

**February 27, 2020**

**Item No. 5.1.**

**Ordinance amending Section 38-19, "Use of Wireless Communication Devices While Operating a Motor Vehicle or Bicycle."**

**Sponsor:** Brandy Norris, Assistant Chief of Police

**Reviewed By CBC:** City Council

**Agenda Caption:** Presentation, discussion, and possible action regarding an ordinance amending Section 38-19, "Use of Wireless Communication Devices While Operating a Motor Vehicle or Bicycle".

**Relationship to Strategic Goals:**

Good Governance  
Improving Mobility

**Recommendation(s):** Council may adopt the attached WCD ordinance as written or rely on current no texting state law.

**Summary:** Driver inattention while using wireless communication devices is a safety concern. The State Legislature passed a State Law regulating the use of these devices while driving, but it allows for drivers to change their music, use their GPS or send or receive emergency messages. City ordinance cannot preempt state law, but an ordinance can be implemented that would require hands free use to talk on devices.

**Budget & Financial Summary:** \$29,400 - \$84,000, depending on the number of posted signs.

**Reviewed & Approved by Legal:** No

**Attachments:**

1. Sec.38.19 WCD Ord Amd

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER 38, “TRAFFIC AND VEHICLES,” ARTICLE I “IN GENERAL,” SECTION 38-19 “USE OF WIRELESS COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE OR BICYCLE,” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:**

- PART 1:** That Chapter 38, “Traffic and Vehicles,” Article I “In General,” Section 38-19 of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A”** attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.
- PART 3:** That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.
- PART 4:** This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

**PASSED, ADOPTED and APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

**APPROVED:**

\_\_\_\_\_  
City Attorney

**EXHIBIT A**

That Chapter 38, "Traffic and Vehicles," Article I "In General," Sec. 38-19 is hereby amended to read as follows:

**Sec. 38-19. - Use of Wireless Communication Devices While Operating a Motor Vehicle or Bicycle.**

- (a) **Definitions.** The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

**Authorized emergency personnel** means a person who is a Law Enforcement Officer, Firefighter, member of a governmental emergency medical services, communications or public utility function, or member of a governmental emergency management function.

**Electronic Message** means data that is read from or entered into a wireless communication device for purposes of communicating with another person.

**Hands-free device** means speakerphone capability a telephone attachment, or another function or other piece of equipment, regardless of whether permanently installed in or on a wireless communication in the motor vehicle, allowing use of the wireless communication device without use of either of the operator's hands.

**Use** means employing, accessing or operating the wireless communication device for any reason, except when using the wireless communication device to read, write or send an electronic message.

**Wireless communication device** has the meaning assigned in Texas Transportation Code § 545.425, as amended.

- (b) **Violation.** An operator of a motor vehicle or a bicycle may not use a wireless communication device while operating a motor vehicle or bicycle on a public roadway or highway, unless the motor vehicle or bicycle is at a complete stop.
- (c) **Affirmative defenses.** It is an affirmative defense to prosecution to an offense under this section if:
- (1) **Complete stop.** The motor vehicle or bicycle is at a complete stop.

- (2) ***Hands-free device.*** The wireless communication device is used in hands-free device mode of operation to engage in telephone communication or to listen to audio transmissions.
- (3) ***Navigation.*** The wireless communication device is used as global positioning or navigation device or for its global positioning or navigation operating software.
- (4) ***Emergency services.*** To report illegal activity, summon emergency help, or enter information into a software application that provides information relating to traffic and road conditions to users of the application and to read an electronic message that the person reasonably believed concerned an emergency.
- (5) ***Music.*** The wireless communication device is used to activate a function that plays music.
- (d) ***Presumption.*** Evidence that a police officer observed a person holding a wireless communication device while operating a motor vehicle or bicycle in motion creates a rebuttable presumption that the person used a wireless communication device in violation of this section.
- (e) ***Conflicts.*** To the extent this section conflicts with any provision of the Texas Transportation Code regarding the use of wireless communication devices or hand-held mobile telephones, this section does not apply.
- (f) ***Non-applicability.*** This section does not apply to:
  - (1) A person licensed by the Federal Communication Commission while operating a radio frequency device other than a wireless communication device.
  - (2) Authorized emergency personnel while acting in official capacity.