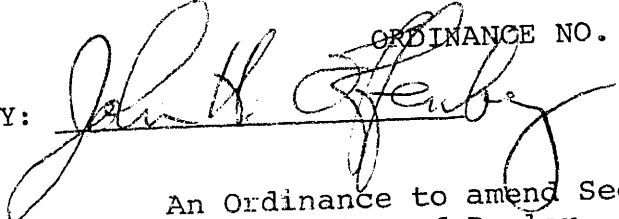


ORDINANCE NO. 33-85

BY:

  
An Ordinance to amend Section 434.01 of the Codified Ordinances of the City of Bexley.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1. That Section 434.01 of the Codified Ordinances of the City of Bexley be, and it hereby is, amended as follows:

434.01 OPERATION OR PHYSICAL CONTROL OF VEHICLE WHILE UNDER THE INFLUENCE; EVIDENCE.

(a) Operation Under Influence. No person shall operate any vehicle within the Municipality if any of the following applies:

- (1) The person is under the influence of alcohol or any drug of abuse, or the combined influence of alcohol and any drug of abuse;
- (2) The person has a concentration of ten-hundredths of one percent or more by weight of alcohol in his or her blood;
- (3) The person has a concentration of ten-hundredths of one gram or more by weight of alcohol per 210 liters of his or her breath; or
- (4) The person has a concentration of fourteen-hundredths of one gram or more by weight of alcohol per 100 milliliters of his or her urine.

(b) Physical Control. No person shall be in actual physical control of any vehicle within the Municipality if any of the following applies:

- (1) The person is under the influence of alcohol or any drug of abuse, or the combined influence of alcohol and any drug of abuse;
- (2) The person has a concentration of ten-hundredths of one percent or more by weight of alcohol in his or her blood;
- (3) The person has a concentration of ten-hundredths of one gram or more by weight of alcohol per 210 liters of his or her breath; or
- (4) The person has a concentration of fourteen-hundredths of one gram or more by weight of alcohol per 100 milliliters of his or her urine.

(c) Evidence; Tests. In any criminal prosecution for a violation of this section, the court may admit evidence on the concentration of alcohol in the defendant's blood, breath or urine at the time of the alleged violation as shown by chemical analysis of the defendant's blood, urine, breath or other bodily substance withdrawn within two hours of the time of such alleged violation.

When a person submits to a blood test at the request of a police officer under Ohio R.C. 4511.191, only a physician, a registered nurse or a qualified technician or chemist shall withdraw blood for the purpose of determining its alcoholic content. This limitation does not apply to the taking of breath or urine specimens. A physician, a registered nurse or a qualified technician or chemist may refuse to withdraw blood for the purpose of determining the alcohol content of the blood if, in his or her opinion, the physical welfare of the person would be endangered by the withdrawing of blood.

Such bodily substance shall be analyzed in accordance with methods approved by the Ohio Director of Health by an individual possessing a valid permit issued by the Director pursuant to Ohio R.C. 3701.143.

If there was, at the time bodily substance was withdrawn, a concentration of less than ten-hundredths of one percent by weight of alcohol in the defendant's blood, less than ten-hundredths of one gram by weight of alcohol per 210 liters of his or her breath, or less than fourteen-hundredths of one gram by weight of alcohol per 100 milliliters of his or her urine, such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

Upon the request of the person who was tested, the results of such test shall be made available to him or her, his or her attorney or his or her agent, immediately upon the completion of the test analysis.

The person tested may have a physician, a registered nurse or a qualified technician or chemist of his or her own choosing administer a chemical test or tests in addition to any administered at the direction of a police officer and shall be so advised. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a police officer.

Any physician, registered nurse or qualified technician or chemist who withdraws blood from a person pursuant to this section, and any hospital, first-aid station or clinic at which blood is withdrawn from a person pursuant to this section, is immune from criminal liability, and from civil liability that is based upon a claim of assault and battery or based upon any other claim that is not in the nature of a claim of malpractice, for any act performed in withdrawing blood from the person.

(d) License Suspension Pending Trial. If a person is charged with a violation of this section relating to operating a motor vehicle while under the influence of alcohol, and if the results of a chemical test administered pursuant to Ohio R.C. 4511.191 indicate that the blood of the person contained a concentration of ten-hundredths of

one gram or more by weight of alcohol per 210 liters of his or her breath, or a concentration of fourteen-hundredths of one gram or more by weight of alcohol per 100 milliliters of his or her urine, at the time of the alleged offense, or refuses to consent to a chemical test of his or her blood, breath or urine to determine alcohol content under Ohio R.C. 2411.191, the court shall immediately suspend the person's operator's or chauffeur's license or permit or nonresident operation privilege, if the court or referee at the initial appearance, which shall be held within five days from the date of the citation or arrest, determines that one of the following is true:

- (1) The person has previously been convicted of a violation of this section, of another municipal ordinance relating to operating a motor vehicle while under the influence of alcohol, or of Ohio R.C. 2411.19;
- (2) At the time of the arrest, the person's driver's or chauffeur's license or permit or nonresident operating privilege was suspended or revoked;
- (3) The person caused death or serious physical harm to another person;
- (4) The person failed to appear at the initial appearance; or
- (5) The court or referee determines that the person's continued driving will be a threat to public safety.

The suspension shall continue until the complaint alleging a violation of this section is adjudicated on the merits by the trial court, or until the trial court, upon motion, determines by a preponderance of the evidence that there was no probable cause for the arrest.

(e) Penalty for Operation Under Influence.

Whoever violates subsection (a) hereof is guilty of a misdemeanor of the first degree, in addition to the license suspension or revocation provided in subsection (d) hereof and in Ohio R.C. 4507.16. Punishment shall be as provided in Section 408.01.

(f) Penalty for Physical Control. Whoever violates subsection (b) hereof is guilty of a minor misdemeanor. Punishment shall be as provided in Section 408.01.

Section 2. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: July 23, 1985

ATTEST: John J. Dwyer  
Clerk of Council

John J. Dwyer  
President of Council

APPROVED: July 23, 1985

David H. Madison  
David H. Madison, Mayor

June 25, 1985 - 1st reading  
July 9, 1985 - 2nd reading  
July 23, 1985 - 3rd reading