

BY: Mr. Bellamy

An ordinance to amend Section 434.01 of the Codified Ordinances of the City of Bexley to require the Mayor to suspend or revoke the operator's or chauffeur's license or nonresident driving privileges of any person who is convicted of or pleads guilty to a violation of Section 434.01(a) and to declare an emergency.

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 amended to read as follows:

434.01 DRIVING OR PHYSICAL CONTROL 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. (ORC 4511.19)

(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analysis of the defendant's blood, urine, breath or other bodily substance withdrawn within two hours of the time of such alleged violation.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. (ORC 4511.19)

(d) License Suspension Pendente Lite. 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 the 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 percent or more by weight of alcohol, a concentration of ten-hundredths of one gram or more by weight of alcohol per 210 liters of his or her breath, or 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. 4511.191, the MAYOR OF THE MAYOR'S court shall immediately SHALL suspend the person's operator's or chauffeur's license or permit or nonresident operating privilege, if the MAYOR OF THE MAYOR'S court or referee HIS DESIGNEE at the initial appearance, which shall be held within five days of the date of the citation or arrest, determines that one of the following is true:

- (1) The person has previously HAS 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. 4511.19.
- (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.
- (5) The MAYOR OF THE Court or referee HIS DESIGNEE 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 THE MAYOR OF THE MAYOR'S COURT, or until the trial court OR MAYOR OF THE MAYOR'S COURT, upon motion, determines by a preponderance of the evidence that there was no probable cause for the arrest. (O.R.C. 4511.191(K))

(e) Penalty For Operation Under Influence. Whoever violates subsection (a) hereof is guilty of a misdemeanor of the first degree. PUNISHMENT SHALL BE AS PROVIDED IN SECTION 408.01, AND SHALL INCLUDE, in addition to the license suspension or revocation provided in subsection (d) hereof and in Ohio R.C. 4507.16, the PROVISIONS OF OHIO R.C. 4507.16 WHICH STATES THAT THE MAYOR, IN ADDITION TO OR INDEPENDENT OF ALL OTHER PENALTIES PROVIDED, BY LAW OR BY ORDINANCE, SHALL REVOKE THE OPERATOR'S OR CHAUFFEUR'S LICENSE OR PERMIT OR NONRESIDENT OPERATING PRIVILEGE OF ANY PERSON WHO IS CONVICTED OF OR PLEADS GUILTY TO A VIOLATION OF THIS SECTION AS FOLLOWS:

- (1) IF THE OFFENDER HAS NOT BEEN CONVICTED, WITHIN FIVE YEARS OF THE OFFENSE AND BEFORE OR AFTER MARCH 16, 1983, OF A VIOLATION OF SECTION 4511.19 OF THE REVISED CODE OR OF THIS SECTION, THE MAYOR SHALL SUSPEND THE OFFENDER'S OPERATOR'S OR CHAUFFEUR'S LICENSE OR PERMIT OR NONRESIDENT OPERATING PRIVILEGE FOR NOT LESS THAN SIXTY DAYS NOR MORE THAN THREE YEARS.
- (2) IF THE OFFENDER HAS BEEN CONVICTED, WITHIN FIVE YEARS OF THE OFFENSE AND BEFORE OR AFTER MARCH 16, 1983, OF A VIOLATION OF SECTION 4511.19 OF THE REVISED CODE OR OF THIS SECTION, THE MAYOR SHALL SUSPEND THE OFFENDER'S OPERATOR'S OR CHAUFFEUR'S LICENSE OR PERMIT OR NONRESIDENT OPERATING PRIVILEGE FOR NOT LESS THAN ONE HUNDRED TWENTY DAYS NOR MORE THAN FIVE YEARS.
- (3) IF THE OFFENDER HAS BEEN CONVICTED, WITHIN FIVE YEARS OF THE OFFENSE AND BEFORE OR AFTER MARCH 16, 1983, OF MORE THAN ONE VIOLATION OF SECTION 4511.19 OF THE REVISED CODE OR OF THIS SECTION, THE MAYOR SHALL SUSPEND THE OFFENDER'S

OPERATOR'S OR CHAUFFEUR'S LICENSE OR
PERMIT OR NONRESIDENT OPERATING PRIVILEGE
FOR NOT LESS THAN ONE HUNDRED EIGHTY DAYS
NOR MORE THAN TEN YEARS.

