

ORDINANCE NO. 2004-08

AN ORDINANCE FOR THE MUNICIPALITY OF Hamersville, OHIO, ADOPTING NEW SECTIONS 71.18 THROUGH 71.22 OF THE OHIO BASIC CODE, EFFECTIVE IMMEDIATELY, TO REFLECT CURRENT STATE PROHIBITIONS REGARDING DRIVING UNDER SUSPENSION OR IN VIOLATION OF LICENSE RESTRICTIONS, OPERATING A MOTOR VEHICLE WITHOUT A VALID LICENSE, DRIVING UNDER OVI SUSPENSION, DRIVING UNDER FINANCIAL RESPONSIBILITY LAW SUSPENSION OR CANCELLATION, FAILURE TO REINSTATE A LICENSE, AND AFFIRMATIVE DEFENSES RELATED THERETO, AND DECLARING AN EMERGENCY.

WHEREAS, effective January 1, 2004, the Ohio Legislature added new Chapter 4510 to the Ohio Revised Code, including §§ 4510.04, 4510.11, 4510.12, 4510.14, 4510.16 and 4510.21 concerning regarding driving under suspension or in violation of license restrictions, operating a motor vehicle without a valid license, driving under OVI suspension, driving under financial responsibility law suspension or cancellation, and failure to reinstate a license.

WHEREAS, the Municipal Code, being the 2004 Edition of the Ohio Basic Code, does not reflect these new state law provisions.

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 LEGISLATIVE AUTHORITY OF THE MUNICIPALITY OF Hamersville, OHIO:

Section 1. The following sections, as set forth in full in Exhibit A, are added to the Municipal Code:

- § 71.18 Driving under suspension or in violation of license restriction
- § 71.19 Operating motor vehicle without valid license
- § 71.20 Driving under OVI suspension
- § 71.21 Driving under financial responsibility law suspension or cancellation
- § 71.22 Failure to reinstate license

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 this Municipality, and shall take effect at the earliest date provided by law.

Date
Passed: 3-1-04

Attest:

Wyndal E. Staggs
Mayor

Dennis Ogle
Clerk of the Legislative Authority

EXHIBIT A

§ 71.18 DRIVING UNDER SUSPENSION OR IN VIOLATION OF LICENSE RESTRICTION.

(A) No person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under any provision of the Revised Code, other than R.C. Chapter 4509, or under any applicable law in any other jurisdiction in which the person's license or permit was issued shall operate any motor vehicle upon the public roads and highways or upon any public or private property used by the public for purposes of vehicular travel or parking within this municipality during the period of suspension unless the person is granted limited driving privileges and is operating the vehicle in accordance with the terms of the limited driving privileges.

(B) No person shall operate any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this municipality in violation of any restriction of the person's driver's or commercial driver's license or permit imposed under R.C. § 4506.10(D) or 4507.14.

(C) (1) Whoever violates this section is guilty of driving under suspension or in violation of a license restriction, a misdemeanor of the first degree. The court shall impose upon the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02 (A)(7).

(2) Except as provided in division (C)(3) or (4) of this section, the court, in addition to any other penalty that it imposes on the offender and if the vehicle is registered in the offender's name, shall order the immobilization of the vehicle involved in the offense for 30 days in accordance with R.C. § 4503.233 and the impoundment of that vehicle's license plates for 30 days.

(3) If the offender previously has been convicted of or pleaded guilty to one violation of R.C. § 4510.11, this section, or of a substantially similar municipal ordinance, the court, in addition to any other sentence that it imposes on the offender and if the vehicle is registered in the offender's name, shall order the immobilization of the vehicle involved in the offense for 60 days in accordance with R.C. § 4503.233 and the impoundment of that vehicle's license plates for 60 days.

(4) If the offender previously has been convicted of or pleaded guilty to two or more violations of R.C. § 4510.11, this section, or of a substantially similar municipal ordinance, the court, in addition to any other sentence that it imposes on the offender and if the vehicle is registered in the offender's name, shall order the criminal forfeiture of the vehicle involved in the offense to the state.

(D) Any order for immobilization and impoundment under this section shall be issued and enforced under R.C. § 4503.233. The court shall not release a vehicle from immobilization ordered under this section unless the court is presented with current proof of financial responsibility with respect to that vehicle.

