

AN ORDINANCE 2014-11-06-0843

**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 BY REPEALING SECTION 19-254 AND AMENDING SECTION 19-255, ARTICLE VII OF THE CITY CODE OF SAN ANTONIO, TEXAS; 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 while driving, 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 communication device, but does not include holding a mobile communication device 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 message 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.
- (b) A person commits an offense if the person uses 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) 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 mobile communication telephone or other such device;
  - (4) while operating an authorized emergency vehicle in an official capacity;  
or

- (5) who is licensed by the Federal Communications Commission while operating a radio frequency device other than a hand held mobile 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 be published in accordance with Section 6 above, and shall take effect on January 1, 2015.

**SECTION 8.** The Chief of Police shall report to City Council one year from the effective date of this ordinance regarding the number of citations issued under the ordinance and the number of collisions attributed to a violation of the ordinance.

**PASSED AND APPROVED** this 6<sup>th</sup> day of November, 2014.

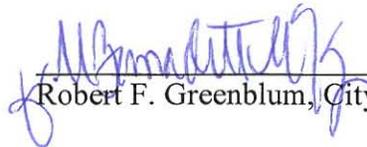


**M A Y O R**  
Ivy R. Taylor

**ATTEST:**

  
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Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
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Robert F. Greenblum, City Attorney

<b>Agenda Item:</b>	4						
<b>Date:</b>	11/06/2014						
<b>Time:</b>	10:37:33 AM						
<b>Vote Type:</b>	Motion to Appr w Cond						
<b>Description:</b>	An Ordinance 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 by repealing Section 19-254 and amending Section 19-255, Article VII of the City Code of San Antonio, Texas, and providing for a fine of up to \$200.00 per violation. [Erik Walsh, Deputy City Manager; William P. McManus, Chief of Police]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ivy R. Taylor	Mayor		x				
Diego Bernal	District 1		x				
Keith Toney	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				x
Joe Krier	District 9		x				
Michael Gallagher	District 10		x			x	



San Antonio Police Department  
**DISTRACTED DRIVING  
ORDINANCE**

William P. McManus  
Chief of Police  
City Council Presentation – November 6, 2014

## BACKGROUND

- August 20, 2014, Councilman Mike Gallagher submitted a CCR requesting a ban on the use of mobile communication devices unless used in a “hands-free” capacity.
- September 17, 2014, the Governance Committee forwarded the request to the Public Safety Committee.
- October 1, 2014, the Public Safety Committee approved the proposal to advance the issue to full City Council

## DISTRACTED DRIVING

- Hand-held use of a mobile communication device is now viewed as the most serious part of the larger public safety issue now recognized as “distracted driving.”
- In San Antonio, there were over 250 vehicle crashes in 2013 directly attributable to cell/mobile phone use.

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## DISTRACTED DRIVING

- In Texas, TXDoT reports that distracted driving contributed to:
  - 90,378 crashes in 2013...of those crashes
    - 18,468 resulted in serious injuries
    - 453 were fatalities
- According to the National Traffic Highway Traffic Safety Administration (NHTSA), in 2013, over 3,300 people were killed nationwide and 400,000 injured in vehicle accidents connected to distracted driving.

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## CURRENT ORDINANCES

- Section 19-254 (adopted August 2008)
  - Prohibits certain uses of a mobile device while driving (texting)
- Section 19-255 (adopted October 2010)
  - Prohibits all uses\* of a mobile device while driving in a **school zone**

\* Allows for emergency calls.

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## OTHER TEXAS CITIES

- Austin, Corpus Christi, Amarillo, and El Paso, have recently adopted ordinances prohibiting all use of hand-held mobile devices while operating a motor vehicle on any city street.
- Twenty-three cities in Texas have enacted ordinances prohibiting texting while operating a motor vehicle.
- Fort Worth, Texas is considering adopting a similar “hands-free” ordinance.

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## CURRENT STATE LAW

- Current state law on use of hand-held mobile devices is limited in scope and provides the following restrictions while operating a motor vehicle:
  - A ban on all hand-held cell phone use for all drivers in active school zones, prohibiting both talking and texting;
  - A ban on all cell phone use by all bus drivers, prohibiting texting and talking, including hands-free;
  - A ban on all cell phone use by drivers under 18 and anyone with a learner's permit during their first 18 months of driving.

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## PROPOSED ORDINANCE

- The proposed "hands-free" ordinance states that a person commits an offense if s/he uses a hand-held mobile communication device while operating a motor vehicle on any City street. These uses include:
  - Engaging in a call
  - Send, read or write a text message
  - Viewing pictures or written text
  - Engaging in gaming
  - Engaging in any other use of the device (GPS, etc)

## PROPOSED ORDINANCE

- Does not apply to a person who is:
  - On private property or legally parked
  - Using a hands-free device (e.g. bluetooth)
  - Using a GPS device affixed to the vehicle
  - Operating an emergency vehicle
  - Reporting illegal activity
  - Communicating with emergency response personnel
  - Preventing injury to a person or property

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## PROPOSED ORDINANCE

- The current ordinance prohibiting cell phone use in active school zones will be repealed:
  - Its subject matter will be covered by new ordinance.
  - A separate State Law already prohibits cell phone use in active school zones.

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## PUBLIC INFORMATION/EDUCATION

- SAPD will produce a series of PSA's/radio spots
- Media ride-alongs
- Utilize TXDoT Transguide signage
- Use of social media
- Reach out to Region 20 to advise high schools
- Use of static displays to promote the message to college, high school, and military groups.
- Various community partners (BCSO, HOA's, TXDoT)

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## PENALTIES/ENFORCEMENT

- Other elements:
  - Fine = \$200
  - Enforceable by any peace officer
    - Including school district officers
    - As long as authorized to issue citations on City streets
  - Not a moving violation
    - does not go on a person's driving record
    - is not reported to the driver's insurance provider

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## RECOMMENDATION

- SAPD recommends adoption of the ordinance
- Ordinance would go into effect January 1, 2015
  - (followed by 30-day warnings-only period)

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San Antonio Police Department

# THANK YOU

William P. McManus

Chief of Police

City Council Presentation – November 6, 2014