

Ordinance Number 2011-1539

AN ORDINANCE AMENDING CHAPTER 98, "TRAFFIC AND VEHICLES" OF THE CITY OF BROWNSVILLE CODE OF ORDINANCES BY ADDING SECTION 98-14, "USE OF A WIRELESS COMMUNICATION DEVICE; OFFENSE."

WHEREAS, the act of texting while driving has been found by some studies to make drivers eight times more likely to cause an auto accident; and

WHEREAS, the danger inherent in texting while driving is of utmost concern to the City of Brownsville in its impact on its citizens; and

WHEREAS, prohibiting texting while driving within the City of Brownsville to the extent allowed by the Texas Transportation Code directly addresses this danger; and

WHEREAS, The City of Brownsville deems this prohibition important for the health, safety, and well being of its citizens.

NOW, THEREFORE, BE IT RESOLVED BY the City of Brownsville:

Section 1. That Chapter 98, Article I of the City of Brownsville Code of Ordinances shall be amended to add the following:

Sec. 98-14. Use of a Wireless Communication Device; Offense

(a) For purposes of this section:

(1) *Operator of a motor vehicle* means an individual who drives or has physical control of a motor vehicle.

(b) It shall be unlawful for an operator of a motor vehicle to use a wireless communication device, including a cellular phone or other electronic media device, to view, send, or compose an electronic message or manually engage other application software while operating a motor vehicle upon any public roadway within the city, including when stopped, except as provided in subsection (c)(2).

(c) It is an exception to the prohibition in subsection (b) if:

(1) An operator of a motor vehicle uses a wireless communication device to strictly engage in a telephone conversation, including dialing or deactivating a phone call;

(2) An operator of a motor vehicle uses a wireless communication device while stopped or standing at a position parallel to and as close as possible to the right hand edge or curb or a roadway where parking, standing or stopping in a non-emergency situation is not otherwise prohibited; or

- (3) An operator of a motor vehicle uses a wireless communication device solely in a voice-activated or other hands-free mode.
- (d) It is an affirmative defense to prosecution of conduct prohibited in subsection (b) if:
- (1) An operator of an authorized government vehicle uses a wireless communication device to:
 - (i) Operate only a global positioning or navigation system;
 - (ii) Obtain emergency assistance by contacting an emergency response service, including a rescue, emergency medical, or hazardous material response service; a hospital; a fire department; a law enforcement agency; a medical doctor's office; or an individual to administer first aid treatment;
 - (iii) Obtain emergency assistance to prevent a crime about to be committed;
 - (iv) Report a traffic accident or serious traffic hazard; or
 - (v) Communicate with the reasonable belief that a person's life, safety, or property is in immediate danger.
 - (e) Conflicting regulations. To the extent that any 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.

Section 2. Severability. If any part of this ordinance is found by a court of competent jurisdiction to be unconstitutional or otherwise invalid, this finding shall not affect the remaining parts herein, and such parts shall remain in full force and effect.

Section 3. This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

INTRODUCED and PASSED on the **First Reading** on this, the 1st day of February, 2011.

PASSED on the **Second and Final Reading** and Approved on this, the 15th day of February, 2011.

Attest:

Estela von Hatten
 Estela Von Hatten
 City Secretary



Pat M. Ahumada, Jr.
 Pat M. Ahumada, Jr.,
 Mayor

Approved as to form and legality
Mark Sossi
 Mark Sossi, City Attorney