustee be uniform."[840] Only *coverage* must be uniform.[841] "If, in order to provide uniform coverage, the township must spend different amounts for different township trustees, that variation in expenditure is permitted under [R.C. § 505.60]."[842]

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[831] OHIO REV. CODE ANN. § 505.60(A).
[832] OHIO REV. CODE ANN. § 505.60(A).
[833] OHIO REV. CODE ANN. § 505.60(B).
[834] Op. Ohio Att'y Gen. 92-068.
[835] OHIO REV. CODE ANN. § 124.841(B).
[836] OHIO REV. CODE ANN. § 505.60(E); 1992 Ohio Op. Att'y Gen. No. 92-068.
[837] 1998 Ohio Op. Att'y Gen. No. 98-019.
[838] 1998 Ohio Op. Att'y Gen. No. 98-019 (citing 1984 Ohio Op. Att'y Gen. No. 8498-086).
[839] 1984 Ohio Op. Att'y Gen. No. 84-086.
[840] 1992 Ohio Op. Att'y Gen. No. 92-068.
[841] 1992 Ohio Op. Att'y Gen. No. 92-068.
[842] 1992 Ohio Op. Att'y Gen. No. 92-068.

In addition, R.C. § 3901.56 permits health and life insurers, including public employee benefit plans, to offer a "wellness or health improvement program that provides rewards or incentives" in order to encourage or reward participation.[843] Rewards and incentives may include, but are not limited to: "merchandise; gift cards; debit cards; premium discounts or rebates; contributions to a health savings account; modifications to copayment, deductible, or coinsurance amounts; or any combination of these incentives, to encourage participation or to reward participation in the program."[844]

When health insurance benefits are provided, "[a]ny township officer or employee may refuse to accept any coverage… without affecting the availability of such insurance coverage to other township officers and employees."[845]

Recent provisions enacted in the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) "(ACA") have called into question certain provisions of Ohio law which permit premium reimbursements for those township officers and employees refusing to accept or denied coverage. At the time of publication of this manual, the law on this issue remains very unsettled. For all questions related to health insurance premium reimbursements to township officials and employees, please contact the Delaware County Prosecuting Attorney's Office.

Comprehensive Zoning Plan

A township comprehensive zoning plan is just that. It is a township-wide plan or goal as to future zoning and growth in the township. It generally takes into account growth or lack thereof in terms of population, businesses, industry, etc. and provides a plan for various prospective changes to zoning that the township determines to be necessary. Such plans are generally created in conjunction with and based on input received from the regional planning commission. Yet, there is no specific statutory guidance in creating and revising such a plan.

The "authority to adopt a system of zoning has…been granted to townships by the provisions of [O.]R.C. Chapter 519."[846] Though there is no specific authority providing townships with a procedure for creating and/or revising a "comprehensive zoning plan,"[847] Chapter 519 of the Ohio Revised Code "provides a comprehensive system for adopting township zoning" that legal authorities regard as encompassing "[t]he adoption of a comprehensive plan "[848] Thus, Revised Code Chapter 519 can be interpreted to provide requirements regarding the adoption of comprehensive zoning plans.[849]

Townships, "in accordance with a comprehensive plan," may enact zoning regulations consistent with Ohio Revised Code Chapter 519.[850] In first enacting a comprehensive zoning plan:

[843] OHIO REV. CODE ANN. § 3901.56.
[844] OHIO REV. CODE ANN. § 3901.56.
[845] OHIO REV. CODE ANN. § 505.60(C).
[846] 2002 Ohio Op. Att'y Gen. No. 2002-032.
[847] PLANNING AND ZONING LAW, *supra* note 335, at §§ 4:38-4:39.
[848] 2002 Ohio Op. Att'y Gen. No. 2002-032.
[849] 2002 Ohio Op. Att'y Gen. No. 2002-032.
[850] OHIO REV. CODE ANN. § 519.02. *See* PLANNING AND ZONING LAW, *supra* note 335, at §§ 4:38, 8:15; 2002 Ohio Op. Att'y Gen. No. 2002-032.

> "the duties of a township…include the formation of a township zoning commission [(BZC)] to prepare the zoning plan, the adoption of the plan by a board of township trustees, the submission of the plan to the electors residing in the unincorporated area of the township, and the filing of a voter approved plan with the county recorder and the appropriate planning commission."[851]

Note that "[a]fter township zoning regulations have been enacted, *any attempt to amend or supplement them should comply with the requirements of [O.]R.C. 519.12*."[852] As such, in revising a comprehensive zoning plan, the procedures specified in R.C. § 519.12 must be observed.[853]

The procedures detailed in the "Amending the Zoning Resolution" subsection of the "Board of Zoning Commissioners" section of this manual are applicable to and should be followed in revising a comprehensive zoning plan. Such amendment procedure generally follows and is in accordance with R.C. § 519.12. But it is unlikely that a referendum is applicable to an amendment to a comprehensive plan, as it is simply a plan or guide and lacks any true mechanism of regulatory enforcement. Thus, gatherings of the BZC and trustees should be referred to as meetings. Generally, the amendment process includes the following steps:

1) Revision by Amendment Initiated by:
    - Motion of the Township Zoning Commission (BZC),
    - Passage of a resolution by the Board of Township Trustees,
    - Filing of a petition by one or more owners of affected property.[854]

2) BZC Sets Date for Public Meeting:
    - Must be at least twenty (20) but no more than forty (40) days after motion, resolution, or petition described above is initiated.
    - Notice of the meeting must be given by one publication in one (1) or more newspapers of general circulation in the township at least ten (10) days prior to the meeting.[855]

3) BZC Publishes and Mails the Appropriate Notices as Determined by the Number of Parcels Affected:
    - If ten (10) or fewer parcels of land are affected, in addition to the published notice, written notice of the meeting must be mailed by the BZC to all affected

[851] 1995 Ohio Op. Att'y Gen. No. 95-038.
[852] 2002 Ohio Op. Att'y Gen. No. 2002-032, quoting Op. Ohio Att'y Gen. 72-118 (emphasis added).
[853] 2002 Ohio Op. Att'y Gen. No. 2002-032. *See City of Moraine v. Bd. of County Comm'rs of Montgomery County*, 67 Ohio St.2d 139, 144, 423 N.E.2d 184, 187 (1981) (discussing the legislative authority to amend zoning regulations in the absence of statutory mandate).
[854] *See* OHIO REV. CODE ANN. § 519.12(A)(1).
[855] *See* OHIO REV. CODE ANN. § 519.12(A)(2). *See supra* note 262 (containing definition for "newspaper of general circulation").

owners at least ten (10) days prior to the meeting. Both the published and mailed notices must contain all items listed in R.C. §§ 519.12(C)(1)-(8).[856]

- If more than ten (10) parcels of land are affected, notice need only be published. The published notice must contain all items listed in R.C. §§ 519.12(D)(1)-(6).[857]

4) BZC, within Five (5) Days after Motion, Resolution, or Petition Described above Is Initiated, Transmits the Motion, Resolution, or Petition Along with the Text and Map of the Affected Area to the County Planning Commission.[858]
5) BZC Meets

6) BZC, within Thirty (30) Days of Their Meeting on the Revision:
   - Recommends the approval or denial or modification of the revision,
   - Submits their Recommendation to Board of Trustees.[859]

7) Board of Trustees, upon Receipt of the Recommendation of the BZC:
   - Sets a date for a meeting on the matter no more than thirty (30) days from receipt of the BZC recommendation, along with the motion, resolution, or petition and the text and map of the affected area.[860]
   - Notice of the meeting must be given by publication in a newspaper of general circulation at least ten (10) days prior to the meeting.[861]

8) Board of Trustees Publishes Notice as Determined by the Number of Parcels Affected:
   - If ten (10) or fewer parcels of land are affected published, the notice must contain all items listed in R.C. §§ 519.12(F)(1)-(7).[862]
   - If more than ten (10) parcels of land are affected, the published notice must contain all items listed in R.C. §§ 519.12(G)(1)-(5).[863]

9) Trustees Meet

10) Board of Trustees, within Twenty (20) Days of Their Meeting on the Revision:
   - Adopts or denies the recommendation of the BZC or adopts some modification of them.[864]
   - If the Board of Trustees denies or modifies the BZC's recommendation, it must be by majority vote.[865]

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[856] *See* OHIO REV. CODE ANN. § 519.12(B)-(C).
[857] *See* OHIO REV. CODE ANN. § 519.12(D)(1)-(6).
[858] *See* OHIO REV. CODE ANN. § 519.12(E).
[859] *See* OHIO REV. CODE ANN. § 519.12(E).
[860] *See* OHIO REV. CODE ANN. § 519.12(E).
[861] *See* OHIO REV. CODE ANN. § 519.12(E). *See supra* note 262 (containing definition for "newspaper of general circulation").
[862] *See* OHIO REV. CODE ANN. § 519.12(F)(1)-(7).
[863] *See* OHIO REV. CODE ANN. § 519.12(G)(1)-(5).
[864] *See* OHIO REV. CODE ANN. § 519.12(H).
[865] *See* OHIO REV. CODE ANN. § 519.12(H).

11) If the Revision Is Approved by the Board of Trustees:

- The Board of Trustees, within five (5) working days of the revision taking effect, must file the text and maps of the revision with the county recorder and county or regional planning commission.[866]

Any questions about this process may be directed to the Delaware County Prosecutor's Office.

Conflicts of Interest

Because township officials serve as government officers while at the same time acting as community leaders, they often face the potential for conflicts of interest.[867] A conflict of interest arises whenever a public position faces a situation which would subject him or her to divided loyalties or conflicting duties, or tempt him or her to act other than in the public's best interest.[868] In general, township officials should recuse themselves from participating in any official activity presenting a conflict of interest.

Although there is no single test for determining what constitutes a conflict of interest, township officials may face employment-related conflicts in their relationship with other township offices, township-related functions, county governments, other political subdivisions, or within the broader community.[869] R.C. § 102.03 sets forth some of the most common and prohibited conflicts involving public officials. Township officials and employees may not:

> "use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties."[870]

Conflicts of interest may also occur where a township official or employee seeks to "solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties."[871]

The Revised Code also imposes restrictions on third-person activities posing a conflict of interest to any township official's duties. No individual is permitted to "promise or give to a public official or employee anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties."[872]

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[866] *See* OHIO REV. CODE ANN. § 519.12(H).
[867] LOCAL GOVERNMENT LAW, *supra* note 1, at § 6:3.
[868] 1985 Ohio Op. Att'y Gen. No. 85-042.
[869] LOCAL GOVERNMENT LAW, *supra* note 1, at § 6:3.
[870] OHIO REV. CODE ANN. § 102.03(D).
[871] OHIO REV. CODE ANN. § 102.03(E).
[872] OHIO REV. CODE ANN. § 102.03(F).

In addition, certain county officials are prohibited from participating in county contracts in which they hold an interest. Specifically, "[n]o county commissioner shall be concerned…in any contract for work to be done or material to be furnished for the county."[873] Violations of this prohibition could result in a civil action as well as the commissioner forfeiting his/her compensation received on the contract.[874] This prohibition does not apply where the commissioner, "being a shareholder of a corporation but not an officer or director, owns not in excess of five per cent of the stock of such corporation and the value of the stock so owned does not exceed five hundred dollars."[875]

It is important to note that these are only a few examples of the potential conflicts that could arise as a township official. Issues involving conflicts of interest should be assessed on a case-by-case basis.

Questions about potential conflicts may be directed to the Delaware County Prosecutor's Office. In addition, the Ohio Ethics Commission serves as an excellent resource on this topic. Questions can be directed through the Ethics Commission's website at:

http://www.ethics.ohio.gov

Compatibility of Public Offices or Positions

A township officer may not hold another office that is incompatible with the township office.[876] Issues involving the compatibility of public offices typically concern whether a person may serve simultaneously in two separate positions. The Attorney General has established a seven-factor test for determining whether two public positions are compatible.[877] Several Ohio courts have used this test in analyzing the compatibility of simultaneously-held positions.[878]

To determine whether two public offices are compatible with each other, a court may consider the following;

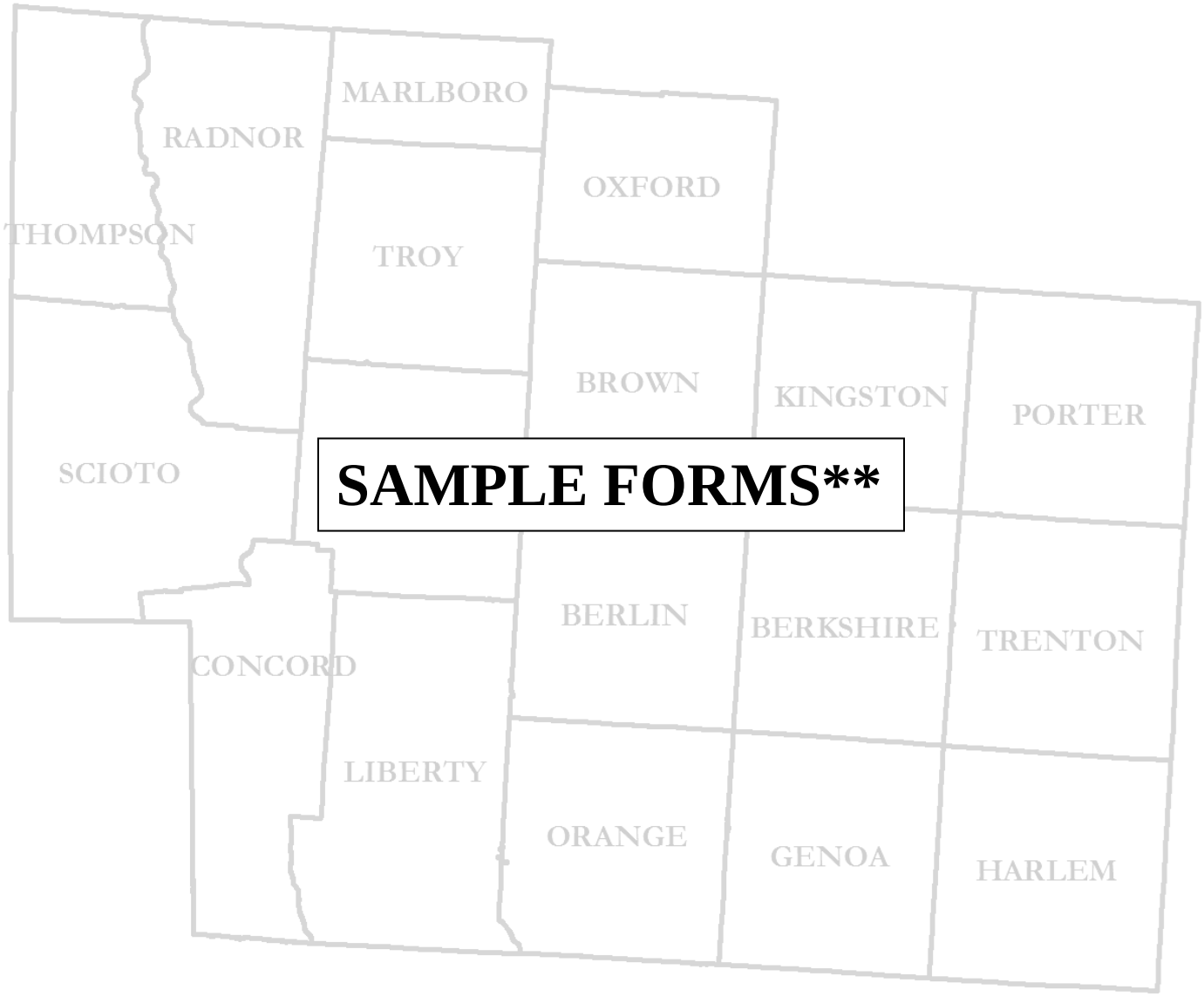
(1) Whether either position is classified pursuant to R.C. § 124.57;
(2) Whether the empowering statutes limit outside employment;
(3) Whether either position is a check upon or subordinate to the other;
(4) Whether one person can physically perform both functions;
(5) Whether there is a conflict of interest;
(6) Whether there are any controlling charter provisions or ordinances; and
(7) Whether there is a federal, state or local departmental regulation applicable.[879]

[873] OHIO REV. CODE ANN. § 305.27.
[874] OHIO REV. CODE ANN. § 305.27.
[875] OHIO REV. CODE ANN. § 305.27.
[876] LOCAL GOVERNMENT LAW, *supra* note 1, at § 6:3; *See also* OHIO REV. CODE ANN. § 3.11.
[877] *See* 1979 Ohio Op. Att'y Gen. No. 79-111; *See also* 2002 Ohio Op. Att'y Gen. No. 2002-021.
[878] *See Rose v. Village of Wellsville, et al.,* 63 Ohio Misc.2d 9, 19, 613 N.E.2d 262, 268 (C.P. 1993); *Esler v. Summit Cnty. et al.*, 39 Ohio Misc.2d 8, 9 530 N.E.2d 973, 974-75 (C.P. 1985).
[879] *See* 1979 Ohio Op. Att'y Gen. No. 79-111; *See also* 2002 Ohio Op. Att'y Gen. No. 2002-021.

As with conflict of interest issues, it is important to remember that issues of compatibility are also assessed on a case-by-case basis.

Questions about the compatibility of two simultaneously-held public positions may be directed to the Delaware County Prosecutor's Office. In addition, the Ohio Attorney General offers a helpful reference guide to the many Attorney General opinions that have addressed the compatibility of particular public offices or positions. Titled the "Compatibility of Public Offices or Positions Index," this guide can be found at the Ohio Attorney General's website at:

http://www.ohioattorneygeneral.gov/About-AG/Service-Divisions/Opinions/Compatibility-of-Public-Offices-or-Positions



SAMPLE FORMS**

BZA

Part II. Forms

Chapter 67. Zoning—Forms

VI. Township Board of Zoning Appeals

§ 67:24. Notice of hearing on zoning appeal

(RC 519.15)

Author's Note:

Notice must be given by one publication in one or more newspapers of general circulation in the county at least 10 days before the date of the hearing; and in writing to parties in interest. Publishing in an online version of a newspaper is not considered publishing in a "newspaper of general circulation" for notice purposes.

NOTICE OF PUBLIC HEARING TOWNSHIP BOARD OF ZONING APPEALS

A public hearing will be held before the township board of zoning appeals on *[date, time and place]*, for the purpose of hearing the following: *[insert matters on appeal]*.

Township Board of Zoning Appeals of *[_____]* Township

_____
Chair

[Affidavit of publication. See, e.g., § 65:1.*]*

Part II. Forms

Chapter 67. Zoning—Forms

VI. Township Board of Zoning Appeals

§ 67:25. Resolution of board of zoning appeals approving zoning variance

(RC 519.14(B))

Whereas the zoning resolution of *[_____]* Township provides that a variance in use may be approved by the Planning and Zoning Commission, consistent with the spirit and intent of the zoning resolution and subject to approval by the Township Board of Zoning Appeals;

Whereas, *[name]* has applied to the Planning and Zoning Commission for permission to *[describe variance]*, and the Planning and Zoning Commission has denied such use; and *[name]* has now appealed the denial of *[his/her]* request to the Board of Zoning Appeals;

Be it resolved that *[name]* is hereby granted a variance as requested.

