

ORDINANCE NO. 2015-031

AN ORDINANCE OF THE CITY OF FLORESVILLE 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 ADDING SECTION 70.46 TO THE CITY CODE OF ORDINANCES; AND PROVIDING FOR A FINE OF UP TO \$200.00 PER VIOLATION.

WHEREAS, the City of Floresville 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 Floresville; and

WHEREAS, the City of Floresville 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;

THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FLORESVILLE:

SECTION 1:

Section 70.46 is hereby added to the City of Floresville's Code of Ordinances, to be entitled "Regulating the Use of Hand-held Mobile Communication Devices while Driving," and such section shall read as follows:

§ 70.46 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 government 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 thirty (30) days following the effective date of this Ordinance so that an educational effort by the City of Floresville 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 Floresville, 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 Floresville.

(H) 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 2:

The City Secretary of the City of Floresville is hereby directed to publish notice of this Ordinance as required by Section 3.11 of the Charter of the City of Floresville and the laws of the State of Texas.

SECTION 3:

This ordinance shall take effect ten (10) days from the date of publication in accordance with Section 3.11 of the City Charter of the City of Floresville.

It is specified that this Ordinance is approved the 19 day of November, 2015, and shall be effective following its passage by City Council.

ACTION BY THE CITY COUNCIL

Upon motion duly made to approve Agenda Item 2b by Councilperson Ortiz, seconded by Councilperson Tejada, Agenda Item 2b was approved by a vote of 4 in favor, 1 opposed, 0 abstaining, and 0 absent on November 19, 2015.



Sherry Castillo
Sherry Castillo
Mayor

Attest:

Monica Cordova

Monica Cordova
City Secretary