

ORDINANCE NO. O-2011-022

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS, AMENDING CHAPTER 90, TRAFFIC AND VEHICLES, OF THE CODE OF ORDINANCES OF THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS, BY ADDING A NEW SECTION 90-8, USE OF CERTAIN WIRELESS COMMUNICATION DEVICES WHILE DRIVING PROHIBITED; REGULATING THE USE OF WIRELESS COMMUNICATION DEVICES WHILE OPERATING MOTOR VEHICLES; AMENDING THE RESERVED SECTIONS IN ARTICLE I; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$200 FOR EACH VIOLATION HEREOF; AND PROVIDING FOR SEVERABILITY, A PENALTY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS:

Section 1. The Code of Ordinances of the City of Magnolia, Texas, is hereby amended by adding a new Section 90-8, Use of Certain Wireless Communication Devices While Driving Prohibited, to Article I, In General, to Chapter 90, Traffic and Vehicles, to provide as follows:

“ARTICLE I. IN GENERAL

Sec. 90-8. Use of Certain Wireless Communication Devices While Driving Prohibited.

(a) Definitions. For the purposes of this section:

(1) Electronic message means a self-contained piece of digital communication that is designed or intended to be transmitted to or from a wireless communication device. An electronic message includes, but is not limited to, a text-based communication, such as electronic mail, a text message, or an instant message, or a command or request to access an internet site, or other data that uses a commonly recognized electronic communication protocol.

(2) Wireless communication device means a device that uses a commercial mobile service, as defined by 47 U.S.C. § 332. Ordinance No. 2010-25

(b) Offense. A person commits an offense if the person drives or operates a motor vehicle in the City while using a wireless communication device to view, send or compose an electronic message.

(c) **Affirmative defenses.** It is an affirmative defense to prosecution of conduct prohibited by subsection (b) if:

(1) The person is using the wireless communication device strictly to engage in a telephone conversation, including dialing or deactivating a phone call;

(2) The person is an authorized government vehicle and is using the wireless communication device to respond to an emergency while acting in an official capacity;

(3) The person is using the wireless communication device while stopped or standing at a position parallel to and as close as possible to the right-hand edge or curb of a roadway where parking, standing or stopping in a non-emergency situation is not otherwise prohibited; or

(4) The person is using the wireless communication device to:

a. Operate only a global positioning or navigation system that is affixed to the vehicle;

b. Obtain emergency assistance to report a traffic accident, medical emergency, serious traffic hazard, fire or other hazardous response service;

c. Prevent a crime about to be committed;

d. Communicate with the reasonable belief that a person's life, safety, or property is in immediate danger; or

e. Operate only a device that is permanently installed inside the vehicle or that is solely in a voice-activated or other hands-free mode.

(d) **Conflicting regulations.** To the extent that any clause, phrase, provision, sentence or part of this section conflicts with Texas Transportation Code §545.424, regarding the use of wireless communication devices while operating a motor vehicle by minors; or Texas Transportation Code § 545.425, regarding the use of wireless communication devices in school crossing zones, this section does not apply.

Secs. 90-9-90-30. Reserved.”

Section 2. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$200. Each violation shall constitute a separate offense.

Section 4. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas

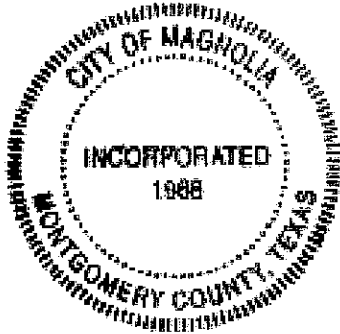
Constitution. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Magnolia, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 5. The City Secretary is instructed to publish this Ordinance in the Official Newspaper of the City of Magnolia in the manner provided and for the time required by Section 52.011(a)-(c) of the Local Government Code which publication shall be sufficient if it contains the caption of this Ordinance and at which time this Ordinance takes effect.

PASSED and APPROVED on this 13th day of September 2011.

THE CITY OF MAGNOLIA, TEXAS

By: Todd Kana
Todd Kana, Mayor



ATTEST

Lynne George
Lynne George, TRMC/CPM
City Secretary