

ORDINANCE NO. 05 -22 AC CMS

AN ORDINANCE AMENDING SECTIONS 1501.06 AND 1501.99 OF THE CODIFIED ORDINANCES OF THE CITY OF OBERLIN, OHIO, TO AUTHORIZE ADDITIONAL POWERS FOR FIRE INVESTIGATORS AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That Section 1501.06 of the Codified Ordinances is hereby amended to authorize the following additional powers and authority of Fire Investigators for the City of Oberlin:

"Fire Investigators may administer an oath to any person appearing as a witness before them. No witness shall refuse to be sworn, refuse to testify, disobey an order of a Fire Investigator, or fail or refuse to produce a book, paper, document, or record, regardless of physical form or characteristics, concerning a matter under examination after being summoned by a Fire Investigator to appear before them to give testimony in relation to a matter or subject under investigation. Any such failure or refusal shall be deemed contemptuous conduct."

SECTION 2. That Section 1501.99 of the Codified Ordinances is hereby amended to add the following penalties for contemptuous conduct:

"Whoever commits contemptuous conduct as provided for in Section 1501.06 of these Codified Ordinances shall be subject to a civil penalty of one hundred dollars (\$100.00) for each day during which said conduct continues and may be committed by the court to the County jail until that person is willing to comply with the order of the Fire Investigator."

SECTION 3. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council 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.

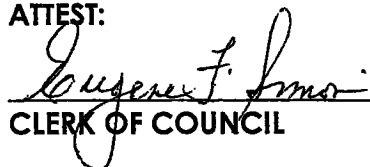
SECTION 4. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of public peace, health, and safety of the citizens of the City of Oberlin, Ohio, to wit:

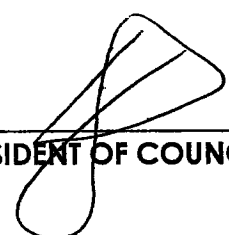
"to authorize additional powers and duties relating to Fire Investigations within the City of Oberlin as soon as possible in order to ensure the public safety of Oberlin residents",

and shall take effect immediately upon passage.

PASSED:	1st Reading -	April 4, 2005
	2nd Reading-	April 18, 2005
	3rd Reading-	May 2, 2005 (E)

ATTEST:


CLERK OF COUNCIL


PRESIDENT OF COUNCIL

POSTED: May 3, 2005

EFFECTIVE DATE: May 3, 2005

a:/ORD05-FireInvestigation

INTER-OFFICE Memorandum

City of Oberlin Fire
Department

To: Robert DiSpirito, City Manager
Oberlin City Council

From: Dennis Kirin, Fire Chief 

Date: April 8, 2005

Subject: Ordinance 05-22

The Fire Department has submitted the above ordinance to City Council for their consideration and first reading on April 4, 2005. This ordinance directly relates to section 1501.06 (a) through (d) of the Oberlin Codified Ordinances (Exhibit A) which delineates the duties of the Fire Prevention Bureau and specifically the duties of fire investigators. Adopted in December 2003, section 1501.06 (c) states that fire investigators are charged with the responsibility to:

"... perform all of the duties and requirements as established by Ohio R.C. 737.27, to wit: to be present at all fires; investigate the cause of all fires; examine witnesses or suspects; administer oaths; compel the presence of witnesses, books, papers, or other documents of relevant importance; and, to do and perform all other acts necessary to carry out the effective discharge of the Fire Investigators's duties."

Although the codified ordinance was adopted using identical language to Ohio R.C. 737.27 (Exhibit B), I did not discover the lack of a penalization clause until we began developing procedures and documentation for the provisions relating to the use of a subpoena process for the "examination of witnesses" and "compel the presence of [documents]." When we contacted the Division of State Fire Marshal' (SFM) Investigation Bureau and requested copies of the documentation and procedures used for these activities, it became apparent that the penalty clause was listed in Ohio R.C. section 3737.28 - a different location than Ohio R.C. 737.27.

At this point, the City Law Director was requested to review the contents and procedures of the SFM's process, and to recommend an amendment to bring the two processes (state and city) into alignment. The result is Ordinance 05-22.

If approved, Ordinance 05-22 would only establish a penalty process for failure of a person to comply with the existing requirements of OCC 1501.06. Upon a failure to comply with a request of a fire investigator to produce documents or appear for testimony, a person would only be subject to a court citation for contempt. It would be the court's decision, based on presentation of the evidence, whether a person would be held in contempt - not the fire investigator's decision. The assignment of a penalty - incarceration or fines - would also be the court's decision.

If Ordinance 05-22 is not approved, a fire investigator would retain the authority under OCC 1501.06 to issue a subpoena to command documentation or appearance to testify, but the individual could simply ignore the request as it lacks any penalty for noncompliance. Historically, fire investigators have noted that most law-abiding citizens comply with a legal request, such as a subpoena, to provide copies of records or written statements. Others who possibly have something to hide (i.e., involvement in a crime) have good reason to avoid compliance. A failure to adopt a penalty clause would give them that opportunity.

