

CITY OF VON ORMY, TEXAS

ORDINANCE NO. 2010-54

AN ORDINANCE PROHIBITING THE USE OF A HAND-HELD DEVICE TO SEND, READ, OR WRITE A TEXT MESSAGE OR ENGAGE IN ANY OTHER USE OF THE DEVICE BESIDES DIALING TELEPHONE NUMBERS OR TALKING TO ANOTHER PERSON, WHILE OPERATING A MOVING MOTOR VEHICLE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CAUSES; PROVIDING FOR PENALTY PROVISIONS FOR VIOLATIONS OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Von Ormy ("City") has found the use of a hand-held mobile communication device to send, read, or write a text message, view pictures or written text, whether transmitted by internet or other electronic means, engage in gaming or any other use of the device besides dialing telephone numbers, or talking to another person while operating a moving motor vehicle, is a traffic hazard, a danger to the public and creates a particular danger or probability of danger in the City; and

WHEREAS, the City Council believes that prohibiting the use of hand-held mobile communication devices to engage in any use of a mobile communication device besides dialing telephone numbers or talking to another person, with certain defenses, would further and protect the public health, safety, and welfare;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VON ORMY, TEXAS;

SECTION 1. Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2. Purpose and Intent. The City Council is enacting this Ordinance to prohibit the use of a hand-held device to send, read, or write a text message or engage in any other use of the device besides dialing telephone numbers or talking to another person while operating a moving motor vehicle.

SECTION 3. Definitions. For the purpose of this Ordinance, the following words shall have the meanings respectively ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) **HAND-HELD MOBILE COMMUNICATION DEVICE** means a text-message device or other electronic, two-way communication device that is designed to receive and transmit voice communication, text or pictorial communication, or both, whether by internet or other electronic means. The term includes a mobile telephone, and a personal digital assistant (PDA).

(b) **TEXT MESSAGE** means a two-way communication (whether real-time or asynchronous) in which data (composed in whole or in part of text, numbers, images, or symbols) is sent, entered, or received by a method other than by voice and transmitted through either a short message service (SMS) or a computer network.

(c) **WIRELESS TELEPHONE SERVICE** means two-way, real-time voice telecommunications service that is interconnected to a public switched telephone network and is commonly referred to as cellular service or personal communication service.

SECTION 4. A person commits an offense if the person uses a hand-held mobile communication device to send, read or write, a text message, view pictures or written text, whether transmitted by internet or other electronic means, engage in gaming or any other use of the device, *besides dialing telephone numbers or talking to another person*, while operating a moving motor vehicle. This ordinance shall not apply to public safety personnel in the normal scope of performing their duties.

SECTION 5. Affirmative Defenses. It is an affirmative defense to prosecution of an offense under this section if a hand-held mobile communication device is used:

- (1) while the vehicle is stopped, out of the moving lanes of the roadway;
- (2) strictly to engage in a telephone conversation, including dialing or deactivating the call;
- (3) as a global positioning or navigation system that is affixed to the vehicle;
- (4) to communicate with an emergency response operator, a fire department, a law enforcement agency, a hospital, a physician's office, or a health clinic regarding a medical or other emergency situation to prevent injury to a person or property;
- (5) in the reasonable belief that a person's life or safety is in immediate danger; or
- (6) solely in a voice-activated or other hands-free mode.

SECTION 6. Penalties. Only warning citations may be issued for the first 90 days following the effective date of this Ordinance so that an educational effort by the City of Von Ormy may be conducted to inform the public about the importance and requirements of this new Ordinance. Thereafter, a person convicted of an offense under this section shall be punished by a fine of up to \$200.00.

- (a) An offense under this section is not a moving violation and may not be made a part of a person's driving record or insurance record.

- (b) In addition to enforcement by a peace officer of the City of Von Ormy, this section may be enforced by a peace officer of another entity, including those employed by school districts, duly authorized to issue traffic citations with the City of Von Ormy.

SECTION 7. Should any article, section, part, paragraph, sentence, phrase, clause, or word of this Ordinance, for any reason, be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 8. The publishers of the City Code of Von Ormy, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing Code.

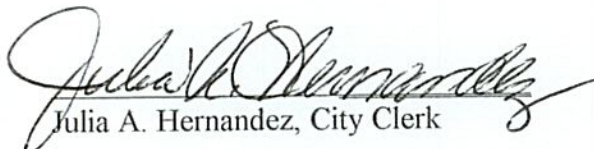
SECTION 9. The City Clerk of the City of Von Ormy is hereby directed to publish notice of this Ordinance as required by the laws of the State of Texas.

SECTION 10. This Ordinance shall take effect 5 days from the date of publication in accordance with Section 9 above.

PASSED, APPROVED AND ADOPTED THIS 3RD DAY OF NOVEMBER, 2010.



Art Martinez de Vara, Mayor



Julia A. Hernandez, City Clerk