

ORDINANCE NO. 2015-50

AN ORDINANCE OF THE CITY COUNCIL OF THE OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 82, ARTICLE 1 OF THE SAN MARCOS CITY CODE BY PROHIBITING THE USE OF A PORTABLE ELECTRONIC 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 OR BICYCLE WITHIN THE CITY LIMITS OF SAN MARCOS, TEXAS; PROVIDING A PENALTY; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Chapter 82, Traffic and Vehicles, of the San Marcos City Code is hereby amended as set forth below. Added text is indicated by underlining. Deleted text is indicated by ~~strikethroughs~~.

Sec. 82.001. Definitions.

Words defined in the Uniform Act Regulating Traffic on Highways, V.A.C.S. art. 6701d, have the same meanings when used in this chapter. In this chapter:

Alley means any public way extending either partly or completely through any city block in the rear of the lots comprising the block.

Authorized Emergency Personnel means a person who is a law enforcement officer, firefighter, member of a governmental emergency medical services, communications or utility function, or member of a governmental emergency management function.

Parade means any procession or combination of vehicles, pedestrians or animals operated or conducted upon any public street, sidewalk or alley which does not comply with normally applicable traffic regulations or controls.

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.

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

SECTION 2. Chapter 82, Article 1, Traffic and Vehicles, is hereby amended to add Section 82.011 "Prohibition against the use of a portable electronic device while operating a motor vehicle or bicycle," to read as follows:

Sec. 82.011. Prohibition against the use of portable electronic devices.

- (a) An operator of a motor vehicle may not use a portable electronic device while operating a motor vehicle in motion.
- (b) A person may not use a portable electronic device while operating a bicycle in motion.
- (c) It is an affirmative defense to prosecution of an offense under this article 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 is operating 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.
- (d) Evidence that a police officer observed a person holding a portable electronic device while operating a motor vehicle or bicycle in motion creates a presumption that a person used a portable electronic device in violation of this section.
- (e) This article does not apply to authorized emergency personnel using a portable electronic device while acting in an official capacity.
- (f) This article 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.
- (g) To the extent that this article conflicts with the Texas Transportation Code Section 545.424, regarding the use of wireless communication devices while operating a motor vehicle by minors, or Texas Transportation Code Section 545.425, regarding the use of wireless communication devices in school crossing zones, this article does not apply.
- (h) Except as otherwise provided by this article or state law, an offense under this article is a Class C misdemeanor punishable by a fine not to exceed \$100 for the first offense, \$250 for the second offense and \$500 for the third and subsequent offenses.

SECTION 3. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

SECTION 4. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 5. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 6. After approval and adoption on second reading and publication of the caption hereof in a newspaper of general circulation, along with an extensive notification and education program beginning immediately upon passage and adoption, this ordinance will take effect on February 1, 2016 with the exception that only warnings may be issued from the effective date through February 29, 2016 so that an educational effort may be conducted by the city to inform the public about the importance and requirements of this ordinance.


PASSED AND APPROVED on first reading on November 2, 2015.

PASSED, APPROVED AND ADOPTED on second reading on November 17, 2015.




Daniel Guerrero
Mayor

Attest:



Jamie Lee Pettijohn
City Clerk

Approved:



Michael J. Cosentino
City Attorney