

CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.:	<u>20-11</u>	July 11, 2011
INTRODUCED BY:	<u>Miller</u>	Second Reading: December 27, 2011
REQUESTED BY:	<u>Mayor</u>	As Amended in Committee: March 12, 2012 As Amended on Council Floor: March 26, 2012

AN ORDINANCE

AMENDING SECTION 337.27 “ DRIVERS AND PASSENGERS REQUIRED TO WEAR SEAT BELTS; PENALTY” OF CHAPTER 337 “SAFETY AND EQUIPMENT” OF PART THREE “TRAFFIC CODE” OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO.

WHEREAS, the Council of the City of South Euclid recognizes the importance of ensuring the safety of those who operate or are a passenger of a motor vehicle; and

WHEREAS, the wearing of seat belts is proven to protect drivers and passengers of motor vehicles, as the National Highway Traffic Safety Administration (NHTSA) states that in 2009 seat belts saved an estimated 12,713 lives and seat belt usage has also been shown to reduce a front seat occupant’s risk of fatality by 45% and risk of moderate to critical injury by 50%; and

WHEREAS, seat belt use is higher in jurisdictions with primary seat belt laws.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of South Euclid, Ohio:

Section 1: That Section 337.27 “Drivers and Passengers Required to Wear Seat Belts; Penalty” of Chapter 337 “Safety and Equipment” of Part Three “Traffic Code” of the Codified Ordinances of the City of South Euclid, Ohio be hereby amended to read as follows:

337.27 DRIVERS AND PASSENGERS REQUIRED TO WEAR SEAT BELTS; PENALTY.

(a) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) "Automobile" means any commercial tractor, passenger car, commercial car, or truck that is required to be factory-equipped with an occupant restraining device for the operator or any passenger by regulations adopted by the United States Secretary of Transportation pursuant to the "National Traffic and Motor Vehicle Safety Act of 1966," 80 Stat. 719, 15 U.S.C. 1392.

(2) "Commercial tractor," "passenger car," and "commercial car" have the same meanings as in Ohio R.C. 4501.01.

(3) "Occupant restraining device" means a seat safety belt, shoulder belt, harness, or other safety device for restraining a person who is an operator of or passenger in an automobile and that satisfies the minimum Federal vehicle safety standards established by the United States Department of Transportation.

(4) "Passenger" means any person in an automobile, other than its operator, who is occupying a seating position for which an occupant restraining device is provided.

(5) "Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a product liability claim, as defined in Ohio R.C. 2307.71, and as asbestos claim, as defined in Ohio R.C. 2307.91, but does not include a civil action for damages for breach of contract or another agreement between persons.

(6) "Vehicle" and "motor vehicle," as used in the definitions of the terms set forth above, have the same meanings as in Ohio R.C. 4511.01.

(b) Prohibited Acts. No person shall do any of the following:

(1) Operate an automobile on any street or highway unless he or she is wearing all of the available elements of a properly adjusted occupant restraining device, or operate a school bus that has an

occupant restraining device installed for use in its operator's seat unless he or she is wearing all of the available elements of the device, as properly adjusted.

(2) Operate an automobile on any street or highway unless each passenger in the automobile who is subject to the requirement set forth in division (b)(3) of this section is wearing all of the available elements of a properly adjusted occupant restraining device.

(3) Occupy, as a passenger, a seating position on the front seat of an automobile being operated on any street or highway unless he or she is wearing all of the available elements of a properly adjusted occupant restraining device.

(4) Operate a taxicab on any street or highway unless all factory-equipped occupant restraining devices in the taxicab are maintained in usable form.

