

TOWN OF LITTLE ELM

ORDINANCE NO. 1308

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN, BY AMENDING CHAPTER 98, "TRAFFIC AND VEHICLES," BY CREATING AND ADDING ARTICLE IX, "USE OF HAND-HELD WIRELESS COMMUNICATION DEVICES WHILE DRIVING"; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Little Elm ("Town") is a home rule municipal corporation organized and existing by virtue of the Constitution and laws of the State of Texas and by its Charter adopted on May 1, 2001; and

WHEREAS, the Town possesses all the rights, powers, and authorities possessed by all home rule municipalities, including the authority to regulate the operation and movement of vehicles under the Texas Transportation Code; and

WHEREAS, the Town Council desires to protect motorists from unnecessary and preventable motor vehicle crashes caused by distracted driving, to reduce the potential for injury, and to increase public safety; and

WHEREAS, the Town Council has determined that the passage of regulations prohibiting the use of hand-held communication devices while operating a motor vehicle is in the best interests of the Town and of motorists on Town-controlled streets; and

WHEREAS, after due deliberations and consideration, the Town Council has determined that the amendments set forth herein should be adopted, and that such amendments are in the best interests of the public health, safety, and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS:

Section 1. INCORPORATION OF PREMISES. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. ADOPTION. That Article IX is hereby added to Chapter 98, "Traffic and Vehicles," of the Code of Ordinances of the Town of Little Elm, Texas, by adding a new Section 98-210 to read as follows:

**“ARTICLE IX. – USE OF HAND-HELD WIRELESS COMMUNICATION
DEVICES WHILE DRIVING**

Section 98-210. - Regulating the use of hand-held wireless communication devices while driving.

A. Definitions.

In this Section:

(1) Engaging in a call means talking, dialing, or listening on a hand-held wireless communication device, including holding a wireless communication device to activate or deactivate the device.

(2) Hand-held wireless communication device means 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.

(3) Hands-free wireless communication device means 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).

(4) Operating a motor vehicle includes 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.

(5) Park or parked shall mean for the operator to completely cease movement of a motor vehicle in a lawful manner and location. For the purposes of this Section, "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.

(6) 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. This term includes instant messaging and e-mail. The term does not include a communication transmitted through a global positioning or navigation system.

B. Offense.

(1) 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.

(2) 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 device.

(3) It shall be an affirmative defense to prosecution under this section that the person was using a hand-held wireless communication 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; or
- (c) In the reasonable belief that a person's life or safety is in immediate danger.

(4) Only warning citations may be issued from the effective date of the ordinance from which this Section derives through February 29, 2016, so

that an educational effort by the Town may be conducted to inform the public about the importance and requirements of this Section. Thereafter, a person convicted of an offense under this Section shall be fined in accordance with the following:

- (a) First offense shall have a minimum fine of \$100.00 and a maximum fine of \$500.00;
 - (b) Second offense shall have a minimum fine of \$200.00 and a maximum fine of \$500.00; and
 - (c) Third and subsequent offenses shall have a minimum fine of \$500.00.
 - (d) Each day's violations shall constitute a separate and distinct offense. Any prior conviction under this ordinance will count towards a second and third charge regardless of when it occurred.
- (5) 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.
- (6) To the extent that this Section conflicts with the V.T.C.A., Transportation Code § 545.424, as amended, regarding the use of wireless communication devices while operating a motor vehicle by minors, or V.T.C.A., Transportation Code § 545.425, as amended, regarding use of wireless communication devices in school crossing zones, state law shall control.”

Section 3. PENALTY. A person commits an offense, if he or she knowingly performs an act prohibited by this ordinance or knowingly fails to perform an act required by this ordinance. Any person who violates any provision of this ordinance shall be subject to a fine of not more than \$500 for each offense.

Section 4. SAVINGS. This ordinance shall be cumulative of all other ordinances of the Town, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this ordinance; provided, however, that any complaint, notice, action, cause of action, or claim which prior to the effective date of this ordinance has been initiated or has arisen under or pursuant to such other ordinance(s) shall continue to be governed by the provisions of that ordinance or those ordinances, and for that purpose that ordinance or those ordinances shall be deemed to remain and shall continue in full force and effect.

Section 5. SEVERABILITY. The sections, paragraphs, sentences, phrases, clauses and words of this ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and the Town Council hereby declares that it would have passed

such remaining portions of this ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 6. REPEALER. That all ordinances of the Town of Little Elm in conflict with the provisions of this ordinance are hereby repealed to the extent of that conflict.


Section 7. EFFECTIVE DATE. That this Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED this the 5th day of JANUARY, 2016.

The Town of Little Elm, Texas


David Hillock, Mayor

ATTEST:


Kathy Phillips, Town Secretary



TOWN OF LITTLE ELM

AGENDA INFORMATION SHEET:

COUNCIL MEETING DATE: January 5, 2016

PROJECT: Consider and Act on Ordinance No. 1308 "Use of Hand-Held Wireless Communication Devices While Driving" to prohibit the use of hand-held devices while operating a motor vehicle.

DESCRIPTION: The proposed Ordinance was discussed at the December 1, 2015 Workshop. Town Council viewed other town/cities ordinances regarding the regulating and use of hand-held communication devices. Council agreed that the Town has an obligation to take the reasonable steps to keep our community safe and directed Staff to prepare and ordinance for consideration at the January 5, 2016 meeting.

COST: N/A

FUNDING: N/A

SCHEDULE: Effective after execution and Ordinance caption published.

RECOMMENDED ACTION: It is recommended that Council consider the Adoption of Ordinance No. 1308.

ATTACHMENT: Copy of Ordinance No. 1308

TOWN CONTACT: Greg Wilkerson, Assistant Police Chief
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