

ORDINANCE NO. 48 -94By: Mark R. Masser

An Ordinance to amend in its entirety Section 438.30 of the Bexley Traffic Code regarding the use of child restraints, to amend subsections (h) and (i) of Section 438.31 of the Bexley Traffic Code regarding penalties for failure to wear an occupant restraining device and to declare an emergency.

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

Section 1. That existing Section 438.30 of the Bexley Traffic Code is hereby deleted in its entirety and amended as follows:

438.30 USE OF CHILD RESTRAINTS.

(A) WHEN ANY CHILD WHO IS IN EITHER OR BOTH OF THE FOLLOWING CATEGORIES IS BEING TRANSPORTED IN A MOTOR VEHICLE, OTHER THAN A TAXICAB OR PUBLIC SAFETY VEHICLE, THAT IS REGISTERED IN THIS STATE, AND IS REQUIRED BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION TO BE EQUIPPED WITH SEAT BELTS AT THE TIME OF MANUFACTURE OR ASSEMBLY, THE OPERATOR OF THE MOTOR VEHICLE SHALL HAVE THE CHILD PROPERLY SECURED IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS IN A CHILD RESTRAINT SYSTEM THAT MEETS FEDERAL MOTOR SAFETY STANDARDS:

- (1) A CHILD WHO IS LESS THAN FOUR YEARS OF AGE;
- (2) A CHILD WHO WEIGHS LESS THAN FORTY POUNDS.

(B) WHEN ANY CHILD WHO IS IN EITHER OR BOTH OF THE FOLLOWING CATEGORIES IS BEING TRANSPORTED IN A MOTOR VEHICLE, OTHER THAN A TAXICAB, THAT IS REGISTERED IN THIS STATE AND IS OWNED, LEASED OR OTHERWISE UNDER THE CONTROL OF A NURSERY SCHOOL, KINDERGARTEN, OR DAY-CARE CENTER, THE OPERATOR OF THE MOTOR VEHICLE SHALL HAVE THE CHILD PROPERLY SECURED IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS IN A CHILD RESTRAINT SYSTEM THAT MEETS FEDERAL MOTOR VEHICLE SAFETY STANDARDS:

- (1) A CHILD WHO IS LESS THAN FOUR YEARS OF AGE;
- (2) A CHILD WHO WEIGHS LESS THAN FORTY POUNDS.

(C) THE OHIO DIRECTOR OF PUBLIC SAFETY IS AUTHORIZED TO ADOPT RULES TO CARRY OUT ORC SECTION 4511.81. ANY SUCH RULES ADOPTED BY THE DIRECTOR SHALL BE APPLICABLE TO AND ENFORCEABLE UNDER THIS SECTION, AND NO PERSON SHALL VIOLATE OR FAIL TO COMPLY WITH ANY SUCH RULE.

(D) THE FAILURE OF AN OPERATOR OF A MOTOR VEHICLE TO SECURE A CHILD IN A CHILD RESTRAINT SYSTEM AS REQUIRED BY THIS SECTION IS NOT NEGLIGENCE IMPUTABLE TO THE CHILD, IS NOT ADMISSIBLE AS EVIDENCE IN ANY CIVIL ACTION INVOLVING THE RIGHTS OF THE CHILD AGAINST ANY OTHER PERSON ALLEGEDLY LIABLE FOR INJURIES TO THE CHILD, IS NOT TO BE USED AS A BASIS FOR A CRIMINAL PROSECUTION OF THE OPERATOR OF THE MOTOR VEHICLE OTHER THAN A PROSECUTION FOR A VIOLATION OF THIS SECTION, AND IS NOT ADMISSIBLE AS EVIDENCE IN ANY CRIMINAL ACTION INVOLVING THE OPERATOR OF THE MOTOR VEHICLE OTHER THAN A PROSECUTION FOR A VIOLATION OF THIS SECTION.

(E) THIS SECTION DOES NOT APPLY WHEN AN EMERGENCY EXISTS THAT THREATENS THE LIFE OF ANY PERSON OPERATING A MOTOR VEHICLE TO WHOM THIS SECTION OTHERWISE WOULD APPLY OR THE LIFE OF ANY CHILD WHO OTHERWISE WOULD BE REQUIRED TO BE RESTRAINED UNDER THIS SECTION.

(F) IF A PERSON WHO IS NOT A RESIDENT OF THIS STATE IS CHARGED WITH A VIOLATION OF SUBSECTION (A) OR (B) HEREOF AND DOES NOT PROVE TO THE COURT, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE USE OR NONUSE OF A CHILD RESTRAINT SYSTEM WAS IN ACCORDANCE WITH THE LAW OF THE STATE OF WHICH SUCH PERSON IS A RESIDENT, THE COURT SHALL IMPOSE THE PENALTY PROVIDED UNDER SUBSECTION (H) HEREOF.

(G) WHOEVER IS A RESIDENT OF THIS STATE AND VIOLATES SUBSECTION (A) OR (B) HEREOF IS GUILTY OF A MINOR MISDEMEANOR ON A FIRST OFFENSE; ON A SECOND OR SUBSEQUENT OFFENSE, THAT PERSON IS GUILTY OF A MISDEMEANOR OF THE FOURTH DEGREE.

(H) WHOEVER IS NOT A RESIDENT OF THIS STATE, VIOLATES SUBSECTION (A) OR (B) HEREOF AND FAILS TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT THE USE OR NONUSE OF A CHILD RESTRAINT SYSTEM WAS IN ACCORDANCE WITH THE LAW OF THE STATE OF WHICH SUCH PERSON IS A RESIDENT IS GUILTY OF A MINOR MISDEMEANOR ON A FIRST OFFENSE; ON A SECOND OR SUBSEQUENT OFFENSE, THAT PERSON IS GUILTY OF A MISDEMEANOR OF THE FOURTH DEGREE.

Section 2. That existing subsections (h), (i) and (j) of Section 438.31 of the Bexley Traffic Code are hereby deleted and that subsections (h) and (i) are hereby amended as follows:

(H) WHOEVER VIOLATES SUBSECTION (B) (1) HEREOF SHALL BE FINED TWENTY-FIVE DOLLARS (\$25.00).

(I) WHOEVER VIOLATES SUBSECTION (B) (2) HEREOF SHALL BE FINED FIFTEEN DOLLARS (\$15.00).

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 Bexley Traffic Code into conformity with recent changes in state law, and shall go into effect upon its passage and approval by the Mayor.

Passed: July 15, 1994

John M. Brennan
President of Council

Attest: John W. Heimbarger
Clerk of Council

Approved: 7/15, 1994

David H. Madison
David H. Madison, Mayor

*July 12/15, 1994 - 1st Reading
- Susp. & Adopted*