



ORDINANCE NO. D 17-01

**USE OF WIRELESS COMMUNICATION DEVICES WHILE
OPERATING A MOTOR VEHICLE**

AN ORDINANCE OF THE CITY OF NOLANVILLE, TEXAS, RELATING TO DISTRACTED DRIVING AND PROHIBITING THE USE OF WIRELESS COMMUNICATION DEVICES IN CERTAIN SITUATIONS; MAKING FINDINGS OF FACT; PROVIDING FOR REPEALER AND SEVERABILITY; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE; PROVIDING FOR A PENALTY NOT TO EXCEED \$500 FOR VIOLATIONS OF THIS ORDINANCE, AND DOUBLE THAT AMOUNT IN ANY CONSTRUCTION ZONE WITH WORKERS PRESENT, AND FINDING PROPER NOTICE AND MEETING.

WHEREAS, the City of Nolanville is a Home Rule City in the State of Texas; and

WHEREAS, pursuant to Texas Local Government Code Section 51.012, the City of Nolanville (“City”) has general authority to adopt an ordinance not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality; and

WHEREAS, pursuant to Texas Transportation Code Section 311.001, the City has exclusive control over and under the public highways, streets, and alleys of the municipality; and

WHEREAS, the National Highway Transportation Safety Administration found that in 2014, at least 3,179 individuals were killed in the United States, and at least 431,000 individuals injured, in distraction-related accidents that year; and

WHEREAS, the Texas Department of Transportation has reported that in 2015 there were 105,783 distracted driver crashes in the State; and

WHEREAS, the City Council of the City of Nolanville, Texas (“City Council”) seeks to minimize distracted driving within the City and increase safety on the City’s streets and highways; and;

WHEREAS, it is the intent of this Ordinance to serve the City’s compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City by

prohibiting the use of the wireless communications devices in certain situations as specified herein; and

WHEREAS, the City Council finds it necessary and proper for the government, interest, welfare, and good order of the City to establish the speed limits on the aforementioned streets as provided herein below; and

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

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. WIRELESS COMMUNICATION DEVICES DEFINITIONS

- a. Authorized government vehicle. A motor vehicle owned, leased or used by the United States, the State of Texas, or a political subdivision of the state.
- b. Electronic message. A self-contained piece of digital communication that is designed or intended to be transmitted to or from a wireless communication device, other than a voice message. An electronic message includes, but is not limited to, a text-based communication; a nonverbal command or request to access, send or receive information from or through an internet site; electronic mail; a text message; an instant message, or such other data that uses a commonly recognized electronic communications protocol.
- c. Hands-free device. Means a wireless communication device with speakerphone capability or attached to other pieces of equipment, regardless of whether permanently installed in a motor vehicle, that allows use of the wireless communication device without use of either of the operator's hands, when it is so used.
- d. Motor vehicle. Has the meaning assigned to that term by Sec. 541.201 of the Texas Transportation Code.
- e. Operate or operating. To drive or be in physical control of a motor vehicle that is in motion.
- f. Operator. A person who drives or has physical control of a motor vehicle.
- g. Park or parked. Shall mean for the operator to completely cease movement of a motor vehicle in a lawful manner and location. For the purpose of this ordinance, "parked" does not include or mean a vehicle stopped in a lane of traffic due to either a lawful traffic control device, due to conditions on the roadway, or due to traffic congestion patterns then existing.
- h. Wireless communication device. Has the meaning assigned in section 545.425(a)(2) of the Texas Transportation Code.

3. OFFENSE, EXCEPTION & DEFENSE

- a. Use of a wireless communication device; offense. It shall be unlawful for an operator of a motor vehicle to use a wireless communication device to view, send or compose an electronic message or manually engage other application software while operating a motor vehicle upon any roadway in the City, including when stopped, except as provided in subsection (b) below.
- b. Exception. It is an exception to the prohibition in subsection (a) if:
 - (1) An operator uses a wireless communication device to strictly engage in a telephone conversation or to listen to a voicemail message, including dialing or deactivating a phone call;
 - (2) An operator uses a wireless communication device while parked; or
 - (3) An operator uses a wireless communication device solely in a voice activated or other hands-free mode.
- c. Defense. It is an affirmative defense to prosecution of conduct prohibited in subsection (a) if:
 - (1) An operator of an authorized government vehicle uses a wireless communication device to respond to an emergency while acting in an official capacity while operating an authorized government vehicle;
 - (2) An operator uses a wireless communication device to:
 - (A) Operate a fixed or mounted global positioning or navigation system;
 - (B) Obtain emergency assistance by contacting: an emergency response service, a hospital; a fire department; a law enforcement agency;
 - (C) Communicate with the reasonable belief that a person's life, safety or property is in immediate danger.

4. REPEALER; CONFLICT

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated herein. To the extent that any clause, phrase, provision, sentence or part of this section conflicts with the Texas Transportation Code, section 545.424, regarding the use of wireless communications 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.

5. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

6. PUBLICATION

The caption or title and the penalties under this Ordinance shall be published one (1) time in the official newspaper(s) of the City of Nolanville, as required under Sec. 3.11(C) of the City Charter.

7. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication as provided by law.

8. FINES AND PENALTIES

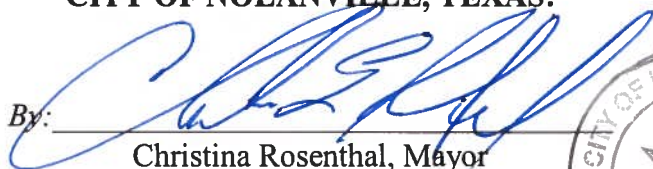
Any person violating any provision of this Ordinance or failing to observe any provision hereof shall be deemed guilty of a misdemeanor and upon conviction shall be fined a sum not more than Five Hundred (\$500.00), which fine, pursuant to authority granted by Texas Transportation Code Sec. 542.201 and Sec. 542.202(a)(13), shall be doubled in a construction zone with workers present.

9. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.


PASSED AND APPROVED this 19th day of January, 2017, by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of the City of Nolanville, Texas.

CITY OF NOLANVILLE, TEXAS:

By: 
Christina Rosenthal, Mayor



ATTEST:


Crystal Briggs, City Secretary