

ORDINANCE NO. 2003-81

AMENDING SECTION 333.01 OF THE CODIFIED ORDINANCES OF THE CITY OF MASON, OHIO, EFFECTIVE JUNE 30, 2003, TO REFLECT THE STATE OF OHIO'S REDUCTION IN THE LEGAL ALCOHOL LIMIT FOR OPERATING A MOTOR VEHICLE, AND DECLARING AN EMERGENCY.

WHEREAS, effective June 30, 2003, the Ohio Legislature amended Ohio Revised Code §§ 4511.19 and 4511.191 by reducing the legal alcohol limit for operating a motor vehicle (see House Bill 87 of the 125th Session of the General Assembly).

WHEREAS, § 333.01 of the Codified Ordinances of the City of Mason, Ohio, do not reflect these amendments.

WHEREAS, it is necessary to provide for the immediate preservation of the public peace, health, safety and general welfare of the municipality that this ordinance take effect at an early date.

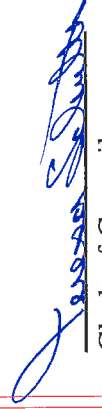
NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, Ohio, six members elected thereto concurring:

Section 1. Effective June 30, 2003, § 333.01 (*Driving or Physical Control While Under The Influence; Evidence*) of the Codified Ordinances of the City of Mason, Ohio is amended to read as set forth in Exhibit A, attached hereto.

Section 2. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the peace, health, safety and general welfare of the people of the City of Mason, and shall take effect at the earliest date provided by law. The need for said emergency is the necessity to effectively protect the citizens by combating the dangers of driving under the influence to the full extent allowed under the law.

Passed this 23rd day of June, 2003.

Attest:



Clerk of Council



Mayor

6/19/2003
178313.1

EXHIBIT "A"

(New matter is **bold and underscored**; deleted matter is ~~struck through~~)

**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~~ **eight-hundredths (.08%)** of one per cent or more but less than seventeen-hundredths of one per cent by weight of alcohol in the person's blood;
- (3) The person has a concentration of ~~ten-hundredths~~ **eight-hundredths (.08)** of one gram or more but less than seventeen-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath;
- (4) The person has a concentration of ~~fourteen-hundredths~~ **eleven-hundredths (.11)** of one gram or more but less than two hundred thirty-eight-thousandths of one gram by weight of alcohol per one hundred milliliters of the person's urine;
- (5) The person has a concentration of seventeen-hundredths of one per cent or more by weight of alcohol in the person's blood;
- (6) The person has a concentration of seventeen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath;
- (7) The person has a concentration of two hundred thirty-eight-thousandths of one gram or more by weight of alcohol per one hundred milliliters of the person's urine.

(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 per cent but less than ~~ten-hundredths~~ **eight-hundredths (.08%)** of one per cent by weight of alcohol in the person's blood;
 - (2) The person has a concentration of at least two-hundredths of one gram but less than ~~ten-hundredths~~ **eight-hundredths (.08)** of one gram by weight of alcohol per two hundred ten liters of the person's breath;
 - (3) The person has a concentration of at least twenty-eight one-thousandths of one gram but less than ~~fourteen-hundredths~~ **eleven-hundredths (.11)** of one gram by weight of alcohol per one hundred milliliters of the person's 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 the person 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~~ **eight-hundredths (.08%)** of one per cent or more by weight of alcohol in the person's blood;

(3) The person has a concentration of ~~ten-hundredths~~ **eight-hundredths (.08)** of one gram or more by weight of alcohol per two hundred ten liters of the person's breath;

(4) The person has a concentration of ~~fourteen-hundredths~~ **eleven-hundredths (.11)** of one gram or more by weight of alcohol per one hundred milliliters of the person's urine.

(e) Physical Control by Minors. No person under twenty-one 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 per cent but less than ~~ten-hundredths~~ **eight-hundredths (.08%)** of one per cent by weight of alcohol in the person's blood;

(2) The person has a concentration of at least two-hundredths of one gram but less than ~~ten-hundredths~~ **eight-hundredths (.08)** of one gram by weight of alcohol per two hundred ten liters of the person's breath;

(3) The person has a concentration of at least twenty-eight one-thousandths of one gram but less than ~~fourteen-hundredths~~ **eleven-hundredths (.11)** of one gram by weight of alcohol per one hundred milliliters of the person's urine.

(f) (1) Evidence; Tests; Immunity. 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. 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 the opinion of the physician, nurse, technician, or chemist 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 (a) hereof if there was at the time the bodily substance was withdrawn a concentration of less than ~~ten-hundredths~~ **eight-hundredths (.08%)** of one percent (~~0-10%~~) by weight of alcohol in the defendant's blood, less than ~~ten-hundredths (0-10)~~ **eight-hundredths (.08)** of one gram by weight of alcohol per 210 liters of the defendant's breath or less than ~~fourteen-hundredths (0-14)~~ **eleven-hundredths (.11)** of one gram by weight of alcohol per 100 milliliters of the defendant's 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 the person or the person's 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 the person's 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.

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- (3) The person has a concentration of eight-hundredths (.08) of one gram or more but less than seventeen-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath;
- (4) The person has a concentration of eleven-hundredths (.11) of one gram or more but less than two hundred thirty-eight-thousandths of one gram by weight of alcohol per one hundred milliliters of the person's urine;
- (5) The person has a concentration of seventeen-hundredths of one per cent or more by weight of alcohol in the person's blood;
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(2) The person has a concentration of at least two-hundredths of one gram but less than eight-hundredths (.08) of one gram by weight of alcohol per two hundred ten liters of the person's breath;

(3) The person has a concentration of at least twenty-eight one-thousandths of one gram but less than eleven-hundredths (.11) of one gram by weight of alcohol per one hundred milliliters of the person's urine.

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