Part II. Forms

Chapter 67. Zoning—Forms

VI. Township Board of Zoning Appeals

§ 67:26. Resolution revoking zoning variance

(RC 519.14(D))

Whereas the *[_____]* Township Board of Zoning Appeals on *[date]* approved and issued a variance to *[name]* on the condition that *[state conditions of variance]*, and

Whereas *[name]* has failed to comply with the terms of the variance in the following particulars: *[state violation(s)]*;

Now, therefore, be it resolved that the variance issued to *[name]* on *[date]* is hereby revoked.

BZC

Part II. Forms

Chapter 67. Zoning—Forms

II. Township Zoning Commission

§ 67:5. Resolution making appropriation for zoning commission

(RC 519.05)

Be it resolved that there is hereby appropriated the sum of *[*$_____*]* for the employment or contract with such planning consultants and executive and other assistants as the Township Zoning Commission deems necessary, payment to be made by the board of township trustees upon the submission of statements approved by the commission.

Part II. Forms

Chapter 67. Zoning—Forms

II. Township Zoning Commission

§ 67:7. Resolution by zoning commission to employ planning consultants

(RC 519.05)

Whereas, the Township Zoning Commission of *[_____]* Township, *[_____]* County, Ohio, needs professional assistance in the preparation of a plan, including both text and maps, representing its recommendations to the township trustees for the carrying out by the board of the powers, purposes, and provisions set forth in R.C. Ch. 519, and

Whereas, the Board of Township Trustees has appropriated funds for this purpose,

Now, therefore, be it resolved by the *[_____]* Township Zoning Commission that it is necessary to employ *[name(s) of consultant(s)]* as consultants, and *[he/she/they]* shall be employed, upon the following terms: *[state terms]*.

CEMETERY

Part II. Forms

Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms

V. Cemeteries

§ 68:13. Application for submission of question of establishing a cemetery to voters

(RC 517.04)

Author's Note:

This application must be signed by at least six electors of the township, and must be certified to the board of elections by the township clerk not later than 4:00 p.m. of the 90th day before the election and at least 20 days before the election the clerk must post written notice in at least three public places in the township.

To the fiscal officer of *[_____]* Township *[_____]* County, Ohio:

The undersigned, electors of *[_____]* Township, respectfully request that a cemetery be established on the following tract of land *[describe as accurately as possible]*, which tract of land will cost, including enclosing and improving the same, as estimated, *[*$_____*]*.

The undersigned request that action on this application be taken as provided in RC 517.05.

_____
[Name and address of elector]

[repeat as needed]

Part II. Forms
Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms
V. Cemeteries

§ 68:14. Resolution to submit question of establishing cemetery to voters

(RC 517.04)
Author's Note:
The board of township trustees may make this order on its own motion without a previous application, but no land can be purchased without an affirmative vote.

It appearing to the board of township trustees of *[_____]* Township, *[_____]* County, Ohio, that it is advisable, necessary and proper that a cemetery be established, and that the same is desired by a considerable number of the electors of said township, it is hereby resolved that at the next *[primary/general]* election held in the township, the proposition of the purchase of the following tract of land *[describe as accurately as possible]*, the estimated cost of which, including enclosing and improving, will be about *[*$_____ *]*, be submitted to a vote of said electors, as provided in RC 517.05.

§ 68:15. Notice of election on question of establishing cemetery

(RC 517.05)

Author's Note:

After the trustees have made the order, or a written application signed by six electors has been filed, the fiscal officer must give at least 20 days' notice before the election that the vote will be taken, by posting written or printed notices in at least three public places. RC 517.05.

If the vote is in favor of the proposition, and the board of township trustees proceed to make the purchase, the fact should be made to appear in a resolution when the purchase is made, and before any order if issued for payment.

[Date]
To the electors of *[_____]* Township *[_____]* County, Ohio:

You are hereby notified that at the election to be held on *[date]*, the proposition of whether or not the board of township trustees of the township shall purchase for cemetery purposes the following described tract of land, to wit: *[describe accurately]*, and shall make a levy for its purchase and maintenance from year to year, will be submitted to the electors of the township. The estimated cost of the cemetery, including enclosing and improving the same, is *[*$_____*]*. The electors favoring the proposition shall put on their ballots for township officers the word "Cemetery," and if a majority of the votes cast at the election favors the proposition, the board of township trustees shall procure the land for cemetery purposes.

_____
Fiscal Officer

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Part II. Forms

Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms

V. Cemeteries

§ 68:16. Resolution ordering purchase of site for cemetery

(RC 517.05)

It appearing to the satisfaction of the board of township trustees that at the election held on *[date]*, a majority of all the votes cast at the election were in favor of the purchase of the following described real estate *[describe accurately]* for cemetery purposes, and that notice thereof had been posted in at least three public places, at least twenty days before the election, it is hereby resolved that the tract of land be purchased at *[*$_____*]*, and that upon the delivery of a good and sufficient deed therefor, the fiscal officer issue an order in the sum of *[*$_____*]*, to *[name]*, in payment thereof.

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Part II. Forms

Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms

V. Cemeteries

§ 68:17. Deed for cemetery lot

(RC 517.07, RC 517.14, RC 759.12, RC 759.31)

Author's Note:

All deeds to cemetery lots must be recorded by the township fiscal officer. No other recording is necessary. R.C. 517.07. This deed by the trustees to the purchaser grants a mere easement for burial purposes and provides only the right of burial, ornamentation, and erection of monuments. Any deed executed after July 24, 1986, may include additional requirements of the grantee, such as: (1) list of names and addresses of the persons to whom the grantee's property would pass by intestate succession; (2) require grantee to notify the board in writing of changes in address; (3) other terms authorized by R.C. 517.07.

DEED FOR CEMETERY LOT

Lot No. *[_____]* Section *[_____]*

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned members of the board of trustees of *[_____]* Township, *[_____]* County, Ohio, in consideration of *[*$*_____]*, to us paid by *[name and address]*, grantee, the receipt whereof is hereby acknowledged, hereby grant, bargain, sell, and convey to the grantee and *[his/her]* heirs forever, the following described lot or parcel of land in *[_____]* Cemetery, to-wit: Lot No. *[_____]* in Section *[_____]* as described on the plat of the Cemetery on file in the office of the fiscal officer of the township.

To have and to hold the same to the grantee and *[his/her]* heirs, to be used for the purposes of burial only, subject to the laws of this state regarding cemeteries and the rules and regulations of the officers having control of the cemetery.

Witness our signatures, *[date]*.

Signed and Acknowledged in presence of:

_____

Trustee

[repeat as needed]

_____
Witness
[repeat as needed]

State of Ohio, *[_____]* County

Acknowledged before me by the above trustees, on *[_____]*.
_____ Notary

COMPETITIVE BIDDING

Part II. Forms
Chapter 65. Contracts and Purchases—Forms
I. Competitive Bidding
§ 65:1. Notice inviting bids—Proof of publication

(R.C. 153.50, R.C. 971.12, R.C. 5575.02)

Notice is hereby given that bids will be received at the office of the board of township trustees of *[_____]* Township, *[_____]* County, Ohio, until *[date and time]* for furnishing the labor and material required for the *[erection/alteration/repair]* of *[describe project]*, according to the plans, surveys, profiles, cross sections, estimates and specifications for the improvement on file with the board of township trustees.

Author's Note:

If the resolution is adopted under RC 9.312, the award should be to the "lowest responsive and responsible bidder." Otherwise, the award is to be to the "lowest and best" bidder.

The contract will be awarded to the lowest *[and best/responsive and responsible]* bidder.

Bids are to be submitted on a *[lump sum/unit price]* basis.

The attention of bidders is directed to the special statutory provisions, RC 4115.02 *et seq.*, governing the prevailing rate of wages to be paid to laborers and mechanics employed on public improvements, and also to RC 153.59 regarding nondiscrimination.

No bid will be considered which is for a greater sum than the estimated cost, nor unless it be accompanied by a bond or a certified check in the sum of *[*$_____*]* to guarantee that if the bid is accepted, a contract will be entered into and the performance of it properly secured.

The board of township trustees reserves the right to reject any and all bids.

[Name and title of township fiscal officer]

PROOF OF PUBLICATION

State of Ohio, *[_____]* County

[Name] being duly sworn, says that the notice, a copy of which is attached, was published once on *[date]*, being not later than two weeks prior to *[date]*, the date of letting of contracts stated, in *[name of newspaper]*, a newspaper of general circulation in *[_____]* Township, *[_____]* County, designated by the board of township trustees of the township.

_____

Sworn to before me and signed in my presence, on *[_____]*.

_____ Notary

Part II. Forms
Chapter 65. Contracts and Purchases—Forms
I. Competitive Bidding
§ 65:2. General form of bid

(R.C. 153.50 to R.C. 153.52)

To the Board of Trustees of *[_____]* Township, *[_____]* County, Ohio:

The undersigned proposes to furnish all material and to do all work necessary in the construction of *[describe project]*, according to and in compliance with the plans, surveys, profiles, cross sections, estimates and specifications prepared for the same and under the direction and approval of *[title of project officer(s)]* for the following prices for materials and labor, respectively:

[List items and prices]

[Name(s)] are the only persons or companies interested in this bid.

_____ *[Title of bidder]*

[Name and address of bidder]

§ 65:3. Bid bond

(R.C. 153.571)

Author's Note:

Recovery of a claimant under the bond is subject to RC 153.01 to RC 153.60 the same as if these sections were incorporated in the bond.

BOND

Know all men by these presents, that the undersigned *[name of principal]*, as principal, and *[name of surety(ies)]*, as surety(ies), are hereby held and firmly bound unto the state of Ohio, for the use of *[_____]* Township, *[_____]* County as obligee in the penal sum of the dollar amount of the bid submitted by the principal to the obligee on *[date]* to undertake the project known as *[describe project]*. The penal sum referred to herein shall be the dollar amount of the principal's bid to the obligee, incorporating any additive or deductive alternate proposals made by the principal on the date referred to above to the obligee, which are accepted by the obligee. In no case shall the penal sum exceed *[*$_____*]*. (If the foregoing blank is not filled in, the penal sum will be the full amount of the principal's bid, including alternates. Alternatively, if the blank is filled in, the amount stated must not be less that the full amount of the bid including alternates, in dollars and cents. A percentage is not acceptable.) For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this *[date]*.

The condition of the above obligation is such, that whereas the above named principal has submitted a bid for *[*$_____*]*;

Now, therefore, if the obligee accepts the bid of the principal and the principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material; and in the event the principal pays to the obligee the difference not to exceed ten per cent of the penalty hereof between the amount specified in the bid and such larger amount for which the obligee may in good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event the obligee does not

award the contract to the next lowest bidder and resubmits the project for bidding, the principal pays to the obligee the difference not to exceed ten per cent of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect; if the obligee accepts the bid of the principal and the principal within ten days after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which contract is made a part of this bond the same as though set forth herein;

Also, if *[name of principal]* shall well and faithfully do and perform the things agreed to be done and performed according to the terms of the contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in carrying forward, performing, or completing the contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation.

The surety hereby agrees that no modifications, omissions, or additions, to the terms of the contract or to the plans or specifications therefor shall in any way affect the obligations of the surety on its bond.

Signed on *[_____]*.

Surety	Principal
.....	.....

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Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:4. Resolution to re-advertise for bids

Today at *[time]* being the time stated in the notice for bids, the bids received were opened, and no acceptable bids were made within the estimate.

It is therefore resolved that *[date and time]* is hereby fixed as the time for letting contracts, that the original estimate be amended per the amended recommended report of the county engineer, and that re-advertisement for bids, as required by law, be published once, not later than two weeks prior to said date, in *[name of newspaper]*, a newspaper published in the county and of general circulation within the township.

Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:5. Resolution accepting bid and awarding contract

(R.C. 153.50, R.C. 971.12, R.C. 5575.02)

Whereas, it appears that due notice has been given as required by law, pursuant to proof of notice on file in the fiscal officer's office, for *[describe project]*, and that the bid of *[name of bidder]* is the lowest and best,

Now, therefore, be it resolved by the board of trustees of *[_____]* Township, *[_____]* County, Ohio, that the bid of *[name of bidder]* is accepted upon the bidder's entering into a contract and giving bond in the sum of *[*$*_____]* with sureties, to the acceptance of the *[fiscal officer/trustees]*.

Oh. Township. L. § 65:6

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Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:6. General form of contract for labor and materials

(R.C. 153.51, R.C. 153.52)

Author's Note:

For examples of contracts for specific projects, see § 65:21 to § 65:23. Except as provided in RC 5705.41, every purchase order, voucher, warrant or contract of a township must be accompanied by the fiscal officer's certificate of availability of funds, § 65:10. Any contract or order for the expenditure of money is void and payment is prohibited if the certificate is omitted.

This agreement, entered into *[date]*, between the board of township trustees of *[_____]* Township, *[_____]* County, Ohio, and *[name of contractor]*, contractor.

Contractor, in consideration of *[*$_____*]* to be paid as hereinafter specified, agrees to furnish to the township all the labor and materials required for *[describe project]* in accordance with the attached plans, drawings and specifications, which are made a part of this contract.

Contractor further agrees to furnish the materials and to do the work promptly, in a workmanlike manner, without hindrance or delay. The whole is to be completed to the satisfaction of the township trustees on or before *[date]*.

The township trustees, in consideration of the faithful performance of the work and furnishing the materials, hereby agrees to pay to contractor *[*$_____*]*, in installments, upon the certificate of *[identify source of certificate]*, as follows: *[describe amounts or percentages of installments and when payments due]*, and the remainder when all materials have been furnished and all labor has been completed and accepted.

It is mutually agreed that no extra work or materials shall be charged for unless ordered in writing by the trustees.

Witness our signatures on the date first above written.

Board of Trustees of *[_____]* Township, *[_____]* County, Ohio

_____ Trustee

_____ Trustee

_____ Trustee

Signed in duplicate in the presence of:

Contractor

.....

Witness

.....

Witness

.....

[Insert certificate of availability of funds, § 65:10.*]*

Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:7. Performance bond (except construction manager)

(R.C. 153.57(A))

Author's Note:

Recovery of a claimant under the bond is subject to RC 153.01 to RC 153.60 the same as if these sections were incorporated in the bond.

Know all persons by these presents, that we, the undersigned *[name of principal]*, as principal, and *[name of surety]*, as sureties, are hereby held and firmly bound unto *[_____]* Township, *[_____]* County, in the penal sum of *[_____]* dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this *[date]*.

The condition of the above obligation is such, that whereas the above named principal did on the *[_____]* day of *[_____]*, *[_____]*, enter into a contract with *[_____]*, which said contract is made a part of this bond the same as though set forth herein;

Now, if the said *[_____]* shall well and faithfully do and perform the things agreed by *[_____]* to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on its bond.

Signed *[date]*.

Surety	Principal
.....	.....

Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:8. Performance bond—Construction manager

(RC 153.57(B))

Know all persons by these presents, that we, the undersigned *[name of principal]*, as principal, and *[name of surety]*, as sureties, are hereby held and firmly bound unto *[name of political subdivision]*, in the penal sum of *[_____]* dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed *[date]*.

The condition of the above obligation is such, that whereas the above named principal did on *[date]*, entered into a contract with *[name of political subdivision]* which said contract is made a part of this bond the same as though set forth herein;

Now, if the said *[name of principal]* shall well and faithfully do and perform the things agreed by and between *[name of principal]* and *[name of political subdivision]* to be done and performed according to the terms of the said contract; we agreeing and assenting that this undertaking shall be for the benefit of the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The surety hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of the contract shall in any way affect the obligation of the surety on its bond.

Baldwin's Ohio Practice, Local Government Law--Township

Database updated October 2018

Rebecca C. Princehorn, B.A., J.D., M.P.A. Based on original work by William B. Shimp, B.A., J.D.

Part II. Forms

Chapter 65. Contracts and Purchases—Forms

I. Competitive Bidding

§ 65:9. Resolution approving bond and contract

On *[date]*, *[name of contractor]*, whose bid for *[describe project]* was previously accepted by this board, executed a contract for the work and submitted a bond as required by law. The contract and the bond and its amount and sureties are satisfactory and are hereby approved.

Part II. Forms
Chapter 65. Contracts and Purchases—Forms
I. Competitive Bidding

§ 65:10. Certificate of availability of funds

(RC 5705.41)

Author's Note:

Except as provided in RC 5705.41, this certificate or equivalent wording must be attached to every purchase order, voucher, warrant, or contract entered into by a township. See §§ 65:6, 65:15 to 65:17, 65:21 to 65:23.

CERTIFICATE OF AVAILABILITY OF FUNDS

I certify that *[*$_____ *]*, the amount required to meet the contract, obligation, or expenditure for the attached, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of the *[name of fund, with appropriation item code number]*, free from any outstanding obligation or encumbrance.

[Date]

[Title of fiscal officer]

CONTRACTS

OPERS INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT FORM

INDEPENDENT CONTRACTOR/WORKER ACKNOWLEDGMENT

OPERS

Ohio Public Employees Retirement System
277 East Town Street, Columbus, Ohio 43215-4642

Employer Services: 1-888-400-0965
www.opers.org

This form is to be completed if you are an individual who begins providing personal services to a public employer on or after Jan. 7, 2013 but are not considered by the public employer to be a public employee (e.g., you are an independent contractor) and will not have contributions made to OPERS. This form must be completed not later than 30 days after you begin providing personal services to the public employer.

STEP 1: Personal Information

Social Security Number

___ — ___ — ____

Date of Birth

Month Day Year

__ / __ / ____

First Name MI Last Name

Name of Current Employer

☐ I am an OPERS or other retirement system benefit recipient

STEP 2: Public Employer Information

Name of Public Employer for Which You Are Providing Personal Services

Employer Contact

First Name MI Last Name

Employer Code

Employer Contact Phone Number

___ — ___ — ____

Service Provided to Public Employer

Start Date of Service

Month Day Year

__ / __ / ____

End Date of Service

Month Day Year

__ / __ / ____

STEP 3: Acknowledgment

The public employer identified in Step 2 has identified you as an independent contractor or another classification other than a public employee. Ohio law requires that you acknowledge in writing that you have been informed that the public employer identified in Step 2 has classified you as an independent contractor or another classification other than a public employee for the services described in Step 2 and that you have been advised that contributions to OPERS will not be made on your behalf for these services.