(E) Any order of criminal forfeiture under this section shall be issued and enforced under R.C. § 4503.234. Upon receipt of the copy of the order from the court, neither the registrar of motor vehicles nor a deputy registrar shall accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the declaration of forfeiture. The period of registration denial shall be five years after the date of the order, unless, during that period, the court having jurisdiction of the offense that led to the order terminates the forfeiture and notifies the registrar of the termination. The registrar then shall take necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer registration of the vehicle.
(R.C. § 4510.11)

(F) It is an affirmative defense to any prosecution brought under this section that the alleged offender drove under suspension, without a valid permit or driver's or commercial driver's license, or in violation of a restriction because of a substantial emergency, and because no other person was reasonably available to drive in response to the emergency.
(R.C. § 4510.04)

§ 71.19 OPERATING MOTOR VEHICLE WITHOUT VALID LICENSE.

(A) (1) No person, except those expressly exempted under R.C. §§ 4507.03, 4507.04, and 4507.05, shall operate any motor vehicle upon a public road or highway or any public or private property used by the public for purposes of vehicular travel or parking in this municipality unless the person has a valid driver's license issued under R.C. Chapter 4507 or a commercial driver's license issued under R.C. Chapter 4506.

(2) No person, except a person expressly exempted under R.C. §§ 4507.03, 4507.04, and 4507.05, shall operate any motorcycle upon a public road or highway or any public or private property used by the public for purposes of vehicular travel or parking in this municipality unless the person has a valid license as a motorcycle operator that was issued upon application by the registrar of motor vehicles under R.C. Chapter 4507. The license shall be in the form of an endorsement, as determined by the registrar, upon a driver's or commercial driver's license, if the person has a valid license to operate a motor vehicle or commercial motor vehicle, or in the form of a restricted license as provided in R.C. § 4507.14, if the person does not have a valid license to operate a motor vehicle or commercial motor vehicle.

(B) Whoever violates this section is guilty of operating a motor vehicle without a valid license and shall be punished as follows:

(1) If the offender's driver's or commercial driver's license or permit was expired at the time of the offense for no more than six months, subject to divisions (B)(3) to (5) of this section, the offense is a minor misdemeanor.

(2) If the offender's driver's or commercial driver's license or permit was expired at the time of the offense for more than six months, subject to divisions (B)(3) to (5) of this section, the offense is a misdemeanor of the fourth degree.

(3) If the offender previously was convicted of or pleaded guilty to one violation of R.C. § 4510.12, this section, or a substantially equivalent municipal ordinance, within the past three years, the offense is a misdemeanor of the third degree.

(4) If the offender previously was convicted of or pleaded guilty to two violations of R.C. § 4510.12, this section, or a substantially equivalent municipal ordinance within the past three years, the offense is a misdemeanor of the second degree.

(5) If the offender previously was convicted of or pleaded guilty to three or more violations of R.C. § 4510.12, this section, or a substantially equivalent municipal ordinance within the past three years, the offense is a misdemeanor of the first degree.

(C) The court shall not impose a license suspension for a first violation of this section or if more than three years have passed since the offender's last violation of R.C. § 4510.12, this section, or a substantially equivalent municipal ordinance.

(D) If the offender was convicted of or pleaded guilty to one or more violations of R.C. § 4510.12, this section, or a substantially equivalent municipal ordinance within the past three years, and if the offender's license was expired for more than six months at the time of the offense, the court shall impose a class seven suspension of the offender's driver license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02 (A)(7).
(R.C. § 4510.12)

§ 71.20 DRIVING UNDER OVI SUSPENSION.

(A) No person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under R.C. § 4511.19, 4511.191, or 4511.196 or under R.C. § 4510.07 for a conviction of a violation of a municipal OVI ordinance shall operate any motor vehicle upon the public roads or highways within this municipality during the period of the suspension.

(B) Whoever violates this section is guilty of driving under OVI suspension. The court shall sentence the offender under R.C. Chapter 2929, subject to the differences authorized or required by this section.

(1) Except as otherwise provided in division (B)(2) or (3) of this section, driving under OVI suspension is a misdemeanor of the first degree. The court shall sentence the offender to all of the following:

(a) A mandatory jail term of three consecutive days. The three-day term shall be imposed, unless, subject to division (C) of this section, the court instead imposes a sentence of not less than 30 consecutive days of house arrest with electronic monitoring. A period of house arrest with electronic monitoring imposed under this division shall not exceed six months. If the court imposes a mandatory three-day jail term under this division, the court may impose a jail term in addition to that term, provided that in no case shall the cumulative jail term imposed for the offense exceed six months;

(b) A fine of not less than \$250 and not more than \$1,000;

(c) A license suspension under division (E) of this section;

(d) If the vehicle the offender was operating at the time of the offense is registered in the offender's name, immobilization for 30 days of the offender's vehicle and impoundment for 30 days of the identification license plates of that vehicle. The order for immobilization and impoundment shall be issued and enforced in accordance with R.C. § 4503.233.

