

ORDINANCE NO. 1 , 2013

AN ORDINANCE IMPLEMENTING PROHIBITIONS AGAINST USING WIRELESS COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE

WHEREAS, the use of wireless communication devices while driving has become a growing problem and has caused drivers to become distracted increasing the risk of traffic accidents; and

WHEREAS, the City of Montgomery desires to update the Code of Ordinances to reflect the current changes in the State Code to restrict the use of such wireless communication devices.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. Section 73.08 of the Code of Ordinances entitled, Prohibition Against Text-based Communication While Driving, shall be adopted as follows:

(A) No person shall operate a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication

(B) Division (A) of this section does not apply to any of the following:

(1) A person using a handheld electronic wireless communications device in that manner for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;

(2) A person driving a public safety vehicle who uses a handheld electronic wireless communications device in that manner in the course of the person's duties;

(3) A person using a handheld electronic wireless communications device in that manner whose motor vehicle is in a stationary position and who is outside a lane of travel;

(4) A person reading, selecting, or entering a name or telephone number in a handheld electronic wireless communications device for the purpose of making or receiving a telephone call;

(5) A person receiving wireless messages on a device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle;

(6) A person receiving wireless messages via radio waves;

(7) A person using a device for navigation purposes;

(8) A person conducting wireless interpersonal communication with a device that does not require manually entering letters, numbers, or symbols or reading text messages, except to activate, deactivate, or initiate the device or a feature or function of the device;

(9) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;

(10) A person using a handheld electronic wireless communications device in conjunction with a voice-operated or hands-free device feature or function of the vehicle.

(C) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of a motor vehicle being operated on any street or highway to stop the motor vehicle for the sole purpose of determining whether a violation of division (A) of this section has been or is being committed nor for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature, or causing the arrest of, or commencing a prosecution of, a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any motor vehicle being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(D) Whoever violates division (A) of this section is guilty of a minor misdemeanor.

(E) As used in this section:

(1) "Electronic wireless communications device" includes any of the following:

- (a) A wireless telephone;
- (b) A text-messaging device;
- (c) A personal digital assistant;
- (d) A computer, including a laptop computer and a computer tablet;
- (e) Any other substantially similar wireless device that is designed or used to communicate text.

(2) "Voice-operated or hands-free device" means a device that allows the user to vocally compose or send, or to listen to a text-based communication without the use of either hand except to activate or deactivate a feature or function.

(3) "Write, send, or read a text-based communication" means to manually write or send, or read a text-based communication using an electronic wireless communications device, including manually writing or sending, or reading communications referred to as text messages, instant messages, or electronic mail.

SECTION 2. Section 73.09 of the Code of Ordinances entitled, Prohibition against person less than 18 years of age from using electronic wireless communication device while driving, shall be adopted as follows:

(A) No holder of a temporary instruction permit who has not attained the age of eighteen (18) years and no holder of a probationary driver's license shall operate a motor vehicle on any street, highway, or property used by the public for purposes of vehicular traffic or parking, while using in any manner an electronic wireless communications device.

(B) Division (A) of this section does not apply to either of the following:

(1) A person using an electronic wireless communications device for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;

(2) A person using an electronic wireless communications device whose motor vehicle is in a stationary position and the motor vehicle is outside a lane of travel;

(3) A person using a navigation device in a voice-operated or hands-free manner who does not manipulate the device while driving.

(C) (1) Except as provided in division (C)(2) of this section, whoever violates division (A) of this section shall be fined up to One Hundred Fifty Dollars (\$150.00). In addition, the court shall impose a class seven suspension of the offender's driver's license or permit for a definite period of sixty (60) days.

(2) If the offender previously has been convicted of a violation of this section, whoever violates this section shall be fined up to Three Hundred Dollars (\$300.00). In addition, the court shall impose a class seven suspension of the offender's driver's license or permit for a definite period of one (1) year.

(D) As used in this section, "electronic wireless communications device" includes any of the following:

- (1) A wireless telephone;
- (2) A personal digital assistant;
- (3) A computer, including a laptop computer and a computer tablet;
- (4) A text-messaging device;
- (5) Any other substantially similar electronic wireless device that is designed or used to communicate via voice, image, or written word.

SECTION 3. All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

SECTION 4. The section and subsections of this Ordinance are hereby declared to be independent sections, subsections, parts and provisions, and the holding of any section, subsection, part or provision to be unconstitutional, void or ineffective, for any cause, shall not affect or render invalid any other section, subsection, part or provision of this Ordinance.

SECTION 5. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: January 2, 2013

ATTEST: *Susan J. Hamm*
Susan J. Hamm, Clerk of Council

Ken Suer
Ken Suer, Mayor

APPROVED AS TO FORM:
Terrence M. Donnellon
Terrence M. Donnellon, Law Director