

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS AMENDING SECTION 18-38 OF THE CODE OF ORDINANCES RELATING TO THE USE OF WIRELESS COMMUNICATION DEVICES WHILE DRIVING TO PROHIBIT THE USE OF WIRELESS COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE; 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 there are significant risks relating to distracted driving that include various aspects of the use of wireless communication devices while driving on the City's public roadways; 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: (1) 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, this ordinance is drafted to address the City of Denton police power interests in the regulation of public safety, and appropriately excludes acts for which the City is preempted from regulating, and provides defenses to prosecution to the application of the ordinance, including allowing the use of hands-free device, while a vehicle is stopped, and communications by operators of authorized emergency vehicles; 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. Section 18-38 "Use of wireless communication devices while driving" is hereby amended to 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, "*Stop*" or "*Stopped*" means to stand an occupied or unoccupied vehicle in a location other than a lane of traffic on a roadway.

- (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.
- (d) An operator of a motor vehicle may not use a wireless communication device while operating a motor vehicle on any street or highway within the City of Denton.
- (e) This section does not apply to an operator of a motor vehicle using a wireless communication device:
 - 1. While the vehicle is stopped;
 - 2. The wireless communication device is used with a hands-free device; or
 - 3. That is affixed to the vehicle and used as a global positioning or navigation system.
- (f) 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.
- (g) It is an affirmative defense to prosecution of an offense under this section if a wireless communication device is used:
 - 1. 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;
 - 2. In the reasonable belief that a person’s life or safety is in immediate danger; or
 - 3. Solely in a voice-activated mode.
- (h) 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.

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 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 _____ day of _____, 2016.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: Stephanie M. Berry