

ORDINANCE NO. 2011- 04

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF McALLEN, TEXAS, CHAPTER 102 ("TRAFFIC AND VEHICLES"), TO ADD NEW SECTION TO PROHIBIT THE CERTAIN USE OF WIRELESS COMMUNICATIONS DEVICES WHILE OPERATING A MOTOR VEHICLE; CREATING AN OFFENSE; PROVIDING FOR PUBLICATION, AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, the City of McAllen Board of Commissioners finds that there are significant risks relating to distracted driving that include various aspects of the use of wireless communications devices while driving on the City's public roads; and

WHEREAS, prohibiting the use of wireless communications devices while driving in the City of McAllen, to the extent allowed by Section 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 McAllen's 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 and exceptions to the application of the ordinance, including allowing the use of hands-free mobile telephone communications, emergency communications, and communications by operators of emergency vehicles.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MCALLEN, TEXAS, THAT:

SECTION I: Section 102-1 ("Definitions") of Chapter 102 of the Code of

Ordinances of the City of McAllen, Texas is amended to add the following definitions which shall read as follows:

Sec. 102-1. Definitions.

[...]

Authorized government vehicle means a motor vehicle owned by the United States, the State of Texas or a political subdivision of the State of Texas.

[...]

Electronic message means a self-contained piece of digital communication that is designed or intended to be transmitted to or from a wireless communication device, other than a voice message. An electronic message includes, but is not limited to, a text-based communication, a nonverbal command or request to access or receive information from an internet site, electronic mail, a text message, an instant message or such other data that uses a commonly recognized electronic communications protocol.

[...]

Operate or operating means to drive or be in physical control of a motor vehicle that is in motion.

Operator means a person who drives or has physical control of a motor vehicle.

[...]

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

SECTION II: New Section 102-60 is added to Chapter 102, Article V (“Operation of Vehicles”), Division 1 (“Generally”) of the Code of Ordinances of the City of McAllen, Texas to read as follows:

Sec. 102-60. Use of a Wireless Communication Device; Offense.

- (a) It shall be unlawful for an operator of a motor vehicle to use a wireless communication device to view, send or compose an electronic message or manually engage other application software while operating a motor vehicle upon any roadway in the city, including when stopped, except as provided in subsection (b)(2).

(b) It is an exception to the prohibition in subsection (a) if:

- (1) an operator of a motor vehicle uses a wireless communication device to strictly engage in a telephone conversation or to listen to a voicemail message, including dialing or deactivating a phone call;
- (2) an operator of a motor vehicle uses a wireless communication device while stopped or standing at a position parallel to and as close as possible to the right hand edge or curb or a roadway where parking, standing or stopping in a nonemergency situation is not otherwise prohibited; or
- (3) an operator of a motor vehicle uses a wireless communication device solely in a voice-activated or other hands-free mode.

(c) It is an affirmative defense to prosecution of conduct prohibited in subsection (a) if:

- (1) an operator of an authorized government vehicle uses a wireless communication device to respond to an emergency while acting in an official capacity while operating an authorized government vehicle;
- (2) an operator of a motor vehicle uses a wireless communication device to:
 - i. operate only a global positioning or navigation system;
 - ii. obtain emergency assistance by contacting an emergency response service, including a rescue, emergency medical, or hazardous material response service; a hospital; a fire department; a law enforcement agency; a medical doctor's office; or an individual to administer first aid treatment;
 - iii. obtain emergency assistance to prevent a crime about to be committed;
 - iv. report a traffic accident or serious traffic hazard; or
 - v. communicate with the reasonable belief that a person's life, safety or property is in immediate danger.

(d) *Conflicting regulations.* To the extent that any clause, phrase, provision, sentence or part of this section conflicts with the Texas Transportation Code Section 545.424, regarding the use of wireless communications 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.

SECTION III: The City Secretary is hereby authorized and directed to cause the caption of this ordinance to be published in a newspaper having general circulation in McAllen, Hidalgo County, Texas in accordance with the Code of Ordinances of the City of McAllen Section 2-56. Publication of Ordinances.

SECTION IV: The City Secretary of the City of McAllen is hereby authorized and directed to cause the language in the new Section 138-43 of the McAllen Code of Ordinances, as amended by Section I hereinabove, to be published in the appropriate location in the said Code of Ordinances.

SECTION V: This Ordinance shall be and remain in full force and effect from and after its passage by the Board of Commissioners, and execution by the Mayor.

SECTION VI: If any part or parts of this Ordinance are found to be invalid or unconstitutional by a court having competent jurisdiction, then such invalidity or unconstitutionality shall not affect the remaining parts hereof and such remaining parts shall remain in full force and effect, and to that extent this Ordinance is considered severable.

CONSIDERED, PASSED and APPROVED this 24th day of January, 2011, at a regular meeting of the Board of Commissioners of the City of McAllen, Texas at which a quorum was present and which was held in accordance with Chapter 551 of the Texas Government Code, and Chapter 102 of the Texas Local Government Code.

SIGNED this 25th day of January, 2011.



CITY OF McALLEN

Richard F. Cortez

Richard F. Cortez, Mayor

ATTEST:

Annette Villarreal

Annette Villarreal, TRMC, CMC, CPM
City Secretary

Approved as to form:

Kevin D. Pagan

Kevin D. Pagan, City Attorney