

ORDINANCE C-50-94

AN ORDINANCE TO REVISE THE SUBSTANTIVE PROVISIONS OF DRIVING OR PHYSICAL CONTROL WHILE UNDER THE INFLUENCE; EVIDENCE THEREFOR AND THE PENALTY FOR VIOLATION THEREOF AND TO DECLARE AN EMERGENCY

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GROVE CITY, STATE OF OHIO, THAT:

SECTION 1. Section 333.01 of the Codified Ordinances of Grove City, Ohio titled "Driving or Physical Control While Under The Influence; Evidence" is hereby amended to read as follows:

333.01 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 After Under-Age Consumption. No person under twenty-one 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 per 100 milliliters of 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 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 per 100 milliliters on his urine.

(f) Evidence; Tests; Immunity.

- (1) In any criminal prosecution or juvenile court proceeding 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. The 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.
- (2) In a criminal prosecution or juvenile court proceeding for violation of subsection (1) hereof 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. This subsection does not limit or affect a criminal prosecution or juvenile court proceeding for a violation of subsection (b) hereof.
- (3) 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.
- (4) 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)

SECTION 2. Section 333.99 of the Codified Ordinance of Grove City, Ohio titled "Penalty" is hereby amended to read as follows:

333.99 PENALTY

(a) General Classification: Speeding Exceptions.

- (1) Whoever violates any provision of this chapter for which no other penalty is provided, is guilty of one of the following:
 - A. If the offender has not been previously convicted of or pleaded guilty to a violation of this Traffic Code for which no other penalty is provided or of any provision of the Ohio Revised Code or of a municipal ordinance that is substantially similar to any such provision of this Traffic Code, a minor misdemeanor;
 - B. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one violation of any provision described in subsection (a)(1) hereof, a misdemeanor of the fourth degree;
 - C. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of any provision described in subsection (a)(1) hereof, a misdemeanor of the third degree.
- (2) When any person is found guilty of a first offense for a violation of Section 333.03 upon a finding that he operated a motor vehicle faster than thirty-five miles an hour in a business district, or faster than fifty miles an hour in other portions, or faster than thirty-five miles an hour while passing through a school zone during recess or while children are going to or leaving school during the opening or closing hours, such person is guilty of a misdemeanor of the fourth degree. (ORC 4511.99)

(b) Driving Under the Influence. Whoever violates Section 333.01(a), 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), or (4) below. The court, in addition to and independent of any sentence that it imposes upon the offender for a violation of Section 333.01(a), 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 or pleaded guilty to any violation of Ohio R.C. 4511.19(A) or (B), 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 303.99(b) 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 driver's 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 driver's 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) or (B), 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 393.99(b) 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 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) or (B), 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 a 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) or (B), 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 91) 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 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.

- (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 92) or (3) hereof shall suspend any portion of the sentence or place the offender in any treatment program in lieu of the 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 paragraphs (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 92) hereof, or the alternative sentence of a term of imprisonment of fifteen consecutive days plus not less that 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. (ORC 4511.99)
- (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. 4511.919(N). (ORC 4511.193)
- (c) (1) Whoever violates Section 333.01(b) is guilty of operating a motor vehicle after under-age alcohol consumption and shall be punished as follows:
- A. If, within one year of the offense, the offender has not been convicted of or pleaded guilty to any violation of Ohio R.C. 4511.19(A) or (B), 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 fourth degree;

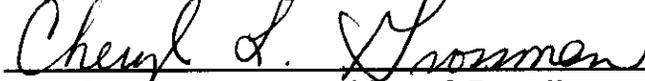
- B. If, within one year of the offense, the offender has been convicted of or pleaded guilty to any violation of Ohio R.C. 4511.19(A) or (B), a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, a municipal ordinance 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 third degree.
- (2) In addition to or independent of all other penalties provided by law, the offender's driver's or commercial driver's license or permit or nonresident operating privilege shall be suspended in accordance with, and for the period of time specified in Ohio R.C. 4507.16(E).
- (3) The court, in addition to and independent of any sentence that it imposes upon the offender for a violation of Section 333.01(b), 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.

(d) Physical Control; Drag Racing. Whoever violates Section 333.01(d) or (e) or 333.07 is guilty of a misdemeanor of the first degree. (ORD 4511.99)

(e) Reckless Operation. Whoever violates Section 333.02 is guilty of a misdemeanor of the second degree.

SECTION 3. Former subsections 303.99(a)(4), (5) and (9) are hereby repealed.

SECTION 4. This ordinance is hereby declared to be an emergency measure for the health, safety and welfare of the citizens of Grove City, Ohio and shall go into immediate effect.


Cheryl L. Grossman, President of Council

Passed: 7-5-94
Effective: 7-5-94


Richard L. Stage, Mayor

Attest: 
Tami K. Kelly, Clerk of Council

I Certify that this ordinance is correct as to form.


Thomas Clark, Director of Law