

ORDINANCE NUMBER 281

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TIOGA, TEXAS PROHIBITING THE USE OF HAND-HELD MOBILE TELEPHONES IN SCHOOL ZONES; PROVIDING FOR A PENALTY CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR A PENALTY FOR VIOLATION OF THE TERMS OF THE ORDINANCE.

WHEREAS, to further serve and protect school-aged children traveling to and from elementary schools and other educational facilities throughout the state, the State of Texas has adopted certain laws regulating the use of hand-held mobile telephones (cell phones) while operating a motor vehicle in a school zone on official school days and during the hours when the school zone is in effect; and

WHEREAS, using a hand-held mobile telephone (cell phone) while operating a motor vehicle necessarily distracts the driver from his or her operation of said motor vehicle and then causes the driver to concentrate less on driving safety; and

WHEREAS, using a hand-held mobile telephone while operating a motor vehicle necessarily limits the driver's ability to steer and maneuver the motor vehicle, and

WHEREAS, the City Council finds that the use of a hand-held mobile telephone while operating a motor vehicle in a school zone when the school zone is in effect creates a danger (or probability of it) to school children and others that the City of Tioga seeks to minimize; and

WHEREAS, the safety of all school-aged children traveling to and from elementary schools and other educational facilities is of paramount importance, and as such, demands a high standard of positive care and control

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

- Section 1. Use of hand-held mobile telephones prohibited in school zones.
- a. For purpose of this section the following definitions apply:
- (1) "Engaging in a call" shall mean talking into, dialing, answering, or listening on a hand-held mobile telephone, but shall not include holding a mobile telephone to activate or deactivate such telephone.
 - (2) "Hands-free mobile telephone" shall mean a mobile telephone that has as internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such 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, deactivate or initiate a function of such telephone.

- (3) "Hand-held mobile telephone" shall mean a mobile telephone with which a user engages in a call using at least one hand (or prosthetic device or aid in the case of a disabled person).
- (4) "Mobile telephone" shall mean the device used by subscribers and other users of wireless telephone service to access such service and shall include Personal Digital Assistants.
- (5) "Personal Digital Assistants" shall mean a device operated using a wireless telecommunications service that provides for data communication other than by voice.
- (6) "Wireless telephone service" shall mean two-way real time voice telecommunications service that is interconnected to a public switched telephone network and commonly referred to as cellular service or personal communication service.

- b. Except as otherwise provided below, it shall be unlawful for a person to drive or operate a motor vehicle in a school zone, as designated by any lawful authority, on official school days, during the hours when school zones signs and signs prohibiting hand-held mobile telephone use are posted in place, while using a hand-held or hands-free mobile telephone to engage in a call or to create, send or read messages.
- c. An operator of a motor vehicle who holds a mobile telephone to or in the immediate proximity of his or her ear while such vehicle is in motion is presumed to be engaging in a call within the meaning of this section. "Immediate proximity" shall mean that distance as permits the operator of a mobile telephone to hear telecommunication transmitted over such mobile telephone, but shall not require physical contact with such operator's ear.
- d. Subsection b shall not apply to:
 - (1) the use of a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation, an emergency response operator, a hospital or a physician's office.

- (2) Any law enforcement, public safety, or police officers emergency services officials, first aid, emergency medical technicians and personnel, or any fire safety officials in the performance of duties arising out of and in the course of their employment as such, or
- (3) The use of a hands-free mobile telephone when it is being used in a hands-free manner.

Section 2. Penalty. That any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof may be assessed and fined not exceed Two Hundred Dollars (\$200.00).

Section 3. Severability. That if any section or portion of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, that section or portion shall be deemed severable and shall not affect the validity of the remaining portions of the Ordinance.

Section 4. Effective Date. That, this Ordinance shall become effective immediately.

Section 5. That it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given all as required by Section 55.041, Texas Government Code.

PASSED AND APPROVED this the 11 day of January, 2010.



Stanley Kemp, Mayor

Attest:



Donna Carney, City Secretary