Why don't we use the State Fire Marshal's Investigation Bureau for these purposes? The Fire & Explosive Investigation Bureau only has 17 investigators to provide coverage for the entire State of Ohio. Matt Hartnett, the investigator assigned to our area, has the combined responsibility of five counties - Erie, Huron, Lorain, Cuyahoga, and Lake. With that area of responsibility and the number of fire incidents that occur there, it would be unfeasible and impractical to call upon this investigator every time our department identifies a need to obtain a document or record or to talk to a witness or suspect.

Council Questions: Based on the inquiry and questions pertaining to the Fire Department's ordinance for subpoena penalties presented at the last Council session, I have attempted to summarize various areas of concern that were discussed. These involve:

1. What is a fire investigation? Simply, fire investigation is the compilation and analysis of information related to fires or explosions. A fire investigation is usually conducted to determine and document the area of origin and cause of a fire or explosion and the factors that contributed to the ignition and subsequent fire growth. This information is used to complete mandated fire incident reports, identify trends, assist in prevention of similar incidents, and to develop public education programs.

Fire investigations are mandated by the State Fire Marshal under Chapter 1301:7-1-03(E) of the Ohio Administrative Code (Exhibit C), otherwise known as the Ohio Fire Code, which states:

"The fire official shall investigate, or cause to be investigated, every fire or explosion occurring within the jurisdiction that is of a suspicious nature or which involves loss of life or serious injury or causes destruction or damage to property. Such investigation shall be initiated immediately upon the occurrence of such fire or explosion; and if it appears that such an occurrence is of a suspicious nature, the fire official shall take charge immediately of the physical evidence, and in order to preserve any physical evidence relating to the cause or origin of such fire or explosion, take means to prevent access by any person or persons to such building, structure or premises until such evidence has been properly processed. The fire official shall notify such persons designated by law to pursue investigations in the collection of evidence and prosecution of the case and shall pursue the investigation to its conclusion." OAC 1301:7-1-03(E)

Investigations are also conducted to determine whether a fire was intentionally set. By definition, arson is the crime of maliciously and intentionally, or recklessly, starting a fire or causing an explosion. In these cases, the cause and origin information developed by the investigator becomes an integral part of any criminal investigation and subsequent legal actions. Consequently, it is imperative that the entire fire investigation is conducted in accordance with legal and statutory authority. Failure to follow these principles would subject evidence uncovered in the investigation to be ruled inadmissible or dismissal of charges.

2. Investigation procedures. A fire investigation is a complex endeavor involving skill, technology, knowledge, and science. Since a fire investigation may eventually develop into a criminal investigation, all investigators follow a standard procedure for investigations as delineated in the NFPA 921, *Guide for Fire and Explosion Investigations* - a 262-page procedural manual. This guide provides a systematic approach that is both required and expected in the legal system. Why only listed as a 'guide', NFPA 921 has been recognized by the legal system as the standard of conduct or model for fire investigations. It is also common knowledge and practice that fire investigators will be recognized as 'expert witnesses' as they present evidence and testimony within the court system, and this fact requires that their entire approach to an investigation be above recourse.

To build experience, skills and knowledge, Oberlin fire investigators participate in the Lorain County Association of Fire Investigators, a unique blend of fire and police investigators, and work closely with the State Fire Marshal's Investigation Bureau. While these personnel are available to us for assistance, the Fire Department is mandated by the SFM to maintain primary responsibility for the investigative effort.

3. Training. While no minimal training has been established for a fire investigator in the country, all public and private fire investigation organizations and agencies reference NFPA 1033, *Standard for Professional Qualifications for Fire Investigator*, which was compiled by a Technical Committee and identifies the acceptable job performance standards of a fire investigator. Following the parameters of NFPA 1033, our department requires that all investigators be trained by the State of Ohio in the following areas:
- State of Ohio Firefighter certification (Ohio Dept. of Public Safety)
 - Basic Fire Investigation certification (Ohio Fire Academy)
 - Advanced Fire Investigation certification (Ohio Fire Academy)

For reference, the Ohio Fire Academy is a branch of the Division of State Fire Marshal's office which also oversees the Fire & Explosion Investigation Bureau (FEIB). Training classes are conducted by personnel from the Investigation Bureau and are designed to meet the requirements of the NFPA 1033 standard.

Recently, recognizing the importance of proper procedures during arson criminal investigation, the Division of State Fire Marshal - Ohio Fire Academy teamed with the Ohio Peace Officer's Training Academy (OPOTA) to provide a specialized course for firefighters who are assigned to fire investigative duties. The course is: *Fire Investigative Law Enforcement Course*. Admission to the course is restricted to fire investigators who employed full-time by municipalities and have completed the above investigation training. The course curriculum includes criminal justice system, laws of arrest, search and seizure, surveillance, civil liability, interview and interrogation, evidence collection, crime scene search, and report writing. These topics are exact excerpts from the State's police certification course. (Exhibit D)

The OPOTA course is based on the requirements of Ohio R.C. 737.27- the same section adopted by City Council in December 2003 that delineates fire investigator duties in section 1501.06 of the Oberlin Codified Ordinance. (See attached)

By recommendation of these State agencies, fire investigators in the City of Oberlin are selected by the Fire Chief on the following basis:

- Completion of State of Ohio fire investigation training.
- Completion of State of Ohio police certification training

The optimal fire investigation team is a mixture of experience fire and police investigators who are cross-trained in each other's knowledge and skill fields. We have that mix.

