

ORDINANCE NO. 30 -86

By: William W. Bocco

An Ordinance to enact Section 438.31 of the Bexley City Code and to declare an emergency.

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

Section 1. That Chapter 438 of the Bexley City Code be, and it hereby is, amended by the addition of Section 438.31 as follows:

438.31 USE OF OCCUPANT RESTRAINING DEVICE.

(a) As used in this section:

- (1) "Automobile" means any commercial tractor, passenger car, commercial car, or truck that is required to be factory-equipped with an occupant restraining device for the operator or any passenger by regulations adopted by the United States Secretary of Transportation pursuant to the "National Traffic and Motor Vehicle Safety Act of 1966," 80 Stat. 719, 15 U.S.C.A. 1392.
- (2) "Occupant restraining device" means a seat safety belt, shoulder belt, harness, or other safety device for restraining a person who is an operator of or passenger in an automobile and that satisfies the minimum federal vehicle safety standards established by the United States Department of Transportation.
- (3) "Passenger" means any person in an automobile, other than its operator, who is occupying a seating position for which an occupant restraining device is provided.
- (4) "Commercial tractor," "passenger car," and "commercial car" have the same meaning as in Ohio R.C. 4501.01.
- (5) "Vehicle" and "motor vehicle," as used in the definitions of the terms set forth in paragraph (a)(4) of this section, have the same meaning as in Ohio R.C. 4511.01.

(b) No person shall do any of the following:

- (1) Operate an automobile on any street or highway unless he is wearing all of the available elements of a properly adjusted occupant restraining device, or operate a school bus that has an occupant restraining device installed for

use in its operator's seat unless he is wearing all of the available elements of the device, as properly adjusted;

- (2) Operate an automobile on any street or highway unless each passenger in the automobile who is subject to the requirement set forth in paragraph (b)(3) of this section is wearing all of the available elements of a properly adjusted occupant restraining device;
 - (3) Occupy, as a passenger, a seating position on the front seat of an automobile being operated on any street or highway unless he is wearing all of the available elements of a properly adjusted occupant restraining device.
- (c) Paragraph (b)(3) of this section does not apply to a person who is required by Ohio R.C. 4511.81 and Section 438.30 to be secured in a child restraining device. Paragraph (b)(1) of this section does not apply to a person who is an employee of the United States Postal Service or of a newspaper home delivery service, during any period in which the person is engaged in the operation of an automobile to deliver mail or newspapers to addresses. Paragraphs (b)(1) and (3) of this section do not apply to a person who has an affidavit signed by a physician licensed to practice in this state under Ohio R.C. Chapter 4731 or a chiropractor licensed to practice in this state under Ohio R.C. Chapter 4734 that states that the person has a physical impairment that makes use of an occupant restraining device impossible or impractical. Paragraph (b) of this section does not apply to an operator of or a passenger in an automobile who is protected by an automatic air cushion restraint system.
- (d) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of Paragraph (b) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for such a violation or for causing the arrest of or commencing a prosecution of a person for such violation, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether such a violation has been or is being committed.

- (e) All fines collected for violations of paragraph (b) of this section shall be forwarded to the Treasurer of State for deposit in the "Seat Belt Education Special Account."
- (f) A charge pending against a person for violation of paragraph (b) of this section shall be dismissed, and any fine waived, if the person proves to the court, by a preponderance of the evidence, that he, before the scheduled court appearance indicated on the citation issued to him, viewed one of the films or video tapes prepared or acquired by the Department of Highway Safety as part of its seat belt education program. In coordination with the Department of Highway Safety's Seat Belt Safety Program, the Bexley Mayor's Court shall advise persons charged with a violation of paragraph (b) of this section of opportunities for viewing the films or video tapes.

A charge pending against a person for violation of paragraph (b) of this section shall not be dismissed and the fine imposed by paragraphs (h), (i), (j) or (k) of this section shall not be waived if either of the following applies:

- (1) The defendant fails to appear at the scheduled court appearance and is convicted of the offense;
 - (2) The defendant fails to prove, by a preponderance of the evidence, that he has viewed a seat belt education film or video tape in accordance with this section and is convicted of the offense.
- (g) A person's failure to wear all of the available elements of a properly adjusted occupant restraining device or to ensure that each passenger of an automobile being operated by the person is wearing all of the available elements of such a device, in violation of paragraph (b) of this section, shall not be considered or used as evidence of negligence or contributory negligence, shall not diminish recovery for damages in any civil action involving the person arising from the ownership, maintenance, or operation of an automobile, shall not be used as a basis for a criminal prosecution of the person other than a prosecution for a violation of this section, and shall not be admissible as evidence in any civil or criminal action involving the person other than a prosecution for a violation of paragraph (b) of this section.
- (h) Whoever violates paragraph (b)(1) of this section shall be fined twenty dollars.

- (i) Whoever violate paragraph (b)(2) of this section shall be fined ten dollars for each passenger in his automobile who fails to wear all of the available elements of a properly adjusted occupant restraining device as required by that division, except that the total amount of any such fine shall not exceed thirty dollars.
- (j) Whoever violates paragraph (b)(3) of this section shall be fined ten dollars.
- (k) Notwithstanding paragraph (b)(2) of this section, the operator of an automobile shall not be fined for failure of any passenger in the automobile who is subject to paragraph (b)(3) of this section to comply with that paragraph.

Section 2. That this Ordinance is an emergency ordinance necessary for the immediate preservation of the public peace, health and safety and shall go into effect upon its passage and approval by the Mayor.

Passed: July 8, 1986

J. J. Schreier
President of Council

Attest: *J. J. Schreier*
Clerk of Council

APPROVED: *July 8*, 1986
David H. Madison
David H. Madison, Mayor

May 13, 1986 - 1st reading
May 27, 1986 - 2nd reading
June 10, 1986 - TABLED
July 8, 1986 - Adopted