

ORDINANCE NO. 017286

**AN ORDINANCE AMENDING TITLE 12 (VEHICLES AND TRAFFIC) TO CREATE CHAPTER 12.22 (WIRELESS COMMUNICATIONS DEVICES) OF THE EL PASO CITY CODE, TO PROHIBIT THE USE OF WIRELESS COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE, AND CREATING AN OFFENSE; THE PENALTY BEING AS PROVIDED IN SECTIONS 1.08-010 - 1.08.030 AND SECTION 12.84.010 OF THE EL PASO CITY CODE.**

**WHEREAS**, the City Council finds that there may be risks relating to distracted driving which can include various aspects of the use of wireless communications devices while driving; and

**WHEREAS**, prohibiting the use of wireless communications devices while driving in the City to the extent allowed by Section 545.425(f), Texas Transportation Code, addresses the possible hazards produced by a distracted driver as the result of making a call, answering a call, or creating, sending or reading a text message; and

**WHEREAS**, this regulation is drafted to address the City's police power interests in regulation of the public safety, and appropriately excludes acts for which the City is preempted from regulating, and provides affirmative defenses to prosecution and exceptions to the application of the ordinance, including allowing the use of hands-free mobile telephone communications and emergency communications.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:**

Section 1. That Chapter 12.22 (Wireless Communications Devices) of the El Paso City Code is created to read as provided herein.

Section 2. That Section 12.22.010 (Definitions) of the El Paso City Code is created to read:

**12.22.010 Definitions.**

In this chapter:

A "Hands-free device" means speakerphone capability or a telephone attachment or other piece of equipment, regardless of whether permanently installed in the motor

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vehicle, that allows use of the wireless communication device without use of either of the operator's hands.

B. "Stop" or "Stopped" means to stand an occupied or unoccupied vehicle in a location other than in a lane of traffic on a roadway.

C. "Wireless Communication Device" has the meaning assigned in Section 545.425 (Use of Wireless Communication Device; Offense) of the Texas Transportation Code.

Section 3. Section 12.22.020 (Use of Wireless Communications While Driving) of the City Code is created to read:

**12.22.020 Use of Wireless Communications While Driving.**

A. An operator of a motor vehicle may not use a wireless communication device while operating a motor vehicle.

B. This section does not apply to an operator of a motor vehicle using a wireless communications device:

1. while the vehicle is stopped; or
2. that is affixed to the vehicle and used as a global positioning or navigation system.

C. It is an affirmative defense to prosecution of an offense under this section if a wireless communications device is used:

1. for obtaining emergency assistance to report a traffic accident, medical emergency, or serious traffic hazard, or to prevent a crime about to be committed;
2. in the reasonable belief that a person's life or safety is in immediate danger; or
3. solely in a voice-activated or other hands-free mode.

D. To the extent that this section conflicts with the Texas Transportation Code Section 545.424, regarding the use of wireless communication 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, or by the operators of school busses, this section does not apply.

Section 4. This ordinance shall take effect on April 1, 2010.

ADOPTED this 9<sup>th</sup> day of March 2010.

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CITY OF EL PASO

John F. Cook  
John F. Cook, Mayor

ATTEST:

Richarda Duffy Mommisen  
Richarda Duffy Mommisen  
City Clerk

APPROVED AS TO FORM:

Elaine S. Hengen  
Elaine S. Hengen  
Senior Assistant City Attorney

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