

**ORDINANCE NO. 20091022-028**

**AN ORDINANCE AMENDING SECTION 12-1-1 AND CREATING SECTION 12-1-34 OF THE CITY CODE TO PROHIBIT THE USE OF WIRELESS COMMUNICATION DEVICES FOR ELECTRONIC MESSAGING WHILE OPERATING A MOTOR VEHICLE, AND CREATING AN OFFENSE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** Section 12-1-1 of the City Code is amended to read:

**§ 12-1-1 Definitions.**

In this title:

(1) ALLEY means a street of 20 feet or less in width, having no legal or official name other than alley.

(2) ELECTRONIC MESSAGE means a self-contained piece of digital communication that is designed or intended to be transmitted between physical devices. An electronic message includes, but is not limited to, a text-based communication, a command or request to access an internet site, or other data that uses a commonly recognized electronic communications protocol.

(3) [~~(2)~~] PARK OR PARKING means to stand an occupied or unoccupied vehicle, other than temporarily while loading or unloading merchandise or passengers.

(4) [~~(3)~~] TRAFFIC ENGINEER means the person designated by the city manager to serve as the City's traffic engineer.

(5) [~~(4)~~] TRUCK means a motor vehicle or combination vehicle/trailer with a total of six or more wheels, designed, maintained, or used primarily for the transportation, loading, or unloading of material or property, including "special mobile equipment" as defined in Section 541.201 (*Vehicles*) of the Texas Transportation Code.

(6) WIRELESS COMMUNICATION DEVICE has the meaning assigned in Section 545.425 (*Use of Wireless Communication Device; Offense*) of the Texas Transportation Code.

**PART 2.** Section 12-1-34 of the City Code is amended to read:

**§ 12-1-34 Electronic Messaging While Driving.**

(A) A driver of a motor vehicle may not use a wireless communication device to view, send, or compose an electronic message while operating a motor vehicle.

(B) It is an affirmative defense to prosecution of an offense under this section if a wireless communications device is used:

(1) while the vehicle is stopped;

(2) for making a telephone call;

(3) as a global positioning or navigation system that is affixed to the vehicle;

(3) for obtaining emergency assistance to report a traffic accident, medical emergency, or serious traffic hazard, or to prevent a crime about to be committed;

(4) in the reasonable belief that a person's life or safety is in immediate danger;

(5) if the device is permanently installed inside the vehicle; or

(6) solely in a voice-activated or other hands-free mode.

(C) This section does not apply to an operator of an authorized emergency vehicle using a wireless communication device while acting in an official capacity.

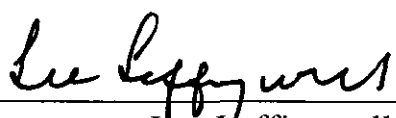
(D) To the extent that this section conflicts with the Texas Transportation Code Section 545.424, regarding the use of wireless communication devices while operating a motor vehicle by minors, or Texas Transportation Code Section 545.425, regarding the use of wireless communication devices in school crossing zones, this section does not apply.

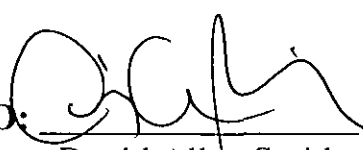
**PART 3.** This ordinance takes effect on January 1, 2010.

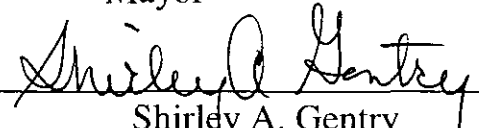
**PASSED AND APPROVED**

October 22, 2009

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Lee Leffingwell  
Mayor

**APPROVED:**   
David Allan Smith  
City Attorney

**ATTEST:**   
Shirley A. Gentry  
City Clerk