

ORDINANCE NO. 966

AN ORDINANCE OF THE CITY OF KYLE, TEXAS AMENDING CHAPTER 47 OF THE CODE OF ORDINANCES, TRAFFIC AND VEHICLES, ARTICLE VII IN GENERAL, TO PROHIBIT THE OPERATION OF HAND-HELD WIRELESS COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE; PROVIDING EXEMPTIONS; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING INCREASED PENALTY FOR SECOND AND THIRD OFFENSES; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, House Bill 62 preempted any city ordinance related to the use of a portable wireless communication device by a driver to read, write, or send an electronic message effective September 1, 2017; and

WHEREAS, the City Council of the City of Kyle previously adopted Ordinance No. 867 on September 1, 2015 restricting the use of hand-held devices; and

WHEREAS, the City Council reaffirms its finding that it is inherently distracting when a person operates a motor vehicle or bicycle while using a hand-held wireless communication device for engaging in a call, texting, taking or viewing pictures, gaming, and any purposes; and

WHEREAS, the City Council seeks to continue to promote the health, safety and general welfare of the community by preventing death, injuries, and property damage within the city limits; and

WHEREAS, adopting these reasonable restrictions on operators while driving is in furtherance of increasing the public's health, safety and welfare.

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

SECTION 1. That the existing Chapter 47 of the Code of Ordinances of the City of Kyle entitled "Traffic and Vehicles" is hereby amended by adding Article VII . "Use of Portable Electronic Devices While Operating a Motor Vehicle or Bicycle." Sections 47-187 to 47-191 to read as follows:

**ARTICLE VII. - USE OF PORTABLE ELECTRONIC DEVICES
WHILE OPERATING A MOTOR VEHICLE OR BICYCLE**

Sec. 47-187. - Definitions.

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.

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 U.S.C. § 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.

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).

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.

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 article, "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.

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.

Sec. 47-188. - Prohibited.

It is an offense if the person uses a **hand-held** wireless communication device while operating a motor vehicle or bicycle to Engage in a call.

- **Sec. 47-189. - Exceptions.**

This article does 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 or private 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 device.

Sec. 47-190. - Affirmative defense.

It shall be an affirmative defense to prosecution under this article 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.

Sec. 47-191. - Penalty.

- (a) Only warning citations may be issued from the effective date of the ordinance from which this article is derived through November 1, 2015, so that an educational effort by the City of Kyle may be conducted to inform the public about the importance and requirements of section 47-188. Thereafter, a person convicted of an offense under this article shall be fined in accordance with the following:
 - (1) First offense shall have a minimum fine of \$100.00 and a maximum fine of \$500.00;
 - (2) Second offense shall have a minimum fine of \$200.00 and a maximum fine of \$500.00; and
 - (3) Third and subsequent offenses shall have a minimum fine of \$500.00.
- (b) Each day's violations shall constitute a separate and distinct offense. Any prior conviction under this article will count towards a second and third charge regardless of when it occurred.
- (c) An offense under this article is not a moving violation and may not be made a part of a person's driving record or insurance record.
- (d) To the extent that this article conflicts with the V.T.C.A., Transportation Code § 545.424, as amended, regarding the use of wireless communication devices while operating a motor vehicle by minors, or V.T.C.A., Transportation Code § 545.425, as amended, regarding use of wireless communication devices in school crossing zones, state law shall control.

SECTION 2. SAVINGS CLAUSE. All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict hereby repealed. The balance of such ordinance is hereby saved from repeal.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or illegal such decision shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clause or phrases be declared void.

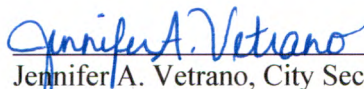
SECTION 4. EFFECTIVE DATE. The Ordinance shall take effect immediately from and after publication in accordance with the provisions of the City Charter and the Local Government Code.

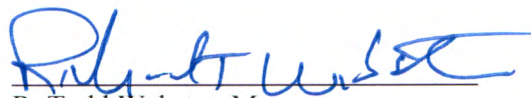
PASSED AND APPROVED on this the 19th day of September, 2017.

FINALLY PASSED AND APPROVED on this the 19th day of September, 2017.

ATTEST:

The City of Kyle, Texas


Jennifer A. Vetrano, City Secretary


R. Todd Webster, Mayor