(2) If, within six years of the offense, the offender previously has been convicted of or pleaded guilty to one violation of this section or one equivalent offense, driving under OVI suspension is a misdemeanor of the first degree. The court shall sentence the offender to all of the following:

(a) A mandatory jail term of 10 consecutive days. Notwithstanding the jail terms provided in R.C. §§ 2929.21 to 2929.28, the court may sentence the offender to a longer jail term of not more than one year. The 10-day mandatory jail term shall be imposed unless, subject to division (C) of this section, the court instead imposes a sentence of not less than 90 consecutive days of house arrest with electronic monitoring. The period of house arrest with electronic monitoring shall not exceed one year;

(b) Notwithstanding the fines provided for in R.C. Chapter 2929, a fine of not less than \$500 and not more than \$2,500;

(c) A license suspension under division (E) of this section;

(d) If the vehicle the offender was operating at the time of the offense is registered in the offender's name, immobilization of the offender's vehicle for 60 days and the impoundment for 60 days of the identification license plates of that vehicle. The order for immobilization and impoundment shall be issued and enforced in accordance with R.C. § 4503.233.

(3) If, within six years of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of this section or two or more equivalent offenses, driving under OVI suspension is a misdemeanor. The court shall sentence the offender to all of the following:

(a) A mandatory jail term of 30 consecutive days. Notwithstanding the jail terms provided in R.C. §§ 2929.21 to 2929.28, the court may sentence the offender to a longer jail term of not more than one year. The court shall not sentence the offender to a term of house arrest with electronic monitoring in lieu of the mandatory portion of the jail term;

(b) Notwithstanding the fines set forth in R.C. Chapter 2929, a fine of not less than \$500 and not more than \$2,500;

(c) A license suspension under division (E) of this section;

(d) If the vehicle the offender was operating at the time of the offense is registered in the offender's name, criminal forfeiture to the state of the offender's vehicle. The order of criminal forfeiture shall be issued and enforced in accordance with R.C. § 4503.234. If title to a motor vehicle that is subject to an order for criminal forfeiture under this division is assigned or transferred and R.C. § 4503.234(B)(2) or (3) applies, the court may fine the offender the value of the vehicle as determined by publications of the national auto dealer's association. The proceeds from any fine so imposed shall be distributed in accordance with division R.C. § 4503.234(C)(2).

(C) (1) No court shall impose an alternative sentence of house arrest with electronic monitoring under division (B)(1) or (2) of this section unless, within 60 days of the date of sentencing, the court issues a written finding on the record that, due to the unavailability of space at the jail where the offender is required to serve the jail term imposed, the offender will not be able to begin serving that term within the 60-day period following the date of sentencing.

(2) An offender sentenced under this section to a period of house arrest with electronic monitoring shall be permitted work release during that period.

(D) Fifty percent of any fine imposed by a court under division (B)(1), (2), or (3) of this section shall be deposited into the municipal indigent drivers alcohol treatment fund under the control of that court, as created by the municipality pursuant to R.C. § 4511.191(H).

(E) In addition to or independent of all other penalties provided by law or ordinance, the trial judge of any court of record or the mayor of a mayor's court shall impose on an offender who is convicted of or pleads guilty to a violation of this section a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. § 4510.02 (A)(7).

(1) When permitted as specified in R.C. § 4510.021, if the court grants limited driving privileges during a suspension imposed under this section, the privileges shall be granted on the additional condition that the offender must display restricted license plates, issued under R.C. § 4503.231, on the vehicle driven subject to the privileges, except as provided in R.C. § 4503.231(B).

(2) A suspension of a commercial driver's license under this section shall be concurrent with any period of suspension or disqualification under R.C. § 3123.58 or 4506.16. No person who is disqualified for life from holding a commercial driver's license under R.C. § 4506.16 shall be issued a driver's license under R.C. Chapter 4507 during the period for which the commercial driver's license was suspended under this section, and no person whose commercial driver's license is suspended under this section shall be issued a driver's license under R.C. Chapter 4507 during the period of the suspension.

(F) As used in this section:

ELECTRONIC MONITORING has the same meaning as in R.C. § 2929.01.

EQUIVALENT OFFENSE means any of the following:

(1) A violation of a municipal ordinance, law of another state, or law of the United States that is substantially equivalent to division (A) of this section;

(2) A violation of a former law of this state that was substantially equivalent to division (A) of this section.

JAIL has the same meaning as in R.C. § 2929.01.

MANDATORY JAIL TERM means the mandatory term in jail of 3, 10, or 30 consecutive days that must be imposed under division (B)(1), (2), or (3) of this section upon an offender convicted of a violation of division (A) of this section and in relation to which all of the following apply:

(1) Except as specifically authorized under this section, the term must be served in a jail.