In accordance with Ohio Administrative Code section 145-1-42(A)(2), an independent contractor means an individual who:

- Is a party to a bilateral agreement which may be a written document, ordinance or resolution that defines the compensation, rights, obligations, benefits and responsibilities of both parties;
- Is paid a fee, retainer or other payment by contractual arrangement for particular services;
- Is not eligible for workers' compensation or unemployment compensation;
- May not be eligible for employee fringe benefits such as vacation or sick leave;
- Does not appear on a public employer's payroll;
- Is required to provide his own supplies and equipment, and provide and pay his assistants or replacements if necessary;
- Is not controlled or supervised by personnel of the public employer as to the manner of work; and
- Should receive an Internal Revenue Service form 1099 for income tax reporting purposes.

An independent contractor is <u>not</u> a public employee and shall not become a contributor to the retirement system. If you disagree with the public employer's classification, you may contact OPERS to request a determination as to whether you are a public employee eligible for OPERS contributions for these services. Ohio law provides that a request for a determination must be made within five years after you begin providing personal services to the public employer, unless you are able to demonstrate through medical records to the Board's satisfaction that at the time the five-year period ended, you were physically or mentally incapacitated and unable to request a determination. Under the OPERS Health Reimbursement Arrangement (HRA) and the OPERS Retiree Medical Account (RMA), re-employed retirees who are not independent contractors are not eligible for a monthly allowance or reimbursement of any medical expenses incurred during the re-employment period. If you are not an independent contractor and receive an allowance or reimbursements, you may be liable to OPERS and/or the applicable plan.

By signing this form, you are acknowledging that the public employer for whom you are providing personal services has informed you that you have been classified as an independent contractor or another classification other than a public employee and that no contributions will be remitted to OPERS for the personal services you provide to the public employer. If you entered into a contract to provide services as an independent contractor, you are acknowledging that you meet the requirements of an "independent contractor" as that term is defined in Ohio Administrative Code section 145-1-42(A)(2). If you begin to provide services as an independent contractor to the same employer from which you retired, or to any employer if less than two months after the retirement allowance commences, you are acknowledging the pension portion of your benefit will be forfeited during the period of the contract. You are acknowledging that the annuity portion of your benefit will be suspended and will be paid in a lump sum upon termination of the contract, and you may be liable to the retirement system for any amounts incorrectly paid from the plan(s). You are also acknowledging that you are not eligible for a monthly allowance or reimbursement of medical expenses incurred during the period you are providing services under the OPERS HRA or the OPERS RMA, and you may be liable to OPERS and/or the applicable plan for any allowance or reimbursements received. This acknowledgment will remain valid as long as you continue to provide the same services to the same employer with no break in service regardless of whether the initial contract period is extended by any additional agreement of the parties. You also acknowledge that you understand you have the right to request a determination of your eligibility for OPERS membership if you disagree with the public employer's classification. **This form must be retained by the public employer and a copy sent to OPERS. The public employer's failure to retain this acknowledgment may extend your right to request a determination beyond the five years referenced above.**

Signature_____ Today's Date____/____/____

Do not print or type name

ELECTIONS / LEVIES

BOARD OF TRUSTEES
_____ TOWNSHIP
DELAWARE COUNTY, OHIO

RESOLUTION NO. _____

A RESOLUTION OF NECESSITY TO LEVY A(N) _____
TAX IN EXCESS OF THE TEN-MILL LIMITATION FOR THE PURPOSE OF
_____
(R.C. §§ 5705.03, _____, 5705.191, 5705.192, and 5705.25)

The Board of Trustees of _____ Township, Delaware County, Ohio ("Board") met in _____ session on _____, 20_____ with the following members present:

_____

_____

_____.

_____ Moved the adoption of the following Resolution:

PREAMBLE

WHEREAS, the amount of taxes that will be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of _____ Township, Delaware County, Ohio ("Township"); and,

WHEREAS, it is necessary to levy a tax in excess of the ten-mill limitation; and

WHEREAS, the levy would be for the purpose of _____, said purposes being authorized by R.C. § _____; and,

WHEREAS, a resolution declaring the necessity of levying a(n) _____ tax, pursuant to R.C. § _____, outside the ten-mill limitation must be approved and certified to the Delaware County Auditor ("Auditor") in order to permit the Board to consider the levy of such a tax and must request that the Auditor certify to the Board the total current tax valuation of the Township, and the number of mills required to generate a specified amount of revenue, or the dollar amount of revenue that would be generated by a specified number of mills.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED, by the Board, at least two-thirds (2/3) of all of the members of the Board concurring, as follows:

1. The amount of taxes that will be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the Township.

2. It is necessary to levy a tax in excess of the ten-mill limitation.

3. Pursuant to R.C. § 5705.03(B)(1):

    a. The purpose of the tax is as follows:

    _____;

    b. The type of levy is as follows:

    _____ additional levy

    proposed levy rate: _____ mill(s)

    _____ renewal levy: _____ increase _____ decrease

    current levy rate: _____ mill(s)

    amount of proposed increase/decrease: _____ mill(s)

    total proposed levy rate: _____ mill(s)

    _____ replacement levy: _____ increase _____ decrease

    current levy rate: _____ mill(s)

    amount of proposed increase/decrease: _____ mill(s)

    total proposed levy rate: _____ mill(s)

    c. The sections of the Revised Code authorizing submission of the question of the tax are R.C. §§ 5705.03, 5705.191, and 5705.25 and the following:

    _____;

    d. The term of the tax is as follows (in years or continuing):

_____;

e. The territory where the tax is to be levied is as follows:

_____ Upon the entire territory of the Township

_____ If authorized by the Revised Code, the following described portion of the territory of the Township:

_____;

f. The date of the election at which the question of the tax shall appear on the ballot is as follows;

_____;

g. The territory where the ballot measure is to be submitted is as follows:

_____ Upon the entire territory of the Township

_____ If authorized by the Revised Code, the following described portion of the territory of the Township:

_____;

h. The tax will be first levied and collected as follows:

The tax year in which the tax will first be levied is _____;

The calendar year in which the tax will first be collected is _____;

i. The Township has territory in Delaware County and each of the following listed counties:

_____.

4. Pursuant to R.C. § 5705.03(B)(1), the Fiscal Officer is hereby directed to certify a copy of this resolution to the Auditor. The Board hereby requests that the Auditor certify to this Board the following:

a. The total current tax valuation of the Township;

b. The number of mills required to generate the following amount of revenue; or,

$_____

c. The dollar amount of revenue that would be generated by the levy of the following mills:

_____ mill(s).

5. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

6. This Resolution shall be in full force and effect immediately upon adoption.

_____ seconded the motion.

Voted on and signed this _____, 20_____ in _____ Township, Delaware County, Ohio.

BOARD OF TRUSTEES
_____ TOWNSHIP
DELAWARE COUNTY, OHIO

_____
Trustee

_____
Trustee

_____
Trustee

State of Ohio :
Delaware County :

I, the undersigned Fiscal Officer of _____Township, Delaware County, Ohio, hereby certify that the foregoing Resolution No. _____ is taken and copied from the record of proceedings of the Board of Trustees of _____ Township, Delaware County, Ohio, and that it has been compared by me with the resolution on the record and is a true and accurate copy. Further, I certify that the adoption of such resolution occurred in an open meeting held in compliance with R.C. § 121.22.

Date: _____

_____
Fiscal Officer
_____Township
Delaware County, Ohio

BOARD OF TRUSTEES
_____ TOWNSHIP
DELAWARE COUNTY, OHIO

RESOLUTION NO. _____

A RESOLUTION TO PROCEED WITH SUBMISSION OF THE QUESTION OF LEVYING A(N) _____ TAX IN EXCESS OF THE TEN-MILL LIMITATION FOR THE PURPOSE OF _____
(R.C. §§ 5705.03, _____, 5705.191, 5705.192, and 5705.25)

The Board of Trustees of _____ Township, Delaware County, Ohio ("Board") met in _____ session on _____, 20_____ with the following members present:

_____

_____

_____.

_____ Moved the adoption of the following Resolution:

PREAMBLE

WHEREAS, the Board, approved the following resolution declaring the necessity to levy a tax in excess of the ten-mill limitation:

Resolution No: _____

Date Approved: _____, 20___

; and,

WHEREAS, the Delaware County Auditor ("Auditor") has certified the following information to the Board:

1. The total current tax valuation of the Township is as follows:

   $_____

2. The number of mills required to generate a specified amount of revenue is:

   - Specified amount of revenue: $_____

- Required number of mills: _____.

3. The dollar amount of revenue that would be generated by a specified number of mills is:

    - Specified number of mills: _____

    - Dollar amount of revenue generated: $_____

RESOLUTION

NOW THEREFORE, BE IT RESOLVED, by the Board, at least two-thirds (2/3) of all of the members of the Board concurring, as follows:

1. The Board shall proceed with the submission of the question of the tax to the electors.

2. The rate of the tax levy, expressed in mills for each one dollar in tax valuation as estimated by the Auditor, is as follows:

    a. _____ mill(s);

    b. This rate amounts to the following for each one hundred dollars of tax valuation:

    $_____.

    c. If the levy is a renewal levy or a replacement levy, this rate:

    _____ **is** the same rate as the existing tax levy.

    _____ **is not** the same rate as the existing tax levy and is either:

    _____ a reduction, the extent of the reduction being: ____ mill(s)

    _____ an increase, the extent of the increase being: ____ mill(s)

3. Pursuant to R.C. § 5705.03(B)(1):

    a. The purpose of the tax is as follows:

    _____;

b. The type of levy is as follows:

_____ additional levy

_____ renewal levy: _____ increase _____ decrease

_____ replacement levy: _____ increase _____ decrease

c. The sections of the Revised Code authorizing submission of the question of the tax are R.C. §§ 5705.03, 5705.191, and 5705.25 and the following:

_____;

d. The term of the tax is as follows (in years or continuing):

_____;

e. The territory where the tax is to be levied is as follows:

_____ Upon the entire territory of the Township

_____ If authorized by the Revised Code, the following described portion of the territory of the Township:

_____;

f. The date of the election at which the question of the tax shall appear on the ballot is as follows ("Election");

_____;

g. The territory where the ballot measure is to be submitted is as follows:

_____ Upon the entire territory of the Township

_____ If authorized by the Revised Code, the following described portion of the territory of the Township:

_____;

h. The tax will be first levied and collected as follows:

The tax year in which the tax will first be levied is _____;

The calendar year in which the tax will first be collected is _____;

i. The Township has territory in Delaware County and each of the following listed counties:

_____.

4. The Fiscal Officer is hereby directed to **certify the levy to the the Board of Elections, Delaware County, Ohio ("BOE").** Certification shall include copies of **ALL** of the following documents:

   a. **Resolution of Necessity** (Resolution No. _____ adopted on _____, 20_____; and,
   b. **Certification of the Auditor**; and,
   c. **Resolution to Proceed** (This Resolution).

   Certification shall occur by **no later than 4:00 PM on _____, 20_____** (90 days prior to the Election)

   The Fiscal Officer shall also notify the BOE to cause notice of the Election on the question of levying the tax to be given as required by law.

5. The BOE is hereby directed to submit substantially the following question to the electors at the Election:

OFFICAL QUESTIONS AND ISSUES BALLOT _____ ELECTION _____, 20_____ PROPOSED TAX LEVY (ADDITIONAL) _____ TOWNSHIP DELAWARE COUNTY, OHIO A majority affirmative vote is necessary for passage	
An additional tax for the benefit of _____ Township, Delaware County, Ohio for the purpose of _____ at a rate not exceeding _____ mills for each one dollar of valuation, which amounts to _____ for each one hundred dollars of valuation, for _____ years commencing in 20_____, first due in calendar year 20_____.	
	FOR THE TAX LEVY
	AGAINST THE TAX LEVY

6. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

7. This Resolution shall be in full force and effect immediately upon adoption.

_____ seconded the motion.

Voted on and signed this _____, 20_____ in _____Township, Delaware County, Ohio.

BOARD OF TRUSTEES
_____ TOWNSHIP
DELAWARE COUNTY, OHIO

_____
Trustee

_____
Trustee

_____
Trustee

State of Ohio :
Delaware County :

I, the undersigned Fiscal Officer of _____Township, Delaware County, Ohio, hereby certify that the foregoing Resolution No. _____ is taken and copied from the record of proceedings of the Board of Trustees of _____ Township, Delaware County, Ohio, and that it has been compared by me with the resolution on the record and is a true and accurate copy. Further, I certify that the adoption of such resolution occurred in an open meeting held in compliance with R.C. § 121.22.

Date: _____

_____
Fiscal Officer
_____ Township
Delaware County, Ohio

INDIGENT BURIAL

BOARD OF TRUSTEES
_____ TOWNSHIP, DELAWARE COUNTY, OHIO

RESOLUTION NO. _____

A RESOLUTION PROVIDING FOR THE CREMATION AND BURIAL OF THE REMAINS OF A TOWNSHIP RESIDENT WHO HAS DIED INDIGENT.
***Note – This is a form resolution, if the township has adopted an Indigent Burial Policy the resolution must be amended to be consistent with that policy.**

PREAMBLE

WHEREAS, _____ was a _____Township resident and _____ died on _____, 20___ ; and,

WHEREAS, _____ was indigent at the time of his/her death; and,

WHEREAS, his/her only identified next-of-kin is a minor child who is also indigent; and,

WHEREAS, R.C. § 9.15 requires townships to bury or cremate the remains of an indigent individual at the expense of the township in which the person had a legal residence at the time of death; and,

WHEREAS, to comply with R.C. § 9.15, the _____ Township Board of Trustees ("Board") desires to make arrangements and pay for the cremation and burial of _____'s remains in the _____ Township Cemetery; and,

WHEREAS, the Board desires to place a stone or concrete marker at _____'s grave indicating his/her name, age, and date of death.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY THE BOARD AS FOLLOWS:

1. The Board recognizes that township resident _____ died on _____ and was indigent at the time of his/her death, and that his/her only identified next-of-kin is a minor child.

2. The Board, pursuant to R.C. § 9.15(A), shall pay for the cremation of _____'s remains and will provide a plot at _____ Township Cemetery for the burial of the cremated remains. The funds to be used for this purpose shall come from the Township's General Fund and shall be monies not otherwise encumbered.

3. The Board, pursuant to R.C. § 9.15(C), shall pay for a marker to be placed at _____'s gravesite from General Fund monies not otherwise encumbered. The marker shall indicate the deceased's name, age, and date of death

4. The Board appoints _____ to make arrangements with _____ Funeral Homes and/or any other company necessary to carry out the purposes of this Resolution.

5. All formal actions of the Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of the Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

6. This Resolution shall be in full force and effect immediately upon adoption.

Voted on and signed this _____ day of _____, 20____ in _____ Township, Delaware County, Ohio.

BOARD OF TRUSTEES OF
_____ TOWNSHIP,
DELAWARE COUNTY, OHIO

_____
Trustee _____

_____
Trustee _____

_____
Trustee _____

LAND / REAL ESTATE

Baldwin's Ohio Practice, Local Government Law--Township

Database updated October 2018

Rebecca C. Princehorn, B.A., J.D., M.P.A. Based on original work by William B. Shimp, B.A., J.D.

Part II. Forms

Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms

I. Acquisition of Property

§ 68:1. Resolution authorizing purchase of real property

(RC 511.11)

Whereas, *[name]* is the owner of the following described real estate in *[_____]* Township: *[insert legal description]*

And whereas, *[name]* has offered to sell the real estate, consisting of *[_____]* acres with *[_____]* foot frontage on *[identify street or road]*, to *[_____]* Township, for the sum of *[*$*_____]*;

Now, therefore, be it resolved by the board of trustees of *[_____]* Township, *[_____]* County, Ohio, that the purchase of the above-described real estate is hereby approved for the purpose of *[state purpose]*, and the fiscal officer is hereby authorized to issue *[his/her]* warrant and voucher for payment of the same.

(RC 511.01)

Author's Note:

See RC 511.02 for provisions on levying a tax or issuing bonds to build, improve or remove a town hall. See also §§ 61:1 to 61:11 and Ch. 63. The following resolution must be certified to the board of elections not later than 4:00 p.m. of the 90th day before the election.

Whereas, it is necessary to *[build a town hall/(improve/enlarge/remove) the present [_____] Town Hall]*, and the estimated cost of *[construction/improvement/enlargement/removal]* exceeds $50,000; it is therefore

Resolved, that the question of *[building a/(improving/enlarging/removing) the]* town hall be submitted to the electors of the township at the *[primary/special/general]* election on *[date]*.

Further resolved, that the fiscal officer is directed to certify a copy of this resolution to the *[_____]* County Board of Elections, not later than 4:00 p.m. on *[date]*.

[Insert fiscal officer's certificate, § 60:21.*]*

Part II. Forms
Chapter 68. Real Property—Buildings—Memorials—Parks— Cemeteries—Forms
II. Town Hall
§ 68:5. Resolution for purchase of site and erection of town hall

(RC 511.01 to RC 511.03)

Author's Note:

See RC Ch. 163 for purchase of land.

It appearing to the satisfaction of the board of township trustees that at the election a majority of the ballots cast were in favor of the purchase of a site and the building of a town hall; it is, therefore, ordered that a site for a town hall be purchased and a hall built thereon, and a tax of *[describe]* levied on all the property in the township to pay for the same.

MEETINGS

BOARD OF TRUSTEES
_____ TOWNSHIP
DELAWARE COUNTY, OHIO

DATE: _____

RESOLUTION NO. _____

IN THE MATTER OF ESTABLISHING A REASONABLE METHOD WHEREBY THE PUBLIC MAY DETERMINE THE TIME AND PLACE OF ALL REGULARLY SCHEDULED MEETINGS OF THE BOARD AND THE TIME, PLACE, AND PURPOSE OF ALL SPECIAL AND EMERGENCY MEETINGS OF THE BOARD

The Board of Trustees of _____ Township, Delaware County, Ohio ("Board") met special open session for the annual organizational meeting on the _____ day of _____, 20_____.

_____ Moved the adoption of the following Resolution.

PREAMBLE

WHEREAS, pursuant to R.C. § 121.22(F), the Board is required, by rule, to establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings of the Board and the time, place, and purpose of all special meetings of the Board; and,

WHEREAS, the Board also desires, consistent with R.C. § 121.22(F), to establish a reasonable method whereby any person may determine the time, place, and purpose of all emergency meetings of the Board.

RESOLUTION

NOW THEREFORE BE IT RESOLVED:

Pursuant to R.C. § 121.22(F), the Board establishes and provides notice of the following schedule for all regular meetings of the Board held in 20 ___ and sets the following rules for providing notice of all special and emergency meetings of the Board held in 20___ :

1. All regularly scheduled meetings of the Board held in 20 __ shall be held in accordance with the following schedule:

   Time: _____

   Days/Dates: _____

Place: _____.

2. The Fiscal Officer shall immediately publish the above time, days/dates, and place of all regularly scheduled meetings one (1) time in the Delaware Gazette, a newspaper of general circulation in the Township (, and in _____).