4. Types of Evidence. According to NFPA 921, in the course of a fire investigation, there are basically three types of evidence, all of which relate to fire investigations in some manner. These include demonstrative evidence, documentary evidence, and testimonial evidence (Exhibit E).

Demonstrative evidence or *physical evidence* consists of tangible items from which a person can derive a firsthand impression by seeing, touching, smelling or hearing the evidence. Such evidence includes liquid accelerants, broken glass, incendiary or explosive devices, containers, appliances, clothing, tools, etc.

Documentary evidence is any evidence in written form. It may include business records; insurance policies; personal records; witness statements reduced to writing; law enforcement agency reports; Bureau of Motor Vehicle records; written transcripts of audio or videotape recordings. Documentary evidence can provide insight into reasons or motive for criminal investigations such as arson.

Testimonial evidence is that given by a competent witness speaking under oath or affirmation. In the initial course of fire investigation, investigators generally obtain oral statements from witnesses without the use of oath or affirmation. As noted in the following section, testimonial evidence provides relevant information or even confirmation of other evidence.

This information, as delineated in the NFPA 921 guide, recognizes the importance of obtaining both documentary and testimonial evidence as necessary in the course of a fire investigation.

5. Interviews or Interrogations. There are two forms of oral questioning in any investigation - interview and interrogation. An interview is the questioning of an individual for the purpose of obtaining information relevant to the investigation. Interviews are non-accusatory in nature.

Most information about a fire incident is derived through an interview process. The purpose of an interview is to gather pertinent and accurate information, obtain information that corroborates or refutes the investigative data, assist in determination of fire cause and origin, and fill gaps in the information or evidence regarding a fire. Examples of some interviews include:

- A neighbor who discovered the fire and provides information about their observations.
- A home owner who confirms that the stove was on immediately before the fire started.
- A store clerk who had seen a suspect buying gasoline before the fire.
- A witness who could probably confirm an alibi or fact.

The important legal issue governing an interview process is whether the individual is a suspect, has been taken into custody, or has been deprived of freedom in any way. Under any of these issues, the interview has just changed into an interrogation.

An interrogation is a formal line of questioning of an individual who is suspected of committing a crime or who may be reluctant to provide answers to the investigator's questions. Interrogations are accusatory by nature, as the individual being questioned is a suspect in the commission of a crime such as arson. During an interrogation, it is paramount that the investigators abide by the legal requirements providing for the constitutional rights of the individual before questioning -, i.e., provision of a written statement/oral explanation and acknowledgment of their Miranda Rights.

6. **Subpoena Process.** To facilitate the presence of individuals for an interview/interrogation, the acquisition of important documents, or to obtain testimony under an oath, the State Fire Marshal's Investigation Bureau uses the subpoena process as delineated in Ohio R.C. section 3737.16 and 3737.28 (Exhibit F) as depicted on the attached copy (Exhibit G) of their subpoena form. While municipal documents and records are governed by the Freedom of Information Act and must be provided upon request, private individuals, businesses, schools, or corporations do not have to provide these records. Unless voluntarily provided, documentary evidence held by these private entities required in the course of a fire investigation must be obtained through legal recourse -, i.e., the subpoena process.

Examples of important documents in fire investigations include:

- Insurance claim forms listing items or possessions lost in a fire - for comparison against known remains found at the fire scene.
- Insurance policies - for recent changes in coverage, history of fire claims (owner with fires at other locations), replacement cost for fire incident loss reports.
- History of residence, ownership, ownership of multiple structures.
- Personal background information (age, education, marital status, financial and social circumstances, gang affiliations, criminal records)
- Military service history
- Employment history
- Bank information - mortgage information, financial history, financial stress.
- Business history - financial condition statements, financial stress, inventory lists, judgements/lawsuits/liens, bankruptcy.
- Telephone records
- Court or juvenile records
- School student records - normally precluded by Family Educational Rights & Privacy Act
- Government records - taxes paid or owed, coroner/medical examiner records, county recorder records.

Failure to obtain appropriate documents or records for investigative purposes would hamper the efforts of fire investigators to determine the fire cause and origin, and to determine responsibility whether that cause is accidental or intentional.

When the ordinance amendment was provided to the City Law Director, a copy of our proposed subpoena form (Exhibit H) was drafted for use by fire investigators. We used the SFM's format with modification for local code references.

7. **Oath or Affirmation.** For the purpose of comparison, the State Fire Marshal's Investigation Bureau advised that it does not differentiate between the procedure for an interrogation and obtaining a statement under oath or affirmation. Accordingly, they provide an Advice of Rights form (Exhibit I), an oral and written statement of the individual's Miranda Rights, and obtain a signed acknowledgment of it. The individual is afforded all rights against self-incrimination, right to remain silent, and right to an attorney and to have one present during questioning. Since the SFM has developed and refined this procedure and document, the Fire Department proposes to

use this form and procedure whenever its fire investigators have the need to obtain statements under oath or affirmation. All other oral statements would not be considered as oath and affirmation, and accordingly would not be subject to the contemptuous conduct penalty.

