

ORDINANCE NO. 2015-

AN ORDINANCE PROHIBITING THE USE OF A PORTABLE ELECTRONIC DEVICE WHILE OPERATING A MOTOR VEHICLE OR BICYCLE, AND CREATING AN OFFENSE AND PROVIDING FOR A FINE OF UP TO \$200.00 PER VIOLATION

WHEREAS, the City Council finds that the use of a portable electronic device while operating a moving motor vehicle or bicycle is a traffic hazard and a danger to the public, which creates particular danger or probability of danger in the City of Boerne, Texas; and

WHEREAS, the City Council believes that prohibiting the use of a portable electronic device to engage in any use of the device while driving or using a bicycle, 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 BOERNE, TEXAS:

A. In this section:

- 1) "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.
- 2) "use" means employing a portable electronic device for any reason including, without limitation, the following activities while holding or touching the device:
 - a. dialing or deactivating a phone call;
 - b. speaking in or listening to a conversation;
 - c. viewing, taking, or transmitting electronic images;
 - d. composing, sending, viewing, accessing, browsing, retrieving, or saving email messages, text messages, or other electronic data;
 - e. entering or changing information in a global positioning or navigation system or any software or application designed for navigation;
 - f. accessing or viewing an internet website or computer application or;
 - g. playing a game.
- 3) "operating a bicycle" means astride a permanent seat attached to the bicycle while the bicycle is in motion.
- 4) "authorized emergency personnel" means a person who is a law enforcement officer, firefighter, member of a governmental emergency medical services function, or member of a governmental emergency management function.

- 5) "complete stop" means for the operator to completely cease movement of a motor vehicle in a lawful manner and location. For purposes of this Section, "complete stop" 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.
- B. An operator of a motor vehicle may not use a portable electronic device while the vehicle is in motion.
- C. A person may not use a portable electronic device while operating a bicycle.
- D. It is an affirmative defense to prosecution of an offense under this section 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 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.
- E. This section does not apply to authorized emergency personnel using a portable electronic device while acting in an official capacity.
- F. This section does not apply to citizen's band radio devices, two-way radio communication in a commercial vehicle, or to persons engaged in Amateur Radio Emergency Service (ARES) activities or Radio Amateur Civil Emergency Service (RACES) activities.
- G. To the extent that this section 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 section does not apply.
- H. 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 Boerne 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.
- I. 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.

PART 2. This ordinance shall take effect January 1, 2016.

PASSED and APPROVED on first reading this the _____ day of October, 2015.

PASSED, APPROVED and ADOPTED on second reading this the _____ day of October, 2015.

APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney