

AGENDA

FAIRLAWN CITY COUNCIL
REGULAR MEETING
MARCH 6, 2023

- ITEM 1:** CALL TO ORDER AT 6:30 P.M.
- ITEM 2:** PLEDGE OF ALLEGIANCE
- ITEM 3:** ROLL CALL
- ITEM 4:** APPROVAL OF MEETING MINUTES
- ITEM 5:** RECEIVING PETITIONS, CLAIMS AND COMMUNICATIONS
- ITEM 6:** REPORT OF CITY OFFICIALS AND BOARDS
- ITEM 7:** INTRODUCTION OF NEW LEGISLATION FOR REFERENCE TO COMMITTEE

2023 NO.	COMMITTEE	SPONSOR
O/2023-027	SAFETY COMMITTEE	MAYOR SHARNSKY

- ITEM 8:** PUBLIC HEARINGS (No hearings scheduled)
- ITEM 9:** COMMITTEE REPORTS ON NEW OR PENDING LEGISLATION

COMMITTEE OF THE WHOLE:

Ordinance 2023-006 **Offered by Mayor Sharnsky**
 AN ORDINANCE APPROVING THE CONTRACT BETWEEN THE CITY OF FAIRLAWN AND THE PART-TIME BARGAINING UNIT EMPLOYEES OF THE DIVISION OF FIRE AND EMERGENCY RESCUE SERVICES OF THE CITY OF FAIRLAWN, RETROACTIVE TO JANUARY 1, 2023, AND PERMITTING EXTENSIONS THEREOF DURING NEGOTIATIONS OF THE SAME AND DECLARING AN EMERGENCY

Expiration Date	Public Hearing	Accepted	1 st Reading	2 nd Reading	3 rd Reading	Hold	Pass
04/03/2023	N/A	01/03/2023	01/03/2023	01/17/2023	02/06/2023	02/21/2023	

Ordinance 2023-020 **Offered by Mayor Sharnsky**
 AN ORDINANCE APPROVING THE TRANSFER OF FAIRLAWN CORPORATE PARK – PARCEL 8 TO THE COMMUNITY IMPROVEMENT CORPORATION OF FAIRLAWN, OHIO FOR THE PURPOSE OF ECONOMIC DEVELOPMENT AND DECLARING AN EMERGENCY

Expiration Date	Public Hearing	Accepted	1 st Reading	2 nd Reading	3 rd Reading	Hold	Pass
05/07/2023	N/A	02/06/2023	02/06/2023	02/21/2023			

Ordinance 2023-024 **Offered by Mayor Sharnsky**
 AN ORDINANCE ACCEPTING THE BID OF CAVANAUGH BUILDING CORPORATION, AS BEING THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER FOR THE 2023 GENERATOR BUILDING PROJECT AND INSTALLATION OF A GENERATOR TO BE UTILIZED BY THE DIVISION OF FIRE AND EMERGENCY RESCUE SERVICES AND DECLARING AN EMERGENCY

Expiration Date	Public Hearing	Accepted	1 st Reading	2 nd Reading	3 rd Reading	Hold	Pass
05/22/2023	N/A	02/21/2023	02/21/2023				

Ordinance 2023-026**Offered by Mayor Sharnsky**

AN ORDINANCE APPROVING THE CONTRACT BETWEEN THE CITY OF FAIRLAWN AND THE OHIO PATROLMEN’S BENEVOLENT ASSOCIATION REPRESENTING THE COMMUNICATIONS SPECIALISTS OF THE POLICE DIVISION OF THE CITY OF FAIRLAWN, RETROACTIVE TO JANUARY 1, 2023, AND PERMITTING EXTENSIONS THEREOF DURING NEGOTIATIONS OF THE SAME AND DECLARING AN EMERGENCY

Expiration Date 05/22/2023	Public Hearing N/A	Accepted 02/21/2023	1 st Reading 02/21/2023	2 nd Reading	3 rd Reading	Hold	Pass
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FINANCE COMMITTEE:**Ordinance 2023-019****Offered by Mayor Sharnsky**

AN ORDINANCE AMENDING AND/OR SUPPLEMENTING THE PART-TIME/SEASONAL WAGE SCHEDULE OF THE CITY OF FAIRLAWN

Expiration Date 05/07/2023	Public Hearing N/A	Accepted 02/06/2023	1 st Reading 02/06/2023	2 nd Reading 02/21/2023	3 rd Reading	Hold	Pass
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Ordinance 2023-021**Offered by Mayor Sharnsky**

AN ORDINANCE ESTABLISHING AN ANNUAL BUDGET FOR THE YEAR 2023 AND APPROPRIATING FUNDS FOR THE PURPOSE THEREOF

Expiration Date 05/22/2023	Public Hearing N/A	Accepted 02/21/2023	1 st Reading 02/21/2023	2 nd Reading	3 rd Reading	Hold	Pass
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MUNICIPAL SERVICES COMMITTEE:**PUBLIC AFFAIRS COMMITTEE:****SAFETY COMMITTEE:****Ordinance 2023-027****Offered by Mayor Sharnsky**