ANY PERSON WHOSE OPERATOR'S OR CHAUFFEUR'S LICENSE OR
PERMIT OR NONRESIDENT OPERATING PRIVILEGE HAS BEEN SUSPENDED
PURSUANT TO THIS SUBSECTION MAY FILE A PETITION THAT ALLEGES THAT
THE SUSPENSION WOULD SERIOUSLY AFFECT THE PERSON'S ABILITY TO
CONTINUE HIS EMPLOYMENT. THE PETITION SHALL BE FILED IN THE
MAYOR'S COURT. UPON SATISFACTORY PROOF THAT THERE IS REASONABLE
CAUSE TO BELIEVE THAT THE SUSPENSION WOULD SERIOUSLY AFFECT THE
PERSON'S ABILITY TO CONTINUE HIS EMPLOYMENT, THE MAYOR MAY GRANT
THE PERSON OCCUPATIONAL DRIVING PRIVILEGES DURING THE PERIOD
DURING WHICH THE SUSPENSION OTHERWISE WOULD BE IMPOSED, EXCEPT
THAT THE MAYOR SHALL NOT GRANT OCCUPATIONAL DRIVING PRIVILEGES
DURING THE FIRST ONE HUNDRED EIGHTY DAYS OF SUSPENSION TO AN
OFFENDER WHOSE LICENSE, PERMIT, OR PRIVILEGE IS SUSPENDED
PURSUANT TO DIVISION (3) OF THIS SUBSECTION.

AFTER AN OPERATOR'S OR CHAUFFEUR'S LICENSE OR PERMIT
OR NONRESIDENT OPERATING PRIVILEGE HAS BEEN SUSPENDED OR REVOKED
PURSUANT TO THIS SUBSECTION, THE MAYOR THAT SUSPENDED OR REVOKED
THE LICENSE, PERMIT, OR PRIVILEGE SHALL CAUSE THE OFFENDER TO
DELIVER TO THE COURT THE LICENSE OR PERMIT. THE MAYOR, OR CLERK
OF THE MAYOR'S COURT, IF THE LICENSE OR PERMIT HAS BEEN SUSPENDED
OR REVOKED IN CONNECTION WITH ANY OF THE CRIMES LISTED IN THIS
SECTION, SHALL FORTHWITH FORWARD TO THE REGISTRAR THE LICENSE OR
PERMIT TOGETHER WITH NOTICE OF THE ACTION OF THE COURT.

THE MAYOR SHALL NOT SUSPEND THE FIRST SIXTY DAYS OF
SUSPENSION REQUIRED UNDER DIVISION (1) OF THIS SUBSECTION, SHALL
NOT SUSPEND THE FIRST ONE HUNDRED TWENTY DAYS OF SUSPENSION
REQUIRED UNDER DIVISION (2) OF THIS SUBSECTION, SHALL NOT SUSPEND
THE FIRST ONE HUNDRED EIGHTY DAYS OF SUSPENSION REQUIRED UNDER
DIVISION (3) OF THIS SUBSECTION, AND SHALL CREDIT ANY PERIOD OF
SUSPENSION IMPOSED PURSUANT TO OHIO R.C. 4511.191 AGAINST ANY
TIME OF SUSPENSION IMPOSED PURSUANT TO THIS SUBSECTION.

THE MAYOR SHALL CREDIT ANY TIME DURING WHICH AN
OFFENDER WAS SUBJECT TO A PRETRIAL SUSPENSION OF HIS OPERATOR'S
OR CHAUFFEUR'S LICENSE OR PERMIT OR NONRESIDENT OPERATING
PRIVILEGES IMPOSED PURSUANT TO SUBSECTION (d) HEREOF AGAINST THE
TIME TO BE SERVED UNDER A RELATED SUSPENSION IMPOSED PURSUANT TO
THIS SUBSECTION.

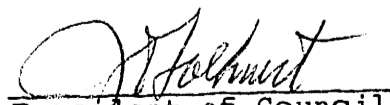
THE MAYOR SHALL NOTIFY THE BUREAU OF MOTOR VEHICLES OF
ANY DETERMINATIONS MADE, AND OF ANY SUSPENSIONS OR REVOCATIONS
IMPOSED, PURSUANT TO THIS SUBSECTION.

(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 existing Sections 434.01 of the
Codified Ordinances of the City of Bexley is hereby repealed.

Section 3. That this Ordinance is an emergency
ordinance necessary for the immediate preservation of the public
peace, health and safety in that Mayor's Court is required to
comply with Ohio R.C. 1905.201, from and after October 20, 1987,
and shall, upon its passage and approval by the Mayor, go into
effect on October 20, 1987.

Passed: Oct. 13, 1987



President of Council

Attest:

John W. ...
Clerk of Council

APPROVED: Oct 13, 1987

David H. Madison
David H. Madison, Mayor

*Oct. 13, 1987 - 1st reading
Susp. & Adopt.*