

**CITY OF LAKEWAY**

**ORDINANCE NO. 2015-04-20-05**

**“HAND-HELD MOBILE COMMUNICATION DEVICES”**

**AN ORDINANCE OF THE CITY OF LAKEWAY, TEXAS, AMENDING THE LAKEWAY MUNICIPAL CODE, CHAPTER 18, “TRAFFIC AND VEHICLES,” BY ADOPTING A NEW ARTICLE 18.07, TO BE ENTITLED “HAND-HELD MOBILE COMMUNICATION DEVICES”; PROHIBITING THE USE OF HAND-HELD MOBILE COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE OR BICYCLE; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING PENALTY UP TO \$500.00; AND PROVIDING FOR FINDINGS OF FACT, ENACTMENT, EDUCATION AND ENFORCEMENT, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.**

WHEREAS, the National Highway Transportation Safety Administration found that in 2012, at least 3,328 people were killed and 421,000 were injured in distraction-related vehicle crashes, and that in 2013 at least 3,154 people were killed in distraction-related vehicle crashes, while about 424,000 people were injured in all distraction-affected crashes that year; and

WHEREAS, the National Highway Transportation Safety Administration found that text messaging creates a crash risk 23 times worse than driving while not distracted; and

WHEREAS, the City of Lakeway Police has found that the number of distracted driving crashes in the City is increasing; and

WHEREAS, the City Council of the City of Lakeway, Texas, (“City Council”) seeks to minimize distracted driving and cycling within the City and increase safety on the City’s streets and highways; and

WHEREAS, Chapter 311, Texas Transportation Code, grants the City Council control over public rights-of-way within the City’s corporate boundaries; and

WHEREAS, section 545.425, Texas Transportation Code, authorizes municipalities to regulate motor vehicle operators’ use of wireless communications devices; and

WHEREAS, the City Council finds that the provisions of this ordinance are in the best interest of the City of Lakeway and adopted in order to preserve the health, welfare, and safety of the City and its citizens;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAKEWAY, TEXAS:

**Article 1. Findings of Fact**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

**Article 2. General**

**Section 2.01 Authority.**

This ordinance is adopted under the authority of the Constitution and laws of the State of Texas, particularly including Chapter 311 of the Texas Transportation Code, pursuant to which the City has exclusive control over its public rights-of-way.

**Section 2.02 Purpose.**

The purpose of this ordinance is to enact regulations regarding the use of hand-held mobile communication devices, and to establish an offense and penalty related to such.

**Article 3. Enactment**

Chapter 18, "Traffic and Vehicles," of the City of Lakeway Code of Ordinances is hereby amended by adopting a new Article 18.07, to be entitled, "Hand-Held Mobile Communication Devices," and shall read in accordance with *Attachment A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text in the said *Attachment A* shall be inserted into the Code and any struck-through text therein shall be deleted from the Code.

**Article 4. Education and Enforcement**

The City Council of Lakeway hereby directs the Chief of Police of the City of Lakeway to allow for an education and acclimation period for drivers until June 30, 2015. As of July 1, 2015, with the full support of this council, the Lakeway Police department may begin enforcement of this ordinance.

**Article 5. Severability**

Should any sentence, paragraph, subdivision, clause, phrase, or section of this ordinance be adjusted or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance in whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

**Article 6. Repealer**

The provisions of this ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance.

**Article 7. Effective Date**

This ordinance shall take effect immediately from and after its passage and publication as may be required by law.

**Article 8. Proper Notice and Meeting**

It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Government Code.

**PASSED & APPROVED** this, the 20th day of April, 2015, by the City Council of the City of Lakeway, Texas.

**CITY OF LAKEWAY:**

by: David P. DeOme

Mayor David P. DeOme

**ATTEST:**

Jo Ann Touchstone

Jo Ann Touchstone, City Secretary



Attachment "A"

City of Lakeway

**CODE OF ORDINANCES**

**CHAPTER 18: TRAFFIC AND VEHICLES**

Article 18.07 Hand-Held Mobile Communication Devices

Sec. 18.07.001 Definitions

In this article:

- (1) *Bicycle* means a device that a person may ride and that is propelled by human power and has two tandem wheels at least one of which is more than 14 inches in diameter.
- (2) *Engaging in a call* means dialing, talking, or listening on a hand-held mobile communication device, but does not include holding a mobile communication device to activate or deactivate the device.
- (3) *Hand-held mobile communication device* means a text-messaging device or other electronic, two-way communication device that uses a commercial mobile service, as defined by 47 U.S.C. § 332, that is designed or used to receive and/or transmit voice communication, text message and/or pictorial communication, whether by internet or any electronic means. The term includes a mobile telephone, and a personal digital assistant (PDA).
- (4) *Hands-free mobile telephone* means a mobile telephone that has an internal feature or function or that is equipped with an attachment or addition, whether or not permanently a part of the mobile telephone, by which a user engages in a call without the use of either hand (or prosthetic device or aid) whether or not the use

of either hand (or prosthetic device) is necessary to activate or deactivate the mobile telephone.

(5) To operate a bicycle means to be in physical possession or in control of a bicycle while the bicycle is in motion.

(6) Park or parked shall mean for the operator to completely cease movement of a motor vehicle or bicycle in a lawful manner and location. For purposes of this section, "parked" does not include or mean a motor vehicle or bicycle stopped in a lane of traffic for any reason, including due to either a lawful traffic control device, or the conditions on the roadway, or traffic congestion patterns then existing.

(7) Text message means a 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 that may be transmitted through either a short message service (SMS) or a computer network. The term does not include a communication transmitted through a global positioning or navigation system.

Sec. 18.07.002 Use of hand-held mobile communication devices prohibited

(a) A person commits an offense if, while on a public roadway or on any private street in an area described under section 18.02 of this code, while operating a motor vehicle or a bicycle the person uses a hand-held mobile communication device to:

(1) engage in a call;

(2) send, read, or write a text message;

(3) view pictures or written text whether transmitted by internet or other electronic means;

(4) engage in gaming or any application software; or

(5) engage in any other use of the device.

(b) This section does not apply to an operator of a motor vehicle or bicycle who is using a hand-held mobile communication device:

(1) if the device is being used as a hands-free mobile telephone or electronic device, whether through Bluetooth or other technology;

(2) while operating an authorized emergency vehicle in an official capacity; or

(3) who is licensed by the Federal Communications Commission and who is operating a radio frequency device other than a hand held mobile communication device.

(c) It is an affirmative defense to prosecution under this section if the person was using a hand-held mobile communication device:

- (1) while the vehicle or bicycle was legally parked or was being operated on private property;
- (2) which was affixed to the vehicle, whether permanently or temporarily, and was being actively utilized as a global positioning or navigation system;
- (3) which was being used as a hands-free mobile telephone, whether through Bluetooth or other technology;
- (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; or
- (5) to report illegal activity or summon emergency help.

Sec. 18.087.003          Signage

After consulting with the chief of police, the city manager is authorized and directed to have the appropriate signs posted at each point at which a state highway, U.S. highway, or interstate highway enters the City, and to in every way comply with the requirements of Texas Transportation Code section 545.425(b-2).

Sec. 18.07.004          Penalty

- (a) A person convicted of an offense under this section shall be punished by a fine of not more than one hundred dollars (\$100.00) for a first offense and not more than five hundred dollars (\$500.00) for any subsequent offense.
- (b) 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.