

ORDINANCE NO. 16-2019

INTRODUCED BY: MAYOR JAMES GRAVEN

AN ORDINANCE RENAMING AND AMENDING SECTION 434.10 OF THE TRAFFIC CODE CURRENTLY ENTITLED "TEXTING WHILE DRIVING PROHIBITED" SO AS TO FURTHER PROHIBIT INTERNET USAGE WHILE DRIVING AND ADDITIONALLY MAKING A VIOLATION OF SECTION 434.10 A PRIMARY OFFENSE, AND DECLARING AN EMERGENCY

WHEREAS, Olmsted Falls Codified Ordinance Section 434.10 currently prohibits texting while driving and establishes that a violation is a secondary offense only; and

WHEREAS, it is the desire of the Safety Director to further regulate driving while engaging in internet browsing or related activity; and

WHEREAS, it is the further desire of the Safety Director to make a violation of Section 434.10 a primary offense. Now therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OLMSTED FALLS, OHIO, THAT:

SECTION 1. That Olmsted Falls Codified Ordinance Section 434.10, which currently reads in its entirety as follows:

434.10 TEXTING WHILE DRIVING PROHIBITED

(a) No person shall drive a motor vehicle on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication.

(b) Subsection (a) of this section does not apply to any of the following:

(1) A person using a handheld electronic wireless communications device in that manner for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;

(2) A person driving a public safety vehicle who uses a handheld electronic wireless communications device in that manner in the course of the person's duties;

(3) A person using a handheld electronic wireless communications device in that manner whose motor vehicle is in a stationary position and who is outside a lane of travel;

(4) A person reading, selecting, or entering a name or telephone number in a handheld electronic wireless communications device for the purpose of making or receiving a telephone call;

(5) A person receiving wireless messages on a device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic or weather alerts; or data used primarily by the motor vehicle;

(6) A person receiving wireless messages via radio waves;

(7) A person using a device for navigation purposes;

(8) A person conducting wireless interpersonal communication with a device that does not require manually entering letters, numbers, or symbols or reading text messages, except to activate, deactivate, or initiate the device or a feature or function of the device;

(9) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;

(10) A person using a handheld electronic wireless communications device in conjunction with a voice-operated or hands-free device feature or function of the vehicle.

(c) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of subsection (a) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(d) Whoever violates subsection (a) of this section is guilty of a minor misdemeanor.

(e) A prosecution for a violation of Ohio R.C. 4511.204 does not preclude a prosecution for a violation of a substantially equivalent municipal ordinance based on the same conduct. However, if an offender is convicted of or pleads guilty to a violation of Ohio R.C. 4511.204 and is also convicted of or pleads guilty to a violation of a substantially equivalent municipal ordinance based on the same conduct, the two offenses are allied offenses of similar import under Ohio R.C. 2941.25.

(f) As used in this section:

(1) "Electronic wireless communications device" includes any of the following:

- A. A wireless telephone;
- B. A text-messaging device;
- C. A personal digital assistant;
- D. A computer, including a laptop computer and a computer tablet;

E. Any other substantially similar wireless device that is designed or used to communicate text.

(2) “Voice-operated or hands-free device” means a device that allows the user to vocally compose or send, or to listen to a text-based communication without the use of either hand except to activate, or deactivate a feature or function.

(3) “Write, send or read a text-based communication” means to manually write or send, or read a text-based communication using an electronic wireless communications device, including manually writing or sending, or reading communications referred to as text messages, instant messages, or electronic mail.

BE AMENDED AND AS AMENDED SHALL READ IN ITS ENTIRETY AS FOLLOWS:

434.10 TEXTING AND INTERNET USAGE WHILE DRIVING PROHIBITED

(a) No person shall drive a motor vehicle on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication; **or (ii) to send, read, create or interact with Internet-based content, play games or otherwise interact with the Internet.**

(b) Subsection (a) of this section does not apply to any of the following:

(1) A person using a handheld electronic wireless communications device in that manner for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;

(2) A person driving a public safety vehicle who uses a handheld electronic wireless communications device in that manner in the course of the person’s duties;

(3) A person using a handheld electronic wireless communications device in that manner whose motor vehicle is in a stationary position and who is outside a lane of travel;

(4) A person reading, selecting, or entering a name or telephone number in a handheld electronic wireless communications device for the purpose of making or receiving a telephone call;

(5) A person receiving wireless messages on a device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic or weather alerts; or data used primarily by the motor vehicle;

(6) A person receiving wireless messages via radio waves;

(7) A person using a device for navigation purposes;

(8) A person conducting wireless interpersonal communication with a device that does not require manually entering letters, numbers, or symbols or reading text messages, except to activate, deactivate, or initiate the device or a feature or function of the device;

(9) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;

(10) A person using a handheld electronic wireless communications device in conjunction with a voice-operated or hands-free device feature or function of the vehicle.

~~(c) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of subsection (a) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.~~ **Notwithstanding any other state or municipal ordinance, a law enforcement officer may cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of subsection (a) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation or summons for violation of subsection (a) or causing the arrest of or commencing a prosecution of a person for a violation of subsection (a).**

(d) Whoever violates subsection (a) of this section is guilty of a minor misdemeanor.

(e) A prosecution for a violation of Ohio R.C. 4511.204 does not preclude a prosecution for a violation of a substantially equivalent municipal ordinance based on the same conduct. However, if an offender is convicted of or pleads guilty to a violation of Ohio R.C. 4511.204 and is also convicted of or pleads guilty to a violation of a substantially equivalent municipal ordinance based on the same conduct, the two offenses are allied offenses of similar import under Ohio R.C. 2941.25.

(f) As used in this section:

(1) “Electronic wireless communications device” includes any of the following:

- A. A wireless telephone;
- B. A text-messaging device;
- C. A personal digital assistant;
- D. A computer, including a laptop computer and a computer tablet;
- E. Any other substantially similar wireless device that is designed or used to communicate text.

(2) “Voice-operated or hands-free device” means a device that allows the user to vocally compose or send, or to listen to a text-based communication without the use of either hand except to activate, or deactivate a feature or function.

