

ORDINANCE NO. 2015-006

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, AMENDING TITLE VII (TRAFFIC REGULATIONS) OF THE CITY OF WIMBERLEY CODE OF ORDINANCES TO ADD A NEW CHAPTER 72 RELATING TO THE USE OF A PORTABLE ELECTRONIC DEVICE WHILE OPERATING A VEHICLE; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT, SAVINGS, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the City of Wimberley has exclusive control over the highways and streets of the municipality pursuant to section 311.002 of the Texas Transportation Code; and

WHEREAS, the City Council has reviewed or received reports on national data indicating that texting and the use of cellphones, smart phones, and similar handheld devices creates undue distractions for persons who operate motor vehicles or bicycles on streets and highways; and

WHEREAS, such studies are reliably and clearly presented on the website of the United States Government DISTRACTION.GOV, and those findings are incorporated herein by reference; and

WHEREAS, the City Council finds that prohibiting the use of hand-held mobile communication devices while driving will further and protect the public health, safety, and welfare;

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

SECTION I. 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.

SECTION II. AMENDMENTS

The City of Wimberley Code of Ordinances, Title VII (Traffic Regulations), is hereby amended to add a new Chapter 72 as follows:

**“USE OF A PORTABLE ELECTRONIC DEVICE
WHILE OPERATING A VEHICLE**

§ 72.01 DEFINITIONS

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words and phrases which are not defined in this subchapter but are defined in the Texas Transportation Code or other ordinances or code provisions of the city shall be given the meanings set forth in those ordinances or in the Texas Transportation Code.

AUTHORIZED EMERGENCY PERSONNEL. A person who is a law enforcement officer, firefighter, a governmental medical emergency medical services provider, or a governmental emergency management provider.

HANDS-FREE MODE OF OPERATION. Use of a portable electronic device that has an internal feature or function or that is equipped with an attachment or addition, whether or not permanently part of the portable electronic device, by which a person uses the portable electronic device without the use of either hand (or prosthetic device or aid in the case of a physically disabled person) regardless of whether the use of either hand (or prosthetic device) is necessary to activate or deactivate the portable electronic device.

PORTABLE ELECTRONIC DEVICE. A handheld mobile telephone, personal digital assistant, MP3 or other hand-held music player, electronic reading device, laptop computer, pager, broadband personal communication device, global positioning or navigation system, electronic game device, or portable computing device.

USE. Employing a portable electronic device for any reason including, without limitation, the following activities while holding or touching the device:

- (1) dialing or deactivating a phone call;
- (2) speaking in or listening to a conversation;
- (3) viewing, taking, or transmitting electronic images;
- (4) composing, sending, viewing, accessing, browsing, retrieving, or saving email messages, text messages, or other electronic data;
- (5) entering or changing information in a global positioning or navigation system or any software or application designed for navigation;
- (6) accessing or viewing an Internet website or computer application; or
- (7) playing a game.

§ 72.02 OFFENSES

An operator of a vehicle on a public street or highway may not use a portable electronic device while the vehicle is in motion.

§ 72.03 DEFENSES TO PROSECUTION

It is an affirmative defense to prosecution under this section if:

- (A) the vehicle is at a complete stop;
- (B) the portable electronic device is used in a hands-free mode of operation and used to engage in telephone communication or to listen to audio transmissions;
- (C) the portable electronic device is a global positioning or navigation device, or global positioning or navigation software on a device, and the device is affixed to the motor vehicle or bicycle;
- (D) use of a portable electronic device is for obtaining emergency assistance to report a crime, traffic accident, medical emergency, or serious traffic hazard, or to prevent an imminent crime from being committed; or
- (E) use of a portable electronic device is in the reasonable belief that a person's life or safety is in immediate danger.

§ 72.04 EXCEPTIONS

This section does not apply to the following:

- (A) use of a portable electronic device by a person who is authorized emergency personnel when used solely for the performance of that person's official duties;
- (B) use of a radio frequency device other than a portable electronic device by an operator who is licensed by the Federal Communications Commission; or
- (C) use of a two-way radio communication device in a commercial vehicle."

SECTION III. SAVINGS

The repeal of any ordinance or part of ordinances effectuated by the enactment of this Chapter shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this Chapter.

SECTION IV. SEVERABILITY

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

SECTION V. REPEALER

The provisions of this Chapter 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 Chapter are hereby expressly repealed to the extent that such inconsistency is apparent. This Chapter shall not be construed to require or allow any act that is prohibited by any other ordinance.

SECTION VI. EFFECTIVE DATE

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

SECTION VII. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Chapter 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 Local Government Code.

FIRST READING PASSED AND APPROVED this 10th day of February, 2015.

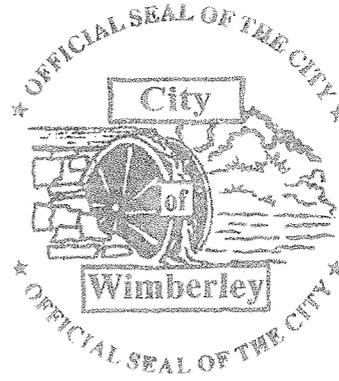
SECOND AND FINAL READING PASSED AND APPROVED this 5th day of March, 2015.



Steve Thurber
Mayor

ATTEST:

Cara McPartland
Cara McPartland,
City Secretary



APPROVED AS TO FORM:

Catherine B. Fryer
Catherine B. Fryer,
City Attorney