

ORDINANCE NO. O2019.07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 19, ARTICLE IV, TEMPE CITY CODE, RELATING TO MOTOR VEHICLES AND TRAFFIC, OPERATION OF VEHICLES, BY AMENDING SECTION 19-55 RELATING TO UNLAWFUL USE OF A MOBILE ELECTRONIC DEVICE, AND DECLARING THE EXISTENCE OF AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 19, Article IV, Section 19-55 of the Tempe City Code is hereby amended to read as follows:

Sec. 19-55. - Unlawful use of a mobile electronic device.

- (a) It shall be unlawful for any person to operate a motor vehicle while ~~using~~ HOLDING a mobile electronic device, ~~if such driving constitutes a risk to that person or others. No law enforcement officers shall issue a citation pursuant to this section unless the law enforcement officer observes or has credible evidence that the operator of the vehicle is involved in an accident or observes or has credible evidence that the operator of the vehicle is driving in such a manner that poses an articulable danger to that person or other persons on the roadway that is not otherwise specified in statute.~~ TYPING ON OR OTHERWISE MANUALLY OPERATING A MOBILE ELECTRONIC DEVICE UNLESS THE VEHICLE IS PARKED OR STOPPED PURSUANT TO ARIZONA REVISED STATUTES SECTION 28-645.A.3 OR SECTION 28-851.
- (b) Definitions.

Mobile electronic device means any handheld or other portable electronic equipment capable of providing wireless or data communication between two (2) or more persons or of providing amusement, including by not limited to a cellular phone, text messaging device, paging device, personal digital assistant, laptop computer, video game, or digital photographic device, but does not include any audio equipment or any equipment installed ~~to~~ IN the motor vehicle for the purpose of providing navigation, emergency assistance to the operator of the motor vehicle, or video entertainment to the passengers in the rear seat of the motor vehicle.

~~Use or using means holding a mobile electronic device while operating a motor vehicle.~~

Hands-free accessory means an attachment, add-on, built-in feature, or addition to the mobile telephone, whether or not permanently installed to the motor vehicle, that, when used, allows the vehicle operator to maintain both hands on the steering wheel.

OPERATING a motor vehicle means TO OPERATING a motor vehicle on any right of way including being temporarily stationary due to traffic, road conditions or traffic control sign or signal, but not including being parked on the side or shoulder of any right of way where such vehicle is safely able to maintain stationary.

- (c) Exceptions. The provisions of this section do not apply to:
 - (1) Emergency responders using a mobile electronic device while in the performance and the scope of their official duties;
 - (2) A driver who is reporting a medical emergency, a safety hazard or criminal activity, or who is requesting assistance related to a medical emergency, a safety hazard, or criminal activity;
 - (3) A driver using a two-way radio or a private Land Mobile Radio System, within the meaning of Title 47 Code of Federal Regulations Part 90, while in the performance and scope of their work-related duties and who are operating fleet vehicles or who possess a commercial vehicle license; or
 - (4) A driver holding a valid amateur radio operator license issued by the Federal Communications Commission and using a half-duplex two-way radio;
 - (5) A driver using a mobile electronic device in hands-free or voice-operated mode, and
 - (6) A driver using a mobile electronic device while parked on the shoulder of a roadway.
- (d) ~~Aggravated. A person commits aggravated use of a mobile electronic device when he or she violates subsection (a) and in committing the violation he or she was involved in a motor vehicle accident that results in great bodily harm, permanent disability, disfigurement, or death to another and the violation was a proximate cause of the injury or death.~~
- (e) Penalties. Any person who violates section (a) shall be guilty of a civil violation and shall be fined one hundred dollars (\$100.00) plus penalty assessment for the first offense, two hundred fifty dollars (\$250.00) plus penalty assessment for a second offense, and five hundred dollars (\$500.00) plus penalty assessment for any subsequent offense within a twenty-four (24) month period. ~~Any person who violates subsection (d) shall be guilty of a Class 1 Misdemeanor.~~

Section 2. Emergency. Because of potential fatalities caused by distracted driving, the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health, safety and general welfare of the community, an emergency is hereby declared

to exist and this Ordinance shall be in full force and effect from and after its adoption by the City Council of the City of Tempe.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 28th day of February, 2019.

/s/

Mark W. Mitchell, Mayor

ATTEST:

/s/

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

/s/

Judith R. Baumann, City Attorney