3. The Fiscal Officer shall also continually post the above time, days/dates, and place of all regularly scheduled meetings in at least one (1) prominent public location in the township hall, in at least one (1) prominent public location at any other location where the Board regularly holds meetings and/or conducts business (if any), and, if the Board maintains a Township website or subsequently establishes a Township website, on the Township's website.

4. Any person, upon request made to the Fiscal Officer, may obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed. Advance notification shall be provided in any reasonably requested manner to include, but not limited to, providing notice and the agenda by email sent to an email address provided by the requestor or physically mailing the notice and agenda to the requestor and/or all subscribers on a mailing list provided by the requestor. If physical mailing of the notice and agenda are requested, the requestor shall provide the Fiscal Officer a sufficient quantity of self-addressed, stamped envelopes bearing sufficient postage to mail the requested notice(s) and agenda(s). The Fiscal Officer shall maintain a list of all persons requesting such notification.

5. The Fiscal Officer shall maintain a separate list of news media requesting notification of meetings.

6. Where the purpose of a regular meeting is of a type for which a person(s) or the news media has requested notification, the Fiscal Officer shall provide advance notice to such requesting person(s) in the manner requested and to the news media in writing.

7. The Fiscal Officer shall provide notice of the time, place, and purpose of all special meetings of the Board as follows:

    A. Provide at least twenty-four (24) hours' advance notice in writing to the news media that have requested notification; and,
    B. Where the purpose of the meeting is of a type for which a person(s) has requested notification, provide advance notice to such requesting person(s) in the manner requested.
    C. Prominently post advance notice of the meeting on the door of the township hall or other location where the meeting is to be held.
    D. If the Board specifically requests notice be published, publish notification as directed by the Board.
    E. If the Board maintains a Township website or subsequently establishes a Township website, post notice of the meeting on the Township's website.

8. Any member or members of the Board calling an emergency meeting of the Board shall immediately provide notice of the time, place, and purpose of the emergency meeting as follows:

A. Provide notice in writing to the news media that have requested notification; and,
B. Where the purpose of the meeting is of a type for which a person(s) has requested notification, provide notice to such requesting person(s) in the manner requested.
C. Prominently post notice of the meeting on the door of the township hall or other location where the meeting is to be held.
D. If the Board maintains a Township website or subsequently establishes a Township website, post notice of the meeting on the Township's website.

9. If a meeting is cancelled, the Fiscal Officer shall provide notice of the cancellation by prominently posting a notice of the cancellation on the door of the township hall or other location where the meeting is to be held and, if the Board maintains a Township website or subsequently establishes a Township website, posting notice of the cancellation on the Township's website.

10. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

11. This Resolution shall be in full force and effect immediately upon adoption.

_____ Seconded the motion.

Voted on and signed this ___ day of _____, 20___in _____ Township, Delaware County, Ohio.

_____
_____
Trustee

_____
_____
Trustee

_____
_____
Trustee

Attest:

_____
_____
Township Fiscal Officer

CERTIFICATE

State of Ohio, Delaware County:

I, the undersigned Township Fiscal Officer of _____ Township, Delaware County, Ohio, certify that the foregoing Resolution No. _____ is taken and copied from the record of proceedings of the Board, and that it has been compared by me with the Resolution on the record and is a true and accurate copy. I further certify that the adoption of such Resolution occurred in an open meeting held in compliance with R.C. § 121.22.

Date: _____ _____

_____

Township Fiscal Officer

NOISE

DATE: _____

RESOLUTION NO. _____

IN THE MATTER OF ADOPTING A RESOLUTION TO REGULATE NOISE WITHIN THE UNINCORPORATED TERRITORY OF _____ TOWNSHIP PURSUANT TO OHIO REVISED CODE SECTION 505.172:

The Board of Trustees of _____ Township, Delaware County, Ohio met in regular session on the _____ day of _____, 20 ___ at _____ with the following members present:

_____ , _____ , _____.

_____ Moved the adoption of the following Resolution:

PREAMBLE

WHEREAS; it is the opinion of this _____ Township Board of Trustees ("Board") that unnecessary noise in residential areas of this township is detrimental to the public health and safety and constitutes a public nuisance, and

WHEREAS; the Board also recognizes that certain levels of noise are unavoidable, and

WHEREAS; it is the opinion of the Board that the elimination of noise beyond that which is essential to everyday living is beneficial to all residents of this township, and

WHEREAS; it is the intent of this Resolution to prohibit noise that is unnecessary in residential areas of this township, and

WHEREAS; Section 505.172 of the Ohio Revised Code authorizes a board of township trustees to adopt regulations and orders that are necessary to control noise within the unincorporated territory of the township that is generated at any premises to which a D permit has been issued by the division of liquor control or that is generated within any area zoned for residential use.

NOW THEREFORE BE IT RESOLVED, as follows:

(A) DEFINITIONS

Plainly Audible - As used in this Resolution, plainly audible means any noise or sound produced by any source that can be clearly heard by a person using normal hearing faculties.

(B) CERTAIN NOISE PROHIBITED

No person in the unincorporated territory of _____ Township shall make and no landowner or lawful occupant of land shall permit at any premises to which a D permit has been issued by the division of liquor control or that is zoned for residential use, the making of any noise or sound, which by reason of volume, pitch, frequency, intensity, duration, or nature annoys or disturbs the comfort, peace, or health of a person of ordinary sensibilities and not a resident of the property from which the noise or sound emanates. The noise or sound must be plainly audible at a distance of one hundred (100) feet or more from the property from which the noise emanates.

(C) EXAMPLES OF NOISES

The following noises or sounds, which constitute a non-exclusive list, may be considered a violation of this Resolution if they violate division (B) of this Resolution:

1. Horns, Signaling Devices. The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any public street or public place; a creation by means of any such signaling device an unreasonably loud or harsh sound; and the sounding of any such device for any unnecessary and unreasonable length of time. This shall not apply to the use of any such signaling devise as a warning of danger.

2. Radios, Phonographs, etc. The use or operation of any radio, phonograph, television, tape recorder, loudspeaker, cassette or compact disc player, MP-3 player, or any other machine or device for the producing or reproducing of sound or amplifying sound with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, or on the property in which such machine or device is operated and who are voluntary listeners thereto.

3. Yelling, Shouting. Yelling, shouting, hooting, whistling, or singing.

4. Musical Instruments. The use of any drum or other musical instrument or device with or without electronic amplification.

5. Internal Combustion Engines or Other Power Equipment. The operation of any internal combustion engine or other piece of power equipment excluding power mowers, trimmers, chain saws, or tillers.

6. Gunfire. Repeated discharging of firearms for an unreasonably long period of time under the circumstances then existing.

(D) It shall be a prima facie violation of division (B) of this Resolution when the noise can be heard at a distance of one hundred (100) feet or more from the property where the noise or sound emanates.

(E) NOISE FROM MOTOR VEHICLES

No person while operating or occupying a motor vehicle within the unincorporated territory of _____ Township within any area zoned for residential use, or at any premises to which a D permit has been issued by the division of liquor control, shall operate or amplify the noise or sound produced by a radio, tape player, compact disk player, MP-3 player, or other sound making device or instrument from within the motor vehicle so that the noise or sound is plainly audible at a distance of one hundred (100) feet or more from the motor vehicle.

(F) The provisions of this resolution shall not apply:

1) To any law enforcement motor vehicle equipped with any communication device necessary to the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary to the performance of any emergency procedures.
2) To the noise or sound made by a horn or other warning device required or permitted by state law, when used in accordance with state law.

(G) LAW ENFORCEMENT DETERMINATION OF SOURCE

Any law enforcement personnel who hears a sound that is plainly audible as defined herein, shall be entitled to measure the sound according to the following standards:

1) The primary means of detection shall be by means of the officer's ordinary auditory senses, so long as the officer's hearing is not enhanced by any mechanical device, such as a microphone or hearing aid.

2) Regarding division (E) of this Resolution, the officer must have a direct line of sight and hearing to the motor vehicle producing the noise or sound so that he can readily identify the offending motor vehicle and the distance involved.

3) The officer need not determine any particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a noise, sound, or rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound.

4) Any motor vehicle from which the sound is produced must be located (stopped, standing, or moving) within the unincorporated area of the township in an area zoned for residential use or on any premises to which a D permit has been issued by the division of liquor control. Parking lots and driveways are included.

(H) Any person engaging in activities described in section 1.61 of the Revised Code (Titled: "Agriculture Defined") is exempt from the provisions of this Resolution if the noise is attributed to an activity described in section 1.61 of the Revised Code.

(I) Any person who engages in coal mining and reclamation operations, as defined in division (B) of section 1513.01 of the Revised Code, or surface mining, as defined in division (A) of section 1514.01 of the Revised Code, is exempt from the provisions of this Resolution if the noise is attributed to coal mining and reclamation or surface mining activities.

(J) Noise resulting from the drilling, completion, operation, maintenance, or construction of any crude oil or natural gas wells or pipelines or any appurtenances to those wells or pipelines or from the distribution, transportation, gathering, or storage of crude oil or natural gas is exempt from the provisions of this Resolution.

(K) Nothing in this Resolution shall be deemed to prohibit incidental noise such as that as is made by construction operations, repairs, or maintenance of houses or yards between the hours of 7:00 a.m. and 9:00 p.m.

(L) Refuse collection operations conducted between the hours of 7:00 a.m. and 9:00 p.m. shall be exempted, provided that all equipment is operated in accordance with the manufacturer's specifications and/or with all standard manufacturers' mufflers and other noise reducing equipment in use and in proper operating condition. Refuse collection personnel are to avoid loud voices and noises generated by striking cans against their vehicle or other cans.

(M) PENALTY

Whosoever violates divisions (B) or (E) of this Resolution shall be guilty of the level of offense as provided in the most current version of section 505.172 of the Ohio Revised Code for violating any regulation or order, such as the current Resolution, adopted pursuant to section 505.172 of the Ohio Revised Code. Fines levied and collected pursuant to this Resolution shall be paid into the township general revenue fund.

(N) PRIVATE CIVIL ACTION

Pursuant to division (F) of section 505.172 of the Revised Code, any person aggrieved by another person's violation of this regulation may seek in a civil action a declaratory judgment, an injunction, or other appropriate relief against the other person for committing an act or practice that violates this Resolution.

(O) RESOLUTION PASSED IN AN OPEN MEETING

All formal actions of the Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of the Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

_____ seconded the motion.

VOTING ON THE RESOLUTION:

BOARD OF _____
TOWNSHIP TRUSTEES

_____	_____
Township Trustee	Date
_____	_____
Township Trustee	Date
_____	_____
Township Trustee	Date

DATE: _____

RESOLUTION NO. _____

IN THE MATTER OF AMENDING RESOLUTION NO. _____, ADOPTING A RESOLUTION TO REGULATE NOISE WITHIN THE UNINCORPORATED TERRITORY OF _____ TOWNSHIP PURSUANT TO OHIO REVISED CODE SECTION 505.172:

The Board of Trustees of _____Township, Delaware County, Ohio met in regular session on the _____day of _____, 20___ at _____with the following members present _____ , _____ , _____.

_____ Moved the adoption of the following Resolution:

PREAMBLE

WHEREAS; it is the opinion of this _____ Township Board of Trustees that unnecessary noise in residential areas of this township is detrimental to the public health and safety and constitutes a public nuisance, and

WHEREAS; this board of trustees also recognizes that certain levels of noise are unavoidable, and

WHEREAS; it is the opinion of this board of trustees that the elimination of noise beyond that which is essential to everyday living is beneficial to all residents of this township, and

WHEREAS; it is the intent of this Resolution to prohibit noise that is unnecessary in residential areas of this township, and

WHEREAS; Section 505.172 of the Ohio Revised Code authorizes a board of township trustees to adopt regulations and orders that are necessary to control noise within the unincorporated territory of the township that is generated at any premises to which a D permit has been issued by the division of liquor control or that is generated within any area zoned for residential use, and

WHEREAS; Section 505.172 of the Ohio Revised Code was amended (2011 HB 153) since the original Resolution was adopted, and

WHEREAS; The Board, via this Resolution, desires to amend its previous Resolution in accordance with the amendments to section 505.172 of the Ohio Revised Code.

NOW THEREFORE BE IT RESOLVED,

(A) DEFINITIONS

Plainly Audible - As used in this Resolution, plainly audible means any noise or sound produced by any source that can be clearly heard by a person using normal hearing faculties.

(B) CERTAIN NOISE PROHIBITED

No person in the unincorporated territory of _____ Township shall make and no landowner or lawful occupant of land shall permit at any premises to which a D permit has been issued by the division of liquor control or that is zoned for residential use, the making of any noise or sound, which by reason of volume, pitch, frequency, intensity, duration, or nature annoys or disturbs the comfort, peace, or health of a person of ordinary sensibilities and not a resident of the property from which the noise or sound emanates. The noise or sound must be plainly audible at a distance of one hundred (100) feet or more from the property from which the noise emanates.

(C) EXAMPLES OF NOISES

The following noises or sounds, which constitute a non-exclusive list, may be considered a violation of this Resolution if they violate division (B) of this Resolution:

1. Horns: Signaling Devices. The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any public street or public place; a creation by means of any such signaling unreasonably loud or harsh sound; and the sounding of any such device for any unnecessary and unreasonable length of time. This shall not apply to the use of any such signaling devise as a warning of danger.

2. Radios: Phonographs: Etc. The use or operation of any radio, phonograph, television, tape recorder, loudspeaker, cassette or compact disc player or any other machine or device for the producing or reproducing of sound or amplifying sound with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, or on the property in which such machine or device is operated and who are voluntary listeners thereto.

3. Yelling: Shouting. Yelling, shouting, hooting, whistling, or singing.

4. Musical Instruments. The use of any drum or other musical instrument or device with or without electronic amplification.

5. Internal Combustion Engines or Other Power Equipment. The operation of any internal combustion engine or other piece of power equipment excluding power mowers, trimmers, chain saws, or tillers.

6. Gunfire. Repeated discharging of firearms for an unreasonably long period of time under the circumstances then existing.

(D) It shall be a prima facie violation of division (B) of this Resolution when the noise can be heard at a distance of one hundred (100) feet or more from the property where the noise or sound emanates.

(E) NOISE FROM MOTOR VEHICLES

No person while operating or occupying a motor vehicle within the unincorporated territory of _____ Township within any area zoned for residential use, or at any premises to which a D permit has been issued by the division of liquor control, shall operate or amplify the noise or sound produced by a radio, tape player, or other sound making device or instrument from within the motor vehicle so that the noise or sound is plainly audible at a distance of one hundred (100) feet or more from the motor vehicle.

(F) The provisions of this resolution shall not apply:

1) To any law enforcement motor vehicle equipped with any communication device necessary to the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary to the performance of any emergency procedures.

2) To the noise or sound made by a horn or other warning device required or permitted by state law, when used in accordance with state law.

(G) LAW ENFORCEMENT DETERMINATION OF SOURCE

Any law enforcement personnel who hears a sound that is plainly audible as defined herein, shall be entitled to measure the sound according to the following standards:

1) The primary means of detection shall be by means of the officer's ordinary auditory senses, so long as the officer's hearing is not enhanced by any mechanical device, such as a microphone or hearing aid.

2) Regarding division (E) of this Resolution, the officer must have a direct line of sight and hearing to the motor vehicle producing the noise or sound so that he can readily identify the offending motor vehicle and the distance involved.

3) The officer need not determine any particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a noise, sound, or rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound.

4) Any motor vehicle from which the sound is produced must be located (stopped, standing, or moving) within the unincorporated area of the township in an area zoned for residential use or on any premises to which a D permit has been issued by the division of liquor control. Parking lots and driveways are included.

(H) Any person engaging in activities described in section 1.61 of the Revised Code (Titled: "Agriculture defined") is exempt from the provisions of this Resolution if the noise is attributed to an activity described in section 1.61 of the Revised Code.

(I) Any person who engages in coal mining and reclamation operations, as defined in division (B) of section 1513.01 of the Revised Code, or surface mining, as defined in division (A) of section 1514.01 of the Revised Code, is exempt from the provisions of this Resolution if the noise is attributed to coal mining and reclamation or surface mining activities.

(J) Noise resulting from the drilling, completion, operation, maintenance, or construction of any crude oil or natural gas wells or pipelines or any appurtenances to those wells or pipelines or from the distribution, transportation, gathering, or storage of crude oil or natural gas is exempt from the provisions of this Resolution.

(K) Nothing in this Resolution shall be deemed to prohibit incidental noise such as that as is made by construction operations, repairs, or maintenance of houses or yards between the hours of 7:00 a.m. and 9:00 p.m.

(L) Refuse collection operations conducted between the hours of 7:00 a.m. and 9:00 p.m. shall be exempted provided that all equipment is operated in accordance with the manufacturer's specifications and/or with all standard manufacturers' mufflers and other noise reducing equipment in use and in proper operating condition. Refuse collection personnel are to avoid loud voices and noises generated by striking cans against their vehicle or other cans.

(M) PENALTY

Whosoever violates divisions (B) or (E) of this Resolution shall be guilty of the level of offense as provided in the most current version of section 505.172 of the Ohio Revised Code for violating any regulation or order, such as the current Resolution, adopted pursuant to section 505.172 of the Ohio Revised Code. Fines levied and collected pursuant to this Resolution shall be paid into the township general revenue fund.

(N) PRIVATE CIVIL ACTION

Pursuant to division (F) of section 505.172 of the Revised Code, any person aggrieved by another person's violation of this regulation may seek in a civil action a declaratory judgment, an injunction, or other appropriate relief against the other person for committing an act or practice that violates this Resolution.

(O) RESOLUTION PASSED IN AN OPEN MEETING

All formal actions of the Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of the Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

_____ seconded the motion.

VOTING ON THE RESOLUTION:

BOARD OF _____
TOWNSHIP TRUSTEES

_____ _____
_____ Township Trustee Date

_____ _____
_____ Township Trustee Date

_____ _____
_____ Township Trustee Date

_____ TOWNSHIP

Resolution No. _____

IN THE MATTER OF ADOPTING A RESOLUTION PROHIBITING THE KEEPING OR HARBORING OF BARKING OR HOWLING DOGS WITHIN THE UNINCORPORATED TERRITORY OF _____ TOWNSHIP:

The Board of Trustees of _____Township, Delaware County, Ohio met in regular session on the _____ day of _____, 20___ at _____ with the following members present: _____, _____, _____.

Mr./Ms. _____ moved the adoption of the following Resolution:

WHEREAS, R.C. Section 955.221(B)(2) authorizes the Township to adopt resolutions to control dogs within the township; and

WHEREAS, the Board of Township Trustees of _____ Township, Delaware County, Ohio, has received numerous and ongoing complaints regarding barking or howling dogs; and

WHEREAS, the Board deems it necessary to control the nuisance of dogs which howl or bark, or emit audible sounds in a manner which disturbs the peace and lives of residents;

NOW THEREFORE BE IT RESOLVED, as follows:

(A) Definitions.