8. **Written Statements.** Following the procedure for oral statements under oath or affirmation, it is also the Investigation Bureau's practice to use the same Advice of Rights form (Exhibit I) to obtain an oral and written statement of an individual's Miranda Rights before obtaining a written *sworn* statement. Again, since the SFM has developed and refined this process, the Fire Department proposes to use this procedure whenever its fire investigators have the need to obtain written sworn statements. All other written statements would not be considered as 'sworn' statements, and accordingly would not be subject to the contemptuous conduct penalty.

I believe that this information should address all pertinent questions and concerns presented by City Council. Please share this information with all parties and advise me of any additional questions, comments or concerns that require my attention.

**PART FIFTEEN - FIRE PREVENTION CODE / CHAPTER 1501 Oberlin Fire
Prevention Code / 1501.06 DUTIES.**

1501.06 DUTIES.

(a) It is the duty of the Bureau of Fire Prevention to enforce the Fire Prevention Code adopted in Section 1501.01 and all laws and ordinances of the State of Ohio and the City of Oberlin relating to fire hazards, fire prevention, fire protection, and fire investigation.

(b) Individuals holding the title of Fire Investigator shall complete any and all training required by law pursuant to Ohio R.C. 737.27, as may be amended. The individuals assigned the duties of Fire Investigator shall be chosen by the Fire Chief according to criteria recommended by the State of Ohio.

(c) Fire Investigators shall perform all of the duties and requirements as established by Ohio R.C. 737.27, to wit: to be present at all fires; investigate the cause of all fires; examine witnesses or suspects; administer oaths; compel the presence of witnesses, books, papers, or other documents of relevant importance; and, to do and perform all other acts necessary to carry out the effective discharge of the Fire Investigator's duties.

(d) Fire Investigators shall have the power to make arrests as is relevant to any fire or explosion being investigated by the Fire Investigator; shall have the right to bear a firearm for the limited and sole purpose of the fire investigation; and enter any building, residence, dwelling or structure which, in the Fire Investigators' opinion, is in danger from fire or explosion. Fire Investigators shall notify all other authorities designated by law to pursue investigations into such matters and cooperate in the collection of evidence and the prosecution of any resulting criminal charges.

(e) The Bureau shall perform such other duties as are herein required, and as may be assigned by the Fire Chief. (Ord. 03-99 AC. Passed 12-1-03.)

37.21 Department, company and rescue units; municipal regulations

The legislative authority of a municipal corporation may establish all necessary regulations to guard against the occurrence of fires, protect the property and lives of its citizens against damage and accidents resulting therefrom, and for such purpose may establish and maintain a fire department, provide for the establishment and organization of fire engine and hose companies and rescue units, establish the hours of labor of the members of its fire department who shall not be required to be on duty continuously more than six days in every seven, and provide such bylaws and regulations for the government of such companies and their members as is necessary and proper.

Effective: October 23, 1961

737.27 Fire investigations

The legislative authority of a municipal corporation may invest any officer of the fire or police department with the power, and impose on him the duty, to be present at all fires, investigate the cause thereof, examine witnesses, compel the attendance of witnesses and the production of books and papers, and to do and perform all other acts necessary to the effective discharge of such duties.

Such officer may administer oaths, make arrests, and enter, for the purpose of examination, any building which, in his opinion, is in danger from fire. The officer shall report his proceedings to the legislative authority at such times as are required.

Effective: October 1, 1953

737.28 Removal or erection of structures

The legislative authority of a municipal corporation may regulate the erection of houses and business structures and prohibit the erection of buildings within such limits as it deems proper, unless the outer walls are constructed of noncombustible material, and, on the petition of the owners of not less than two thirds of the ground included in any square or half-square, may prohibit the erection thereon of any building, or addition to any building more than ten feet high, unless the outer walls are made of iron, stone, brick and mortar, or of some of them, and may provide for the removal of any building or additions erected in violation of such prohibition.

Effective: October 1, 1953

737.34 Fire safety inspection, special

On application of the owner or person having control of an opera house, hall, theater, church, schoolhouse, college, academy, seminary, infirmary, sanitarium, children's home, hospital, medical institute, asylum, or other buildings used for the assemblages or betterment of people in a municipal corporation the chief of the division of workshops and factories shall carefully examine such buildings to ascertain the means provided for the speedy and safe egress of persons at any time there assembled, and for extinguishing fires at or in such place.

Effective: October 1, 1953

737.35 Notice of unsafe conditions required

If the chief of the division of workshops and factories finds that a structure mentioned in section 737.34 of the Revised Code is not properly arranged for the safe and speedy egress of persons therein assembled, or not properly provided with means for the extinguishment of fire at or in such structures, as required by law, or that it is such as to endanger the lives of the persons there assembled, from fire or other cause, he shall, in writing, notify the owner, officer, or agent in charge thereof, and the mayor of the municipal corporation if such structure is located in a municipal corporation, if not, the prosecuting attorney of the county wherein it is located, specifying the alterations, additions, and appliances necessary to be made and furnished.

