

ORDINANCE NO. O-2007-3

AN ORDINANCE ADDING SECTION 513.15 DRUG RELATED CONDUCT TO THE CODIFIED ORDINANCE OF THE VILLAGE OF WINDHAM, DECLARING AN EMERGENCY AND REPEALING ALL PRIOR OTHER INCONSISTENT ORDINANCES.

WHEREAS, the Chief of Police has recommended to the Safety Committee that this ordinance be adopted; and

WHEREAS, the Safety Committee has recommended to Council that this would be a new tool for drug enforcement; and

WHEREAS, this matter is an emergency measure affecting the health, safety and general welfare of the residents of the Village of Windham;

NOW THEREFORE, BE IT ORDAINED by the Council of the Village of Windham three-fourths or more of the members elected thereto concurring that:

Section One: That Section 513.15 Drug Related Conduct be added to the Codified Ordinances of the Village of Windham to read as follows:

513.15 DRUG RELATED CONDUCT.

- (A) No person shall engage in the following conduct in, or about any street, in or about any place open to the public, or in or about any public or private place with the specific intent to engage in drug-related activity contrary to any of the provisions of Ohio R.C. Chapters 2925 or 4729 or Chapter 513 of the Codified Ordinances;
- (1) To repeatedly stop, beckon to, or attempt to stop or engage passersby in Conversation; or
 - (2) To repeatedly stop, beckon to, or attempt to stop motor vehicles by hailing, waving arms or making other bodily gestures; or
 - (3) To act as a lookout; or
 - (4) To transfer small objects or packages for currency or any other thing of value in a furtive fashion which would lead an observer to believe or ascertain that a drug sale has occurred or is about to occur.
 - (5) To carry small objects or packages in one's mouth and to transfer such objects or packages to another person for currency or any other thing of value or to swallow the objects or packages if approached by a law enforcement officer.
- (B) A prima facie case may be established by a law enforcement officer's observation of the offender's behavior. The seizure or recovery of illegal drugs shall not be a prerequisite to establish a prima facie case.
- (C) A person shall be rebuttably presumed to have the specific intent to engage in

drug-related activity contrary to any of the provisions of Ohio R.C. Chapters 2925 or 4729 or Chapter 513 of the Codified Ordinances if the person persists in one or more of the behaviors described in division (a) after a law enforcement officer gives the person reasonable warnings to desist, and the person:

- (1) Is a known unlawful drug user, possessor or seller as defined in division (d) of this section; or
 - (2) Displays the physical characteristics of drug intoxication or usage, including dilated pupils, glassy eyes, slurred speech, loss of coordination or motor skills, or needle tracks; or
 - (3) Is identified by a law enforcement officer as a member of a gang or association which has for its principal purpose illegal drug activity.
- (D) For purposes of this section, a "known unlawful drug user, possessor or seller" means a person who, within the knowledge of the arresting officer, either:
- (1) Has been convicted in any court within this State, within five years prior to the date of arrest, or any violation involving the use, possession or sale of any of the substances referred to in Ohio R.C. Chapters 2925 or 4729 or Chapter 513 of the Codified Ordinances of the Village of Windham or any substantially similar laws of political subdivision of the State of Ohio; or
 - (2) Has been charged two or more times, within one year prior to the date of arrest, for a violation involving the use, possession or sale of any of the substances referred to in Ohio R.C. Chapters 2925 or 4729 or Chapter 513 of the Codified Ordinances of the Village of Windham, Ohio, or any substantially similar laws of any political subdivision of the State of Ohio.
- (E) If any provision of this section or the application of it to any person or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.
- (F) Whoever violates the provisions of this section is guilty of engaging in prohibited drug-related activity, a misdemeanor of the first degree.

Section Two: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were accepted in an open meeting of this Council, and that deliberations of this Council and any of its committees that resulted in such formal actions were in meeting open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

Section Three: This Ordinance is hereby declared to be an emergency measure necessary to preserve the public health, safety, morals and general welfare of the inhabitants of the Village of Windham, Ohio and this Ordinance shall go into full force and effect

immediately upon its passage by three-fourths of the members of Council.

PASSED IN COUNCIL this 20th day of February, 2007.

Vote of Council: Ayes: Rachel Barrett, Sonya Edwards, Marian Garrett, Scott Garrett, Jodi Minotti, Phil Snyder. Nays: None.

ATTEST:

APPROVED:

Lloyd C. Billman, Village Fiscal Officer

C. James Moore, Mayor

I hereby certify that the above ordinance was duly published by public posting at predesignated posting places.

Lloyd C. Billman, Village Fiscal Officer

Cortland Bank, D&A Citgo, Windham Hardware, Windham Pharmacy, Windham Sparkle