Plainly Audible - As used in this Resolution, plainly audible means noise or sound that can be clearly heard and is discernible by a person using normal hearing faculties or ordinary auditory senses not enhanced by any mechanical device, such as a microphone or hearing aid, as barking, howling or other noise being made by a dog or dogs.

(B) Barking or Howling Dogs.

1. No owner, keeper or harborer shall keep or harbor within the unincorporated area of the township any dog or dogs which, at any time of day or night, continually or intermittently howl or bark, or emit any audible sounds or noises for a period of time exceeding _____ (_____) consecutive minutes that are of such an intensity so as to be plainly audible at a distance of one hundred (100) feet or more from the property from which the howling, barking or audible sounds or noises emanate and which are disturbing to the peace and quiet of the neighborhood or are detrimental to the life and health of any individual.

2. Any person who shall allow any dog or dogs habitually to remain, be lodged or fed within any dwelling, building, yard or enclosure, which that person occupies or owns, shall be considered as harboring such dog.

(C) None of the provisions of division (A) hereof shall apply to the use of any dog which is lawfully engaged in hunting or training for the purpose of hunting while accompanied by a licensed hunter or to any dog engaged in herding or corralling of animals for an agricultural purpose. However, such dogs at all other times and in all other respects, shall be subject to this resolution, unless actually in the field and engaged in hunting or in legitimate training for such purpose.

(D) None of the provisions of division (A) hereof shall apply to owners, operators, or employees of duly licensed veterinary hospitals; owners, operators, or employees of duly licensed kennels or animal boarding establishments; or to blind or disabled persons when the dog serves as an aid, guide or leader.

(E) Whoever violates this resolution is guilty of a minor misdemeanor. Each day of continued violation constitutes a separate offense.

(F) All formal actions of the Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of the Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

_____ seconded the motion.

VOTING ON THE RESOLUTION:

BOARD OF _____
TOWNSHIP TRUSTEES

_____ _____
_____ Township Trustee Date

_____ _____
_____ Township Trustee Date

_____ _____
_____ Township Trustee Date

NUISANCE ABATEMENT

_____ TOWNSHIP BOARD OF TRUSTEES
DELAWARE COUNTY, OHIO

DATE: _____

RESOLUTION NO. _____

DECLARATION OF NUISANCE AND ABATEMENT, CONTROL, AND/OR REMOVAL OF NUISANCE PURSUANT TO R.C. § 505.87
ON REAL PROPERTY LOCATED AT:

OWNER: _____

PROPERTY: _____

PIN: _____

PREAMBLE

WHEREAS, the _____ Township Board of Trustees, Delaware County, Ohio ("Board") is familiar with the following real property:

_____,
PIN: _____ ("Property")

(See Exhibit A – General Warranty Deed with legal description)(See Exhibit B – Delaware County Auditor's Summary, Tax Information, and GIS Map), and;

WHEREAS, the Property is wholly located in _____ Township, Delaware County, Ohio; and,

WHEREAS, the record owner of the Property is _____ ("Property Owner"); and,

WHEREAS, the Property is not maintained by the Property Owner and contains accumulations of vegetation, garbage, refuse or other debris that are an attractive nuisance, dangerous, unhealthy, and/or unsightly to the neighborhood and community and which negatively impact property values and the general welfare of the neighborhood and community; and,

WHEREAS, the Board believes that the Property Owner's maintenance of such vegetation, garbage, refuse, or other debris on the Property constitutes a nuisance; and,

WHEREAS, the Board hereby seeks to abate, control and/or remove such nuisance (vegetation, garbage, refuse or other debris) from the Property and recover its costs in so doing, all in accordance with R.C. § 505.87.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED:

A. The Board determines and declares that the Property Owner's maintenance of vegetation, garbage, refuse, or other debris on the Property constitutes a nuisance.

B. The Board shall provide for the abatement, control, or removal of such nuisance (vegetation, garbage, refuse, and other debris) from the Property and recover the Board's costs in so doing, all in accordance with R.C. § 505.87.

C. At least seven (7) days before providing for such abatement, control, or removal of vegetation, garbage, refuse, or other debris from the Property, notification shall be provided to the Property Owners and any holders of liens of record on the Property. The individual(s)/entity(ies) to be provided notice and the last known and best address(es) for such individual(s) and/or entity(ies) is/are as follows:

See Exhibit C

D. The Board shall send the notice by certified mail to the Property Owner and lienholders of record on the Property at the addresses listed on Exhibit C. In addition, the Board shall publish the notice once in a newspaper of general circulation in the Township.

E. The contents of the notice shall:

1. Order the Property Owner to abate, control, or remove the vegetation, garbage, refuse, or other debris, the Property Owner's maintenance of which has been determined by the Board to be a nuisance;

2. State that if that vegetation, garbage, refuse, or other debris is not abated, controlled, or removed, or if provision for its abatement, control, or removal is not made, within seven (7) days, the Board shall provide for the abatement, control, or removal. Any expenses incurred by the Board in performing that task shall be entered upon the tax duplicate and become a lien upon the land from the date of entry.

F. A copy of this Resolution shall accompany the mailed notices.

G. The _____ Township Fiscal Officer ("Fiscal Officer") shall send and publish the above notices on behalf of the Board.

H. If, within seven (7) days after notice is given pursuant to this Resolution, the Property Owner fails to abate, control, or remove the vegetation, garbage, refuse, or other debris, or no agreement for its abatement, control, or removal is entered into under R.C. § 505.87(D), the Board shall provide for the abatement, control, or removal and may employ the necessary labor, materials, and equipment to perform the task. Employment of any contractor to perform such work shall be done by separate resolution.

I. All expenses incurred to abate, control, or remove the vegetation, garbage, refuse, or other debris, when approved by the Board, shall be paid out of the Township general fund from moneys not otherwise appropriated.

J. Pursuant to R.C. § 505.87, the Board shall collect the total cost of abating, controlling, or removing the vegetation, garbage, refuse, or other debris from the Property. To do so, the Board shall make a written report to the County Auditor of the Board's action. The Board shall include in the report a proper description of the Property and a statement of all expenses incurred in providing for the abatement, control, or removal of any vegetation, garbage, refuse, or other debris from the Property, including the board's charges for its services, the costs incurred in providing notice, and the amount paid for labor, materials, and equipment.

K. On behalf of the Board, the Fiscal Offer shall prepare the report described in Section J above and provide such report to the Board for approval. Once approved by the Board, the Fiscal Offer shall deliver the report, along with a certified copy of this Resolution and a certified copy the Resolution approving the report, to the County Auditor.

L. The expenses incurred, when allowed, shall be entered upon the tax duplicate, are a lien upon the land from the date of the entry, shall be collected as other taxes, and shall be returned to the Township and placed in the Township general fund.

M. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

N. All exhibits referenced in this Resolution are hereby incorporated herein.

O. This Resolution shall be in full force and effect immediately upon adoption.

Voted on and signed this _____ day of _____, 20_____ in _____ Township, Delaware County, Ohio.

BOARD OF TRUSTEES OF
_____ TOWNSHIP,
DELAWARE COUNTY, OHIO

_____
Trustee

_____
Trustee

_____
Trustee

Attest:

_____
Township Fiscal Officer
_____Township, Delaware County, Ohio

CERTIFICATE

State of Ohio, Delaware County

I, the undersigned Township Fiscal Officer of _____ Township, Delaware County, Ohio, certify that the foregoing Resolution No. _____ is taken and copied from the record of proceedings of the Board, and that it has been compared by me with the Resolution on the record and is a true and accurate copy. Further, I certify that the adoption of such Resolution occurred in an open meeting held in compliance with R.C. § 121.22.

Date: _____

_____

Township Fiscal Officer
_____ Township,
Delaware County, Ohio

LEGAL NOTICE OF DECLARATION OF NUISANCE AND ABATEMENT, CONTROL, AND/OR REMOVAL OF NUISANCE PURSUANT TO R.C. § 505.87 ON REAL PROPERTY LOCATED AT:

_____

PIN:_____

The above identified property ('Property") is not currently maintained and contains vegetation, garbage, refuse or other debris that are an attractive nuisance, dangerous, unhealthy, and/or unsightly to the neighborhood and community and which negatively impact property values and the general welfare of the neighborhood and community. This lack of maintenance was determined by the _____ Township Board of Trustees, Delaware County, Ohio ("Board") in Resolution No. _____, approved on September _____, 2016, to constitute a nuisance.

The Property owner(s) and any lienholders of record on the Property and the last known and best address(es) for such individual(s) and/or entity(ies) is/are as follows:

_____
_____
_____
_____
_____ ("Interested Party").

As an Interested Party, you are hereby advised as follows:

1. You are ordered to abate, control, or remove the vegetation, garbage, refuse, or other debris, the owner's maintenance of which has been determined by the Board to be a nuisance;
2. If that vegetation, garbage, refuse, or other debris is not abated, controlled, or removed, or if provision for its abatement, control, or removal is not made, within seven (7) days, the Board shall provide for the abatement, control, or removal, and any expenses incurred by the Board in performing that task shall be entered upon the tax duplicate and become a lien upon the land from the date of entry.

For any questions concerning this notice, the Property conditions, what must be done to bring the Property into compliance, and/or verification of compliance, contact _____ Township Zoning Inspector, _____, at _____.

_____
_____ Township Fiscal Officer

_____ _____, 20____

Property Owner / Lienholder
123 Main Street
Delaware, Ohio 43015

RE: NOTICE OF DECLARATION OF NUISANCE AND ABATEMENT, CONTROL, AND/OR REMOVAL OF NUISANCE PURSUANT TO R.C. § 505.87

PROPERTY: _____

PARCEL NO: _____

CERTIFIED MAIL

Dear _____:

This letter concerns the above identified real property ('Property"). You have been identified as either the Property owner, a lienholder of record on the Property, and/or another person/entity who may have an ownership or lien interest in the Property ("Interested Party")

As you may or may not be aware, the Property is not currently maintained and contains vegetation, garbage, refuse or other debris that are an attractive nuisance, dangerous, unhealthy, and/or unsightly to the neighborhood and community and which negatively impact property values and the general welfare of the neighborhood and community. This lack of maintenance was determined by the _____ Township Board of Trustees, Delaware County, Ohio ("Board") in Resolution No. _____, approved on _____ _____, 20___ ("Resolution"), to constitute a nuisance. (See Enclosed).

As an Interested Party, you are hereby advised as follows:

1. You are ordered to abate, control, or remove the vegetation, garbage, refuse, or other debris, the owner's maintenance of which has been determined by the Board to be a nuisance;
2. If that vegetation, garbage, refuse, or other debris is not abated, controlled, or removed, or if provision for its abatement, control, or removal is not made, within seven (7) days, the Board shall provide for the abatement, control, or removal, and any expenses incurred by the Board in performing that task shall be entered upon the tax duplicate and become a lien upon the land from the date of entry.

The Board encourages your complete and prompt attention to this matter. To avoid the possibility of the Board taking action, please abate, control, or remove the nuisance within seven (7) days. If you fail to timely resolve this matter as provided in this letter, the Board will, by any action deemed necessary by the Board, abate, control, or remove the vegetation, garbage, refuse, or other debris at your expense.

For any questions concerning this notice, the Property conditions, what must be done to bring the Property into compliance, and/or verification of compliance, please contact _____ Township Zoning Inspector, _____, at _____.

Sincerely,

_____
_____ Township Fiscal Officer

cc:
_____ Township Trustees
_____ Township Zoning Inspector
Delaware County Prosecuting Attorney

Enclosure: Resolution

DATE: _____

RESOLUTION NO. _____

ABATEMENT OF DANGEROUS PROPERTY CONDITIONS, PURSUANT TO R.C. § 505.86, ON REAL PROPERTY LOCATED AT _____

(Delaware County Permanent Parcel Number _____)

PREAMBLE

WHEREAS, the Board of _____ Township Trustees of Delaware County, Ohio (the "Board") is familiar with the real property located at _____ bearing Delaware County Permanent Parcel Number _____ (The "Property.") (See Exhibit A– Deed with legal description.) (See Exhibit B – Delaware County Auditor's Summary, Tax Information and Map), and;

WHEREAS, the Property is wholly located in _____ Township, Delaware County, Ohio; and,

WHEREAS, the Property contains a structure (hereinafter "Structure") generally described as abandoned, insecure, unsafe and/or structurally defective;

WHEREAS, the individuals or entities with an ownership or legal or equitable lien interest in the Property and/or Structure (hereinafter individually, "Party in Interest"; collectively, "Parties in Interest") along with their last known and best addresses are as follows:

1. Name: _____
   Address: _____
   _____

2. Name: _____
   Address: _____
   _____

WHEREAS, the Board believes the Structure on the Property to be vacant, not properly maintained, and in a dilapidated and dangerous condition, and;

WHEREAS, the Board has regularly observed the Structure on the Property to be unsecured, open, and accessible to any persons, animals and/or vermin, and;

WHEREAS, the Board believes the Structure to be insecure, unsafe, and/or structurally defective and as such is an attractive nuisance to children and will attract animals, vermin, and/or filth and;

WHEREAS, the Board, pursuant to R.C. § 505.86, hereby seeks to remove, repair and/or secure the Structure and recover any and all costs incurred by the Board and/or _____ Township (hereinafter the "Township") in so doing.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED, as follows:

12. The Board, pursuant to R.C. § 505.86, intends to remove, repair, and/or secure the Structure on the Property. Any and all costs incurred by the Board and/or the Township in so doing shall be recovered.

13. Prior to taking any action to remove, repair, and/or secure the Structure, the Board respectfully requests that the _____ Township Fire Department, which fire department is under contract with and/or serves the Township, and/or the county building department, inspect the Structure to determine whether the Structure is insecure, unsafe, and/or structurally defective. Following such inspection, the _____ Township Fire Department and/or the county building department shall make a written report of findings concerning the condition of the Structure and immediately forward such written report of findings to the Board.

14. Upon inspection, if the _____ Township Fire Department and/or county building department determines and reports that the Structure is in an insecure, unsafe, and/or structurally defective condition, notification in accordance with R.C. § 505.86, will be sent to all Parties in Interest with an ownership and/or legal or equitable lien interest in the Property and/or Structure, including the following:

    A. Name: _____
    Address: _____
    _____

    B. Name: _____
    Address: _____
    _____

    to notify and inform them of the Board's intentions regarding the removal, repair, and/or securance of the Structure.

15. The notification will be sent via certified U.S. Mail, return receipt requested, to all known addresses for these Parties in Interest. If any addresses are unknown and/or cannot reasonably be obtained with certainty or if notification by certified mail is returned "unclaimed" or not delivered, notification will also be published once in a newspaper of general circulation in the Township. Whether mailed or published, the notification(s) shall:

A. Identify with specificity the Property and Structure and all persons known to have an ownership or legal or equitable lien interest in the Property and/or Structure.

B. Order the Parties in Interest to remove, repair, and/or secure the Structure such that the Structure is secure, safe, and structurally sound as determined and approved by the _____ Township Fire Department and/or county building department;

C. Inform the Parties in Interest that each Party in Interest is entitled to a hearing if the Party in Interest requests a hearing in writing within twenty (20) days after which the notice was mailed. The written request for a hearing shall be made to the Township Fiscal Officer.

D. State that if the Structure is not removed, repaired, or secured, the Board shall make an order providing for the removal, repair, and/or securance of the Structure within thirty (30) days after mailing the notice, unless a Party in Interest has requested a hearing, in which case the Board shall make such order within thirty (30) days after a hearing. Any expenses incurred by the Board and/or Township in performing that task shall, pursuant to authority provided under R.C. § 505.86, be collected through a civil action and/or entered upon the tax duplicate and become a lien upon the land from the date of entry.

16. If a Party in Interest timely requests a hearing, the Board shall set the date, time, and place for the hearing and notify the Party in Interest by certified mail, return receipt requested. The date set for the hearing shall be within fifteen (15) days, but not earlier than seven (7) days, after the Party in Interest has requested a hearing, unless otherwise agreed to by both the Board and the Party in Interest. The hearing shall be recorded by stenographic or electronic means.

17. The Board shall make an order deciding the matter not later than thirty (30) days after a hearing, or not later than thirty (30) days after mailing notice to the Parties in Interest if no Party in Interest requested a hearing. The order may dismiss the matter or direct the removal, repair, or securance of the Structure. At any time, a Party in Interest may consent to an order.

18. A Party in Interest who requested and participated in a hearing, and who is adversely affected by the Order of the Board, may appeal the order under R.C. § 2506.01.

19. At any time, a Party in Interest may enter into an agreement with the Board to perform the removal, repair, or securance of the insecure, unsafe, or structurally defective or unfit Structure.

20. If after thirty (30) days of sending notice, the Structure, following reevaluation by and as re-determined by the _____ Township Fire Department and/or the county building department, is still in an insecure, unsafe, or structurally defective condition, and a Party in Interest has not requested a hearing, the Structure, pursuant to R.C. § 505.86, shall, by any action deemed necessary by the Board, be removed, repaired, and/or secured through the use of either Township employees, materials, and equipment, or through any contractor or person whom the Board may employ. All expenses incurred in such removal, repair, and/or securance, when approved by the Board, shall be paid out of the Township general fund from moneys not otherwise

appropriated, except that, if the costs incurred exceed five hundred dollars ($500), the Board may borrow moneys from a financial institution to pay for the costs in whole or in part.

21. The total cost of removing, repairing, and/or securing the Structure shall be paid out of the Township general fund from moneys not otherwise appropriated. The Board, pursuant to R.C. § 505.86, shall collect the total cost of removing, repairing, and/or securing the Structure by choosing, at their discretion, either of the following methods:

    A. The Board may have the Township Fiscal Officer certify the total costs, together with a proper description of the Property to the county auditor who shall place the costs upon the tax duplicate. The costs are a lien upon the Property from and after the date of entry.

    B. The Board may commence a civil action to recover the total costs from the owner of record of the Property on which the Structure is located.

22. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

23. This Resolution shall be in full force and effect immediately upon adoption.

Voted on and signed this _____ day of _____, 20____ in _____ Township, Delaware County, Ohio.

BOARD OF TRUSTEES OF
_____ TOWNSHIP,
DELAWARE COUNTY, OHIO

_____
Trustee

_____
Trustee

_____
Trustee

CERTIFICATE

State of Ohio, Delaware County

I, the undersigned Township Fiscal Officer of _____ Township, Delaware County, Ohio, certify that the foregoing Resolution No. _____ is taken and copied from the record of proceedings of the Board, and that it has been compared by me with the Resolution on the record and is a true and accurate copy. Further, I certify that the adoption of such Resolution occurred in an open meeting held in compliance with R.C. § 121.22.

