



MIDLOTHIAN POLICE DEPARTMENT

Information Bulletin

Understanding the new Hand-Held Wireless Device Ordinance

According to the National Highway Traffic Safety Administration (2012), driver distraction was the cause of almost 20% of fatal crashes, which accounted for over 3,300 traffic deaths, and over 420,000 wounded. Studies indicate that drivers who use cell phones while driving are 23 times more likely to be involved in a crash and response times in an emergency are quadrupled.

In 2015, Midlothian Police Department responded to over 700 incidents involving vehicle crashes. Of these, 339 of rose to the level of a formal report to the state, 134 of which cited driver inattention, a distraction in the vehicle or cell phone use as a causative factor. That's 39% of Midlothian crashes in 2015 that involved distracted drivers. In Midlothian's roadways are becoming more crowded and challenging to navigate. With the increased number of families calling Midlothian home, comes increased construction, vehicle and pedestrian traffic. All of this, and other factors, require an increased awareness on the part of Midlothian drivers.

Currently, 46 states ban texting while driving. Currently, 46 states, D.C., Puerto Rico, Guam and the U.S. Virgin Islands ban text messaging for all drivers. Of the 4 states without an all driver texting ban, 2 prohibit text messaging by novice drivers, 1 restricts school bus drivers from texting.

In May of this year the Midlothian City Council unanimously passed Ordinance 2016-12 which added an ordinance to Chapter 12 of the city ordinance ("Traffic and Vehicles") The new ordinance is titled "USE OF HAND-HELD WIRELESS COMMUNICATIONS DEVICE WHILE OPERATING A MOTOR VEHICLE PROHIBITED."

What does the ordinance prohibit?

This ordinance prohibits the use of a hand-held wireless communication device while operating a motor vehicle to:

- engage in a call,
- send, read or write a text message,
- take or view pictures or written text,
- access or view an internet website or software application,
- play a game,
- any other use of the device while operating a motor vehicle, including holding the device.

What is a hand-held wireless device?

A device that sends electronic (text or picture) messages or is used for wireless voice communication. Also included are, PDAs, e-readers, laptops, tablets, portable GPS devices, pagers, and electronic gaming devices or broadband devices with the above capabilities.

What is an acceptable hands-free device?

A mobile telephone or other wireless device (permanently installed or otherwise) that allows use of the device without use of the operator's hands.

What is "engaging in a call?"

Talking, dialing or listening on a hand held device or holding the device to activate or deactivate the device.

What does it mean to “operate a moving vehicle?”

If the car is moving, stopped or standing on a public street, highway or right of way, unless it is lawfully parked.

Are there exceptions?

Yes, here is a list of those exceptions:

- reporting crime to the police
- talking with 911 operators, police, fire, or medical facility about an emergency
- using the phone in a situation where it is reasonable to believe that a person’s life or safety is in immediate danger
- using a GPS that is installed in the vehicle



ORDINANCE NO. 2016-12

AN ORDINANCE OF THE CITY OF MIDLOTHIAN, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 12 TITLED "TRAFFIC AND VEHICLES" BY ADDING A NEW ARTICLE 12.05 TITLED "USE OF HAND-HELD WIRELESS COMMUNICATIONS DEVICES WHILE OPERATING A MOTOR VEHICLE PROHIBITED" SETTING FORTH REGULATIONS PROHIBITING THE USE OF HAND-HELD WIRELESS COMMUNICATIONS DEVICES WHILE OPERATING A MOTOR VEHICLE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Midlothian finds it inherently distracting when a person who is operating a motor vehicle uses a hand-held wireless communications device for engaging in a call, texting, taking or viewing photographs, gaming, or any purpose; and

WHEREAS, the City Council of the City of Midlothian finds that drivers who use hand-held wireless communications devices while operating motor vehicle area at risk of losing safe control of their vehicles due to manual, visual, and cognitive distractions, and are, therefore, more likely to have an accident than undistracted drivers; and

WHEREAS, these regulations do not conflict with the Texas Transportation Code Section 545.424, regarding the use of wireless communications devices while operating a motor vehicle by minors, or Texas Transportation Code 545.425, regarding the use of wireless communications devices in school crossing zones; and

WHEREAS, the City Council of the City of Midlothian, Texas, has determined that it is in the best interest of the health, safety, and general welfare of the community to establish regulations prohibiting the use of hand-held wireless communications devices while driving;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLOTHIAN, TEXAS:

SECTION 1. That the Code of Ordinances of the City of Midlothian, Texas, is hereby amended by amending Chapter 12 titled "Traffic and Vehicles" by adding a new Article 12.05 titled "Use of Hand-Held Wireless Communications Devices While Operating a Motor Vehicle Prohibited", to read as follows:

"CHAPTER 12

TRAFFIC AND VEHICLES

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**ARTICLE 12.05 USE OF HAND-HELD WIRELESS COMMUNICATIONS DEVICE
WHILE OPERATING A MOTOR VEHICLE PROHIBITED**

Sec. 12.05.001 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Engaging in a call. Talking, dialing, or listening on a hand-held wireless communication device, including holding a wireless communication device to activate or deactivate the device.

