

ORDINANCE NO. 184-092015

AN ORDINANCE PROHIBITING THE USE OF A HAND-HELD MOBILE COMMUNICATION DEVICE TO ENGAGE IN A CALL, OR SEND, READ OR WRITE A TEXT MESSAGE, OR ENGAGE IN ANY OTHER USE OF THE DEVICE WHILE OPERATING A MOVING MOTOR VEHICLE WITHIN THE CITY LIMITS OF GARDEN RIDGE, PROVIDING FOR A PENALTY, PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council finds that using a hand-held mobile telephone (cell phone) while operating a motor vehicle has the potential to distract a driver from operation of a motor vehicle and cause the driver to concentrate less on driving safely; and

WHEREAS, the City Council finds using a hand-held mobile telephone while operating a motor vehicle has the potential to limit the person's ability to steer and maneuver said motor vehicle, and

WHEREAS, the City Council finds that the use of a hand-held mobile communication device to 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 5) engaging in any other use of the device while operating a moving motor vehicle is a traffic hazard and a danger to the public, which creates a particular danger or probability of danger in the City of Garden Ridge; and

WHEREAS, the City Council desires to prohibit the use of hand-held mobile communication devices to engage in use of a mobile communication device while driving as contained herein and consistent with Texas law; and

WHEREAS, the City Council desires to implement these rules and regulations in order to protect the health, safety and welfare of the citizens and community of the City of Garden Ridge.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARDEN RIDGE, TEXAS THAT:

Section 1. Findings. The findings set out herein are found to be true and correct and are hereby adopted by the City Council and made a part of this Ordinance for all purposes.

Section 2. Definitions.

- (a) *ENGAGING IN A CALL* means talking to, dialing, or listening on a hand-held mobile communication device, but does not include holding a mobile communication device to activate or deactivate the device.
- (b) *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 to receive and transmit voice communication, text message or pictorial communication, or both, whether by internet

or other electronic means. The term includes a mobile telephone, and a personal digital assistant (PDA).

- (c) *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 part of the mobile telephone, by which a user engages in a call without the use of either hand (or prosthetic device or aid in the case of a physically disabled person) whether or not the use of either hand (or prosthetic device) is necessary to activate or deactivate the mobile telephone.
- (d) *PARK OR PARKED* means for the operator to completely cease movement of a motor vehicle in a lawful manner and location. For purposes of this Section, "Parked" does not include or mean a vehicle stopped in a lane of traffic due to either a lawful traffic control device, or the conditions on the roadway, or traffic congestion patterns then existing.
- (e) *TEXT MESSAGE* means a two-way 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 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.

Section 3. Offense.

- (a) A person commits an offense if 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 5) engage in any other use of the device while operating a moving motor vehicle.
- (b) This section does not apply to an operator of a motor vehicle using a hand-held mobile communications device:
 - 1) while the vehicle is legally parked or is being driven on private property;
 - 2) that is affixed to the vehicle and used as a global positioning or navigation system;
 - 3) that is used with a hands-free mobile communication telephone or other such device;
 - 4) while operating an authorized emergency vehicle in an official capacity; or
 - 5) who is licensed by the Federal Communications Commission while operating a radio frequency device other than a hand held mobile communication device.
- (c) It shall be an affirmative defense to prosecution under this section that the person was using a hand-held mobile communication device for the purpose of:
 - 1) executing the person's official duties;
 - 2) reporting illegal activity to a law enforcement agency;

- 3) communicating 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
- 4) preventing injury to a person or property.

Section 4. Penalty.


- (a) Only warning citations may be issued for the first 30 days following the effective date of this ordinance so that an education effort by the City of Garden Ridge may be conducted to inform the public about the importance and requirements of this new ordinance. Any person who shall violate any of the provisions of this ordinance or fail to comply therewith shall be deemed guilty of a Class C Misdemeanor and, upon conviction shall be fined not more than Two Hundred dollars (\$200.00).
- (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.
- (c) In addition to enforcement by a peace officer of the City of Garden Ridge, this section may be enforced by a peace officer of another entity, including those employed by school districts, duly authorized to issue traffic citations within the City of Garden Ridge.

Section 4. Cumulative and Savings. This Ordinance shall be cumulative of all provisions of ordinances of the City of Garden Ridge City, Texas, except where the provisions of the ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. Any and all previous versions of this Ordinance to the extent that they are in conflict herewith are repealed.

Section 6. Severability. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section. The provisions of state law will govern in the event of a conflict.

Section 7. Effective Date. This Ordinance shall be in full force and effect from and after its final passage and any publication required by law.

PASSED AND APPROVED this 22nd day of September, 2015.


Nadine Knaus, Mayor

ATTEST:


Shelley Goodwin, City Secretary

PUBLISHED IN THE NEW BRAUNFELS HERALD ON TUESDAY, SEPTEMBER 8, 2015.