Date: _____

_____
Township Fiscal Officer
_____ Township, Delaware County, Ohio

_____ TOWNSHIP BOARD OF TRUSTEES
RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE AND IMPLEMENT THE PROCEDURES DESCRIBED IN DIVISIONS (C) AND (D) OF SECTION 3929.86 OF THE OHIO REVISED CODE RELATING TO PAYMENT TO THE TOWNSHIP OF A PORTION OF INSURED FIRE LOSS CLAIMS AS SURETY FOR THE REMOVAL, REPAIR, OR SECURING OF BUILDINGS OR OTHER STRUCTURES DAMAGED BY FIRE

PREAMBLE

WHEREAS, it is the intent of _____ Township and the _____ Township Board of Township Trustees to deter the commission of arson and related crime, to discourage the abandonment of fire damaged property and to prevent urban blight and deterioration; and,

WHEREAS, section 505.86 of the Ohio Revised Code authorizes townships, by resolution, to provide for the removal, repair, or securance of buildings or other structures in the township that have been declared insecure, unsafe, or structurally defective by:

1) any fire department under contract with the township or
2) by the county building department or other authority responsible under Chapter 3781. of the Revised Code for the enforcement of building regulations or the performance of building inspections in the township, or
3) buildings or other structures that have been declared to be in a condition dangerous to life or health, or unfit for human habitation by the board of health of the general health district of which the township is a part; and,

WHEREAS, as a means to achieve this stated intent and to recover the costs or expenses incurred by the township in removing, repairing, or securing buildings or other structures in the township damaged by fire that have been declared insecure, unsafe, or structurally defective pursuant to section 505.86 of the Ohio Revised Code, a board of township trustees may, accept security payments and follow the procedures of divisions (C) and (D) of section 3929.86 of the Ohio Revised Code, whenever:

1) a policy(ies) of insurance is/are in force providing coverage against the peril of fire on a building or structure, and
2) the loss agreed to between the named insured(s) and the company(ies) is more than five thousand dollars ($5,000.00) and equals or exceeds sixty per cent (60%) of the aggregate limits of liability on all fire policies covering the building or structure on the property; and,

WHEREAS, section 3929.86 (A) of the Ohio Revised Code provides that no insurance company doing business in the state of Ohio shall pay a claim of a named insured for fire damage to a structure located in a township in this state where the amount recoverable for the fire loss to the structure under all policies

exceeds five thousand dollars ($5,000.00), unless the company is furnished with a certificate pursuant to division (B) and unless the company first complies with the procedures of divisions (C) and (D) thereof; and,

WHEREAS, division (C) of section 3929.86 of the Ohio Revised Code requires that when the loss agreed to between the named insured(s) and the company(ies) equals or exceeds sixty per cent (60%) of the aggregate limits of liability on all fire policies covering the building or structure, the insurance company(ies), in accordance with section 505.86 of the Revised Code, shall transfer from the insurance proceeds to the designated officer of the township in the aggregate:

1) two thousand dollars ($2,000.00) for each fifteen thousand dollars ($15,000.00), and each fraction of that amount, of a claim, or,
2) if, at the time of a proof of loss agreed to between the named insured(s) and the insurance company(ies), the named insured(s) have submitted a contractor's signed estimate of the costs of removing, repairing, or securing the building or other structure, the amount specified in the estimate; and,

WHEREAS, division (C) of section 3929.86 of the Ohio Revised Code also requires that such proceeds shall be transferred to the township on a pro rata basis by all companies insuring the building or other structure; and

WHEREAS, division (C) of section 3929.86 of the Ohio Revised Code also states that the named insured(s) may submit a contractor's signed estimate of the costs of removing, repairing, or securing the building or other structure after the transfer, and the officer designated by the township to administer such transferred funds shall return the amount of the fund in excess of the estimate to the named insured(s), provided that the township has not commenced to remove, repair, or secure the building or other structure; and,

WHEREAS, division (C) of section 3929.86 of the Ohio Revised Code directs the township to designate the officer authorized to carry out the duties of section 3928.86 of the Ohio Revised Code; and,

WHEREAS, division (D) of section 3929.86 of the Ohio Revised Code directs that upon receipt of proceeds by the township as authorized by Ohio Revised Code section 3929.86, the designated officer shall place the proceeds in a separate fund to be used solely as security against the total cost of removing, repairing, or securing such fire damaged building or other structure incurred by the township pursuant to 505.86 of the Ohio Revised Code; and,

WHEREAS, division (D) of section 3929.86 of the Ohio Revised Code, requires that when transferring the funds as required in division (C) of section 3929.86 of the Ohio Revised Code, an insurance company provide the township with the name and address of the named insured(s), whereupon the township shall contact the named insured(s), certify that the proceeds have been received by the municipal corporation or township, and notify them that the following procedures will be followed:

1) The fund/proceeds shall be returned to the named insured(s), if the township has not incurred any costs for the repairs, removal, or securing, when repairs, removal, or securing of the building or

other structure have been completed and the required proof has been received by the designated officer. The funds shall be returned to the named insured(s) no later than sixty (60) days after the designated officer receives the required proof.

2) If the township has incurred any costs for repairs, removal, or securing of the building or other structure, the costs shall be paid from the fund, and if excess funds remain, the township shall transfer, no later than sixty (60) days after all such costs have been paid, the remaining funds to the named insured(s).
3) Nothing in section 3929.86 of the Ohio Revised Code shall be construed to limit the ability of a township to recover any deficiency under section 505.86 of the Revised Code.
4) Nothing in section 3929.86 of the Ohio Revised Code shall be construed to prohibit the township and the named insured(s) from entering into an agreement that permits the transfer of funds to the named insured(s) if some other reasonable disposition of the damaged property has been negotiated; and,

WHEREAS, division (C) of section 3929.86 of the Ohio Revised Code requires that in order to avail itself of this procedure, a township must:

1) adopt a resolution authorizing the procedure described in divisions (C) and (D) of Ohio Revised Code section 3929.86, and
2) have filed a certified copy of the resolution for public record with the State of Ohio Superintendent of Insurance; and,

WHEREAS, The provisions of divisions (C) and (D) of Ohio Revised Code section 3929.86 only apply to fire losses that occur after the filing of the certified copy of such resolution for with the State of Ohio Superintendent of Insurance.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TOWNSHIP TRUSTEES OF _____ TOWNSHIP, DELAWARE COUNTY, STATE OF OHIO AS FOLLOWS:

SECTION 1.

The Board of Trustees of _____ Township, Delaware County, State of Ohio authorize the procedure described in divisions (C) and (D) of section 3929.86 of the Ohio Revised Code to be implemented as it currently exists, and as it may hereafter from time to time be amended by the Ohio General Assembly, whereby no insurance company doing business in the State of Ohio shall pay a claim of a named insured for fire damage to a structure located in _____ Township, Delaware County, State of Ohio unless the applicable provisions of Section 3929.86 are fully complied with; and,

SECTION 2.

The Board of Trustees of _____ Township, Delaware County, State of Ohio hereby designate _____ as the officer to carry out the duties of section 3929.86 of the Ohio Revised Code; and,

SECTION 3.

_____ is hereby authorized and instructed to file a certified copy of this Resolution with the State of Ohio Superintendent of Insurance; and,

SECTION 4.

All formal actions of the Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of the Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

SECTION 5.

This Resolution shall immediately take effect upon the filing of a certified copy of this Resolution with the State of Ohio Superintendent of Insurance and shall apply to fire losses that occur thereafter.

Voted on and signed this _____ day of _____, 20____ in _____ Township, Delaware County, Ohio.

BOARD OF TRUSTEES OF
_____ TOWNSHIP,
DELAWARE COUNTY, OHIO

_____
Trustee

_____
Trustee

_____
Trustee

OATH

Oath of Office

For _____ *(Twp. Name)* Township _____ *(Office)*

(R.C. §§ 3.22 and 3.23 and OH Const. Art. XV, § 7)

I, _____, do solemnly swear that I will support the Constitution of the United States and the Constitution of Ohio, and will faithfully discharge and perform the duties of the office and incumbent upon me as _____ *(Office)* of _____ *(Twp. Name)* Township, Delaware County, Ohio according to the best of my ability and understanding.

Date: _____, 20 ____

Signature: _____

The State of Ohio :
: ss
County of Delaware :

Pursuant to authority granted under R.C. § 3.24, sworn to and subscribed before me, a duly elected official in the County of Delaware, State of Ohio, this ___ day of _____, 20_____, by _____ *(name of person taking oath)*, who acknowledged the same to be his/her free and voluntary act and deed.

_____ _____
Signature Date

SEAL (If Seal Exists)

_____
Printed Name

_____
Title

PARK

§ 68:8. Petition to establish township park

(RC 511.18)

[Date]

To the Board of Trustees of *[_____]* Township, *[_____]* County, Ohio:

The undersigned, who are electors in the township, including all municipal corporations in the township, and who equal or exceed one-tenth of the total vote cast in such township at the general election next preceding, request that the board of township trustees proceed pursuant to law to organize a park district and to establish a free public park within this township.

_____
[Petitioner's name and address]

[repeat as needed]

SALE OF PROPERTY

BOARD OF TRUSTEES
_____ TOWNSHIP, DELAWARE COUNTY, OHIO

RESOLUTION NO. _____

RESOLUTION OF INTENT TO SELL BY INTERNET AUCTION PERSONAL PROPERTY, INCLUDING MOTOR VEHICLES, ROAD MACHINERY, EQUIPMENT, TOOLS, OR SUPPLIES THAT ARE NOT NEEDED FOR PUBLIC USE, ARE OBSOLETE, OR ARE UNFIT FOR THE USE FOR WHICH THEY WERE ACQUIRED.

PREAMBLE

WHEREAS, the Board of Trustees of _____ Township, Delaware County, Ohio ("Board") routinely has personal property, including motor vehicles, road machinery, equipment, tools, or supplies that are not needed for public use, are obsolete, or are unfit for the use for which they were acquired, which it desires to sell; and,

WHEREAS, the Board desires to sell that property by Internet auction; and,

WHEREAS, Ohio Revised Code §505.10(D) authorizes the Board to sell personal property, including motor vehicles, road machinery, equipment, tools, or supplies, that are not needed for public use, are obsolete, or are unfit for the use for which they were acquired, by Internet auction.

RESOLUTION

NOW, THEREFORE BE IT RESOLVED BY THE _____ TOWNSHIP BOARD OF TRUSTEES AS FOLLOWS:

SECTION 1. INTENT TO SELL PERSONAL PROPERTY BY INTERNET AUCTION

It is the intent of the Board to sell by Internet auction personal property, including motor vehicles, road machinery, equipment, tools, or supplies, that are not needed for public use, are obsolete, or are unfit for the use for which they were acquired.

When property is to be sold by Internet auction, the Board or its representative may establish a minimum price that will be accepted for specific items and may establish any other terms and conditions for the particular sale, including requirements for pick-up or delivery, method of payment, and sales tax. This type of information shall be provided on the Internet at the time of the auction and may be provided before that time upon request, after the terms and conditions have been determined by the Board or its representative.

SECTION 2. BOARD REPRESENTATIVE

_____, is hereby designated as and, for all purposes, shall act as the Board's representative in conducting and/or administering Internet auctions held pursuant to this Resolution.

_____, is hereby authorized to negotiate on behalf of the Board a contract with a contractor to conduct Internet auctions consistent with this Resolution.

SECTION 3. EFFECTIVE YEAR OF RESOLUTION

This Resolution is effective only for calendar year 20_____.

SECTION 4. AUCTIONS TO BE CONDUCTED BY CONTRACTOR

The Board, having negotiated a contract, shall contract with _____ [*name of party*], a _____ *[name of state*] corporation, having its principal place of business at _____ [*address*], to conduct the Internet auctions. The _____ *[name of party*] representative assigned to the Board and his/her contact information is as follows:

Name: _____
Title: _____
Address: _____
_____
_____

Telephone: _____
Cell: _____
Facsimile: _____
Email: _____

SECTION 5. DESCRIPTION OF HOW AUCTIONS WILL BE CONDUCTED

Township owned personal property, including motor vehicles, road machinery, equipment, tools, or supplies, that are not needed for public use, are obsolete, or are unfit for the use for which they were was acquired will be posted on an Internet-based auction system for sale for potential buyers to bid upon and purchase these items. The Internet site where the items are posted is owned, managed, and operated by a contractor known as _____ *[name of party*]. The Board will contract with _____ *[name of party*] to post items and act as a representative of the Board to conduct the auction. Items will be listed for no less than the minimum number of days established by this Resolution.

_____ *[name of party*] will charge a fee to the Board for items that are sold through _____'s *[name of party*] Internet auction. For any items that are sold, _____ *[name of party*] will charge a total fee of _____% of the sales price. Of that fee, the Board pays _____% and the winning bidder pays _____%. There is a minimum fee of $_____.

The base fee of _____% is reduced as follows on sales where the sale price is greater than $_____:

1. Where an asset sells for more than $_____, and up to $_____ the _____ *[name of party*] fee is _____% of the winning bid up to $_____, plus _____% of the winning bid for auction proceeds in excess of $_____ up to $_____.

2. Where an asset sells for greater than $_____, and up to $_____ the _____ *[name of party*] fee is _____% of the first $_____ of the winning bid, plus a fee of _____%) of the next $_____ of the winning bid, plus a fee of _____% of the bid amount in excess of $_____ up to $_____.

3. Where an asset sells for greater than $_____ the _____ *[name of party*] fee is _____% of the first $_____ of the winning bid, plus a fee of _____% of the next $_____ of the winning bid, plus a fee of _____% of the next $_____ of the winning bid, plus a fee of _____%) of the bid amount in excess of $_____.

_____ *[name of party*] shall collect such fees by collecting all proceeds due the Board from the winning bidder and remitting the proceeds to the Board less the _____ *[name of party*] fee.

The Board may utilize other disposal approaches, including traditional auctioneer services or sealed bids. However, the Board may not utilize other disposal approaches for an asset at the same time the asset is listed on the _____ *[name of party*] online auction site or sell by some other means to a prior bidder any item currently or previously listed on the _____ *[name of party*] site for the purpose of avoiding payment of the _____ *[name of party*] fee.

SECTION 6. MINIMUM NUMBER OF DAYS THAT PROPERTY WILL BE OFFERED

Personal property sold via Internet auction shall be offered for a minimum of ten (10) days including Saturdays, Sundays, and legal holidays.

SECTION 7. GENERAL TERMS AND CONDITIONS OF SALES

The following terms and conditions shall apply to all sales via Internet auction:

1. Guaranty Waiver. All assets are offered for sale "AS IS, WHERE IS." The Board of Trustees of _____ Township, Delaware County, Ohio and/or _____ Township, Delaware County, Ohio (Seller) make no warranty, guaranty or representation of any kind, expressed or implied, as to the merchantability or fitness for any purpose of the property offered for sale. The Buyer is not entitled to any payment for loss of profit or any other money damages – special, direct, indirect or consequential.

2. Description Warranty. Seller warrants to the Buyer the property offered for sale will conform to its description. Any claim for misdescription must be made prior to removal of the property. If Seller confirms the property does not conform to the description, Seller will keep the property and refund any money paid. The liability of the Seller shall not exceed the actual purchase price of the property. Please note that all sales are final upon the removal of the property.

3. Personal and Property Risk. Persons attending during exhibition, sale, or removal of goods assume all risks of damage of or loss to person and property and specifically release the Seller and _____ *[name of party*] from liability therefore.

4. Inspection. Most assets offered for sale are used and may contain defects not immediately detectable. Bidders may inspect the property prior to bidding. Bidders must adhere to the inspection dates and times indicated in the asset description. See special instructions on each asset page for inspection details.

5. Consideration of Bid. Seller reserves the right to reject any and all bids and to withdraw from sale any of the assets listed.

6. Buyer's Certificate. Successful bidders will receive a Buyer's Certificate by email from _____ *[name of party*].

7. Buyers Premium. If a Buyer's Premium is shown on the auction page bidder box, then that amount (expressed as a percentage of the final selling price) will be added to the final selling price of all items in addition to any taxes imposed.

8. Payment. Payment in full is due not later than 5 business days from the time and date of the Buyers Certificate. Payment must be made electronically through the _____ *[name of party*] website. Acceptable forms of payment are:

    - PayPal
    - Wire Transfer
    - Visa
    - MasterCard
    - American Express
    - Discover

    PayPal and Credit Card purchases are limited to below $5,000.00. If the winning bid plus applicable taxes, if any indicated, and the buyer's premium, equals more than $4,999.99, PayPal and Credit Cards may not be used. If Wire Transfer is chosen, a Wire Transfer Transaction Summary page will provide payment and account information. The Wire Transfer must be completed within 5 days.

9. Removal. All assets must be removed within ten (10) business days from the time and date of issuance of the Buyer's Certificate. Purchases will be released only upon receipt of payment as specified. Successful bidders are responsible for loading and removal of any and all property awarded to them from the place where the property is located as indicated on the website and in the Buyer's Certificate. The Buyer will make all arrangements and perform all work necessary, including packing, loading and transportation of the property. Under no circumstances will Seller assume responsibility for packing, loading or shipping. See special instructions on each asset page

for removal details. A daily storage fee of $10.00 may be charged for any item not removed within the ten (10) business days allowed and stated on the Buyer's Certificate.

10. Vehicle Titles. Seller will issue a title or certificate upon receipt of payment. Titles may be subject to restrictions as indicated in the asset description on the website.

11. Default. Default shall include (1) failure to observe these terms and conditions; (2) failure to make good and timely payment; or (3) failure to remove all assets within the specified time. Default may result in termination of the contract and suspension from participation in all future sales until the default has been cured. If the Buyer fails in the performance of their obligations, Seller may exercise such rights and may pursue such remedies as are provided by law. Seller reserves the right to reclaim and resell all items not removed by the specified removal date.

12. Acceptance of Terms and Conditions. By submitting a bid, the bidder agrees they have read, fully understand and accept these Terms and Conditions, and agree to pay for and remove the property, by the dates and times specified. These Terms and Conditions are displayed at the top of each page of each asset listed on _____ *[name of party*]. Special Instructions appearing on the asset page will override certain sections of the terms and conditions.

13. State/Local Sales and/or Use Tax. Buyers may be subject to payment of State and/or local sales and/or use tax. Buyers are responsible for contacting seller or the appropriate tax office, completing any forms and paying any taxes that may be imposed.

14. Sales to Employees. Employees of the Seller may bid on the property listed for auction, so long as they do NOT bid while on duty.

SECTION 8. PUBLICATION

After adoption of this Resolution, notice of the Board's intent to sell unneeded, obsolete, or unfit-for-use township personal property by Internet auction shall be published in a newspaper of general circulation in the township (Delaware Gazette). The notice shall include a summary of the information provided in this Resolution and shall be published at least twice.

Notice may also be posted on the Board's Internet web site. If the notice is posted on the Board's web site, the second notice otherwise required to be published in a newspaper of general circulation in the township may be eliminated, provided that the first notice published in such newspaper meets all the following requirements:

a) It is published at least two (2) weeks before the Internet auction begins.

b) It includes a statement that the notice is posted on the Board's Internet web site.

c) It includes the Internet address of the Board's Internet web site.

d) It includes instructions describing how the notice may be accessed on the Board's Internet web site.

