

Distracted Driving: A Panel Discussion

FEDERAL REGULATION

Federal Employees

Executive order signed October 1, 2009: directs federal employees not to engage in text messaging while driving government-owned vehicles; when using electronic equipment supplied by the government while driving; or while driving privately owned vehicles when they're on official government business. Also encourages federal contractors and others doing business with the government to adopt and enforce their own policies banning texting while driving on the job

FMCSA (Federal Motor Carrier Safety Administration)

Bans commercial drivers from using handheld mobile phones while operating commercial trucks or buses. Ban includes texting and handheld device dialing and conversation. Federal penalties include \$2,750 for each offense and max \$11,000 for companies allowing drivers to use handheld cell phones.

OSHA

Employers should prohibit any work policy or practice that requires or encourages workers to text while driving, or risk being in violation of the Occupational Safety and Health Act of 1970.

PHMSA (Pipeline and Hazardous Materials Safety Administration)

Bans texting on electronic devices by drivers operating a motor vehicle containing hazardous materials.

National Transportation Safety Board

December 13, 2011: Calls for the 50 states and the District of Columbia to ban the nonemergency use of portable electronic devices (other than those designed to support the driving task) for all drivers, and use the NHTSA model of high-visibility enforcement to support these bans.

STATE REGULATION

Transportation Code, Section 545.424

OPERATION OF VEHICLE BY PERSON UNDER 18 YEARS OF AGE (in part)

- (a) A person under 18 years of age may not operate a motor vehicle while using a wireless communications device, except in case of emergency.
- (b) A person under 17 years of age who holds a restricted motorcycle license or moped license may not operate a motorcycle or moped while using a wireless communications device, except in case of emergency.
- (c) This section does not apply to:
 - (1) the holder of a hardship license;
 - (2) a person operating a motor vehicle while accompanied in the manner required by Section .222(d)(2) for the holder of an instruction permit; or

(3) a person licensed by the Federal Communications Commission to operate a wireless communication device or a radio frequency device.

(e) A peace officer may not stop a vehicle or detain the operator of a vehicle for the sole purpose of determining whether the operator of the vehicle has violated this section.

(f) In this section, "wireless communication device" means a handheld or hands-free device that uses commercial mobile service, as defined by 47 U.S.C. Section 332.

Transportation Code, Section 545.425

USE OF WIRELESS COMMUNICATION DEVICE; OFFENSE.

(a) In this section:

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

(2) "Wireless communication device" means a device that uses a commercial mobile service, as defined by 47 U.S.C. Section 332.

(b) Except as provided by Subsection (c), an operator may not use a wireless communication device while operating a motor vehicle within a school crossing zone, as defined by Section 541.302, Transportation Code, unless:

(1) the vehicle is stopped; or

(2) the wireless communication device is used with a hands-free device.

(b-1) Except as provided by Subsection (b-2), a municipality, county, or other political subdivision that enforces this section shall post a sign that complies with the standards described by this subsection at the entrance to each school crossing zone in the municipality, county, or other political subdivision. The department shall adopt standards that:

(1) allow for a sign required to be posted under this subsection to be attached to an existing sign at a minimal cost; and

(2) require that a sign required to be posted under this subsection inform an operator that:

(A) the use of a wireless communication device is prohibited in the school crossing zone; and

(B) the operator is subject to a fine if the operator uses a wireless communication device in the school crossing zone.

(b-2) A municipality, county, or other political subdivision that by ordinance or rule prohibits the use of a wireless communication device while operating a motor vehicle throughout the jurisdiction of the political subdivision is not required to post a sign as required by Subsection (b-1) if the political subdivision:

(1) posts signs that are located at each point at which a state highway, U.S. highway, or interstate highway enters the political subdivision and that state:

(A) that an operator is prohibited from using a wireless communication device while operating a motor vehicle in the political subdivision; and

(B) that the operator is subject to a fine if the operator uses a wireless communication device while operating a motor vehicle in the political subdivision; and

(2) subject to all applicable United States Department of Transportation Federal Highway Administration rules, posts a message that complies with Subdivision (1) on any dynamic message sign operated by the political subdivision located on a state highway, U.S. highway, or interstate highway in the political subdivision.

(b-3) A sign posted under Subsection (b-2)(1) must be readable to an operator traveling at the applicable speed limit.

(b-4) The political subdivision shall pay the costs associated with the posting of signs under Subsection (b-2).

(c) An operator may not use a wireless communication device while operating a passenger bus with a minor passenger on the bus unless the passenger bus is stopped.

(d) It is an affirmative defense to prosecution of an offense under this section that:

(1) the wireless communication device was used to make an emergency call to:

(A) an emergency response service, including a rescue, emergency medical, or hazardous material response service;

(B) a hospital;

(C) a fire department;

(D) a health clinic;

(E) a medical doctor's office;

(F) an individual to administer first aid treatment; or

(G) a police department; or

(2) a sign required by Subsection (b-1) was not posted at the entrance to the school crossing zone at the time of an offense committed in the school crossing zone.

