

**CITY OF LAKEWAY, TEXAS**

**ORDINANCE NO. 2018-11-19-04**

**AN ORDINANCE OF THE CITY OF LAKEWAY, TEXAS, AMENDING THE CODE OF ORDINANCES, TITLE I: GENERAL ORDINANCES; CHAPTER 18: TRAFFIC AND VEHICLES; ARTICLE 18.07 HANDHELD MOBILE COMMUNICATION DEVICES; SEC. 18.07.001: DEFINITIONS; SEC. 18.07.002: USE PROHIBITED; AND PROVIDING FOR SEVERABILITY, REPEALER, AND AN EFFECTIVE DATE.**

**WHEREAS,** the City Council seeks to promote the health, safety, and general welfare within the City of Lakeway, Texas (“City”) by preventing death, injuries, and property damage caused by distracted driving; and

**WHEREAS,** pursuant to Texas Transportation Code Chapter 311 the City has control over public rights-of-way within its corporate boundaries; and

**WHEREAS,** pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an Ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

**WHEREAS,** The Texas Legislature passed HB 62 in 2017, making it a violation of the Texas Transportation Code to use a portable wireless communication device to read, write, or send an electronic message while operating a motor vehicle unless the vehicle is stopped; and

**WHEREAS,** HB 62 preempts municipal ordinances regulating the use of wireless communication devices to read, write, or send an electronic message while operating a motor vehicle; and

**WHEREAS,** Municipalities may still adopt and enforce ordinances making a violation to use wireless communication devices in other ways within the city limits; and

**WHEREAS,** The City Council finds that regulating the use of wireless communication devices while operating a vehicle on a public right-of-way is reasonable and necessary for the good government, peace, and order of the City.

**NOW, THEREFORE BE IT ORDAINED** by the City Council of the City of Lakeway, Texas:

## 1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

## 2. AMENDMENT

Title I (General Ordinances) Chapter 18 (Traffic and Vehicles); Article 18.07 (Handheld Mobile Communication Devices), Sec. 18.07.001 (Definitions) and Sec. 18.07.002 (Use Prohibited) of the City of Lakeway Code of Ordinances is hereby amended as follows:

### “ARTICLE 18.07 HANDHELD MOBILE COMMUNICATION DEVICE WIRELESS COMMUNICATION DEVICE

#### Sec. 18.07.001 Definitions

In this article:

~~*Bicycle.* 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.~~

~~*Engaging in a call.* Dialing, talking, or listening on a handheld mobile wireless communication device, but does not include holding a mobile wireless communication device to activate or deactivate the device.~~

~~*Handheld mobile communication device-Wireless communication device.* A text messaging device or other electronic, two-way communication device that uses a commercial mobile service, as defined by 47 U.S.C. section 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).~~

~~*Hands-free mobile telephone.* 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.~~

~~*Motor Vehicle.* A self-propelled vehicle or a vehicle that is propelled by electric power from overhead trolley wires. The term does not include an electric bicycle or an electric personal assistive mobility device.~~

~~*Park or parked.* 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.~~

**Stop or Stopped.** To completely cease movement of a motor vehicle.

~~Text message. 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.~~

~~To operate a bicycle. To be in physical possession or in control of a bicycle while the bicycle is in motion.~~

### **Sec. 18.07.002 Use prohibited**

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

- (1) Engage in a call;
- (2) ~~View or interact with websites or web pages~~ send, read, or write a text message;
- (3) View pictures or video files ~~written text~~ whether transmitted by internet or other electronic means or stored locally on the device;
- (4) Engage in gaming or use of any application software; or
- (5) ~~Engage in any other use of the device~~ Activate a camera or take a picture or video.

(b) This section does not apply to an operator of a motor vehicle ~~or bicycle~~ who is using a handheld ~~mobile~~ wireless 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 handheld ~~mobile~~ wireless communication device.

(c) It is an affirmative defense to prosecution under this section if the person was using a handheld ~~mobile~~ wireless communication device:

- (1) While the vehicle ~~or bicycle~~ was legally stopped-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. 18.07.003 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).

(Ordinance 2015-04-20-05 adopted 4/20/15)

**Sec. 18.07.004 Penalty**

(a) A person convicted of an offense under this article shall be punished by a fine of not more than five hundred dollars (\$500.00) for any offense.

(b) An offense under this article is not a moving violation and may not be made a part of a person's driving record or insurance record.

(Ordinance 2016-08-15-02, att. A, adopted 7/18/16)"

**3. SEVERABILITY**

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this Ordinance.

**4. REPEALER**

All Ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated herein.

**5. EFFECTIVE DATE**

This Ordinance shall be effective immediately upon passage and publication as provided for by law.

**6. PROPER NOTICE & MEETING**

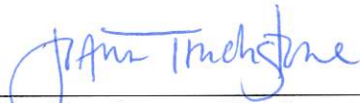
It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, and Chapter 551. Notice was also provided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

**PASSED & APPROVED this, the 19<sup>th</sup> day of November, 2018, by the City Council of Lakeway, Texas.**

**CITY OF LAKEWAY:**

By:   
Sandra L. Cox, Mayor

**ATTEST:**

  
Jo Ann Touchstone, City Secretary