Effective: October 1, 1953

737.36 Inspection frequency

The chief of the division of workshops and factories shall make inspections of buildings named in section 737.34 of the Revised Code, as often as such chief deems necessary, or upon the written demand of the agent or owner of such structures, or upon the written request of five or more citizens of the municipal corporation, county, or township in which such structure is located. The inspectors shall have access to such buildings at any time it is deemed necessary to inspect them.

Effective: October 1, 1953

737.37 Rules for public safety, municipal corporation

The legislative authority of a municipal corporation may make such regulations pertaining to public buildings as it considers necessary for the public safety.

Effective: October 1, 1953

- (3) Isolation of hazardous operations; provided, however, that the fire official may require the installation of fire safety devices or systems (fire extinguishers, fire alarms, fire detection devices, sprinklers or similar systems) where, in his judgment, they are necessary to provide safety to life and property. in lieu of requiring the installation of safety devices or systems, or when necessary to secure safety in addition thereto, the fire official may prescribe limitations on the handling and storage of materials or substances or upon operations that are liable to cause fire, contribute to the spread of fire, or endanger life or property.

G) FM-101.6 Where there is a conflict between this code and the rules and regulations of a political subdivision, the requirements which provide the greatest safety shall be applied throughout said subdivision.
Effective: September 1, 1995

1301:7-1-03 ENFORCEMENT

Section FM-102.0 Enforcement.

A) FM-102.1 Fire official: The fire marshal, any assistant fire marshal, any certified fire safety inspector, the chief of the fire department of each municipal corporation where a fire department is established, the chief of the fire department in each township where a fire department is established, and such members of any such departments as may be designated by such chief, the fire prevention officer of a municipal corporation where no fire department exists, or the fire prevention officer of a township where no fire department is established shall be designated to enforce the provisions of this code. The fire official is herein also referred to as the code official.

B) FM-102.2 Inspections: The fire marshal, any assistant fire marshal, or certified fire safety inspector may inspect all structures, premises and vehicles pursuant to section 3737.14 of the Revised Code as often as may be necessary for the purpose of ascertaining and causing to be corrected, any conditions liable to cause fire, contribute to the spread of fire, interfere with firefighting operations, endanger life or any violations of the provisions or intent of this code or any other ordinance affecting fire safety.

C) FM-102.2.1 Coordinated inspections: Whenever in the enforcement of the fire prevention code or another code or ordinance the responsibility of more than one enforcement official of the jurisdiction may be involved, it shall be their duty to coordinate their inspections and administrative orders as fully as practicable so that the owners and occupants of the structures shall not be subjected to visits by numerous inspectors nor multiple or conflicting orders. Whenever an inspector from any agency or department observes an apparent or actual violation of some provision of some law, ordinance or code of the jurisdiction, not within his authority to enforce, he shall report his findings to the official having jurisdiction in order that such official may institute the necessary corrective measures.

D) FM-102.2.2 Right of entry: Whenever necessary for the purpose of enforcing the provisions of this code, or whenever the fire official has reasonable cause to believe that there exists in any structure or upon any premises any condition which makes such structure or premises unsafe, the fire official may enter such

structure or premises at all reasonable times to inspect the same or to perform any duty imposed upon the fire official by this code; provided, that if such structure or premises be occupied, he shall first present proper credentials and request entry. If such entry is refused, the fire official shall have recourse to every remedy provided by law to secure entry.

(E) FM-102.3 Investigation of fires: The fire official shall investigate, or cause to be investigated, every fire or explosion occurring within the jurisdiction that is of a suspicious nature or which involves the loss of life or serious injury or causes destruction or damage to property. Such investigation shall be initiated immediately upon the occurrence of such fire or explosion; and if it appears that such an occurrence is of a suspicious nature, the fire official shall take charge immediately of the physical evidence, and in order to preserve any physical evidence relating to the cause or origin of such fire or explosion, take means to prevent access by any person or persons to such building, structure or premises until such evidence has been properly processed. The fire official shall notify such persons designated by law to pursue investigations into such matters and shall further cooperate with such authorities in the collection of evidence and prosecution of the case and shall pursue the investigation to its conclusion.

(F) FM-102.4 Fire records: The reports of fire investigations required by section 3737.23 of the Revised Code shall be reported on form NFIRS-1, the "Incident Report," "the Civilian Casualty Report," and form NFIRS-3, "the Fire Service Casualty Report." Instructions for the use of these reports including the coding procedures that shall be used are found in the "National Fire Incident Reporting System" (NFIRS) version 4 hand book.

The report forms, manuals and coding information shall be compatible with the program prescribed by the United States fire administration as version 4 of the "National Fire Incident Reporting System" and sent to the state fire marshal in a manner approved by the fire marshal. Electronic reporting of "Incident Reports" to the state fire marshal when utilizing version 5 NFIRS files is permitted if the version 5 of NFIRS is a version approved by both the United States Fire Administration and the state fire marshal as being compatible with version 5 of the National Fire Incident Reporting System. Any electronic reporting also must be in a format that is specifically compatible with the software used by the state fire marshal to process such reports and transmitted in a format that has been approved by the state fire marshal.