(d-1) The affirmative defense available in Subsection (d)(2) is not available for an offense under Subsection (b) committed in a school crossing zone located in a municipality, county, or other political subdivision that is in compliance with Subsection (b-2).

(e) This section does not apply to:

(1) an operator of an authorized emergency vehicle using a wireless communication device while acting in an official capacity; or

(2) an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device.

(f) Except as provided by Subsection (b-2), this section preempts all local ordinances, rules, or regulations that are inconsistent with specific provisions of this section adopted by a political subdivision of this state relating to the use of a wireless communication device by the operator of a motor vehicle.

H.B. 242

(1-a) "Text-based communication" means a communication that is designed or intended to be transmitted between wireless communication devices for the purpose of manually communicating in a nonspoken manner with another person in a written medium. The term includes:

(A) a text message;

(B) an instant message; and

(C) e-mail.

(c-1) An operator may not use a hand-held wireless communication device to read, write, or send a text-based communication while operating a motor vehicle unless the vehicle is stopped.

(c-2) An operator is not subject to prosecution under Section (a)(1) if

(1) the operator uses a hand-held wireless communication device:

(A) to read, select, or enter a telephone number or name for the purpose of making a telephone call;

(B) in conjunction with voice-operated technology or a hands-free device; or

(C) to navigate using a global positioning system; or

(2) the hand-held wireless communication device:

(A) is used by the operator to relay information between the operator and a dispatcher in the course of the operator's occupational duties; and

(B) is affixed to the vehicle.

LOCAL REGULATION

El Paso City Code

§ 12.22.010 - Definitions - In this chapter:

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

B. "Stop" or "stopped" means to stand an occupied or unoccupied vehicle in a location other than in a lane of traffic on a roadway.

C. "Wireless communication device" has the meaning assigned in Section 545.425 (Use of Wireless Communication Device; Offense) of the Texas Transportation Code.

(Ord. No. 17286, § 2, 3-9-2010, eff. 4-1-2010)

§ 12.22.020 - Use of wireless communications while driving.

A. An operator of a motor vehicle may not use a wireless communication device while operating a motor vehicle.

B. This section does not apply to an operator of a motor vehicle using a wireless communications device:

1. While the vehicle is stopped; or

2. That is affixed to the vehicle and used as a global positioning or navigation system.

C. It is an affirmative defense to prosecution of an offense under this section if a wireless communications 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;
2. In the reasonable belief that a person's life or safety is in immediate danger; or
3. Solely in a voice-activated or other hands-free mode.

D. 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 communication devices in school crossing zones, or by the operators of school busses, this section does not apply.

(Ord. No. 17286, § 3, 3-9-2010, eff. 4-1-2010)

Austin City Code

§ 12-1-34 ELECTRONIC MESSAGING WHILE DRIVING.

(A) A driver of a motor vehicle may not use a wireless communication device to view, send, or compose an electronic message or engage other application software while operating a motor vehicle.

(B) It is an affirmative defense to prosecution of an offense under this section if a wireless communications device is used:

- (1) while the vehicle is stopped;
- (2) strictly to engage in a telephone conversation, including dialing or deactivating the call;
- (3) as a global positioning or navigation system that is affixed to the vehicle;
- (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;
- (5) in the reasonable belief that a person's life or safety is in immediate danger;
- (6) if the device is permanently installed inside the vehicle; or
- (7) solely in a voice-activated or other hands-free mode.

(C) This section does not apply to an operator of an authorized emergency vehicle using a wireless communication device while acting in an official capacity.

(D) 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 communication devices in school crossing zones, this section does not apply.

Source: Ord. 20091022-028; Ord. 20091217-090.

§ 12-1-2 COMPLIANCE REQUIRED.

(A) A person who performs an act prohibited by this title or fails to perform an act required by this title commits an offense.

(B) Except as otherwise provided in this title, an offense under this title is a Class C misdemeanor punishable by a fine not to exceed \$500.

Arlington City Code

§ 2.15 - Use of Wireless Communication Devices While Driving

A. Definitions. For the purpose of this Section, the following words, terms, phrases and their derivations shall have the meanings as set out below:

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

"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.

"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).

"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.

B. 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 moving motor vehicle. This ordinance shall not apply to public safety personnel in the normal course and scope of performing their duties.

C. It is an affirmative defense to prosecution of an offense under this section if 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 the call;
3. as a global positioning or navigation system that is affixed to the vehicle;
4. to communicate 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 to prevent injury to a person or property;
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.

D. 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 may be conducted to inform the public about the importance and requirements of this new Ordinance. Thereafter, a person convicted of an offense under this section shall be punished by a fine of up to \$200.

E. An offense under this section is not a moving violation and may not be made a part of a person's driving record or insurance record.

ARTICLE II-11 (Amend Ord 11-054, 9/13/11)