

ORDINANCE NO. 57-93By: John M. Brennan

An Ordinance to amend Sections 434.01(g) and 436.99 of the Codified Ordinances and declaring an emergency.

WHEREAS, the Ohio General Assembly through Senate Bills 62 and 275 has increased the severity of penalties for driving under the influence and under suspension of license effective September 1 1993; and

WHEREAS, the pernicious effects of such driving and the need for uniformity with the State in this area of law enforcement make it incumbent upon the City of Bexley to amend the Codified Ordinances to reflect the new State law; NOW, THEREFORE,

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

Section 1. That Section 434.01(g) of the Codified Ordinances be amended to read as follows:

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

(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, and any disqualification imposed under Ohio R.C. 4506.16, shall be punished as provided in paragraph (1), (2), (3) or (4) below. The court, in addition to and independent of any sentence that it imposes upon the offender for a violation of subsection (a) or (b) hereof, shall order the immobilization of the vehicle and impoundment of the license plates or forfeiture of the vehicle as provided in Ohio R.C. 4511.193:

- (1) If, within five years of the offense, the offender has not been convicted of or pleaded guilty to any violation of Ohio R.C. 4511.19, a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath or urine, Ohio R.C. 2903.04 in a case in which the offender was subject to the sanctions described in Division (D) of that section, or Ohio R.C. 2903.06, 2903.07 or 2903.08 or a municipal ordinance that is substantially similar to Ohio R.C. 2903.07 in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, the offender is guilty of a misdemeanor of the first degree and the court shall sentence the offender to a term of imprisonment of three consecutive days and may sentence the offender pursuant to Section 408.01 to a longer term of imprisonment. In addition, the court shall impose upon the offender a fine of not less than two hundred dollars (\$200.00) and not more than one thousand dollars (\$1,000).

The court may suspend the execution of the mandatory three consecutive days of imprisonment that it is required to impose by this paragraph, if the court, in lieu of the suspended term of imprisonment, places the offender on probation and

requires the offender to attend, for three consecutive days, a drivers' intervention program that is certified pursuant to Ohio R.C. 3793.10. The court also may suspend the execution of any part of the mandatory three consecutive days of imprisonment that it is required to impose by this paragraph, if the court places the offender on probation for part of the three consecutive days; requires the offender to attend, for that part of the three consecutive days, a drivers' intervention program that is certified pursuant to Ohio R.C. 3793.10; and sentences the offender to a term of imprisonment equal to the remainder of the three consecutive days that the offender does not spend attending the drivers' intervention program. The court may require the offender, as a condition of probation, to attend and satisfactorily complete any treatment or education programs that comply with the minimum standards adopted pursuant to Ohio R.C. Chapter 3793 by the State Director of Alcohol and Drug Addiction Services, in addition to the required attendance at a drivers' intervention program, that the operators of the drivers' intervention program determine that the offender should attend and to report periodically to the court on his progress in the programs. The court also may impose any other conditions of probation on the offender that it considers necessary.

- (2) If within five years of the offense, the offender has been convicted of or pleaded guilty to one violation of Ohio R.C. 4511.19, a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath or urine, Ohio R.C. 2903.04 in a case in which the offender was subject to the sanctions described in Division (D) of that section, or Ohio R.C. 2903.06, 2903.07 or 2903.08 or a municipal ordinance that is substantially similar to Ohio R.C. 2903.07 in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, the offender is guilty of a misdemeanor of the first degree and, except as provided in this paragraph, the court shall sentence the offender to a term of imprisonment of ten consecutive days and may sentence the offender pursuant to Section 408.01 to a longer term of imprisonment. As an alternative to the term of imprisonment required to be imposed by this paragraph, but subject to paragraph (8) hereof, the court may impose upon the offender a sentence consisting of both a term of imprisonment of five consecutive days and not less than eighteen consecutive days of electronically monitored house arrest as defined in Ohio R.C. 2929.23(A)(4). The five consecutive days of imprisonment and the period of electronically monitored house arrest shall not exceed six months. The five consecutive days of imprisonment do not have to be served prior to or consecutively with the period of electronically monitored house arrest.

In addition, the court shall impose upon the offender a fine of not less than three hundred dollars (\$300.00) and not more than one thousand five hundred dollars (\$1,500).

In addition to any other sentence that it imposes upon the offender, the court may require the offender to attend a drivers' intervention program that is certified pursuant to Ohio R.C. 3793.10. If the officials of the drivers' intervention program determine that the offender is alcohol dependent, they shall notify the court, and the court shall order the offender to obtain treatment through an alcohol and drug addiction program authorized by Ohio R.C. 3793.02. The cost of the treatment shall be paid by the offender.

