

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE PROHIBITING THE USE OF PORTABLE ELECTRONIC DEVICES WHILE OPERATING A MOTOR VEHICLE WITHIN THE CITY LIMITS OF THE CITY OF PFLUGERVILLE, PROVIDING FOR A PENALTY, PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City Council finds that using a portable electronic device 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 portable electronic device 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 portable electronic 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; and

**WHEREAS**, the City Council desires to prohibit the use of portable electronic devices 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 City and its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, 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) *PORTABLE ELECTRONIC DEVICE* means a hand-held 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.
- (b) *USE* means 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.
- (c) *OPERATING A BICYCLE* means astride a permanent seat attached to the bicycle while the bicycle is in motion.
- (d) *AUTHORIZED EMERGENCY PERSONNEL* means a person who is a law enforcement officer, firefighter, member of a governmental emergency medical services function or member of a governmental emergency management function.

Section 3. Prohibition.

- (a) An operator of a motor vehicle may not use a portable electronic device while the vehicle is in motion.
- (b) A person may not use a portable electronic device while operating a bicycle.
- (c) This section does not apply to authorized emergency personnel using a portable electronic device while acting in an official capacity.
- (d) This section does not apply to an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a portable electronic device or an operator using a two-way radio communication device in a commercial vehicle.
- (e) It is an affirmative defense to prosecution under this section if:
1. the motor vehicle or bicycle is at a complete stop;
  2. 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;
  3. 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;
  4. 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 a crime about to be committed; or

5. use of a portable electronic device is in the reasonable belief that a person's life or safety is in immediate danger.
- (f) To the extent that this section conflicts with the Texas Transportation Code Section 545.424, as amended, regarding the use of portable electronic devices while operating a motor vehicle by minors, Texas Transportation Code Section 545.425, as amended, regarding the use of wireless communication devices in school crossing zones or other provisions of the Texas Transportation Code that may be adopted by the legislature, this section does not apply.

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 Pflugerville may be conducted to inform the public about the importance and requirements of this new ordinance. Thereafter, 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 Five Hundred dollars (\$500.00).

Section 5. Cumulative and Savings. This Ordinance shall be cumulative of all provisions of ordinances of the City of Pflugerville, 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 will take effect upon its passage and adoption by the City Council in accordance with the provisions of Section 3.15(d) of the City Charter.

PASSED, APPROVED, AND ADOPTED on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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Victor Gonzales, Mayor

**ATTEST:**

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Karen Thompson, City Secretary

**APPROVED TO FORM:**

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George Hyde, City Attorney  
DENTON, NAVARRO, ROCHA, BERNAL, HYDE & ZECH, P.C.