AN ORDINANCE AMENDING AND/OR SUPPLEMENTING SECTION 432.41 “TEXTING WHILE DRIVING PROHIBITED” OF CHAPTER 432 “OPERATION GENERALLY”; TITLE SIX “OPERATION AND VEHICLES”; PART FOUR “TRAFFIC CODE” OF THE CITY OF FAIRLAWN CODIFIED ORDINANCES AND DECLARING AN EMERGENCY

Expiration Date 06/14/2023	Public Hearing N/A	Accepted	1 st Reading	2 nd Reading	3 rd Reading	Hold	Pass
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INTERGOVERNMENTAL AFFAIRS COMMITTEE:**PLANNING COMMITTEE:****ITEM 10: OTHER BUSINESS****ITEM 11: ADJOURNMENT**

AN ORDINANCE AMENDING AND/OR SUPPLEMENTING SECTION 432.41 “TEXTING WHILE DRIVING PROHIBITED” OF CHAPTER 432 “OPERATION GENERALLY”; TITLE SIX “OPERATION AND VEHICLES”; PART FOUR “TRAFFIC CODE” OF THE CITY OF FAIRLAWN CODIFIED ORDINANCES AND DECLARING AN EMERGENCY

WHEREAS, Section 432.41 regarding persons operating a motor vehicle on any street, highway, or property open to the public for vehicular traffic while using, holding, or physically supporting with any part of the person's body an electronic wireless communications device needs to be amended in order to be consistent with the recently revised state law; and

WHEREAS, the City Council has determined that it is in the City’s best interest to update Section 432.41 of the City of Fairlawn Codified Ordinances.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY OF FAIRLAWN, OHIO THAT:

Section 1: Section 432.41 “Texting While Driving Prohibited” of the City of Fairlawn Codified Ordinances is hereby amended as described in Exhibit A, attached hereto and made a part hereof.

Section 2: All other sections of Chapter 432 “Operation Generally” of the City of Fairlawn Codified Ordinances remain unchanged.

Section 3: It is hereby found and determined that this legislation complies with Section 121.22, O.R.C. regarding notification of meetings, and all deliberations of this Council pertaining hereto have been conducted in accordance therewith.

Section 4: This Ordinance is hereby declared to be an emergency measure for the health, safety, and welfare of the residents of the City of Fairlawn for the reason that it is necessary to provide safety for the residents and property of the City of Fairlawn and it shall therefore be in full force and effect from and after its enactment and approval by the Mayor or at the earliest period allowed by law.

Enacted: _____ 2023

Approved: _____ 2023

Barbara Potts, President of Council

Russell T. Sharnsky, Mayor

Approval of the form and corrections by R. Bryan Nace, Director of Law:

CERTIFICATION OF PASSAGE

I, Tonja K. Caldwell, Clerk of Council of the City of Fairlawn, hereby certify that the foregoing Ordinance was duly and regularly passed at a meeting on _____, 2023.

Tonja K. Caldwell, Clerk of Council

CERTIFICATION OF POSTING

This is to certify that on _____, 2023 the within Ordinance was published as required in Section 222.03(a) of the Codified Ordinances of the City of Fairlawn.

Tonja K. Caldwell, Clerk of Council

Exhibit A
Ordinance 2023-027

432.41 TEXTING WHILE DRIVING PROHIBITED

(a) No person shall operate a motor vehicle on any street, highway, or property open to the public for vehicular traffic while using, holding, or physically supporting with any part of the person's body an electronic wireless communications device.

(b) Division (a) of this section does not apply to any of the following:

- (1) A person using an electronic wireless communications device to make contact, for emergency purposes, with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;
- (2) A person driving a public safety vehicle while using an electronic wireless communications device in the course of the person's duties;
- (3) A person using an electronic wireless communications device when the person's motor vehicle is in a stationary position and is outside a lane of travel, at a traffic control signal that is currently directing traffic to stop, or parked on a road or highway due to an emergency or road closure;
- (4) A person using and holding an electronic wireless communications device directly near the person's ear for the purpose of making, receiving, or conducting a telephone call, provided that the person does not manually enter letters, numbers, or symbols into the device;
- (5) A person receiving wireless messages on an electronic wireless communications device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle, provided that the person does not hold or support the device with any part of the person's body;
- (6) A person using the speaker phone function of the electronic wireless communications device, provided that the person does not hold or support the device with any part of the person's body;
- (7) A person using an electronic wireless communications device for navigation purposes, provided that the person does not do either of the following during the use:
 - A. Manually enter letters, numbers, or symbols into the device;
 - B. Hold or support the device with any part of the person's body;
- (8) A person using a feature or function of the electronic wireless communications device with a single touch or single swipe, provided that the person does not do either of the following during the use:
 - A. Manually enter letters, numbers, or symbols into the device;
 - B. Hold or support the device with any part of the person's body;