- (3) If, within five years of the offense, the offender has been convicted of or pleaded guilty to two violations of Ohio R.C. 4511.19, a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath or urine, Ohio R.C. 2903.04 in a case in which the offender was subject to the sanctions described in Division (D) of that section, or Ohio R.C. 2903.06, 2903.07 or 2903.08 or a municipal ordinance that is substantially similar to Ohio R.C. 2903.07 in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, except as provided in this paragraph, the court shall sentence the offender to a term of imprisonment of thirty consecutive days and may sentence the offender to a longer definite term of imprisonment of not more than one year. As an alternative to the term of imprisonment required to be imposed by this paragraph, but subject to paragraph (8) hereof, the court may impose upon the offender a sentence consisting of both a term of imprisonment of fifteen consecutive days and not less than fifty-five consecutive days of electronically monitored house arrest as defined in Ohio R.C. 2929.23(A)(4). The fifteen consecutive days of imprisonment and the period of electronically monitored house arrest shall not exceed one year. The fifteen consecutive days of imprisonment do not have to be served prior to or consecutively with the period of electronically monitored house arrest.

In addition, the court shall impose upon the offender a fine of not less than five hundred dollars (\$500.00) and not more than twenty-five hundred dollars (\$2,500).

In addition to any other sentence that it imposes upon the offender, the court shall require the offender to attend an alcohol and drug addiction program authorized by Ohio R.C. 3793.02. The cost of the treatment shall be paid by the offender. If the court determines that the offender is unable to pay the cost of his attendance at the treatment program, the court may order that payment of the

cost of the offender's attendance at the treatment program be made from that court's indigent drivers alcohol treatment fund.

- (4) If, within five years of the offense, the offender has been convicted of or pleaded guilty to three or more violations of Ohio R.C. 4511.19, a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse or alcohol and a drug of abuse, a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath or urine, Ohio R.C. 2903.04 in a case in which the offender was subject to the sanctions described in Division (D) of that section, or of Ohio R.C. 2903.06, 2903.07 or 2903.08 or a municipal ordinance that is substantially similar to Ohio R.C. 2903.07 in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse or alcohol and a drug of abuse, the court shall sentence the offender to a term of imprisonment of sixty consecutive days and may sentence the offender to a longer definite term of imprisonment of not more than one year.

In addition, the court shall impose upon the offender a fine of not less than seven hundred fifty dollars (\$750.00) nor more than ten thousand dollars (\$10,000).

In addition to any other sentence that it imposes upon the offender, the court shall require the person to attend an alcohol and drug addiction program authorized by Ohio R.C. 3793.02. The cost of the treatment shall be paid by the offender. If the court determines that the offender is unable to pay the cost of his attendance at the treatment program, the court may order that payment of the cost of the offender's attendance at the treatment program be made from the court's Indigent drivers alcohol treatment fund.

- (5) A. Except as provided in paragraph (5)B. hereof, upon a showing that imprisonment would seriously affect the ability of an offender sentenced pursuant to paragraphs (1) to (4) hereof to continue his employment, the court may authorize that the offender be granted work release from imprisonment after the offender has served the three, ten, thirty or sixty consecutive days of imprisonment that the court is required by paragraphs (1) to (4) hereof to impose. No court shall authorize work release from imprisonment during the three, ten, thirty or sixty consecutive days of Imprisonment that the court is required by paragraphs (1) to (4) hereof to impose. The duration of the work release shall not exceed the time necessary each day for the offender to commute to and from the place of employment and the place of Imprisonment and the time actually spent under employment.

B. An offender who is sentenced pursuant to paragraph (2) or (3) hereof to a term of imprisonment followed by a period of electronically monitored house arrest is not eligible for work release from imprisonment, but that person shall be permitted work release during the period of electronically monitored house arrest. The duration of the work release shall not exceed the time necessary each day for the offender to come to and from the place of employment and his home or other place specified by the sentencing court and the time actually spent under employment.

(6) Notwithstanding any section of the Ohio Revised Code or this Traffic Code that authorizes suspension of the imposition or execution of a sentence or the placement of an offender in any treatment program in lieu of imprisonment, no court shall suspend the ten, thirty or sixty consecutive days of imprisonment required to be imposed by paragraphs (2) to (4) hereof or place an offender who is sentenced pursuant to paragraphs (2) to (4) hereof in any treatment program in lieu of imprisonment until after the offender has served the ten, thirty or sixty consecutive days of imprisonment required to be imposed pursuant to paragraphs (2) to (4) hereof, and no court that imposes a sentence of imprisonment and a period of electronically monitored house arrest upon an offender under paragraph (2) or (3) hereof shall suspend any portion of the sentence or place the offender in any treatment program in lieu of imprisonment or electronically monitored house arrest.

