

ORDINANCE NO. 2017-15

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SMYRNA, GA, AMENDING CHAPTER 98, SECTION 98 OF THE CITY CODE, TRAFFIC AND VEHICLES, ARTICLE I, BY ADOPTING SECTION 98-10 PROHIBITING THE USE OF HANDHELD MOBILE TELEPHONES OR PORTABLE ELECTRONIC DEVICES WHILE OPERATING A MOTOR VEHICLE.

WHEREAS, the Georgia Legislature, to date, has partially addressed not enacted legislation fully covering the prohibition of handheld mobile telephones and portable electronic devices while operating a motor vehicle; and

WHEREAS, these regulations do not conflict with the Georgia Uniform Rules of the Road Section 40-6-241.1 regarding the use of wireless telecommunication devices while driving by minors; and

WHEREAS, these regulations do not conflict with the Georgia Uniform Rules of the Road Section 40-6.241.2 regarding texting on a telecommunication device while driving; and

WHEREAS, the City Council of Smyrna finds should any conflict exist between said regulation and that of State Law, the City of Smyrna has the authority under O.C.G.A. § 40-6-371(a)(19) to adopt and enforce such temporary or experimental regulations as may be necessary to cover emergencies or special conditions; and

WHEREAS, studies show that:

Distracted driving in Georgia is suspected to be greatly underreported in fatal and serious injury collisions, as information pointing to distraction is gathered through self-reporting, witness testimony and evidence indicating distraction.

Even with greatly underreported fatal and serious injury collisions caused by distracted driving, from 2012 to 2015 Georgia has seen a 60% increase in the number of such incidents.

From 2009 to 2015, the number of serious injuries from traffic accidents in Georgia increased 55%.

Georgia's traffic fatalities rate is higher now than it was before the 2010 law that bans texting while driving. In 2009, Georgia had 1,292 traffic fatalities. In 2016, Georgia had 1,561 traffic fatalities.

The rise of the traffic fatalities rate in Georgia is outpacing the national average.

60% of roadway fatalities in Georgia involve drivers failing to maintain their lanes.

WHEREAS, the City Council of Smyrna finds and determines that the increased occurrence of distracted driving coupled with the difficulty of enforcing the state statutes addressing texting while driving constitutes a special condition which poses an increasingly significant threat to the health, safety, and welfare of motorists and pedestrians within the City; and

WHEREAS, the City Council of Smyrna finds and determines that a temporary and experimental regulation, no longer than two (2) years in duration, is necessary to cover the special condition caused by the increased number of incidences of distracted driving and associated traffic accidents and will allow for the collection of data points concerning the effectiveness of said regulation.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Smyrna as follows:

PART 1. Section 98-10 of the City Code is amended to read:

SECTION 98-10 DISTRACTED DRIVING – PROHIBITING THE USE OF HANDHELD MOBILE TELEPHONES OR PORTABLE ELECTRONIC DEVICES WHILE OPERATING A MOTOR VEHICLE.

(A) In this section:

- (1) “Portable Electronic Device” includes, but is not limited to, MP3 or other hand-held music players, electronic reading devices, laptop computers, smart-watches, pagers, broadband personal communication devices, global positioning or navigation systems, electronic game devices, portable computing devices, or personal digital assistants.
- (2) “Hands-Free Use” means the use of a mobile telephone or portable electronic device without the use of either hand by employing an internal feature of, or an attachment to, the device.
- (3) “Use” means employing a handheld mobile telephone or portable electronic device for any reason including, without limitation, the following activities without employing hands-free features:
 - (a) dialing 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.
- (4) “Operating” means being in actual physical control of a motor vehicle on a Highway or street and includes being temporarily stopped because of traffic, a traffic light or stop sign or otherwise, but excludes operating a motor vehicle when the vehicle has pulled over to the side of the road or off an active roadway and has stopped at a location in which it can safely remain stationary.
- (B) No person shall, except as otherwise provided in this Ordinance, use a mobile telephone or portable electronic device while operating a motor vehicle upon a street or highway, unless that device is configured to allow Hands-Free Use and used in that manner while Operating a motor vehicle.
- (C) This section shall not apply to the following:
 - (1) The use of a mobile telephone or portable electronic device for the sole purpose of communicating with any of the following regarding an immediate emergency situation:
 - (a) An emergency response operator;
 - (b) An ambulance company;
 - (c) Fire district and rescue service personnel
 - (d) Law enforcement personnel;
 - (e) A hospital; or
 - (f) A physician’s office or health clinic
 - (2) Any medical monitoring device.
 - (3) Activating or deactivating a mobile telephone or portable electronic device or a function of the device as long as the mobile telephone or portable electronic device is securely configured and attached to the vehicle or integrated into the vehicle.
 - (4) First responder exception. This section does not apply to an emergency service professional using a mobile telephone or portable electronic device while operating an emergency vehicle in the course and scope of his or her duties.

- (D) An offense under this section shall be subject to Section 1-8 “General Penalty” provision of the City Code of Smyrna except that the maximum fine shall not exceed \$150.00. The provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof. Any violation of this Code section shall constitute a separate offense.

- (E) This ordinance shall be effective beginning April 2, 2018 and shall remain effective until May 31, 2020 unless sooner repealed.

The above Ordinance was approved by the Mayor and Council of the City of Smyrna, Georgia, on the _____ day of _____ 2018.

A. Max Bacon, Mayor

Attest:

Terri Graham, City Clerk

SEAL

Approved As to Form:

Scott Cochran, City Attorney