

ORDINANCE NO. 62-90By: Mark R. Masser

An Ordinance to amend Section 434.01 of the Codified Ordinances pertaining to driving under the influence to comply with current State law and to declare an emergency.

WHEREAS, the State General Assembly through Am. Sub. Senate Bill 131, effective July 25, 1990, has substantially revised and strengthened State law relative to driving under the influence; and

WHEREAS, ordinances which are enacted as an exercise of the municipality's police powers are required to be in conformity with general State law; and

WHEREAS, concern within this municipality for the injurious effects of driving under the influence compel Council to amend the Codified Ordinances to reflect the new State DUI law;

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

Section 1. That Section 434.01 of the Codified Ordinances is hereby amended to read as follows:

434.01 DRIVING OR PHYSICAL CONTROL WHILE UNDER THE INFLUENCE; EVIDENCE.

(a) Operation Generally. No person shall operate any vehicle within the Municipality, if any of the following apply:

- (1) The person is under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;
- (2) The person has a concentration of ten-hundredths of one percent (0.10%) or more by weight of alcohol in his blood;
- (3) The person has a concentration of ten-hundredths (0.10) of one gram or more by weight of alcohol per 210 liters of his breath;
- (4) The person has a concentration of fourteen-hundredths (0.14) of one gram or more by weight of alcohol per 100 milliliters of his urine. (ORC 4511.19)

(b) Operation by Minors. No person under eighteen years of age shall operate any vehicle within this Municipality, if any of the following apply:

- (1) The person has a concentration of at least two-hundredths of one percent (0.02%) but less than ten-hundredths of one percent (0.10%) by weight of alcohol in his blood;
- (2) The person has a concentration of at least two-hundredths (0.02) of one gram but less than ten-hundredths (0.10) of one gram by weight of alcohol per 210 liters of his breath;
- (3) The person has a concentration of at least twenty-eight one-thousandths (0.028) of one gram but less than fourteen-hundredths (0.14) of one gram by weight of alcohol in his urine.

(c) One Conviction Limitation. In any proceeding arising out of one incident, a person may be charged with a violation of subsection (a)(1) hereof and a violation of subsection (b)(1), (2) or (3) hereof, but he may not be convicted of more than one violation of these subsections.

(d) Physical Control Generally. No person shall be in actual physical control of any vehicle within the Municipality, if any of the following apply:

- (1) The person is under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;
- (2) The person has a concentration of ten-hundredths of one percent (0.10%) or more by weight of alcohol in his blood;
- (3) The person has a concentration of ten-hundredths (0.10) of one gram or more by weight of alcohol per 210 liters of his breath;
- (4) The person has a concentration of fourteen-hundredths (0.14) of one gram or more by weight of alcohol per 100 milliliters of his urine.

(e) Physical Control by Minors. No person under eighteen years of age shall be in actual physical control of any vehicle within this Municipality, if any of the following apply:

- (1) The person has a concentration of at least two-hundredths of one percent (0.02%) but less than ten-hundredths of one percent (0.10%) by weight of alcohol in his blood;
- (2) The person has a concentration of at least two-hundredths (0.02) of one gram but less than ten-hundredths (0.10) of one gram by weight of alcohol per 210 liters of his breath;
- (3) The person has a concentration of at least twenty-eight one-thousandths (0.028) of one gram but less than fourteen-hundredths (0.14) of one gram by weight of alcohol in his urine.

(f) Evidence; Tests; Immunity. In any criminal prosecution for a violation of this section, the court may admit evidence on the concentration of alcohol, drugs of abuse, or alcohol and drugs of abuse in the defendant's blood, breath, urine or other bodily substance 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 the 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 alcohol, drug, or alcohol and drug 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, drug, or alcohol and drug content of the blood, if in his 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 of Health pursuant to Ohio R.C. 3701.143.

If there was at the time the bodily substance was withdrawn a concentration of less than ten-hundredths of one percent (0.10%) by weight of alcohol in the defendant's blood, less than ten-hundredths (0.10) of one gram by weight of alcohol per 210 liters of his breath or less than fourteen-hundredths (0.14) of one gram by weight of alcohol per 100 milliliters of his 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 the chemical test shall be made available to him, his attorney or agent, immediately upon the completion of the chemical test analysis.

The person tested may have a physician, a registered nurse or a qualified technician or chemist of his own choosing administer a chemical test or tests in addition to any administered at the request of a police officer, and shall be so advised. The failure or inability to obtain an additional chemical test by a person shall not preclude the admission of evidence relating to the chemical test or tests taken at the request 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 a person. (ORC 4511.19)

(g) Penalty for Operation Under the Influence. Whoever violates subsection (a) or (b) hereof, in addition to the license suspension or revocation provided in Ohio R.C. 4507.16, is guilty of a misdemeanor of the first degree. (ORC 4511.19)

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

Section 2. That Section 434.01 as presently in effect is hereby repealed.

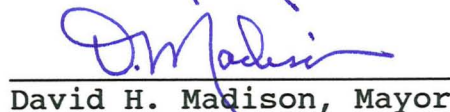
Section 3. That this Ordinance is an emergency measure necessary for the immediate preservation of the public peace, health and safety, said emergency being the need to bring the City's ordinance on driving under the influence and physical control into compliance with current State law as required by the Ohio Constitution and to avoid practical and legal entanglements; therefore, this Ordinance shall be in force and effect immediately upon its passage and approval by the Mayor.

Passed: July 24, 1990

  
President of Council

Attest: John W. ...  
Clerk of Council

Approved: July 24, 1990

  
David H. Madison, Mayor

July 24, 1990 - 1st reading  
Susp. & Adopt.