

AN ORDINANCE

REPEALING SECTION 19-254 AND AMENDING SECTION 19-255 OF CHAPTER 19, ARTICLE VII OF THE CITY CODE OF SAN ANTONIO, TEXAS, 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, AND PROVIDING FOR A FINE OF UP TO \$200.00 PER VIOLATION.

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WHEREAS, the City Council finds that the use of 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) 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 San Antonio; and

WHEREAS, the City Council believes that prohibiting the use of hand-held mobile communication devices to engage in any use of a mobile communication device, with certain defenses, would further and protect the public health, safety, and welfare; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Division 1, “Generally,” of Article V, “General Rules of vehicle Operation,” of Chapter 19, “Motor Vehicles and Traffic” of the City Code of San Antonio, Texas, Section 19-255, entitled “Regulating the Use of Hand-held Mobile Communication Devices while Driving,” is hereby amended to read as follows:

SEC. 19-255 REGULATING THE USE OF HAND-HELD MOBILE COMMUNICATION DEVICES WHILE DRIVING.

(a) In this section:

- (1) **ENGAGING IN A CALL** means talking to, dialing, or listening on a hand-held mobile telephone, but does not include holding a mobile telephone to activate or deactivate the device.

- (2) **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 or pictorial communication, or both whether by internet or other electronic means. The term includes a mobile telephone, and a personal digital assistant (PDA).
- (3) **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.
- (4) **PARK OR PARKED** shall mean 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.
- (5) **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.
- (6) **WIRELESS TELEPHONE SERVICE** means two-way, real time voice telecommunications service that is interconnected to a public switched telephone network and is commonly referred to as cellular service or personal communication service.
- (b) A person commits an offense if the person uses a hand-held mobile communication device to 1) engage in a call, 2) send, 3) read or write a text message, 4) view pictures or written text whether transmitted by internet or other electronic means, 5) engage in gaming, or 6) engage in any other use of the device while operating a moving motor vehicle.
- (c) 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 device;
 - (4) by a person who is an operator of an authorized emergency vehicle while acting in an official capacity;
 - (5) by a person who is licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device.
- (d) 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.
- (e) Only warning citations may be issued for the first 30 days following the effective date of this ordinance so that an educational effort by the City of San Antonio may be conducted to inform the public about the importance and requirements of this new Ordinance. Thereafter, a person convicted of an offense under this section shall be punished by a fine of not more than \$200.
- (f) 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.
- (g) In addition to enforcement by a peace officer of the city of San Antonio, 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 San Antonio.

SECTION 2. Chapter 19 of the City Code of San Antonio, Texas, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 3. Section 19-254 of Article VII, Chapter 19 of the City Code of San Antonio, Texas is hereby repealed.

SECTION 4. Should any article, section, part, paragraph, sentence, phrase, clause, or word of this ordinance, for any reason, be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 5 The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing Code.

SECTION 6. The City Clerk of the City of San Antonio is hereby directed to publish notice of this Ordinance as required by Section 17 of the Charter of the City of San Antonio and the laws of the State of Texas.

SECTION 7. This ordinance shall take effect five days from the date of publication in accordance with Section 5 above.

PASSED AND APPROVED this ___ day of _____, 2014.

M A Y O R
Ivy Taylor

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek, City Clerk

Robert F. Greenblum, City Attorney