SECTION 9. POSTING OF NOTICE

A notice similar to the published notice required by Section 8 of this Resolution shall be posted continually throughout the calendar year in a conspicuous place in the Board's office.

SECTION 10. ADOPTION

All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of this Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

SECTION 11. PRIOR RESOLUTIONS

This Resolution supersedes any Resolution of intent to sell personal property via Internet auction adopted by this Board prior to the effective date of this Resolution.

SECTION 12. EFFECTIVE DATE

This Resolution shall take effect immediately upon adoption.

Voted on and signed this _____, 20____ in _____ Township, Delaware County, Ohio.

APPROVED AND ADOPTED THIS ____ DAY OF _____, 20____ BY:

BOARD OF TRUSTEES, _____ TOWNSHIP, DELAWARE COUNTY, OHIO,

_____
Township Trustee

_____
Township Trustee

_____
Township Trustee

Attest:

_____
Township Fiscal Officer

LEGAL NOTICE OF INTENT TO SELL PERSONAL PROPERTY VIA INTERNET AUCTION

The Board of Trustees of _____ Township, Delaware County, Ohio ("Board") routinely has personal property, including motor vehicles, road machinery, equipment, tools, or supplies that are not needed for public use, are obsolete, or are unfit for the use for which they were acquired. It is the intent of the Board to sell such property by Internet auction.

_____ [*name of party*], a _____ *[name of state*] corporation, having its principal place of business at _____ [*address*], shall conduct the Internet auctions on behalf of the Board. The Internet address of the website where such Internet actions will be conducted is _____ [*website*]

Personal property sold via Internet auction shall be offered for a minimum of ten (10) days including Saturdays, Sundays, and legal holidays. For any items that are sold, _____ [*name of party*] will charge a total fee of _____% of the sales price. Of that fee, the Board pays _____% and the winning bidder pays _____%. There is a minimum fee of $_____. The terms and conditions of sale will be displayed at the top of each page of each asset listed by the Board to be sold on _____ [*name of party*] Internet auction website.

DATE: _____

RESOLUTION NO. _____

IN THE MATTER OF AUTHORIZING THE SALE OF A MOTOR VEHICLE PURSUANT TO OHIO REVISED CODE SECTION 505.10:

The Board of Trustees of _____Township, Delaware County, Ohio met in regular open session on _____, 20___ at _____ with the following members present:_____, _____ , _____.

_____ Moved the adoption of the following Resolution.

PREAMBLE

WHEREAS; the _____ Township Board of Trustees ("Board") owns and possesses a _____ [*make, model, and type of vehicle*] (*"*_____*"* [*vehicle type*]), and

WHEREAS; Section 505.10(A) of the Ohio Revised Code authorizes a board of township trustees to sell and convey property, including motor vehicles, road machinery, equipment, and tools that is/are not needed for public use, is/are obsolete, or is/are unfit for the use for which it/they was/were acquired, and

WHEREAS; it is the opinion of the Board that the _____ [*vehicle type*] is not needed for public use, is obsolete, and is unfit for the use for which it was acquired, and

WHEREAS; The Board desires to sell the _____ [*vehicle type*] pursuant to R.C. § 505.10(A).

RESOLUTION

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of _____ Township, Delaware County, Ohio ("Board") that:

1. The Board owns a _____ [*make, model, and type of vehicle*] (*"*_____*"* [*vehicle type*]) more fully described as follows:

   _____ [*make, model, and type of vehicle*]
   _____ [*vehicle VIN #*]

2. The Board finds that the _____ [*vehicle type*] is not needed for public use, is obsolete, and is unfit for the use for which it was acquired and as such the Board desires to sell the _____ [*vehicle type*] pursuant to R.C. § 505.10(A).

3. It is the opinion of the Board that the _____ [*vehicle type*] has a fair market value in excess of $2500.00. As a result, the _____ [*vehicle type*], in accordance with R.C. § 505.10(A)(1), shall be sold by sealed bid to the highest bidder.

4. Pursuant to R.C. § 505.10(A)(1), the following steps shall be followed in selling the _____ [*vehicle type*] via sealed bid:
    a. Notice of the time, place, and manner of the sale shall be published at least once a week for two (2) weeks in a newspaper published, or of general circulation, in the township (i.e. Delaware Gazette).
    b. In addition, a typewritten or printed notice of the time, place, and manner of the sale shall be posted in the office of the Board for at least ten (10) days prior to the sale.
    c. The Board shall prescribe the form of the bid.
    d. Each bid shall contain the name of the person submitting the bid.
    e. Bids shall be opened and tabulated at the time stated in the published and posted notices.
    f. The _____ [*vehicle type*] shall be sold to the highest bidder, except that the Board may reject all bids and hold another sale, by public auction or sealed bid, in the manner prescribed in R.C. § 505.10 or may exercise any other options for selling the _____ [*vehicle type*] which may be available to the Board.

5. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of this Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

_____ Seconded the adoption of the following Resolution.

Voted on and signed this _____, 20____ in _____ Township, Delaware County, Ohio.

APPROVED AND ADOPTED THIS ____ DAY OF _____, 20____ BY:

BOARD OF TRUSTEES, _____ TOWNSHIP, DELAWARE COUNTY, OHIO,

_____
Township Trustee

_____
Township Trustee

_____
Township Trustee

Attest:

_____
Township Fiscal Officer

DATE: _____

RESOLUTION NO. _____

IN THE MATTER OF AUTHORIZING THE SALE OF A DESK PURSUANT TO OHIO REVISED CODE SECTION 505.10(A)(2)

The Board of Trustees of _____Township, Delaware County, Ohio met in regular open session on the _____, 20___ at _____ with the following members present:_____, _____ , _____.

_____ Moved the adoption of the following Resolution.

PREAMBLE

WHEREAS; the Board owns and possesses a _____ [*type of desk*] which it wishes to sell ("Property"). The Property is more specifically described as follows:

_____; and,

WHEREAS; it is the opinion of the Board that the Property is not needed for public use, is obsolete, or is unfit for the use for which it was acquired and should be sold; and,

WHEREAS; it is the opinion of the Board that the fair market value of the Property is less than two thousand five hundred dollars ($2,500.00); and,

WHEREAS; R.C. § 505.10(A)(2) provides that "[i]f the fair market value of property to be sold is, in the opinion of the board, two thousand five hundred dollars or less, the board may …[s]ell the property by private sale, without advertising or public notification."

RESOLUTION

NOW THEREFORE, **BE IT RESOLVED AS FOLLOWS:**

1. The Board finds that the Property is no longer needed for public use, is obsolete, or is unfit for the use for which it was acquired: and,

2. It is the opinion of the Board that the fair market value of the Property is less than two thousand five hundred dollars ($2,500.00); and,

3. Pursuant to R.C. § 505.10(A)(2) "[i]f the fair market value of property to be sold is, in the opinion of the board, two thousand five hundred dollars or less, the board may . . . [s]ell the property by private sale, without advertising or public notification;" and,

4. The Board desires to sell the property pursuant to R.C. § 505.10(A)(2); and,

5. The Board establishes _____ ($_____) as the minimum amount to be paid to the Board as the purchase price of the Property; and,

6. In accordance with the terms provided herein, Trustee _____ is hereby appointed and authorized to negotiate the sale of the Property and, on behalf of the Board, execute a contract to sell the Property; and,

7. Trustee _____ may promote the sale of the Property by any appropriate means that does not result in a cost to the Township or Board.

8. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of this Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

_____ Seconded the adoption of the following Resolution.

Voted on and signed this _____, 20____ in _____ Township, Delaware County, Ohio.

APPROVED AND ADOPTED THIS ____ DAY OF _____, 20____ BY:

BOARD OF TRUSTEES, _____ TOWNSHIP, DELAWARE COUNTY, OHIO,

_____
Township Trustee

_____
Township Trustee

_____
Township Trustee

Attest:

_____
Township Fiscal Officer

DATE: _____

RESOLUTION NO. _____

IN THE MATTER OF AUTHORIZING THE SALE OF EQUIPMENT TO THE BOARD OF TRUSTEES OF _____ TOWNSHIP, DELAWARE COUNTY, OHIO PURSUANT TO R.C. § 505.101:

The Board of Trustees of _____Township, Delaware County, Ohio met in regular open session on the _____, 20___ at _____ with the following members present:_____, _____ , _____.

_____ Moved the adoption of the following Resolution.

PREAMBLE

WHEREAS; the Board of Trustees of _____ Township, Delaware County, Ohio ("Board") owns and possesses equipment (collectively "Equipment") more fully described as follows:

- _____
- _____

WHEREAS; it is the opinion of the Board that the Equipment is not needed for public use, is obsolete, or is unfit for the use for which it was acquired; and,

WHEREAS; R.C. § 505.101 authorizes a board of township trustees, by resolution, to enter into a contract, without advertising or bidding, for the purchase or sale of motor vehicles, materials, equipment, or supplies from or to any department, agency, or political subdivision of the state; and,

WHEREAS; the Board of Trustees of _____ Township, Delaware County, Ohio ("_____ Board"), a political subdivision of the State of Ohio, wants to contract with the Board for the purchase of the Equipment; and,

WHEREAS; the Board desires to enter into a contract pursuant to R.C. § 505.101 to sell the Equipment to the _____ Board.

RESOLUTION

NOW THEREFORE BE IT RESOLVED:

1. The Board finds that the Equipment is not needed for public use, is obsolete, or is unfit for the use for which it was acquired.

2. Pursuant to R.C. § 505.101, the Board hereby approves entering into a contract to sell the Equipment to the _____ Board, a political subdivision of the State of Ohio.

3. The agreed upon purchase price for the Equipment is _____ ($_____).

4. In accordance with the requirements of R.C. § 505.101:

   A. The Board is the seller of the Equipment. There is no need to establish and the Board does not establish a maximum amount to be paid as the purchase price for the Equipment.

   B. A description of the Equipment and that which is included with the sale of the Equipment is set forth herein above.

   C. The Board is the seller of the Equipment. There is no need to appropriate sufficient funds to pay the purchase price for the Equipment.

5. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

6. This Resolution shall be in full force and effect immediately upon adoption.

_____ Seconded the adoption of the following Resolution.

Voted on and signed this _____, 20_____ in _____ Township, Delaware County, Ohio.

BOARD OF TRUSTEES, _____ TOWNSHIP,
DELAWARE COUNTY, OHIO

_____
Township Trustee

_____
Township Trustee

_____
Township Trustee

Attest:

_____
Township Fiscal Officer

ZONING

Part II. Forms

Chapter 67. Zoning—Forms

V. Zoning Certificates

§ 67:21. Application for zoning certificate

(RC 519.16, RC 519.17)

Application No. *[_____]* *[Date]*

To the Board of Trustees, *[_____]* Township, *[_____]* County, Ohio:

Application is hereby made for a zoning certificate. It is understood and agreed by the applicant that any error, misstatement or misrepresentation of fact or expression of fact in the application, either with or without intention on the part of the applicant, such as might, or would, operate to cause the issuance of a permit in accordance with this application, shall constitute sufficient ground for the revocation of the permit at any time.

Location .....

Subdvn. .....

Lot .....

Landowner .....

Address .....

Tel. .....

Occupant .....

Address .....

Tel. .....

Class of work: New *[_____]* Alteration *[_____]* Addition *[_____]* Move *[_____]*

Sign *[_____]*x*[_____]* Acc. Bldg. *[_____]* Building use *[_____]* Families *[_____]* Stories *[_____]* Basement *[_____]* Type .....

Usable floor space for use as living quarters exclusive of basements, porches, garages, breezeways, terraces, attics or partial stories. First floor *[_____]* sq. ft. Second floor *[_____]* sq. ft.

Off-street parking *[_____]* sq. ft.

Remarks: .....

Sketch of lot showing existing buildings and proposed construction. Fill in all dimensions showing all side yard clearances, streets and roads.

Main road frontage *[_____]* ft. District *[_____]* Setback from side road *[_____]* ft. Rear yard clearance *[_____]* ft. Side yard clearance: right *[_____]* ft. left *[_____]* ft. Dimensions of bldg.: Length *[_____]* ft. Width *[_____]* ft.

Highest point of building *[_____]* ft. above established grade.

Applicant's signature .....

For Use of Zoning Inspector

Fee *[_____]* Date paid *[_____]* Date filed *[_____]*

Approved *[_____]* Disapproved *[_____]* Date *[_____]*

_____
Zoning Inspector

This application when approved constitutes the zoning permit.

To be filed in triplicate with the office of the Zoning Inspector.

Notice Requirements Rezoning/Amendment to Zoning Resolution

BZC – 10 or Fewer Parcels
R.C. § 519.12(A)(2)-(C)

Means:

- Published (1X – newspaper of general circulation)
- Mailed (1st Class)

Timing:

- At least ten (10) days before the date of the hearing (mail and publish)

Mailed Notice:

- To all owners of property within and contiguous to and directly across the street from the area proposed to be rezoned.
- To the addresses of those owners appearing on the county auditor's current tax list.

Contents:

_____ Time
_____ Date
_____ Place of hearing
_____ Name of the zoning commission
_____ Statement indicating that the motion, resolution, or application is an amendment to the zoning resolution
_____ Addresses of all properties to be rezoned or redistricted by the proposed amendment
_____ Names of owners of all properties to be rezoned or redistricted (per auditor's current tax list)
_____ Present zoning classification of property named in the proposed amendment
_____ Proposed zoning classification of property named in the proposed amendment
_____ Time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for a period of at least ten (10) days prior to the hearing
_____ Name of the person responsible for giving notice of the hearing by publication, by mail, or by both publication and mail
_____ Statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action
_____ Any other information requested by the commission.

Notice Requirements Rezoning/Amendment to Zoning Resolution

BZC – Text Amendment or More Than 10 Parcels R.C. § 519.12(A)(2) and (D)

Means:

- Published (1X – newspaper of general circulation)

Timing:

- At least ten (10) days before the date of the hearing

Contents:

_____ Time
_____ Date
_____ Place of the hearing
_____ Name of the zoning commission
_____ Statement indicating that the motion, application, or resolution is an amendment to the zoning resolution
_____ Time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten (10) days prior to the hearing
_____ Name of the person responsible for giving notice of the hearing by publication
_____ Statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action
_____ Any other information requested by the commission.

Notice Requirements Rezoning/Amendment to Zoning Resolution

BOT – 10 or Fewer Parcels
R.C. § 519.12(E)(3) and (F)

Means:

- Published (1X – newspaper of general circulation)

Timing:

- At least ten (10) days before the date of the hearing

Contents:

_____ Time
_____ Date
_____ Place of the hearing
_____ Name of the BOT
_____ Statement indicating that the motion, application, or resolution is an amendment to the zoning resolution
_____ Addresses of all properties to be rezoned or redistricted by the proposed amendment
_____ Names of owners of all properties to be rezoned or redistricted (per auditor's current tax list)
_____ Present zoning classification of property named in the proposed amendment
_____ Proposed zoning classification of property named in the proposed amendment
_____ Time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten (10) days prior to the hearing
_____ Name of the person responsible for giving notice of the hearing by publication, by mail, or by both publication and mail
_____ Any other information requested by the BOT.

Notice Requirements Rezoning/Amendment to Zoning Resolution

BOT – Text Amendment or More Than 10 Parcels
R.C. § 519.12(E)(3) and (G)

Means:

- Published (1X – newspaper of general circulation)

Timing:

- At least ten (10) days before the date of the hearing

Contents:

_____ Time
_____ Date
_____ Place of the hearing
_____ Name of the BOT
_____ Statement indicating that the motion, application, or resolution is an amendment to the zoning resolution
_____ Time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten (10) days prior to the hearing
_____ Name of the person responsible for giving notice of the hearing by publication
_____ Any other information requested by the BOT

VACANCY

PROCESS FOR FILLING A VACANCY IN TOWNSHIP OFFICE

APPLICABILITY:

- Trustee
- Fiscal Officer

REASONS FOR VACANCY WHERE THIS PROCESS WOULD BE USED (R.C. § 503.24):

- Nonacceptance,
- Death,
- Removal of a person chosen to an office in any township at the regular election, or
- Any other cause

WHEN VACANCY OCCURS (R.C. § 503.241):

Whenever any township officer:

- ceases to reside in the township, or
- is absent from the township for 90 consecutive days[880]

Vacancy does not occur while a township officer is in the active military service of the United States.

DECLARATION OF VACANCY (R.C. § 503.24 *et seq*.):

Board of trustees, by resolution, shall declare the existence of the vacancy. The resolution shall specify:

- the office that is vacant
- the reason for the vacancy
- date the vacancy occurred

[880] Whenever any township officer is absent from the township because of sickness or injury, he or she shall cause to be filed with the board of trustees a physician's certificate of his sickness or injury. If such certificate is not filed with the board within 10 days after the expiration of the 90 consecutive days of absence from the township, his office shall be deemed vacant and the board of trustees shall declare a vacancy to exist in such office. R.C. § 503.241.

NOTIFICATION OF VACANCY TO BOARD OF ELECTIONS (R.C. §§ 3.02(B), 503.24, *et seq*., and 507.051):

Immediately, but not later than ten (10) days after vacancy occurs, the Fiscal Officer shall notify the Board of Elections of the vacancy in writing.

NOTIFICATION OF VACANCY TO SECRETARY OF STATE (R.C. §§ 3.02(B), 503.24, *et seq*., and 507.051):

Immediately but not later than ten (10) days after vacancy occurs, the Fiscal Officer shall notify the Secretary of State of the vacancy in writing.

QUALIFICATIONS FOR APPOINTMENT (R.C. §§ 503.24 and 503.241):

- Resident of the township
- Elector

APPOINTMENT BY BOARD (R.C. § 503.24):

The board of township trustees, by resolution, shall make the appointment.

TIMING OF APPOINTMENT BY BOARD (R.C. § 503.24):

Within 30 days after the occurrence of a vacancy.

FAILURE OF BOARD TO APPOINT (COMMITTEE OF FIVE) (R.C. § 503.24):

If a township is without a board or if no appointment is made within 30 days after the occurrence of a vacancy, a majority of the persons designated as the committee of five on the last-filed nominating petition of the township officer whose vacancy is to be filled who are residents of the township shall appoint a person having the qualifications of an elector to fill the vacancy for the unexpired term or until a successor is elected.

TIMING OF APPOINTMENT BY COMMITTEE OF FIVE (R.C. § 503.24):

Within 10 days after the 30 day period in which the board of trustees is authorized to make an appointment.

FAILURE OF COMMITTEE OF FIVE TO APPOINT (PROBATE JUDGE) (R.C. § 503.24):

If at least three (3) of the committee members who are residents of the township cannot be found, or if that number of such members fails to make an appointment within 10 days after the 30 day period in which the board of trustees is authorized to make an appointment, then the presiding probate judge of the county shall appoint a suitable person having the qualifications of an elector in the township to fill the vacancy for the unexpired term or until a successor is elected.

