

ORDINANCE NO. 2010-25

AN ORDINANCE AMENDING CHAPTER 78, TRAFFIC AND VEHICLES, OF THE CODE OF ORDINANCES OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, BY ADDING A NEW SECTION 78-73, USE OF CERTAIN WIRELESS COMMUNICATION DEVICES WHILE DRIVING PROHIBITED; REGULATING THE USE OF WIRELESS COMMUNICATION DEVICES WHILE OPERATING MOTOR VEHICLES; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$200 FOR EACH VIOLATION HEREOF; AND PROVIDING FOR SEVERABILITY; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The Code of Ordinances of the City of Tomball, Texas, is hereby amended by adding a new Section 78-73, Use of Certain Wireless Communication Devices While Driving Prohibited, to Article III, Operation of Vehicle Generally, to Chapter 78, Traffic and Vehicles, to provide as follows:

“ARTICLE III. OPERATION OF VEHICLE GENERALLY

* * * * *

Sec. 78-73. Use of Certain Wireless Communication Devices While Driving Prohibited.

- (a) **Definitions.** For the purposes of this section:
- (1) Electronic message means a self-contained piece of digital communication that is designed or intended to be transmitted to or from a wireless communication device. An electronic message includes, but is not limited to, a text-based communication, such as electronic mail, a text message, or an instant message, or a command or request to access an internet site, or other data that uses a commonly recognized electronic communication protocol.
 - (2) Wireless communication device means a device that uses a commercial mobile service, as defined by 47 U.S.C. § 332.

- (b) **Offense.** A person commits an offense if the person drives or operates a motor vehicle in the City while using a wireless communication device to view, send or compose an electronic message.
- (c) **Affirmative defenses.** It is an affirmative defense to prosecution of conduct prohibited by subsection (b) if:
 - (1) The person is using the wireless communication device strictly to engage in a telephone conversation, including dialing or deactivating a phone call;
 - (2) The person is an authorized government vehicle and is using the wireless communication device to respond to an emergency while acting in an official capacity;
 - (3) The person is using the wireless communication device while stopped or standing at a position parallel to and as close as possible to the right-hand edge or curb of a roadway where parking, standing or stopping in a nonemergency situation is not otherwise prohibited; or
 - (4) The person is using the wireless communication device to:
 - a. Operate only a global positioning or navigation system that is affixed to the vehicle;
 - b. Obtain emergency assistance to report a traffic accident, medical emergency, serious traffic hazard, fire or other hazardous response service;
 - c. Prevent a crime about to be committed;
 - d. Communicate with the reasonable belief that a person's life, safety, or property is in immediate danger; or
 - e. Operate only a device that is permanently installed inside the vehicle or that is solely in a voice-activated or other hands-free mode.
- (d) **Conflicting regulations.** To the extent that any clause, phrase, provision, sentence or part of this section conflicts with Texas Transportation Code §545.424, regarding the use of wireless communication devices while operating a motor vehicle by minors; or Texas Transportation Code § 545.425, regarding the use of wireless communication devices in school crossing zones, this section does not apply.”

Section 2. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$200. Each violation shall constitute a separate offense.

Section 4. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance 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 Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 15TH DAY OF NOVEMBER 2010.

| | |
|---------------------|------------|
| COUNCILMAN QUINN | <u>AYE</u> |
| COUNCILMAN STOLL | <u>AYE</u> |
| COUNCILMAN BROWN | <u>AYE</u> |
| COUNCILMAN TOWNSEND | <u>AYE</u> |
| COUNCILMAN DODSON | <u>AYE</u> |

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 6TH DAY OF DECEMBER 2010.

| | |
|---------------------|------------|
| COUNCILMAN QUINN | <u>AYE</u> |
| COUNCILMAN STOLL | <u>AYE</u> |
| COUNCILMAN BROWN | <u>AYE</u> |
| COUNCILMAN TOWNSEND | <u>AYE</u> |
| COUNCILMAN DODSON | <u>AYE</u> |

Gretchen Fagan
Gretchen Fagan, Mayor

ATTEST:

Doris Speer
Doris Speer, City Secretary