(G) FM-102.5 Administrative liability: Pursuant to section 9.86 of the Revised Code, no fire official, officer or employee of the state of Ohio shall be liable in any civil action that arises under the law of Ohio for damage or injury caused in the performance of his duties in enforcing this code, unless his actions were manifestly outside the scope of his employment or official responsibilities, or unless he acted with malicious purpose, in bad faith, or in a wanton or reckless manner. Pursuant to section 9.87 of the Revised Code, the state of Ohio shall indemnify a fire official, officer or employee of the state of Ohio from liability incurred in the performance of his duties in enforcing this code by paying any judgment in, or amount negotiated in settlement of any civil action arising under federal law, the law of another state, or the law of a foreign jurisdiction subject to the limitations set out in section 9.87 of the Revised Code.



Ohio Department of Commerce

Division of State Fire Marshal

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State Fire Marshals Fire Investigative Law Enforcement Course

The State Fire Marshals Investigations Bureau and the Ohio Fire Academy in conjunction with the Ohio Peace Officer Training Commission (OPOTC) developed this 160-hour course using the OPOTC Basic Peace Officer Training Curriculum. This course was designed for those municipal firefighters assigned to fire investigative duties as outlined in ORC 737.27. All course instructors are Ohio Peace Officer Training Commission certified.

Course curriculum will consist of:

- Introduction to Basic Training
- The Criminal Justice & Structure of the American Courts
- Introduction to Report Writing
- Communications Radio Procedures & LEADS
- Laws of Arrest
- Search & Seizure
- Civil Liability & Use of Force
- Defensive Tactics and Cuffing Techniques
- Legal Aspects of Interview & Interrogation
- Testifying in Court & Rules of Evidence
- Evidence Collection Techniques
- Crime Scene Search
- Crime Scene Sketching & Detailed Drawings
- Police Photography
- Tracing Stolen Property
- Confidential Informants
- Observation, Perception, & Description
- Line-ups
- Surveillance
- Search Warrants
- Interview & Interrogation Techniques
- Investigative Report Writing
- Firearms Safety Procedures
- Handgun & related Equipment
- Basic Fundamentals of Pistol Craft
- Range

FINANCIAL INSTITUTIONS

INDUSTRIAL COMPLIANCE

LABOR & WORKER SAFETY

LIQUOR CONTROL

REAL ESTATE & PROFESSIONAL LICENSING

SECURITIES

STATE FIRE MARSHAL

UNCLAIMED FUNDS

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E

11.5.1.2 Evidentiary requirements, standards, and rules vary greatly from jurisdiction to jurisdiction. For this reason, those rules of evidence that are in effect in individual states, territories, provinces, and international jurisdictions should be consulted. The United States Federal Rules of Evidence have been relied on throughout this guide for guidance in promoting their general criteria of relevance and identification. The Federal Rules of Evidence became effective on January 2, 1975 and have been amended several times. The most recent amendment was January 28, 2002. The federal rules are applicable in all civil and criminal cases in all United States courts of appeal, district courts, courts of claims, and before United States magistrates. The federal rules are recognized as having essentially codified the well-established rules of evidence, and many states have adopted, in whole or in part, the federal rules.

11.5.2 Types of Evidence. There are basically three types of evidence, all of which in some manner relate to fire investigations. They are "demonstrative evidence," "documentary evidence," and "testimonial evidence." They are described in detail in 11.5.2.1, 11.5.2.2, and 11.5.2.3.

11.5.2.1 Demonstrative Evidence. This is a type of evidence that consists of tangible items as distinguished from testimony of witnesses about the items. It is evidence from which one can derive a relevant firsthand impression by seeing, touching, smelling, or hearing the evidence. Demonstrative evidence should be authenticated. Evidence is authenticated in one of two ways: through witness identification (i.e., recognition testimony), or by establishing a chain of custody (an unbroken chain of possession from the taking of the item from the fire scene to the exhibiting of the item).

11.5.2.1.1 Photographs/Illustrative Forms of Evidence. Among the most frequently utilized types of illustrative demonstrative evidence are maps, sketches, diagrams, and models. They are generally admissible on the basis of testimony that they are substantially accurate representations of what the witness is endeavoring to describe. Photographs and movies are viewed as graphic portrayals of oral testimony and become admissible when a witness has testified that they are correct and accurate representations of relevant facts observed by the witness. The witness often need not be the photographer, but he or she should know about the facts being represented or the scene or objects being photographed. Once this knowledge is demonstrated by the witness, he or she can state whether a photograph correctly and accurately portrays those facts.

11.5.2.1.2 Samples. Chain of custody is especially important regarding samples. To ensure admissibility of a sample, an unbroken chain of possession should be established.