(2) Except as specifically authorized under this section, the term cannot be suspended, reduced, or otherwise modified pursuant to any provision of the Ohio Revised Code.
(R.C. § 4510.14)

(G) It is an affirmative defense to any prosecution brought under this section that the alleged offender drove under suspension, without a valid permit or driver's or commercial driver's license, or in violation of a restriction because of a substantial emergency, and because no other person was reasonably available to drive in response to the emergency.

(R.C. § 4510.04)

Statutory reference:

Immobilization of vehicle; impoundment of license plates; criminal forfeiture of vehicle, see R.C. § 4510.161

§ 71.21 DRIVING UNDER FINANCIAL RESPONSIBILITY LAW SUSPENSION OR CANCELLATION.

(A) No person, whose driver's or commercial driver's license or temporary instruction permit or nonresident's operating privilege has been suspended or canceled pursuant to R.C. Chapter 4509, shall operate any motor vehicle within this municipality, or knowingly permit any motor vehicle owned by the person to be operated by another person in the municipality, during the period of the suspension or cancellation, except as specifically authorized by R.C. Chapter 4509. No person shall operate a motor vehicle within this municipality, or knowingly permit any motor vehicle owned by the person to be operated by another person in the municipality, during the period in which the person is required by R.C. § 4509.45 to file and maintain proof of financial responsibility for a violation of R.C. § 4509.101, unless proof of financial responsibility is maintained with respect to that vehicle.

(B) (1) Whoever violates this section is guilty of driving under financial responsibility law suspension or cancellation, a misdemeanor of the first degree. The court shall impose a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege for the period of time specified in R.C. § 4510.02(A)(7).

(2) If the vehicle is registered in the offender's name, the court, in addition to or independent of any other sentence that it imposes upon the offender, shall do one of the following:

(a) Except as otherwise provided in division (B)(2)(b) or (c) of this section, order the immobilization for 30 days of the vehicle involved in the offense and the impoundment for 30 days of the license plates of that vehicle;

(b) If the offender previously has been convicted of or pleaded guilty to one violation of R.C. § 4510.16, this section or a substantially similar municipal ordinance, order the immobilization for 60 days of the vehicle involved in the offense and impoundment for 60 days of the license plates of that vehicle;

(c) If the offender previously has been convicted of or pleaded guilty to two or more violations of this section or a substantially similar municipal ordinance, order the criminal forfeiture to the state of the vehicle involved in the offense. If title to a motor vehicle that is subject to an order for criminal forfeiture under this division is assigned or transferred and R.C. § 4503.234(B)(2) or (3) applies, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the national auto dealers association. The proceeds from any fine so imposed shall be distributed in accordance with R.C. § 4503.234(C)(2).

(C) Any order for immobilization and impoundment under this section shall be issued and enforced in accordance with R.C. §§ 4503.233 and 4507.02, as applicable. Any order of criminal forfeiture shall be issued and enforced in accordance with R.C. § 4503.234. The court shall not release a vehicle from immobilization orders under this section unless the court is presented with current proof of financial responsibility with respect to that vehicle. (R.C. § 4510.16)

(D) (1) It is an affirmative defense to any prosecution brought under this section that the alleged offender drove under suspension, without a valid permit or driver's or commercial driver's license, or in violation of a restriction because of a substantial emergency, and because no other person was reasonably available to drive in response to the emergency.

(2) It is an affirmative defense to any prosecution brought under this section that the order of suspension resulted from the failure of the alleged offender to respond to a financial responsibility random verification request under R.C. § 4509.101(A)(3)(c) and that, at the time of the initial financial responsibility random verification request, the alleged offender was in compliance with division R.C. § 4509.101(A)(1) as shown by proof of financial responsibility that was in effect at the time of that request.

(R.C. § 4510.04)

Statutory reference:

Immobilization of vehicle; impoundment of license plates; criminal forfeiture of vehicle, see R.C. § 4510.161

§ 71.22 FAILURE TO REINSTATE LICENSE.

(A) No person whose driver's license, commercial driver's license, temporary instruction permit, or nonresident's operating privilege has been suspended shall operate any motor vehicle upon a public road or highway or any public or private property after the suspension has expired unless the person has complied with all license reinstatement requirements imposed by the court, the bureau of motor vehicles, or another provision of the Ohio Revised Code.

(B) Whoever violates this section is guilty of failure to reinstate a license, a misdemeanor of the first degree. The court may impose upon the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary driver's license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(7).

(R.C. § 4510.21)

(C) It is an affirmative defense to any prosecution brought under this section that the alleged offender drove under suspension, without a valid permit or driver's or commercial driver's license, or in violation of a restriction because of a substantial emergency, and because no other person was reasonably available to drive in response to the emergency.

(R.C. § 4510.04)