Hand-held wireless communication device. A text-messaging device or other electronic, two-way communication device that uses a commercial mobile service, as defined by 47 United States Code §332, that is designed to receive and transmit voice communication, text message or pictorial communication, or both, whether by internet or other electronic means. The term also includes devices such as mobile telephones, personal digital assistants (PDA), MP3 or other portable music players, electronic reading devices, laptop computers or tablets, portable computing devices, portable global positioning or navigation systems, pagers, electronic game devices and broadband personal communication devices.

Hands-free wireless communication device. A mobile telephone, a device with speakerphone capability, a telephone attachment, or another function or other piece of equipment, regardless of whether or not permanently installed in a motor vehicle, that allows use of the wireless communication device without use of either of the operator's hands, (or prosthetic device or aid in the case of a physically disabled person).

Operating a motor vehicle. A motor vehicle that is moving, stopped or standing on a public street, highway or right-of-way, unless it is lawfully parked as that term is defined herein.

Park or parked. The operator of a motor vehicle to completely cease movement of a motor vehicle in a lawful manner and location. For the purposes of this ordinance, "parked" does not mean a vehicle stopped in a lane of traffic due to either a lawful traffic control device, or the conditions on the roadway, or traffic congestion patterns then existing.

Text message. A two-way communication (whether real-time or asynchronous) in which data (composed in whole or in part of text, numbers, images, or symbols) is sent, entered, or received by a method other than by voice and transmitted through either a short message service (SMS) or a computer network. This term includes instant messaging and e-mail. The term does not include a communication transmitted through a global positioning or navigation system.

Sec. 12.05.002 Use of a hand-held wireless communication device; offense

It is an offense if the person uses a hand-held wireless communication device while operating a motor vehicle to:

- (a) engage in a call;
- (b) send, read or write a text message;

- (c) take or view pictures or written text whether transmitted by internet or other electronic means, or access or view an internet website or software application;
- (d) engage in gaming; or
- (e) engage in any other use of the device while operating a motor vehicle. This includes holding the hand-held wireless communication device.

Sec. 12.05.003 Exceptions

This section does not apply to an operator of a motor vehicle using a hand-held wireless communication device:

- (a) while the vehicle is legally parked as that term is defined herein, or is being driven on private property;
- (b) that is used with a hands-free wireless communication device;
- (c) if the operator is a law enforcement officer, firefighter, member of a governmental emergency medical services function, or member of a governmental emergency management function, and the operator is using the device to conduct official business related to the position; or
- (d) who is licensed by the Federal Communications Commission while operating a radio frequency device, other than a hand held wireless communication device; or an operator using a two-way radio communication.

Sec. 12.05.004 Affirmative defenses

It is an affirmative defense to prosecution under this article that the person was using a hand-held wireless communications device for the purpose of:

- (a) reporting illegal activity to a law enforcement agency;
- (b) Communicating with an emergency response operator, a fire department, a law enforcement agency, a hospital, a physician's office, or a health clinic regarding a medical or other emergency situation;
- (c) in the reasonable belief that a person's life or safety is in immediate danger; or
- (d) as a global positioning or other navigation system that is affixed to the vehicle.

Sec. 12.05.005 Penalties

(a) A person who violates a provision of this article is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. For each offense, upon conviction, is punishable by a fine not to exceed \$500.00. No culpable mental state shall be required to be plead or proven to substantiate guilt in prosecution of any case in which an offense under this section is alleged.

(b) An offense committed under this article is not a moving violation and may not be a part of a person's driving record or insurance record.

SECTION 2. That all provisions of the Ordinances of the City of Midlothian, Texas, in conflict with the provisions of this Ordinance be and the same are hereby, repealed, and that all other provisions of the Ordinances of the City of Midlothian not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof other than the part thereof decided to be unconstitutional, illegal, or invalid.

SECTION 4. An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Ordinances of the City of Midlothian, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 5. That any person, firm, or corporation violating any provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances, as amended, and upon conviction shall be punished by a fine not to exceed the sum of Five Hundred Dollars (\$500.00) for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 6. This ordinance shall take effect immediately from and after its passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MIDLOTHIAN, TEXAS ON THIS THE 24TH DAY OF MAY, 2016.

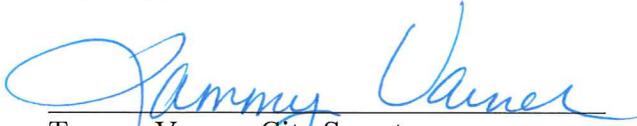
APPROVED:



Bill Houston, Mayor



ATTEST:



Tammy Varner, City Secretary

APPROVED AS TO FORM:



Joseph J. Gorfida, Jr., City Attorney
(04-14-2016/76451)