(c) Exceptions. Division (b)(3) of this section does not apply to a person who is required by Ohio R.C. 4511.81 or a substantially equivalent municipal ordinance to be secured in a child restraint device or booster seat. Division (b)(1) of this section does not apply to a person who is an employee of the United States Postal Service or of a newspaper home delivery service, during any period in which the person is engaged in the operation of an automobile to deliver mail or newspapers to addressees. Divisions (b)(1) and (b)(3) of this section do not apply to a person who has an affidavit signed by a physician licensed to practice in this State under Ohio R.C. Chapter 4731 or a chiropractor licensed to practice in this State under Ohio R.C. Chapter 4734 that states that the person has a physical impairment that makes use of an occupant restraining device impossible or impractical.

~~(d) Officers Not Permitted to Stop Cars to Determine Violation. Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (b) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for the violation or for causing the arrest of or commencing a prosecution of a person for the violation. No law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether the violation has been or is being committed.~~

Any law enforcement officer *with reasonable suspicion* may cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (b) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for the violation or for causing the arrest of or commencing a prosecution of a person for the violation. Any law enforcement officer may view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether the violation has been or is being committed.

(e) Use of Fines for Educational Program. All fines collected for violations of division (b) of this section shall be forwarded to the State Treasurer for deposit in the funds as set forth in Ohio R.C. 4513.263(E).

(f) Limitations on Evidence Used for Prosecution.

(1) Subject to division (f)(2) of this section, the failure of a person to wear all of the available elements of a properly adjusted occupant restraining device in violation of division (b)(1) or (b)(3) of this section or the failure of a person to ensure that each minor who is a passenger of an automobile being operated by that person is wearing all of the available elements of a properly adjusted occupant restraining device in violation of division (b)(2) of this section shall not be considered or used by the trier of fact in a tort action as evidence of negligence or contributory negligence. But, the trier of fact may determine based on evidence admitted consistent with the Ohio Rules of Evidence that the failure contributed to the harm alleged in the tort action and may diminish a recovery of compensatory damages that represents non-economic loss, as defined in Ohio R.C. 2307.011, in a tort action that could have been recovered but for the plaintiff's failure to wear all of the available elements of a properly adjusted occupant restraining device. Evidence of that failure shall not be used as a basis for a criminal prosecution of the person other than a prosecution for a violation of this section; and shall not be admissible as evidence in a criminal action involving the person other than a prosecution for a violation of this section.

(2) If, at the time of an accident involving a passenger car equipped with occupant restraining devices, any occupant of the passenger car who sustained injury or death was not wearing an available

occupant restraining device, was not wearing all of the available elements of such a device, or was not wearing such a device as properly adjusted, then, consistent with the Rules of Evidence, the fact that the occupant was not wearing the available occupant restraining device, was not wearing all of the available elements of such a device, or was not wearing such a device as properly adjusted is admissible in evidence in relation to any claim for relief in a tort action to the extent that the claim for relief satisfies all of the following:

A. It seeks to recover damages for injury or death to the occupant;

B. The defendant in question is the manufacturer, designer, distributor, or seller of the passenger car;

C. The claim for relief against the defendant in question is that the injury or death sustained by the occupant was enhanced or aggravated by some design defect in the passenger car or that the passenger car was not crashworthy.

(ORC 4513.263)

(g) Penalty.

(1) Whoever violates division (b)(1) of this section shall be fined thirty dollars (\$30.00).

(2) Whoever violates division (b)(2) of this section shall be fined thirty dollars (\$30.00).

(3) Whoever violates division (b)(3) of this section shall be fined twenty dollars (\$20.00).

(4) Except as otherwise provided in this division, whoever violates division (b)(4) of this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to a violation of division (b)(4) of this section, whoever violates division (b)(4) of this section is guilty of a misdemeanor of the third degree.

Section 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

~~Section 3: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. Wherefore, this Ordinance shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor. *That this Ordinance shall not be enforced prior to June 1, 2012 in order to provide the public with the necessary education period so the Ordinance may preserve the public peace, health and safety of the citizens of the City of South Euclid, Ohio.*~~

Passed this _____ day of _____, ~~2011~~ **2012**.

David B. Miller, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law