Notwithstanding any section of the Ohio Revised Code or this Traffic Code that authorizes the suspension of the imposition or execution of a sentence or the placement of an offender in any treatment program in lieu of imprisonment, no court, except as specifically authorized by paragraph (1) hereof, shall suspend the three consecutive days of imprisonment required to be imposed by paragraph (1) hereof or place an offender who is sentenced pursuant to paragraph (1) hereof in any treatment program in lieu of imprisonment until after the offender has served the three consecutive days of imprisonment required to be imposed pursuant to paragraph (1) hereof.

(7) No court shall sentence an offender to an alcohol treatment program pursuant to paragraph (1) to (4) hereof unless the treatment program complies with the minimum standards adopted pursuant to Ohio R.C. Chapter 3793 by the State Director of Alcohol and Drug Addiction Services.

(8) No court shall impose the alternative sentence of a term of imprisonment of five consecutive days plus not less than eighteen consecutive days of electronically monitored

house arrest permitted to be imposed by paragraph (2) hereof, or the alternative sentence of a term of imprisonment of fifteen consecutive days plus not less than fifty-five consecutive days of electronically monitored house arrest permitted to be imposed pursuant to paragraph (3) hereof, unless within sixty days of the date of sentencing, the court issues a written finding, entered into the record, that due to the unavailability of space at the incarceration facility where the offender is required to serve the term of imprisonment imposed upon him, the offender will not be able to commence serving his term of imprisonment within the sixty-day period following the date of sentencing. If the court issues such a finding, the court may impose the alternative sentence comprised of a term of imprisonment and a term of electronically monitored house arrest permitted to be imposed by paragraph (2) or (3) hereof.

- (9) As used in this section, "three consecutive days" means seventy-two consecutive hours. (ORC 4511.991)
- (10) Twenty-five dollars (\$25.00) of any fine imposed for violation of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath or urine shall be deposited into the municipal or county indigent drivers alcohol treatment fund created pursuant to Ohio R.C. 4511.191(N). (ORC 4511.193)

Section 2. That Section 436.99 of the Codified Ordinances be amended to read as follows:

436.99 PENALTY.

(EDITOR'S NOTE: See Chapter 408 for general Traffic Code penalty and penalties applicable to misdemeanor classifications.)

(a) Licensing.

- (1) Whoever violates Section 436.01(a)(1) or (3) by operating a motor vehicle when his driver's or commercial driver's license has been expired for no more than six months is guilty of a minor misdemeanor.
- (2) Whoever violates Section 436.05 is guilty of permitting the operation of a vehicle by a person with no legal right to operate a vehicle, a misdemeanor of the first degree.
- (3) Whoever violates Section 436.07(a)(1) is guilty of driving under financial responsibility law suspension or revocation, a misdemeanor of the first degree.

The court, in addition to and independent of any sentence that it imposes upon the offender for a violation of Section 436.07(a)(1), shall order the immobilization of the vehicle and impoundment of the license plates or forfeiture of the vehicle as provided

in Ohio R.C. 4507.361.

Except as otherwise provided in Ohio R.C. 4507.162(D), the court, in addition to or independent of all other penalties provided by law, may suspend for a period not to exceed one year the driver's or commercial driver's license or permit or nonresident operating privilege of an offender who is sentenced under paragraph (3) hereof.

(4) Whoever violates Section 436.07(a)(2) or (c)(1) is guilty of driving under suspension or revocation or in violation of license restrictions, a misdemeanor of the first degree. Whoever violates Section 436.07(b) is guilty of driving without paying a license reinstatement fee, a misdemeanor of the first degree. Except as otherwise provided in Ohio R.C. 4507.162(D), the court, in addition to or independent of all other penalties provided by law, may suspend for a period not to exceed one year the driver's or commercial driver's license or permit or nonresident operating privilege of any person who pleads guilty to or is convicted of a violation of Section 436.07(a)(2), (b) or (c)(1).

(5) Whoever violates Section 436.07(c)(2) is guilty of driving under OMVI suspension or revocation and shall be punished as provided in subsection (a)(5) hereof. The court in addition to and independent of any sentence that it imposes upon the offender for a violation of Section 436.07(c)(2), shall order the immobilization of the vehicle and impoundment of the license plates or forfeiture of the vehicle as provided in Ohio R.C. 4507.361.

A. If, within five years of the offense, the offender has not been convicted of or pleaded guilty to any violation of Ohio R.C. 4507.02(D)(2) or a municipal ordinance that is substantially equivalent to that division, driving under OMVI suspension or revocation is a misdemeanor of the first degree and the court shall sentence the offender to a term of imprisonment of not less than three consecutive days and may sentence the offender pursuant to Section 408.01 to a longer term of imprisonment. As an alternative to the term of imprisonment required to be imposed by this paragraph, but subject to paragraph (5)E hereof, the court may sentence the offender to a term of not less than thirty consecutive days of electronically monitored house arrest as defined in Ohio R.C. 2929.23(A)(4). The period of electronically monitored house arrest shall not exceed six months. In addition, the court shall impose upon the offender a fine of not less than two hundred fifty dollars (\$250.00) and not more than one thousand dollars (\$1,000).

