

ORDINANCE NO. 06-50 AC CMS

AN ORDINANCE AMENDING SECTION 373.03 OF THE CODIFIED ORDINANCES OF THE CITY OF OBERLIN AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That Section 373.03 of the Codified Ordinances of the City of Oberlin is hereby amended to read as follows:

"373.03 ATTACHING BICYCLE OR SLED TO VEHICLE.

No person riding upon any motorcycle, bicycle, coaster, roller skates, skateboard, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway.

No operator shall knowingly permit any person riding upon any motorcycle, bicycle, coaster, roller skates, skateboard, sled or toy vehicle to attach the same or himself to any vehicle while it is moving upon a roadway. This section does not apply to the towing of a disabled vehicle."

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees 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 of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit:

"to amend the traffic code as soon as possible in order to ensure the efficient operation of the police department", and shall take effect immediately upon passage.

PASSED: 1st Reading – May 15, 2006
2nd Reading – June 5, 2006 (E)
3rd Reading –

ATTEST:


CLERK OF COUNCIL


PRESIDENT OF COUNCIL
EFFECTIVE DATE: June 6, 2006

POSTED: June 6, 2006

**OBERLIN POLICE
DEPARTMENT**

Memo

To: City Manager Rob DiSpirito
From: Chief Tom Miller
CC: Atty. Severs, file
Date: 05/04/06
Re: Revision to Ordinance 373.03

Sir,

Attached is a ruling by the Honorable Judge Januzzi, Our Department cited a subject on a skateboard being towed by another student on a bicycle under Section 373.03 of the Oberlin Codified Ordinances.

Section 373.03 reads in part as follows:

"No person riding upon any motorcycle, bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway."

Judge Januzzi ruled that a skateboard was not any of the described items that would constitute a violation. Atty. Severs has recommended that the word skateboard be added to the above ordinance. The revised ordinance would read as follows:

373.03 ATTACHING BICYCLE OR SLED TO VEHICLE.

No person riding upon any motorcycle, bicycle, coaster, roller skates, *skateboard*, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway.

No operator shall knowingly permit any person riding upon any motorcycle, bicycle, coaster, roller skates, *skateboard*, sled or toy vehicle to attach the same or himself to any vehicle while it is moving upon a roadway. This section does not apply to the towing of a disabled vehicle.

Thank you for the consideration.

FYI

Oberlin Municipal Court
Oberlin, Ohio

State of Ohio

Case No. 06TRD01885

Plaintiff

vs.


Frank Tisano

Judgment Entry

Defendant

Defendant appeared in court for arraignment on April 14, 2006 charged with a violation of Section 373.03 of the Oberlin Codified Ordinances. The report was read by the Prosecutor and the matter submitted for ruling. Defendant is found not guilty. See Opinion. Clerk shall send a copy of this Judgment Entry and the opinion to the Defendant and place a copy in the Prosecutor's envelope.

April 17, 2006


Judge

Oberlin Municipal Court
Oberlin, Ohio

State of Ohio

Case No. 06TRD01885

Plaintiff

vs.

Frank Tisano

Opinion

Defendant

Defendant appeared in court for arraignment on April 14, 2006 charged with the following violation:

Section 373.03 of the Oberlin Codified Ordinances that reads in part as follows:

“No person riding upon any motorcycle, bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway.”

Section 501.04(a) of the Oberlin Codified Ordinances provides in part that “... sections of the Codified Ordinances defining offenses or penalties shall be strictly construed against the Municipality and liberally construed in favor of the accused.”

The report read by the Prosecutor in support of the charge against the Defendant was: “This male was being towed by a male on a bike with a long rope. I saw them at Main & College, but didn’t get them stopped until they got to the Misslers Market.” The face of the summons charges the Defendant with a violation of OCO 373.03 – “Skateboarding in the Roadway.” Defendant admitted that he was on a skateboard being pulled by a friend on a bicycle.

In order to convict the Defendant of this ordinance there must evidence that the Defendant was riding upon either a motorcycle, bicycle, coaster, roller skates, sled or toy vehicle and that while riding one of the foregoing that he attached the same or attached himself to a vehicle on the roadway.

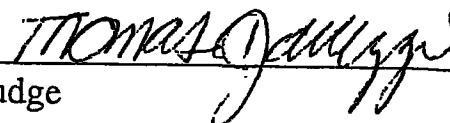
Defendant was on a skateboard. Is a skateboard any of the delineated vehicles? It is not a motorcycle, a bicycle, a roller coaster or a sled. By definition in Webster’s it is not roller skates or a coaster. By definition in the Oberlin City Ordinances it is not a vehicle. The definition excludes any device, other than a bicycle, that is moved by human power.

There is an ordinance, 311.03, that does prohibit a person from using a skateboard on the street except while crossing a sidewalk and except upon

streets set aside as play streets and as authorized by the City Manager. However, the Defendant is not charged under 311.03 and the Prosecutor did not make a motion to amend the complaint.

Since the facts provided by the Prosecutor do not support a conviction under OCO 373.03 the court must find the Defendant not guilty.

April 17, 2006


Judge