11.5.2.2 Documentary Evidence. Documentary evidence is any evidence in written form. It may include business records such as sales receipts, inventory lists, invoices, and bank records including checks and deposit slips; insurance policies; personal items such as diaries, calendars, telephone records; fire department records such as the fire investigator's report, the investigator's notes, the fire incident report, witness statement reduced to writing; or any law enforcement agency reports, including investigation reports, police officer operational reports, fire or police department dispatcher logs; division of motor vehicle records; written transcripts of audio- or videotape recordings. Any information in a written form related to the fire or explosion incident is considered documentary evidence. Documentary evidence is generally admissible if the documents are maintained in the normal course of business.

All witness statements should be properly signed by the witness, dated, and witnessed by a third party when possible. It is important to obtain the full name, address, and telephone number of the witness. Any additional identifying information (e.g., date of birth, social security number, and automobile license number) may prove helpful in the event that difficulties are later encountered in locating the witness. Statements actually written by the witness may be required in certain jurisdictions.

11.5.2.3 Testimonial Evidence. Testimonial evidence is that given by a competent live witness speaking under oath or affirmation. Investigators are frequently called on to give testimonial evidence regarding the nature, scope, conduct, and results of their investigation. It is incumbent on all witnesses to respond completely and honestly to all questions. There are two types of witnesses that offer testimony in a legal proceeding: "fact witnesses" and "expert witnesses."

11.5.2.3.1 Fact Witnesses. A fact witness is one whose testimony is not based on scientific, technical, or other specialized knowledge. An example of a fact witness is a neighbor who discovered the fire and testifies about their observations. An investigator will often be called to give testimony before courts, administrative bodies, regulatory agencies, and related entities as a fact witness. In addition to giving factual testimony, an investigator may be called to give conclusions or opinions regarding a fire, as an expert witness. Opinion testimony by a fact witness is allowed in limited circumstances. The circumstances are governed by Federal Rules of Evidence, Rule 701, or state rules of evidence.

11.5.2.3.2 Expert Witnesses. An expert witness is generally defined as someone with sufficient skill, knowledge, or experience in a given field so as to be capable of drawing inferences or reaching conclusions or opinions that an average person would not be competent to reach. The expert's opinion testimony should aid the judge or jury in their understanding of the fact at issue and thereby aid in the search for truth.

(A) Prior to offering opinion testimony identifying the origin and cause, a fire investigator must be accepted by the court as an expert. The opinion or conclusion of the investigator testifying as an expert witness is of no greater value in ascertaining the truth of a matter than that warranted by the soundness of the investigator's underlying reasons and facts. The evidence that forms the basis of any opinion or conclusion should be relevant and reliable and, therefore, admissible. The proper conduct of an investigation will ensure that these indices of reliability and credibility are met. The rules governing the admissibility of expert witnesses are contained in Rules 702, 703, 704, and 705 of the Federal Rules of Evidence in Federal Court, or the rules of the particular jurisdiction in which the case is pending. Rule 702 reads as follows in 11.5.2.3.2(B):

(B) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert through knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

3737.28. Power to administer oaths; failure to cooperate.

F

The fire marshal or an assistant fire marshal may administer an oath to any person appearing as a witness before the fire marshal or assistant fire marshal. No witness shall refuse to be sworn, refuse to testify, disobey an order of the fire marshal or an assistant fire marshal, or fail or refuse to produce a book, paper, document, or record, regardless of physical form or characteristic, concerning a matter under examination, or be guilty of contemptuous conduct after being summoned by the fire marshal or an assistant fire marshal to appear before the fire marshal or assistant fire marshal to give testimony in relation to a matter or subject under investigation.

6

STATE OF OHIO
DIVISION OF STATE FIRE MARSHAL
INVESTIGATIONS BUREAU
8895 EAST MAIN STREET
REYNOLDSBURG, OHIO 43068

ENTER COUNTY OF VENUE COUNTY

TO: ENTER Name of Person or Company
ENTER Name of Person or Company
ENTER Street Address
ENTER City, ST, ZIP

SUBPOENA AD TESTIFICANDUM ☐

SUBPOENA DUCES TECUM ☐

YOU ARE HEREBY COMMANDED TO APPEAR before the undersigned Assistant State Fire Marshal pursuant to Section 3737.16, of the Ohio Revised Code, on Sunday, , at ENTER Location of Appearance, County of ENTER County where Appearing, at A.M. to testify Under Oath as to the facts relative to a criminal investigation.

YOU ARE FURTHER ORDERED TO bring with you this writ and the following book (s), paper (s) and/or documents ENTER Description of the Documents

ATTENDANCE NOT NECESSARY IF INFORMATION IS MAILED OR FAXED

Office: (614) 752-7106 Fax: (614) 644-1442

I hereby appoint and deputize _____, as my duly authorized and acting agent for the purpose serving the within writ upon therein named.

TAKE NOTICE that your failure to appear at the aforesaid time and place or your failure to produce the above-described book(s), paper(s) and/or document(s) may be deemed contemptuous conduct under Section 3737.28, of the Ohio Revised Code and **PURSUANT to an official criminal investigation being conducted by this agency, you are not to disclose the existence of this request.** Any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law.

