



ORDINANCE 2008-03

AN ORDINANCE ESTABLISHING “USE OF HAND-HELD MOBILE TELEPHONES IN SCHOOL ZONES” PROHIBITING USE THEREOF; PROVIDING PENALTY FOR VIOLATION; PROVIDING FOR PUBLICATION; PROVIDING AN EFFECTIVE DATE; CONTAINING A SEVERABILITY CLAUSE AND MAKING AN OPEN MEETING FINDING.

WHEREAS, to further serve and protect school-aged children traveling to and from elementary schools and other educational facilities throughout the state, the State of Texas has adopted certain laws regulating the speed of motor vehicles in a “school zone” – said laws applying only on official school days and during the hours when the school zone is in effect; and

WHEREAS, using a hand-held mobile telephone (a/k/a “cell phone”) while operating a motor vehicle necessarily distracts the actor from his or her operation of said motor vehicle and thus causes him or her to concentrate less on driving safely, and

WHEREAS, using a hand-held mobile telephone while operating a motor vehicle necessarily limits the actor’s ability to steer and maneuver said motor vehicle, and

WHEREAS, the City of Tom Bean, Texas (“City”) finds that the use of a hand-held mobile telephone while operating a motor vehicle in a “School Zone (on official school days and during hours when the school zone is in effect) creates a danger (or probability of it) to school children and others that the City seeks to minimize; and

WHEREAS, the safety of all school-aged children traveling to and from elementary schools and other educational facilities located in the City of Tom Bean is of paramount importance to the City, and as such, demands a high standard of positive care and control; and

WHEREAS, “strict liability” offenses include, not only those that are regulatory, public welfare or mala prohibita in nature, but also those for example that are designed to protect children; and

WHEREAS, the states of California, Connecticut, New Jersey, New York, and Washington ban the use of hand-held mobile telephones while operating a motor vehicle; and

WHEREAS, the City of Tom Bean desires to implement those rules and regulations that protect health, life, and property and the preserve good government, order and security of the City and it’s inhabitants;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOM BEAN, TEXAS:

SECTION ONE:

- (a) Use of a hand-held mobile telephone is prohibited while operating a motor vehicle in a “School Zone”, on official school days and during hours when the school zone is in effect.
- (b) Definitions
 - For purposes of this section, the following definitions apply:
 - (1) “Engaging in a call” shall mean talking into, dialing or listening on a hand-held mobile telephone, but shall not include holding a mobile telephone to activate or deactivate such telephone.
 - (2) “Hand-held mobile telephone” shall mean a mobile telephone with which a user engages in a call using at least one hand (or prosthetic device or aid in the case of a physically disabled person).
 - (3) “Hands-free mobile telephone” shall mean mobile telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, which a user engages in a call without the use of either hand (or prosthetic device or aid in the case of a physically disabled person), whether or not the use of either hand (or prosthetic devices) is necessary to activate, deactivate, or initiate a function of such telephone.
 - (4) “Mobile telephone” shall mean the device used by subscriber and other users of wireless telephone service to access such service and shall include Personal Digital Assistants.
 - (5) “Personal Digital Assistant” shall mean a device operated using a wireless telecommunications service that provides for data communication other than by voice.
 - (6) “Wireless Telephone Service” shall mean two-way real time voice telecommunications service that is interconnected to a public switched telephone network commonly referred to as cellular service or personal communication service.
- (c) Except as otherwise provided below, it shall be unlawful for a person to drive or operate a motor vehicle in a school zone, on official school days, during the hours when school zones are in effect, and when school zone signs and signs prohibiting hand-held mobile telephone use are posted in place, while using a hand-held mobile telephone to engage in a call or to create, send or read message.

(d) An operator of a motor vehicle who holds a mobile telephone to, or in the immediate proximity of his or her ear while such vehicle is in motion is presumed to be engaging in a call within the meaning of this section. "Immediate proximity" shall mean that distance as permits the operator of a mobile telephone to hear telecommunications transmitted over such mobile telephone, but shall not require physical contact with such operator's ear.

(e) Subsection (c) shall not apply to:

- a. The use of a mobile telephone for the sole purposes of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital; a physician's office or health clinic; the City's Public Safety Facility;
- b. Any law enforcement, public safety or police officers, emergency services officials, first aid, emergency medical technicians and personnel, or any fire safety officials in the performance of duties arising out of and in the course of their employment as such, or
- c. The use of a hand-free mobile telephone when being used in a hands-free manner.

(f) The violation of this section is a strict liability offense.

SECTION TWO: PENALTY FOR VIOLATION

That any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor.

SECTION THREE: SEVERABILITY

If any provision, section, sentence, clause or phrase of this Ordinance, or the application of the same to any person or set of circumstances, if for any reason is held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portion of this Ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intention of the City Council of the City of Tom Bean, Texas, in adopting and of the Mayor in approving this Ordinance, that no portion hereof or provision or regulation contained herein shall become inoperative or fail by any other reason of any unconstitutionality or invalidity of any other portion, provision or regulation.

SECTION FOUR: PUBLICATION

Publication shall be made in the official publication of the City of Tom Bean, Texas, after final passage, which publication shall contain the caption stating in substance the purpose of this Ordinance.

SECTION FIVE: EFFECTIVE DATE

This Ordinance shall be effective upon passage and publication.

PASSED AND APPROVED BY THE CITY COUNCIL OF TOM BEAN, TEXAS THIS 12TH DAY OF MAY, 2008.

Mayor, Sherry Howard

Attest:

City Secretary, Cathy Pugh