Exhibit A
Ordinance 2023-027

- (9) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;
 - (10) A person operating a utility service vehicle or a vehicle for or on behalf of a utility, if the person is acting in response to an emergency, power outage, or circumstance that affects the health or safety of individuals;
 - (11) A person using an electronic wireless communications device in conjunction with a voice-operated or hands-free feature or function of the vehicle or of the device without the use of either hand except to activate, deactivate, or initiate the feature or function with a single touch or swipe, provided the person does not hold or support the device with any part of the person's body;
 - (12) A person using technology that physically or electronically integrates the device into the motor vehicle, provided that the person does not do either of the following during the use:
 - A. Manually enter letters, numbers, or symbols into the device;
 - B. Hold or support the device with any part of the person's body.
 - (13) A person storing an electronic wireless communications device in a holster, harness, or article of clothing on the person's body.
- (c) (1) If a law enforcement officer issues an offender a ticket, citation, or summons for a violation of division (a) of this section, the officer shall do both of the following:
- A. Report the issuance of the ticket, citation, or summons to the officer's law enforcement agency;
 - B. Ensure that such report indicates the offender's race.
- (d) (1) Whoever violates division (a) of this section is guilty of operating a motor vehicle while using an electronic wireless communication device, an unclassified misdemeanor.
- A. Except as provided in divisions (d)(1) B., C., D., and (2) of this section, the court shall impose upon the offender a fine of not more than one hundred fifty dollars.
 - B. If, within two years of the violation, the offender has been convicted of or pleaded guilty to one prior violation of this section or a substantially equivalent state statute, the court shall impose upon the offender a fine of not more than two hundred fifty dollars.
 - C. If, within two years of the violation, the offender has been convicted of or pleaded guilty to two or more prior violations of this section or a substantially equivalent state statute, the court shall impose upon the offender a fine of not more than five hundred dollars. The court also may impose a suspension of the offender's driver's license, commercial driver's license, temporary instruction

Exhibit A
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permit, probationary license, or nonresident operating privilege for ninety days.

- D. Notwithstanding divisions (d)(1)A. to C. of this section, if the offender was operating the motor vehicle at the time of the violation in a construction zone where a sign was posted in accordance with section 4511.98 of the Revised Code, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two times the amount imposed for the violation under division (d)(1)A., B., or C. of this section, as applicable.
- (2) In lieu of payment of the fine of one hundred fifty dollars under division (d)(1)A. of this section and the assessment of points under division (d)(4) of this section, the offender instead may elect to attend the distracted driving safety course, as described in section 4511.991 of the Revised Code. If the offender attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall not be required to pay the fine and shall not have the points assessed against that offender's driver's license if the offender submits the written evidence to the court.
- (3) The court may impose any other penalty authorized under sections 2929.21 to 2929.28 of the Revised Code. However, the court shall not impose a fine or a suspension not otherwise specified in division (d)(1) of this section. The court also shall not impose a jail term or community residential sanction.
- (4) Except as provided in division (d)(2) of this section, points shall be assessed for a violation of division (a) of this section in accordance with section 4510.036 of the Revised Code.
- (5) The offense established under this section is a strict liability offense and section 2901.20 of the Revised Code does not apply. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.
- (e) (1) A law enforcement officer does not have probable cause and shall not stop the operator of a motor vehicle for purposes of enforcing this section unless the officer visually observes the operator using, holding, or physically supporting with any part of the person's body the electronic wireless communications device.
- (2) A law enforcement officer who stops the operator of a motor vehicle for a violation of division (a) of this section shall inform the operator that the operator may decline a search of the operator's electronic wireless communications device. The officer shall not do any of the following:
- A. Access the device without a warrant, unless the operator voluntarily and unequivocally gives consent for the officer to access the device;

Exhibit A
Ordinance 2023-027

- B. Confiscate the device while awaiting the issuance of a warrant to access the device;
 - C. Obtain consent from the operator to access the device through coercion or any other improper means. Any consent by the operator to access the device shall be voluntary and unequivocal before the officer may access the device without a warrant.
- (f) As used in this section:
- (1) “Electronic wireless communications device” includes any of the following:
 - A. A wireless telephone;
 - B. A text-messaging device;
 - C. A personal digital assistant;
 - D. A computer, including a laptop computer and a computer tablet;
 - E. Any device capable of displaying a video, movie, broadcast television image, or visual image;
 - F. Any other substantially similar wireless device that is designed or used to communicate text, initiate or receive communication, or exchange information or data.
 - (2) An “electronic wireless communications device” does not include a two-way radio transmitter or receiver used by a person who is licensed by the federal communications commission to participate in the amateur radio service.
 - (3) “Voice-operated or hands-free feature or function” means a feature or function that allows a person to use an electronic wireless communications device without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.
 - (4) “Utility” means an entity specified in division (A), (C), (D), (E), or (G) of section 4905.03 of the Revised Code.
 - (5) “Utility service vehicle” means a vehicle owned or operated by a utility.