

RECORD OF ORDINANCES

Ordinance  
~~Resolution~~ No. 2022-60

Passed OCTOBER 5, 20 22

SPONSOR: SAFETY COMMITTEE

AN ORDINANCE AMENDING THE VILLAGE OF MOGADORE CODIFIED ORDINANCES SECTION 135.06, TITLED "MENACING," TO ENHANCE THE CHARGES OF MENACING PUBLIC EMPLOYEES; AND DECLARING AN EMERGENCY.

WHEREAS, the Village Council has recently become aware of assaults on public employees; and

WHEREAS, the Village Council realizes that the existing Village of Mogadore Codified Ordinance Section 135.06, titled "Menacing," could be improved to properly support the Village's goals to provide safe workplace for its employees and a safer community; and

WHEREAS, the Village Council finds it to be in the best interests of the Village of Mogadore and its residents to amend Section 135.06 of the Codified Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the Village Council of Mogadore, Summit and Portage Counties, Ohio, as follows:

SECTION 1. That Section 135.06 of the Codified Ordinances is hereby amended to provide as stated in Exhibit "A," attached hereto and incorporated herein.

SECTION 2. That the aforesaid recitals are rendered to be the findings of this Council and are hereby incorporated into this Ordinance.

SECTION 3: That the Village of Mogadore finds and determines that all formal actions of this Council concerning and relating to the adoption of this resolution were taken in open meetings of this Council and any deliberations of this Council and any of its committees that resulted in this formal action were in meeting open to the public, in compliance with all legal requirements, including R.C.121.22.

SECTION 4: That this Ordinance is an emergency measure necessary for the preservation of the public peace, health, safety, convenience, and welfare of the Village of Mogadore and the inhabitants thereof, and thereby maintaining and even improving safety levels within the Village, and provided it receives the approval of two-thirds of the members of Council, shall be in full force and effect from and after its passage and approval by the Mayor, or otherwise take effect and be in full force from and after the earliest period allowed by law.

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Michael Raddish 10-5-22  
President Council Date

[Signature] 10-5-22  
Mayor Date

Attest:

[Signature]  
Clerk-Treasurer

## EXHIBIT A

### § 135.06 MENACING; AGGRAVATED MENACING; MENACING BY STALKING; MENACING OF PUBLIC EMPLOYEES.

#### (A) *Menacing.*

(1) No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

(2) Whoever violates division (A)(1) of this section is guilty of menacing. Except as otherwise provided in this division (A)(2), menacing is a misdemeanor of the fourth degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony to be prosecuted under appropriate state law.

(3) As used in this division (A), **ORGANIZATION** includes an entity that is a governmental employer.

#### (B) *Aggravated menacing.*

(1) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, such other person's unborn, or a member of such other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

(2) Whoever violates division (B)(1) of this section is guilty of aggravated menacing. Except as otherwise provided in this division (B)(2), aggravated menacing is a misdemeanor of the first degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, aggravated menacing is a felony to be

prosecuted under appropriate state law or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony to be prosecuted under appropriate state law.

(3) As used in this division (B), **ORGANIZATION** includes an entity that is a governmental employer.

(C) *Menacing by stalking.*

(1) (a) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or a family or household member of the other person or cause mental distress to the other person or a family or household member of the other person. In addition to any other basis for the other person's belief that the offender will cause physical harm to the other person or the other person's family or household member or mental distress to the other person or the other person's family or household member, the other person's belief or mental distress may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

(b) No person, through the use of any form of written communication or any electronic method of remotely transferring information, including but not limited to any computer, computer network, computer program, computer system, or telecommunication device, shall post a message or use any intentionally written or verbal graphic gesture with purpose to urge do either of the following:

1. Violate division (C)(1)(a) of this section;
2. Urge or incite another to commit a violation of division (C)(1)(a) of this section.

(c) No person, with a sexual motivation, shall violate division (C)(1)(a) or (C)(1)(b) of this section.

(2) Whoever violates division (C)(1) of this section is guilty of menacing by stalking.

(a) Except as otherwise provided in division (C)(2)(b) of this section, menacing by stalking is a misdemeanor of the first degree.

(b) Menacing by stalking is a felony, to be prosecuted under appropriate state law, if any of the following applies:

1. The offender previously has been convicted of or pleaded guilty to a violation of R.C. § 2903.211 or a violation of R.C. § 2911.211, or a substantially equivalent municipal ordinance to either of these offenses.

2. In committing the offense under division (C)(1)(a), (C)(1)(b) or (C)(1)(c) of this section, the offender made a threat of physical harm to or against the victim, or as a result of an offense committed under division (C)(1)(b) or (C)(1)(c) of this section, a third person induced by the

offender's posted message made a threat of physical harm to or against the victim.

3. In committing the offense under division (C)(1)(a), (C)(1)(b) or (C)(1)(c) of this section, the offender trespassed on the land or premises where the victim lives, is employed, or attends school, or as a result of an offense committed under division (C)(1)(b) or (C)(1)(c) of this section, a third person induced by the offender's posted message trespassed on the land or premises where the victim lives, is employed, or attends school.

4. The victim of the offense is a minor.

5. The offender has a history of violence towards the victim or any other person or a history of other violent acts towards the victim or any other person.

6. While committing the offense under division (C)(1)(a) of this section or a violation of division (C)(1)(c) of this section based on conduct in violation of division (C)(1)(a) of this section, the offender had a deadly weapon on or about the offender's person or under the offender's control. Division (C)(2)(b)6. of this section does not apply in determining the penalty for a violation of division (C)(1)(b) of this section or a violation of division (C)(1)(c) of this section based on conduct in violation of division (C)(1)(b) of this section.

