

ORDINANCE 2321

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HURST, TEXAS, AMENDING THE HURST CODE OF ORDINANCES CHAPTER 24 BY AMENDING AND REPLACING SECTION 24-26; PROHIBITING USE OF A HANDHELD ELECTRONIC DEVICES WHILE OPERATING A MOTOR VEHICLE; PROVIDING A PENALTY CLAUSE; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council (the "City Council") of the City of Hurst, Texas (the "City"), finds and determines that distracted driving is a threat to the health, safety, and welfare of all motorist and pedestrians within the City; and

WHEREAS, the City Council finds and determines that drivers who use handheld electronic devices while operating a motor vehicle are at risk of losing safe control of their vehicles due to manual, visual, and cognitive distractions, and are therefore more likely to have an accident than undistracted drivers; and

WHEREAS, the City of Hurst is a Home Rule municipality having full powers of self-government and may enact ordinances relative to its citizens' health, safety, and welfare that are not inconsistent with the Constitution and laws of the State; and

WHEREAS, these regulations do not conflict 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; and

WHEREAS, the City Council finds and declares that the meeting at which this Ordinance is considered is open to the public as required by law, and that public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code; therefore,

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

Section 1. The statements contained in the preamble to this Ordinance are hereby adopted as findings of fact and as a part of the operative provisions hereof.

Section 2. The City of Hurst Code of Ordinances Chapter 24, Article I, Section 24-26 is hereby amended and replaced, which shall read as follows:

Sec. 24-26 - Use of Portable Electronic Devices Prohibited

- (a) Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
 - (1) *Electronic device* shall mean any handheld wireless communication device, cell phone, laptop computer, tablet, media player, handheld gaming device, or any other electronic device capable of displaying text-based communications, games, pictures, or video.
 - (2) *Hands-free device* shall mean speakerphone capability, telephone attachment, or another function or other piece of equipment installed in or on a wireless communication device that allows the use of a handheld wireless communication device without the use of the operator's hand(s), except to activate or deactivate a function of the a hand-held electronic device or hands-free device.
- (b) It shall be unlawful for a person to:
 - (1) use a portable electronic device while operating a motor vehicle upon a public street or highway; or

- (2) use a portable electronic device while operating a motor vehicle upon or within public park property or parking lots of city
 - (3) facilities when signs are posted at such locations that indicate the use of portable electronic devices while driving is prohibited.
- (c) In this Section, use of a portable electronic device includes, but is not limited to:
 - (1) viewing the display screen of a portable electronic device;
 - (2) holding a portable electronic device in a position to talk into or listen on; or
 - (3) manipulating a portable electronic device by interacting with its display screen or pushing any button to enter text, dial numbers, or to engage in any other function.
- (d) This Section does not apply to an operator of an authorized emergency vehicle or law enforcement vehicle using a portable electronic device while acting in an official capacity; or
 - (1) The operation of two-way mobile radio transmitters or receivers used by licensees of the Federal Communications Commission (FCC).
- (e) The culpable mental state required by Texas Penal Code § 6.02, is specifically negated and dispensed with and a violation under this subsection is a strict liability offense.
- (f) It is a defense to prosecution under this Section if the portable electronic device is used:
 - (1) while the vehicle is stopped, out of the moving lanes of the roadway;

- (2) as a global positioning or other navigation system that is affixed to the vehicle;
 - (3) solely as a hands-free device;
 - (4) to obtain emergency assistance at a traffic accident;
 - (5) to communicate with an emergency response service, fire department, police department, hospital, health clinic, or physician's office in an attempt to prevent injury to person or property; or
 - (6) to communicate with reasonable belief a person's life or safety is in immediate danger.
- (g) To the extent that any part of this Section conflicts with Texas Transportation Code provisions regarding the use of wireless communications devices while operating a motor vehicle by minors, the use of wireless communication devices in school crossing zones, or the use of a wireless communication device by operators of a school bus, this section does not apply.

Section 3. That all ordinances or any parts thereof in conflict with the terms of this ordinance shall be and hereby are deemed repealed and of no force or effect; provided, however, that the ordinance or ordinances under which the cases currently filed and pending in the Municipal Court of the City of Hurst, Texas, shall be deemed repealed only when all such cases filed and pending under such ordinance or ordinances have been disposed of by a final conviction or a finding not guilty or nolo contendere, or dismissal.

Section 4. Any person violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Hurst, and upon conviction shall be punishable by a fine not to exceed the sum of Five Hundred (\$500.00) for each offense.

Section 5. Save and except as amended by this ordinance, the provisions of all sections of the City of Hurst, Texas, shall remain in full force and effect.

Section 6. If any section, subsection, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 7. The fact that the present ordinances and regulations of the City of Hurst, Texas are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the inhabitants of the City of Hurst, Texas, creates an emergency for the immediate preservation of the public business, property, health, safety and general welfare of the public which requires that this ordinance shall become effective from and after the date of its passage, and it is accordingly so ordained.

AND IT IS SO ORDERED.

Passed on the first reading on the 12th day of July 2016 by a vote of 6 to 0.

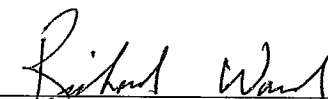
Approved on the second reading on the 19th day of July 2016 by a vote of 6 to 0.

ATTEST:

CITY OF HURST



Rita Frick, City Secretary



Richard Ward, Mayor

Approved as to form and legality:



City Attorney