Date:

ENTER your name
Assistant State Fire Marshal

H

**OBERLIN FIRE DEPARTMENT
FIRE PREVENTION BUREAU
430 SOUTH MAIN STREET
OBERLIN, OHIO 44074**

LORAIN COUNTY

TO: ENTER Name of Person or Company
ENTER Name of Person or Company
ENTER Street Address
ENTER City, ST, ZIP

SUBPOENA AD TESTIFICANDUM ☐

SUBPOENA DUCES TECUM ☐

YOU ARE HEREBY COMMANDED TO APPEAR before the undersigned Fire Investigator of the Oberlin Fire Department pursuant to Section 1501.06 of the Oberlin Codified Ordinances, on Sunday, _____, at _____, County of Lorain, at _____ A.M. to testify Under Oath as to the facts relative to a criminal investigation. **YOU ARE FURTHER ORDERED TO** bring with you this writ and the following book(s), paper(s) and/or documents:

ENTER Description of the Documents

ATTENDANCE NOT NECESSARY IF INFORMATION IS MAILED OR FAXED

Office: (440) 774-3211 Fax: (440) 774-8501

I hereby appoint and deputize _____, as my duly authorized and acting agent for the purpose serving the within writ upon therein named.

TAKE NOTICE that your failure to appear at the aforesaid time and place or your failure to produce the above-described book(s), paper(s) and/or document(s) may be deemed contemptuous conduct under Section 1501.06 of the Oberlin Codified Ordinances and **PURSUANT to an official criminal investigation being conducted by this agency, you are not to disclose the existence of this request.** Any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law.

Date:

ENTER your name
Fire Investigator

1

NAME: _____

DATE OF BIRTH: ____/____/____ SOCIAL SECURITY #: ____/____/____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

INTERVIEW LOCATION: _____

DATE: ____/____/____ TIME: _____ AM / PM

ADVICE OF RIGHTS

- You have the right to remain silent.
- Anything you say can be used against you in a court of law.
- You have the right to the presence of an attorney to assist you prior to questioning, and to be with you during questioning, if you so desire.
- If you cannot afford an attorney, you have the right to have an attorney appointed for you prior to questioning.
- You can decide at any time to exercise these rights and not answer any questions or make any statements.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want an attorney at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Witness: _____ Signature: _____

Witness: _____

Time: _____ AM / PM

This interview was concluded at _____ on the above date. I knowingly and intelligently continued to waive all my rights previously explained to me, and I willingly made all the statements that I did make.

I also certify that during the entire time I was here, I have been well treated, submitted myself freely to the interview knowing that I could stop and leave any time I so desired by merely saying I wished to stop or that I wished to consult an attorney or any other person. There were no threats, promises, or any harm whatsoever done to me in connection with the interview or my again signing this form.

Witness: _____ Signature: _____

Oberlin Fire Department
430 South Main Street, Oberlin Ohio 44074
(440) 774-3211 Fax (440) 774-8501

Memorandum

To: Robert DiSpirito, City Manager
From: Dennis Kirin, Fire Chief
Date: March 23, 2005
Subject: Codified Ordinance Amendment

Attached is a copy of a proposed amendment to Section 1501.06 and 1501.99 of the Codified Ordinances. This amendment is necessary to delineate the existing provision of Section 1501.06 that provides for the subpoena powers of fire investigators relevant to their examination and investigation of fire incidents.

According to present language in 1501.06, fire investigator may "investigate the cause of all fires; examine witnesses or suspects; administer oaths; compel the presence of witnesses, books, papers, or other documents of relevant importance; and, to do and perform all other acts necessary to carry out the effective discharge of the Fire Investigator's duties". These duties are delineated directly from Ohio Revised Code Section 737.27 and are applicable to both fire and police officers involved in fire investigations.

After discussion of these procedures with the State Fire Marshal's office, and a comparison of our documentation and procedures, our ordinance did not include any penalty clause for failure to comply with these provisions. If you refer to the copy of the SFM subpoena form (attached) and review Section 3737.28 of the Revised Code as referenced in the subpoena, you will note that the State penalty provisions recommended are nearly identical. If adopted, our proposed amendments would provide a penalty of contemptuous conduct for failure to comply with the provision of Section 1501.06.

This ordinance and material has already been reviewed by the Law Director. I would request that you review this proposal for inclusion in the next Council session.

Contact me if you have any questions or concerns.



STATE OF OHIO
DIVISION OF STATE FIRE MARSHAL
INVESTIGATIONS BUREAU
8895 EAST MAIN STREET
REYNOLDSBURG, OHIO 43068

ENTER COUNTY OF VENUE COUNTY

TO: ENTER Name of Person or Company
ENTER Name of Person or Company
ENTER Street Address
ENTER City, ST, ZIP

SUBPOENA AD TESTIFICANDUM ☐

SUBPOENA DUCES TECUM ☐

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ATTENDANCE NOT NECESSARY IF INFORMATION IS MAILED OR FAXED

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Date:

ENTER your name
Assistant State Fire Marshal

*Reference
only*

§ 3737.28. Power to administer oaths; failure to cooperate.

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HISTORY: 137 v H 590 (Eff 7-1-79); 149 v S 115. Eff 3-19-2003.

*Reference
only*