7. At the time of the commission of the offense, the offender was the subject of a protection order issued under R.C. § 2903.213 or R.C. § 2903.214, regardless of whether or not the person to be protected under the order is the victim of the offense or another person.

8. In committing the offense under division (C)(1)(a), (C)(1)(b) or (C)(1)(c) of this section, the offender caused serious physical harm to the premises at which the victim resides, to the real property on which that premises is located, or to any personal property located on that premises, or as a result of an offense committed under division (C)(1)(b) of this section or an offense committed under division (C)(1)(c) of this section based on a violation of division (C)(1)(b) of this section, a third person induced by the offender's posted message caused serious physical harm to that premises, that real property, or any personal property on that premises.

9. Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious harm, or other evidence of then-present dangerousness.

10. The victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties.

11. The offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties.

(3) R.C. § 2919.271 applies in relation to a defendant charged with a violation of this section.

(4) As used in division (C) of this section:

**COMPUTER, COMPUTER NETWORK, COMPUTER PROGRAM, COMPUTER SYSTEM, and TELECOMMUNICATIONS DEVICE** have the same meanings as in R.C. § 2913.01.

**EMERGENCY FACILITY PERSON.** Is the singular of “emergency facility personnel” as defined in R.C. § 2909.04

**EMERGENCY MEDICAL SERVICES PERSON.** Is the singular of “emergency medical services personnel” as defined in R.C. § 2133.21.

**FAMILY OR HOUSEHOLD MEMBER.** Means any of the following:

1. Any of the following who is residing or has resided with the person against whom the act prohibited in division (C)(1)(a) of this section is committed:
  - a. A spouse, a person living as a spouse, or a former spouse of the person;
  - b. A parent, a foster parent, or a child of the person, or another person related by consanguinity or affinity to the person;
  - c. A parent or a child of a spouse, person living as a spouse, or former spouse of the person, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the person.
2. The natural parent of any child of whom the person against whom the act prohibited in division (C)(1)(a) of this section is committed is the other natural parent or is the putative other natural parent.

**MENTAL DISTRESS.** Means any of the following:

1. Any mental illness or condition that involves some temporary substantial incapacity;
2. Any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.

**ORGANIZATION.** Includes an entity that is a governmental employer.

**PATTERN OF CONDUCT.** Means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, or two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, directed at one or more persons employed by or belonging to the same corporation, association, or other organization. Actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official’s, firefighter’s, rescuer’s, emergency medical services person’s, or emergency facility person’s official capacity, or the posting of messages, use of intentionally written or verbal graphic gestures, or receipt of information or data through the use of any form of written communication or an electronic method of remotely transferring information, including but not limited to a computer, computer network, computer program, computer system, or telecommunications device, may constitute a “pattern of conduct.”

**PERSON LIVING AS A SPOUSE.** Means a person who is living or has lived with the person against whom the act prohibited in division (C)(1)(a) of this section is committed in a common law marital relationship, who otherwise is cohabiting with that person, or who otherwise has cohabited

with the person within five years prior to the date of the alleged commission of the act in question.

**POST A MESSAGE.** Transferring, sending, posting, publishing, disseminating, or otherwise communicating, or attempting to transfer, send, post, publish, disseminate, or otherwise communicate, any message or information, whether truthful or untruthful, about an individual, and whether done under one's own name, under the name of another, or while impersonating another.

**PUBLIC OFFICIAL.** Has the same meaning as in R.C. § 2921.01.

**SEXUAL MOTIVATION.** Has the same meaning as in R.C. § 2971.01.

**THIRD PERSON.** In relation to conduct as described in division (C)(1)(b) of this section, an individual who is neither the offender nor the victim of the conduct.

(5) The prosecution does not need to prove in a prosecution under division (C) of this section that a person requested or received psychiatric treatment, psychological treatment, or other mental health services in order to show that the person was caused mental distress as described in division (2) of the definition for "mental distress" in this section.

(6) (a) Division (C) of this section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection. In addition, any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control shall not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that it believes is or will be sent in violation of division (C) of this section.

(b) Division (C)(6)(a) of this section does not create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is or will be sent in violation of division (C) of this section except as otherwise provided by law.

(c) Division (C)(6)(a) of this section does not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of division (C) of this section or who knowingly advertises the availability of material of that nature.

(D) *Menacing of a Public Employee.*

(D) Menacing of Public Employee.

1. No person shall knowingly cause a public employee to believe that the offender will cause physical harm to that person during the public employee's performance or attempted performance of official responsibilities or duties.

2. No person shall knowingly cause a utility worker to believe that the offender will cause physical harm to that person during the utility workers' performance or attempted performance of job-related responsibilities or duties.
3. Except as otherwise provided in this section, whoever violates this division (D) of this section is guilty of menacing of a public employee, a misdemeanor of the first degree. Penalty, see §130.99. (R.C. §2903.22).
4. As used in division (D) of this section:

***PUBLIC EMPLOYEE*** means any person holding a position by appointment or employment in the service of a public employer.

***UTILITY WORKER*** means an employee of a person or entity whose primary responsibility is the operation of maintenance of a utility.

***UTILITY*** means an entity that provides gas, electric, steam, water, sewage, communication services, or cable and broadband services, whether publicly or privately owned.