ORDINANCE NO. 2014-112

AN ORDINANCE OF THE CITY OF DENTON, TEXAS ADDING SECTION 18-38 OF THE CODE OF ORDINANCES RELATING TO THE USE OF WIRELESS COMMUNICATION DEVICES WHILE DRIVING; BY CREATING SECTION 18-38 TO PROHIBIT THE USE OF WIRELESS COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE EXCEPT FOR DIALING A NUMBER OR TALKING TO ANOTHER PERSON WITH CERTAIN DEFENSES; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED $200 FOR VIOLATIONS OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Denton City Council finds that the use of a wireless communication device to send, read, or write a text message, view pictures or written text, whether transmitted by internet or other electronic means, engage in gaming or any other use of the device, other than dialing telephone numbers, or talking to another person while operating a moving motor vehicle, is a traffic hazard, a danger to the public and creates a particular danger or probability of danger in the City of Denton; and

WHEREAS, the interstate highway system may be distinguished from the other roadways within the City because it is both a limited access highway system within the City of Denton and a roadway on which a large percentage of motor vehicle operators on the interstate highway system are travelling through the city without ever exiting the interstate highway system;

WHEREAS, it is in the interest of public safety to restrict the use of wireless communication devices by persons operating motor vehicles on City public roadways and highways other than the interstate highway system; and

WHEREAS, prohibiting the use of wireless communication devices while driving in the City of Denton, to the extent allowed by §545.425(f), Texas Transportation Code, addresses the possible hazards produced by a distracted driver as the result of: (l) sending or reading text messages, instant messages; (2) viewing or accessing internet sites; or (3) viewing or accessing other data that uses commonly recognized electronic communications protocol; and

WHEREAS, the Denton City Council believes that prohibiting the use of wireless communication devices to engage in any use of a mobile communication device other than dialing telephone numbers or talking to another person, with certain defenses, would further and protect the public health, safety, and welfare; NOW THEREFORE:

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference as true.

SECTION 2. Chapter 18 "Motor Vehicles and Traffic" of the Code of Ordinances of Denton, Texas is hereby amended by adding Section 18-38 regarding the use of wireless

communication devices while driving on all streets and highways within the City of Denton other than any streets within the interstate highway system. Section 18-38 shall read as follows:

Sec. 18-38 Use of Wireless Communication Devices While Driving.

(a) In this section, a "Hands-free device" means speakerphone capability or a telephone attachment to other piece of equipment, regardless of whether permanently installed in the motor vehicle, that allows use of the wireless device without use of either of the operator's hands.

(b) In this section, "Text message" means 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.

(c) In this section, "Wireless Communication Device" has the meaning assigned in Section 545.425 (Use of Wireless Communication Device; Offense) of the Texas Transportation Code. Further, "Wireless Communication Device" means a text-messaging device or other electronic, two-way communication device that is designed to receive and transmit voice communication, text or pictorial communication, or both, whether by internet or other electronic means. The term includes a mobile telephone, and a personal digital assistant (PDA).

(d) In this section, "Wireless Telephone Service" means two-way, real time voice telecommunications service that is interconnected to a public switched telephone network and is commonly referred to as cellular service or personal communication service.

(e) A person commits an offense if the person uses a wireless communication device to send, read, or write a text message, view pictures or written text, whether transmitted by internet or other electronic means, engage in gaming or any other use of the device, besides dialing telephone numbers or talking to another person, while operating a motor vehicle.

(f) It is an affirmative defense to prosecution of an offense under this section is a wireless communication device is used:

1. While the vehicle is stopped, out of the moving lanes of the roadway;
2. Strictly to engage in a telephone conversation, including dialing or deactivating a call;
3. That is affixed to the vehicle and used as a global positioning or navigation system;
4. For obtaining emergency assistance to report a traffic accident, medical emergency, or serious traffic hazard, or to prevent a crime about to be committed or being committed;

5. In the reasonable belief that a person's life or safety is in immediate danger; or
6. Solely in a voice-activated or other hands-free mode.

(g) This ordinance does not apply to:

1. An operator of an authorized emergency vehicle using a wireless communication device while acting in an official capacity; and
2. An operator who is licensed by the Federal Communications Commission operating a radio frequency device other than a wireless communication device.

(h) This ordinance does not apply to a person operating a motor vehicle on any street or highway in the City of Denton on the interstate highway system. The interstate highway system within the City of Denton includes the following roadways:

1. Interstate Highway 35 East;
2. Interstate Highway 35 West;
3. Interstate Highway 35; and
4. All the frontage and access roads providing access to the three interstate highways.

(i) To the extent that this section conflicts with the Texas Transportation Code Section 545.424, regarding the use of wireless communication devices while operating a motor vehicle by minors, or Texas Transportation Code Section 545.425, regarding the use of wireless communications devices in school zones or by the operators of school busses, this section does not apply.

(j) No citations will be issued for the first 30 days following the effective date of this Ordinance so that an educational effort by the City of Denton may be conducted to inform the public about the importance and requirements of this new Ordinance.

SECTION 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this ordinance, or application thereof to any person or circumstances is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and the City Council of the City of Denton, Texas hereby declares it would have enacted such remaining portions despite any invalidity.

SECTION 4. Save and except as amended hereby, all the provisions, sections, subsections, paragraphs, sentences, clauses, and phrases of the Code of Ordinances shall remain in full force and effect.

SECTION 5. Any person found guilty of violating this Ordinance by a court of competent jurisdiction shall be fined a sum not to exceed two hundred dollars ($200).

SECTION 6. This Ordinance providing for a penalty shall become effective fourteen (14) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this ordinance to be published twice in the *Denton Record-Chronicle*, the official newspaper of the City of Denton, Texas, within 10 days of the date of its passage.

PASSED AND APPROVED this the 6th day of May, 2014.

MARK A. BURROUGHS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: Jennifer Walters

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: Stephanie M. Berry