LENGTH OF APPOINTMENT (R.C. § 503.24):

Unexpired term or until a successor is elected.[881]

NOTIFICATION OF APPOINTMENT TO BOARD OF ELECTIONS (R.C. § 3.02(B)):

Immediately, but no later than seven (7) days after making the appointment, certify (notify) the Board of Elections of appointment in writing.

NOTIFICATION OF APPOINTMET TO SECRETARY OF STATE (R.C. § 3.02(B)):

Immediately, but no later than seven (7) days after making the appointment, certify (notify) the Secretary of State of appointment in writing.

---

[881] If a vacancy occurs in a township elective office more than 40 days before the next general election (November election) for municipal and township officers a successor shall be chosen at that election to fill the unexpired term, provided the term does not expire within 1 year from the day of the election. If the term expires within 1 year from the day of the next general election for municipal and township officers, a successor appointed pursuant to R.C. § 503.24 shall serve out the unexpired term.

- **Example 1:** Vacancy occurs November 10, 2015 for trustee. The trustee's term naturally expires December 31, 2017. The next general election for township and municipal officers is November 7, 2017. No municipal or township officers are elected at the November 8, 2016 general election. The term expires (December 31, 2017) within 1 year from the November 7, 2017 general election. The appointee is therefore appointed for the unexpired term.
- **Example 2:** Vacancy occurs October 10, 2015 for fiscal officer. The fiscal officer's term naturally expires March 31, 2016. The next general election for township and municipal officers is November 3, 2015. October 10, 2015 is less than 40 days before the November 3, 2015 general election. Because the vacancy occurred less than 40 days before the next general election for municipal and township officers the appointee is not required to run at the November 3, 2015 general election. The appointee is appointed for the unexpired term (until March 31, 2016). At the expiration of the natural term (March 31, 2016), any fiscal officer elected at the November 3, 2015 general election will take office (April 1, 2016). If no fiscal officer was elected, the office will again become vacant. At that time, a new vacancy would need to be declared and a new appointment would need to be made. No municipal or township officers are elected at the November 8, 2016 general election. Therefore, following a new appointment the next general election for municipal and township officers is the November 7, 2017 general election. The November 7, 2017 general election is more than 40 days after the appointment. The new term expires March 31, 2020, more than 1 year from the November 7, 2017 general election. The appointee is therefore appointed until a successor is elected at the November 7, 2017 general election.

NOTICE TO APPOINTEE, BOND, AND OATH (R.C. § 503.25):

Immediately after the appointment, the township fiscal officer shall make a list (notice) of all the appointed officers, stating the offices to which each is appointed, and the fiscal officer shall add to the list a requisition that the officers appear before the fiscal officer, or some other officer authorized to administer oaths, give bond, and take the oath of office prescribed by R.C. §§ 3.22 and 3.23 and Section 7 of Article XV, Ohio Constitution.

The fiscal officer shall immediately make service of, or deliver to any constable of the township who shall make service of, a copy of the list and requisition by delivering it to each person so appointed. The list and requisition, with the time and manner of service on it, shall be returned and filed in the office of the fiscal officer.

CONTENT OF THE OATH (R.C. §§ 3.22, 3.23, 3.24 AND 503.25 AND SECTION 7, Art. XV OH CONST.):

The oath of office shall be to support the constitution of the United States and the constitution of this state, and faithfully to discharge the duties of the office.

The oath shall be in writing. The person taking the oath shall write the person's signature immediately under the text of the oath. The person administering the oath under authority of R.C. § 3.24 shall then write the administering person's signature, the title of the elected office that the administering person holds, and the date; and shall affix the seal of office if a seal is prescribed for, or has been adopted by, the administering person's office.

(See Attached "Exhibit A" for sample oath).

ADMINISTRATION OF THE OATH (R.C. §§ 3.24 AND 503.25):

Every person holding an elected office under the constitution or laws of this state may administer oaths of office to persons elected or appointed to offices under the constitution or laws of this state if those persons are elected or appointed to offices within the geographical limits of the elected officer's constituency, except that members of the general assembly may administer oaths of office to persons elected or appointed to any office under the constitution or laws of this state.

CERTIFICATE OF OATH TO BE RETURNED AND RECORDED (R.C. § 503.26)

If a person elected or appointed to a township office takes the oath of office required by R.C. § 503.25 before an officer other than the township fiscal officer, the officer before whom it is taken shall immediately deposit with the fiscal officer a certificate of the oath. The fiscal officer shall make a record of all official oaths.

BOND - TRUSTEES (R.C. § 505.02):

Each township trustee, before entering upon the discharge of his duty, shall give bond to the state for the use of the township, in the sum of one thousand dollars ($1,000), conditioned for the faithful performance of his duty as trustee, with at least two sureties, each of whom shall be a resident of the same township with the trustee or a corporate surety authorized to do business in this state. Such bond shall be approved by a judge of the county court or judge of a municipal court having jurisdiction in the township.

DEPOSIT OF BOND – TRUSTEES (R.C. § 505.03)

The bond shall be deposited with the township fiscal officer and recorded by the fiscal officer.

BOND – FISCAL OFFICER (R.C. § 507.03)

The township fiscal officer, before entering upon the discharge of official duties, shall give a bond, payable to the board of township trustees, with sureties approved by the board, in the sum determined by the board but not less than the sum provided in R.C. § 507.03(A)-(J)[882], and conditioned for the faithful performance of the duties of the office of township fiscal officer.

DEPOSIT OF BOND – FISCAL OFFICER (R.C. § 507.03)

The fiscal officer's bond shall be recorded by the township fiscal officer, filed with the county treasurer, and carefully preserved.

DELIVERY OF BOOKS (R.C. § 503.28)

All books, records, documents, laws, obligations, papers, blanks, and all other articles and property belonging to the respective office shall be delivered to the appointee.

[882] The minimum amount of the Fiscal Officer's Bond is based on the amount of the township budget. (See R.C. § 507.03(A)-(J)).

EXHIBIT A

Oath of Office

For _____ *(Twp. Name)* Township _____ *(Office)*

(R.C. §§ 3.22 and 3.23 and OH Const. Art. XV, § 7)

I, _____, do solemnly swear that I will support the Constitution of the United States and the Constitution of Ohio, and will faithfully discharge and perform the duties of the office and incumbent upon me as _____ *(Office)* of _____ *(Twp. Name)* Township, Delaware County, Ohio according to the best of my ability and understanding.

Date: _____, 20 ____

Signature: _____

The State of Ohio :
: ss
County of Delaware :

Pursuant to authority granted under R.C. § 3.24, sworn to and subscribed before me, a duly elected official in the County of Delaware, State of Ohio, this ___ day of _____, 20_____, by _____ *(name of person taking oath)*, who acknowledged the same to be his/her free and voluntary act and deed.

_____ _____
Signature Date

SEAL (If Seal Exists)

_____
Printed Name

_____
Title

DATE: _____

BOARD OF TRUSTEES OF _____ TOWNSHIP
DELAWARE COUNTY, OHIO

RESOLUTION NO. _____

DECLARATION OF VACANCY IN OFFICE OF TOWNSHIP FISCAL OFFICER

The Board of Trustees of _____ Township, Delaware County, Ohio ("Board") met in _____ session on the _____ day of _____, 20_____ with the following members present:

_____

_____

_____.

_____ Moved the adoption of the following Resolution:

PREAMBLE

WHEREAS, _____ resigned as _____ Township Fiscal Officer, Delaware County, Ohio effective _____, 20_____; and,

WHEREAS, as a result of such resignation, the office of Fiscal Officer for _____ Township, Delaware County, Ohio became vacant.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED:

24. Due to the resignation of _____, the Board of Trustees of _____ Township, Delaware County, Ohio ("Board"), pursuant to R.C. § 503.24, *et seq*., hereby declares and deems the office of Fiscal Officer for _____ Township, Delaware County, Ohio to be vacant as of _____, 20_____.

25. The Board hereby designates _____, a Board member, on behalf of the Board, to perform those duties required by law which are normally performed by the Fiscal Officer in connection with declaring a vacancy in a township office.

26. Pursuant to R.C. §§ 3.02(B), 503.24, *et seq*. and 507.051, the designated Board member, on behalf of the Board and in lieu of the Fiscal Officer, shall immediately, but not later than 10 days after the vacancy occurs, notify the Delaware County Board of Elections and the Ohio Secretary of State in writing of the vacancy.

27. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

28. This Resolution shall be in full force and effect immediately upon adoption.

_____ seconded the motion.

Voted on and signed this _____ day of _____, 20____ in _____ Township, Delaware County, Ohio.

BOARD OF TRUSTEES
_____ TOWNSHIP,
DELAWARE COUNTY, OHIO

_____
Trustee

_____
Trustee

_____
Trustee

CERTIFICATE

I, the member of the Board of Trustees of _____ Township, Delaware County, Ohio ("Board") designated to notify the Delaware County Board of Elections and the Ohio Secretary of State in writing of the vacancy in the office of Fiscal Officer, certify that the foregoing Resolution No. _____ is taken and copied from the record of proceedings of the Board and that it has been compared by me with the Resolution on the record and is a true and accurate copy. Further, I certify that the adoption of such Resolution occurred in an open meeting held in compliance with R.C. § 121.22.

Date: _____

_____

(Name) _____
Trustee
_____ Township, Delaware County, Ohio

DATE: _____

BOARD OF TRUSTEES OF _____ TOWNSHIP
DELAWARE COUNTY, OHIO

RESOLUTION NO. _____

APPOINTMENT TO OFFICE OF TOWNSHIP FISCAL OFFICER

The Board of Trustees of _____ Township, Delaware County, Ohio ("Board") met in _____ session on the _____ day of _____, 20_____ with the following members present:

_____

_____

_____.

_____ Moved the adoption of the following Resolution:

PREAMBLE

WHEREAS, pursuant to Resolution No. _____, the Board of Trustees of _____ Township, Delaware County, Ohio ("Board") declared and deemed the office of Fiscal Officer for _____ Township, Delaware County, Ohio to be vacant as of _____, 20_____; and,

WHEREAS, pursuant to R.C. § 503.24, the Board desires to make an appointment to fill the vacancy in such office.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED:

29. The Board, pursuant to R.C. § 503.24, hereby appoints _____ to the office of Fiscal Officer for _____ Township, Delaware County, Ohio. Such appointment is for the current unexpired term of office.

30. The Board hereby designates _____, a Board member, on behalf of the Board, to perform those duties required by law which are normally performed by the Fiscal Officer in connection with making an appointment of a township officer.

31. Pursuant to R.C. § 3.02(B), the designated Board member, on behalf of the Board, shall immediately, but no later than seven (7) days after making the appointment, certify the appointment to the Delaware County Board of Elections and to the Ohio Secretary of State.

32. Immediately after the appointment, the designated Board member, on behalf of the Board, pursuant to R.C. § 503.25, shall prepare a notice informing _____ of the appointment. The notice shall include the name of the office to which _____ was appointed. The designated Board member shall add to the notice a requisition that _____ appear before an officer authorized to administer oaths, give bond, and take the oath of office prescribed by R.C. § 3.22 and 3.23 and Section 7 of Article XV, Ohio Constitution.

33. The designated Board member shall immediately make service of a copy of the notice and requisition by delivering it to _____. The notice and requisition, with the time and manner of service on it, shall be returned and filed in the office of the Fiscal Officer.

34. Before entering upon the discharge of official duties of township fiscal officer, _____ shall, pursuant to R.C. §§ 3.22 and 3.23 and Section 7 of Article XV, Ohio Constitution, take the oath of office and, pursuant to R.C. § 507.03, give bond.

35. Pursuant to R.C. § 503.26, the officer before whom the oath is taken shall immediately deposit with the Fiscal Officer a certificate of the oath. The Fiscal Officer shall make a record of all official oaths.

36. Pursuant to R.C. § 507.03, before entering upon the discharge of official duties of township fiscal officer, _____ shall give a bond, payable to the Board, with sureties approved by the Board, in the sum determined by the Board but not less than the applicable sum provided in R.C. § 507.03(A)-(J), and conditioned for the faithful performance of the duties of the office of township fiscal officer. This bond shall be recorded by the Fiscal Officer, filed with the county treasurer, and carefully preserved.

37. After taking the oath and giving bond, all books, records, documents, laws, obligations, papers, blanks, and all other articles and property belonging to the office of fiscal officer shall, consistent with R.C. § 503.28, be delivered to _____.

38. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

39. This Resolution shall be in full force and effect immediately upon adoption.

_____ seconded the motion.

Voted on and signed this _____ day of _____, 20____ in _____ Township, Delaware County, Ohio.

BOARD OF TRUSTEES
_____ TOWNSHIP,
DELAWARE COUNTY, OHIO

_____
Trustee

_____
Trustee

_____
Trustee

CERTIFICATE

I, the member of the Board of Trustees of _____ Township, Delaware County, Ohio ("Board") designated to notify the Delaware County Board of Elections and the Ohio Secretary of State in writing of the appointment to the office of Fiscal Officer, certify that the foregoing Resolution No. _____ is taken and copied from the record of proceedings of the Board and that it has been compared by me with the Resolution on the record and is a true and accurate copy. Further, I certify that the adoption of such Resolution occurred in an open meeting held in compliance with R.C. § 121.22.

Date: _____

_____
(Name) _____
Trustee
_____ Township, Delaware County, Ohio

[SAMPLE LETTER]

[DATE]

Delaware County Board of Elections
2079 US Hwy. 23 North
Delaware, Ohio 43015

Re: Notice of Vacancy in the Office of Trustee of _____ Township, Delaware County, Ohio

To Whom It May Concern:

_____ Township Trustee _____ unexpectedly passed away on _____, 20 _____. As a result, the office of Trustee for _____ Township, Delaware County, Ohio for the term expiring 20_____ became vacant.

On _____, 20_____, the Board of Trustees of _____ Township, Delaware County, Ohio ("Board") met in open public session and approved Resolution No. _____ ("Resolution") declaring and deeming the office of Trustee for _____ Township, Delaware County, Ohio for the term expiring 20_____ to be vacant as of _____, 20_____. The Board provides this notice of the vacancy pursuant to R.C. §§ 3.02(B), 503.24, *et seq*. and 507.051. Enclosed, please find a copy of the Resolution. Should you have any questions or concerns, please feel free to contact me.

Sincerely,

_____
Fiscal Officer
_____ Township
Delaware County, Ohio

Enclosure:

cc:
Delaware County Prosecuting Attorney

[SAMPLE LETTER]

[DATE]

Ohio Secretary of State
Attn: Myra Hawkins
180 East Broad Street, 15th Floor
Columbus, Ohio 43215

Re: Notice of Vacancy in the Office of Trustee of _____ Township, Delaware County, Ohio

To Whom It May Concern:

_____ Township Trustee _____ unexpectedly passed away on _____, 20_____. As a result, the office of Trustee for _____ Township, Delaware County, Ohio for the term expiring 20_____ became vacant.

On _____, 20_____, the Board of Trustees of _____ Township, Delaware County, Ohio ("Board") met in open public session and approved Resolution No. _____ ("Resolution") declaring and deeming the office of Trustee for _____ Township, Delaware County, Ohio for the term expiring 20_____ to be vacant as of _____, 20_____. The Board provides this notice of the vacancy pursuant to R.C. §§ 3.02(B), 503.24, *et seq*. and 507.051. Enclosed, please find a copy of the Resolution. Should you have any questions or concerns, please feel free to contact me.

Sincerely,

_____
Fiscal Officer
_____Township
Delaware County, Ohio

Enclosure:

cc:
Delaware County BOE
Delaware County Prosecuting Attorney

[SAMPLE LETTER]

[DATE]

Delaware County Board of Elections
2079 US Hwy. 23 North
Delaware, Ohio 43015

Re: Appointment of _____ to the Office of Trustee of _____ Township, Delaware County, Ohio for the term Expiring 20_____

To Whom It May Concern:

On _____, 20_____, the Board of Trustees of _____ Township, Delaware County, Ohio ("Board") met in open public session and approved Resolution No. _____ ("Resolution") appointing _____ to fill the vacancy in the office of Trustee for _____ Township, Delaware County, Ohio for the term expiring 201_____ from the date of the Resolution until the _____, 20____ general election or until a successor is elected and qualified. The Board provides this notice of and hereby certifies the appointment pursuant to R.C. § 3.02(B). Enclosed, please find a copy of the Resolution. Should you have any questions or concerns, please feel free to contact me.

Sincerely,

_____
Fiscal Officer
_____ Township
Delaware County, Ohio

Enclosure:

cc:
Delaware County Prosecuting Attorney

[SAMPLE LETTER]

[DATE]

Ohio Secretary of State
Attn: Myra Hawkins
180 East Broad Street, 15th Floor
Columbus, Ohio 43215

Re: Appointment of _____ to the Office of Trustee of _____ Township, Delaware County, Ohio for the term Expiring 20____

To Whom It May Concern:

On _____, 20_____, the Board of Trustees of _____ Township, Delaware County, Ohio ("Board") met in open public session and approved Resolution No. _____ ("Resolution") appointing _____ to fill the vacancy in the office of Trustee for _____ Township, Delaware County, Ohio for the term expiring 20_____ from the date of the Resolution until the _____, 20____ general election or until a successor is elected and qualified. The Board provides this notice of and hereby certifies the appointment pursuant to R.C. § 3.02(B). Enclosed, please find a copy of the Resolution. Should you have any questions or concerns, please feel free to contact me.

Sincerely,

_____
Fiscal Officer
_____ Township
Delaware County, Ohio

Enclosure:

cc:
Delaware County BOE
Delaware County Prosecuting Attorney

NOTICE OF APPOINTMENT AND REQUISTION

_____, 20 _____

Mr./Ms. _____
_____
_____

Re: Notice of Appointment to the Office of Fiscal Officer
_____ Township, Delaware County, Ohio and Requisition

Dear Mr./Ms. _____:

On _____, 20____, the Board of Trustees of _____ Township, Delaware County, Ohio ("Board") met in open public session and approved Resolution No. _____ ("Resolution") appointing you, _____, to fill the vacancy in the office of Fiscal Officer for _____ Township, Delaware County, Ohio. This appointment is made for the current unexpired term of office. Before entering upon the discharge of official duties of township fiscal officer you shall appear before an officer authorized to administer oaths, give bond, and take the oath of office prescribed by R.C. §§ 3.22 and 3.23 and Section 7 of Article XV, Ohio Constitution.

The Board provides this notice pursuant to R.C. § 503.25. Enclosed, please find a copy of the Resolution. Should you have any questions or concerns, please feel free to contact me.

Sincerely,

Name
Trustee
_____ Township
Delaware County, Ohio

Enclosure:

cc:
Delaware County Prosecuting Attorney

The undersigned hereby certifies that service of a true and accurate copy of the foregoing Notice of Appointment and Requisition was made on _____ at _____ AM/PM on this _____, 20_____ by the following means of service:

_____

_____
Signature

_____
Printed Name

_____
Title