

ORDINANCE NO. 2014-20

AN ORDINANCE OF THE FLAGSTAFF CITY COUNCIL AMENDING TITLE 9, TRAFFIC, CHAPTER 9-01, TRAFFIC CODE, BY ADDING A NEW SECTION 9-01- 001-0013, USE OF WIRELESS COMMUNICATION DEVICES WHILE DRIVING PROHIBITED; EXCEPTIONS; AND PROVIDING FOR PENALTIES

RECITALS:

WHEREAS, while there is ample research regarding the dangers of distracted driving generally, there is an increasing amount of evidence showing that text messaging is the most dangerous driver distraction of all; and

WHEREAS, this Council finds that prohibiting text messaging and similar behaviors while driving is necessary for the health and safety of Flagstaff citizens.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. General.

Title 9, Traffic, Chapter 9-01, Traffic Code, is amended by adding the following section:

**9-01-001-0013. USE OF WIRELESS COMMUNICATION DEVICES WHILE VEHICLE OR
BICYCLE IS IN MOTION~~DRIVING~~ PROHIBITED; EXCEPTIONS.**

- A. A person shall not operate a motor vehicle or a bicycle on a street, sidewalk or trail while using a handheld wireless communications device to compose manually, send or read a written message for the purpose of non-voice interpersonal communication, including but not limited to texting, emailing and instant messaging, while the motor vehicle or bicycle is in motion.
- B. This section does not apply to any of the following persons if the use of the handheld wireless communications device is made as part of their official duties:
 - 1. Law enforcement and public safety personnel.
 - 2. Drivers of authorized emergency vehicles.
- C. Enforcement and Penalties.
 - 1. Any peace officer may stop a motor vehicle or bicycle if the officer has reasonable cause to believe a violation of this Ordinance is occurring.
 - 2. A violation of this article is a civil traffic violation.

3. A person found to be in violation of this Ordinance and not involved in a motor vehicle or bicycle crash is subject to a civil penalty of \$100 dollars plus any other penalty assessment authorized by law.
4. A person found to be in violation of this Ordinance and involved in a motor vehicle or bicycle crash is subject to a civil penalty of \$250 dollars plus any other penalty assessments authorized by law.
5. Violations of this Ordinance shall be administered pursuant to the procedures for civil traffic violations as set out in A.R.S. 28-1591 through 28-1601.

OR**SECTION 1. General.**

Title 9, Traffic, Chapter 9-01, Traffic Code, is amended by adding the following section:

9-01-001-0013. USE OF WIRELESS COMMUNICATION DEVICES WHILE DRIVING PROHIBITED; EXCEPTIONS.

- A. A person shall not drive a motor vehicle or bicycle while using a portable communications device to compose manually, send or read a written message for the purpose of non-voice interpersonal communication, including but not limited to texting, emailing and instant messaging.
~~engage in a call unless that devise is specifically designed and configured to allow hands-free listening and talking, and is used exclusively in that manner while driving a motor vehicle or bicycle. Texting and typing are banned while driving a motor vehicle or bicycle.~~
- B. This Section does not apply to:
 1. ~~Drivers using a Hands-free mobile device to engage in a call.~~
 2. ~~Calls made for the purpose of communication during an emergency with a police or fire department, physician's office, or an ambulance service.~~
 13. Law enforcement officials or other peace officers or emergency-vehicle operators when performing official duties.
 4. ~~drivers who have a valid amateur radio operator license or any license issued by the Federal Communications Commission or drivers who use a two-way radio, including radios used in the Citizens Band (CB) service.~~
 25. Operation of a motor vehicle on private property.
 36. Operators of a motor vehicle that is parked in the non-traveled portion of the roadway in a safe and legal location.

C. Definitions:

1. ~~"Hands free mobile device" shall mean: A device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such device, which is not held by the driver during motor vehicle use. The device must not obstruct the driver's view of the front or sides of the motor vehicle or interfere with the safety or operating equipment of the motor vehicle; or a device that is programmed before a person begins to drive or operate a motor vehicle such as a Global Positioning Device (GPS).~~
12. "Portable communications device" shall mean: any handheld mobile telephone, personal digital assistant (PDA), handheld device with mobile data access, laptop computer, pager, broadband personal communications device, two-way messaging device, electronic game, or portable computing device.
23. "Motor vehicle," "Drive" and "Driver" have the same meaning as those terms are defined in Title 283, Chapter 1, Arizona Revised Statutes, Transportation.
34. "Use" means: holding a portable communications device and performing the illegal activities stated in Section A.

D. Enforcement and Penalties.

1. Any peace officer may stop a motor vehicle or bicycle if the officer has reasonable cause to believe a violation of this Ordinance is occurring.
2. A violation of this article is a civil traffic violation.
3. A person found to be in violation of this Ordinance and not involved in a motor vehicle or bicycle crash is subject to a civil penalty of \$100 dollars plus any other penalty assessment authorized by law.
4. A person found to be in violation of this Ordinance and involved in a motor vehicle or bicycle crash is subject to a civil penalty of \$250 dollars plus any other penalty assessments authorized by law.
5. Violations of this Ordinance shall be administered pursuant to the procedures for civil traffic violations as set out in A.R.S. 28-1591 through 28-1601.

SECTION 3. Warning Period

For the purpose of informing and educating persons who operate motor vehicles and motor driven cycles and bicyclists, any law enforcement office may only issue verbal warnings to persons who would be violating this ordinance for a six month period after the ordinance is in effect.

SECTION 4. Severability

Should any sentence, paragraph, section, subsection, division, subdivision, clause or phrase of this ordinance be adjudged to be unconstitutional, illegal or invalid, the same shall not affect the validity of the document as a whole, or any part or provision thereof other than that part so decided to be

unconstitutional, illegal or invalid, and shall not affect the validity of this ordinance, or the Flagstaff City Code, as amended, as a whole.

SECTION 5. Clerical Corrections

That the City Clerk is authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary; and that the City Clerk is authorized to make formatting changes needed for purposes of clarity and form, if required, to be consistent with Flagstaff City Code.

SECTION 6. This Ordinance is effective 30 days after adoption by the Flagstaff City Council.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2014.

MAYOR**ATTEST:**

CITY CLERK**APPROVED AS TO FORM:**

CITY ATTORNEY