B. If, within five years of the offense, the offender has been convicted of or pleaded guilty to one violation of Ohio

R.C. 4507.02(D)(2) or a municipal ordinance that is substantially equivalent to that division, driving under OMVI suspension or revocation is a misdemeanor and the court shall sentence the offender to a term of imprisonment of not less than ten consecutive days and may sentence the offender to a longer definite term of imprisonment of not more than one year. As an alternative to the term of imprisonment required to be imposed by this paragraph but subject to paragraph (5)E hereof, the court may sentence the offender to a term of not less than ninety consecutive days or electronically monitored house arrest as defined in Ohio R.C. 2929.23(A)(4). The period of electronically monitored house arrest shall not exceed one year. In addition the court shall impose upon the offender a fine of not less than five hundred dollars (\$500.00) and not more than two thousand five hundred dollars (\$2,500).

- C. If, within five years of the offense, the offender has been convicted of or pleaded guilty to two or more violations of Ohio R.C. 4507.02(D)(2) or a municipal ordinance that is substantially equivalent to that division, driving under OMVI suspension or revocation is a misdemeanor, the court shall sentence the offender to a term of imprisonment of not less than thirty consecutive days and may sentence the offender to a longer definite term or imprisonment of not more than one year. The court shall not sentence the offender to a term of electronically monitored house arrest as defined in Ohio R.C. 2929.23(A)(4). In addition, the court shall impose upon the offender a fine of not less than five hundred dollars (\$500.00) and not more than two thousand five hundred dollars (\$2,500).
- D. In addition to or independent of all other penalties provided by law or ordinance, the Judge shall suspend for a period not to exceed one year the driver's or commercial driver's license or permit or nonresident operating privilege of an offender who is sentenced under Section (a)(5)A. to C. hereof.
- E. No court shall impose the alternative sentence of not less than thirty consecutive days of electronically monitored house arrest permitted to be imposed by paragraph (5)A. hereof, or the alternative sentence of a term of not less than ninety consecutive days of electronically monitored house arrest permitted to be imposed by paragraph (5)B hereof, unless within sixty days of the date of sentencing the court issues a written finding, entered into the record, that, due to the unavailability of space at the incarceration facility where the offender is required to serve the term of imprisonment imposed upon him, the



offender will not be able to begin serving his term of imprisonment within the sixty-day period following the date of sentencing. If the court issues such a finding, the court may impose the alternative sentence comprised of or including electronically monitored house arrest permitted to be imposed by paragraph (5)A. or B. hereof.

F. An offender sentenced under this section to a period of electronically monitored house arrest shall be permitted work release during such period. The duration of the work release shall not exceed the time necessary each day for the offender to commute to and from the place of employment and his home or other place specified by the sentencing court and the time actually spent under employment. (ORC 4507.99)

(6) Except as provided in subsection (a)(1) to (5) above, whoever violates any provision of Section 436.01 to 436.07 is guilty of a misdemeanor of the first degree.

(7) Whoever violates Section 436.08 is guilty of a misdemeanor of the second degree.

(8) Whoever violates Section 436.09(b) or 436.11 is guilty of a misdemeanor of the fourth degree on a first offense; on each subsequent offense such person is guilty of a misdemeanor of the third degree (ORC 4549.99)

(b) Accidents. Whoever violates any provision of Section 436.12 to 436.14 is guilty of a misdemeanor of the first degree. (ORC 4549.99)

Section 3. That former Section 434.01(g) and 436.99 are hereby repealed.

Section 4. That this Ordinance is an emergency Ordinance, necessary for the immediate preservation of the public peace, health and safety, said emergency being the need to bring the City's penalties for driving under the influence and driving under license suspension into compliance with current State law in order to avoid practical and legal difficulties in the enforcement of the City's ordinances, and this Ordinance shall go into immediate force and effect on its passage and approval by the Mayor.

Passed: \_\_\_\_\_, 1993

\_\_\_\_\_  
President of Council

Attest: \_\_\_\_\_  
Clerk of Council

Approved: \_\_\_\_\_, 1993

\_\_\_\_\_  
David H. Madison, Mayor

*Oct. 12, 1993 - 1<sup>st</sup> reading*  
*Oct. 26, 1993 - 2<sup>nd</sup> reading*  
*Nov. 9, 1993 - 3<sup>rd</sup> reading, failed*

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*Jan 11, 2000 - removed from table - failed*