

ORDINANCE NO. 2016-016

AN ORDINANCE OF THE CITY OF MONT BELVIEU, TEXAS, ADDING A NEW SECTION 38-27 OF ARTICLE II OF CHAPTER 38 PROVIDING RULES AND REGULATIONS FOR USE OF WIRELESS COMMUNICATION DEVICES WITHIN THE TERRITORIAL LIMITS OF THE CITY OF MONT BELVIEU, TEXAS; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, The City Council of the City of Mont Belvieu, Texas, ("City") conducted research on safe driving behaviors; and

WHEREAS, Texas Transportation Code, Section 545.425 allows a City to enforce rules and regulations for use of a wireless communication device throughout the City's territorial limits; and

WHEREAS, The City Council finds that such rules and regulations for use of wireless communication devices throughout the City's territorial limits protects the health, safety, and general welfare of traveling motor vehicles, pedestrians, and bicyclists;

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

Section 1. The City Council finds that the facts and recitations in the preamble of this Ordinance are true and correct and incorporated herein for all purposes.

Section 2. That a new section 38-27 of Article II of Chapter 38 is added to read as follows:

"Chapter 38 Traffic and Vehicles

. . . .

Article II Traffic Control Regulations

. . . .

Section 38-27. Use of Wireless Communication Devices Throughout City Limits, Prohibited.

(a) Definitions.

Hands-free device means speakerphone capability or a telephone attachment or other piece of equipment, regardless of whether permanently installed in the motor vehicle, that allows use of the wireless communication device without the use of the vehicle operator's hands.

Use means employing a wireless communication device to dial or deactivate a phone call, speak or listen to a phone call, view, compose, or send any electronic messages including but not limited to text messages, emails, pictures, videos, games, or other electronic data, or accessing or viewing any of the above or any internet data or websites.

Wireless communication device means a device that uses a commercial mobile service, as defined by V.T.C.A., Transportation Code § 545.425.

Parked shall mean for the operator to completely cease movement of a motor vehicle in a lawful manner and location. For purposes 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, or the conditions on the roadway, or traffic congestion patterns then existing.

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 or any similar type application or program.

(b) It shall be unlawful for a motor vehicle operator to use a wireless communication device while operating a motor vehicle on a public roadway or on school property within the territorial limits of the City of Mont Belvieu unless:

- (1) The wireless communication device is being used with a hands-free device;
- (2) The device is affixed to the vehicle for use as a global positioning or navigation system;
- (3) The vehicle is parked;
- (4) An operator is in an authorized emergency vehicle using a wireless communication device while acting in an official capacity;
- (5) The operator of a motor vehicle using a hand-held mobile communication device while the vehicle is legally parked or is being driven on private property; or

- (6) The operator is licensed by the Federal Communication Commission and is operating a radio frequency device other than a wireless communication device.

(c) It shall be an affirmative defense to prosecution of an offense under this section that:

- (1) the wireless communication device was used to make an emergency call to:
 - (A) an emergency response service, including a rescue, emergency medical, or hazardous material response service;
 - (B) a hospital;
 - (C) a fire department;
 - (D) a health clinic;
 - (E) a medical doctor's office;
 - (F) an individual to administer first aid treatment; or
 - (G) a police department.

(D) To the extent that this section conflicts with the V.T.C.A., Transportation Code § 545.424, regarding the use of wireless communication devices while operating a motor vehicle by minors, or V.T.C.A., Transportation Code § 545.425, regarding the use of wireless communication devices in school crossing zones, this section does not apply to such conflict only."

(E) The City shall install signs prohibiting the use of a wireless communication device while driving within the city limits at each city limit sign.

Section 3. Penalty.

Any person who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than One Dollar (\$1.00) nor more than Two Hundred Dollars (\$200.00). Each occurrence of any such violation of this Ordinance shall constitute a separate offense.

Section 4. Severability.

In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances 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 Mont Belvieu, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 5. *Repeal Clause.*

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

Section 6. *Effective Date.*

This Ordinance shall become effective immediately but not enforceable until six (6) months from the date of adoption and when published as required by law.

PASSED, APPROVED, and ADOPTED this 12th day of September, 2016.

CITY OF MONT BELVIEU, TEXAS



Nick Dixon, Mayor

ATTEST:



Kori Schweinle, City Secretary