

ORDINANCE NO. 2017-

AN ORDINANCE OF THE CITY OF NEW BRAUNFELS, TEXAS AMENDING CHAPTER 126, ARTICLE IV-OPERATION OF VEHICLES, DIVISION 1-GENERALLY, SECTION 126-104, TO REPEAL ONLY THAT PORTION OF THE ORDINANCE THAT PROHIBITS DRIVERS FROM USING HAND-HELD WIRELESS COMMUNICATION DEVICES TO READ, WRITE, OR SEND A TEXT MESSAGE WHILE THE VEHICLE IS STOPPED AND ADDITIONAL AFFIRMATIVE DEFENSES; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City Council finds it inherently distracting and dangerous when a person operates a motor vehicle while using a hand-held wireless communication device; and

WHEREAS, in 2015, the City of New Braunfels City Council adopted reasonable restrictions on the use of hand-held wireless communication devices while driving, which included a bar against texting while at a stop unless the vehicle was legally parked; and

WHEREAS, the Texas Legislature adopted House Bill 62 during the 85<sup>th</sup> regular session, that allows drivers to read, write, and send text messages on hand-held wireless communication devices such as cell phones, while the vehicle is stopped; and

WHEREAS, House Bill 62 preempts all local ordinances relating to the use of a portable wireless communication device by the operator of a motor vehicle to read, write, or send electronic message and further provides specific affirmative defenses for violations of this new state law; and

WHEREAS, the city's hands-free ordinance prohibiting driver texting while stopped should be amended to reflect House Bill 62.

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

SECTION 1. Findings.

The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2: That Chapter 126, Article IV, Division 1, of the New Braunfels Code of Ordinances shall be amended to read as follows, with new language indicated below by use of underlined font:

Sec. 126-104. - Regulating the use of hand-held wireless communication devices while driving.

- (a) Definitions. ~~In this section:~~ The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them below, except where the context clearly indicates a different meaning:

- (1) Electronic message means data that is read from or entered into a wireless communication device for the purpose of communicating with another person.
- (42) *Engaging in a call* means talking, dialing, or listening on a hand-held wireless communication device, including holding a wireless communication device to activate or deactivate the device.
- (23) *Hand-held wireless communication device* means a text-messaging device or other electronic, two-way communication device that uses a commercial mobile service, as defined by 47 United States Code §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 ~~also~~ includes devices such as mobile telephones, personal digital assistants (PDA), MP3 or other portable music players, electronic reading devices, laptop computers or tablets, portable computing devices, portable global positioning or navigation systems, pagers, electronic game devices and broadband personal communication devices.
- (34) *Hands-free wireless communication device* means a mobile telephone, a device with speakerphone capability, a telephone attachment, or another function or other piece of equipment, regardless of whether or not permanently installed in a motor vehicle, that allows use of the wireless communication device without use of either of the operator's hands, (or prosthetic device or aid in the case of a physically disabled person).
- (45) *Operating a motor vehicle* includes motor vehicle that is moving, stopped or standing on a public street, highway or right-of-way, unless it is lawfully parked as that term is defined herein.
- (56) *Park or parked* shall mean for the operator to completely cease movement of a motor vehicle in a lawful manner and location. For the purposes of this section, "parked" does not 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.
- (7) Stop or stopped shall mean for the operator to completely cease movement of a motor vehicle while in traffic due to a traffic control device, conditions on the roadway, or traffic congestion patterns then existing.
- (68) *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. This term includes instant messaging and e-mail. The term does not include a communication transmitted through a global positioning or navigation system.
- (b) It is an offense if the person uses a hand-held wireless communication device while operating a motor vehicle to:
- (1) Engage in a call;
  - (2) Send, read or write an electronic message on a wireless communication device, unless the vehicle is stopped. To be prosecuted, the behavior must be committed in the

presence of or within view of a peace officer or established by other evidence. The state law definitions of *electronic message* and *wireless communication device* will apply to this subparagraph (b)(2) and the reference to *electronic messages* in (b)(3), and (e);

- (3) Take or view pictures or written text, excluding electronic messages referenced in subparagraph (b)(2) above, whether transmitted by internet or other electronic means, or access or view an internet web site or software application;
  - (4) Engage in gaming; or
  - (5) Engage in any other use of the device while operating a motor vehicle. This includes holding the hand-held wireless communication device.
- (c) Sections (b)(1),(3),(4) and (5) do not apply to an operator of a motor vehicle using a hand-held wireless communication device:
- (1) While the vehicle is legally parked as that term is defined herein, or is being driven on private property;
  - (2) That is used with a hands-free wireless communication device;
  - (3) If the operator is a law enforcement officer, firefighter, member of a governmental emergency medical services function, or member of a governmental emergency management function, and the operator is using the device to conduct official business related to the position; or
  - (4) Who is licensed by the Federal Communications Commission while operating a radio frequency device, other than a hand held wireless communication device; or an operator using a two-way radio communication.
- (d) It shall be an affirmative defense to prosecution under ~~this~~ sections (b)(1),(3),(4) and (5), that the person was using a hand-held wireless communication device for the purpose of:
- (1) Reporting illegal activity to a law enforcement agency;
  - (2) 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
  - (3) In the reasonable belief that a person's life or safety is in immediate danger.
- (e) Affirmative defenses applicable to prosecution under paragraph (b)(2) are limited to those provided in the *Texas Transportation Code*, Chapter 545.4251(c), and are listed below, however if state law amends this provision, then this paragraph is so amended. It is an affirmative defense to prosecution under this section that the operator used the wireless communication device:
- (1) in conjunction with a hands-free device as defined by *Transportation Code*, Section 545.425;
  - (2) to navigate a global positioning system or navigation system;
  - (3) to report illegal activity, summon emergency help, or enter information into a software application that provides information relating to traffic and road conditions to users of the application;

(4) to read an electronic message that the person reasonably believed concerned an emergency;

(5) that was permanently or temporarily affixed to the vehicle to relay information in the course of the operator's occupational duties between the operator and:

(A) a dispatcher; or

(B) a digital network or software application service; or

(6) to activate a function that plays music.

**SECTION 3:**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

**SECTION 4:**

All provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

**SECTION 5:**

All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

**SECTION 6:**

In accordance with the provisions of Section 3.10 of the City Charter, this Ordinance may be read and published by descriptive caption only. This Ordinance has been publicly available in the office of the City Secretary prior to its adoption.

**SECTION 7:**

This Ordinance shall become adopted and effective upon its final reading and must be published in a newspaper of general circulation at least one time within ten (10) days after its final passage, as required by the City Charter of the City of New Braunfels.

PASSED AND APPROVED: First Reading on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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**CITY OF NEW BRAUNFELS, TEXAS**

By: \_\_\_\_\_  
Barron Casteel, Mayor

**ATTEST:**

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Patrick Aten, City Secretary

**APPROVED AS TO FORM:**

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Valeria M. Acevedo, City Attorney