

ORDINANCE NO. 1972

AN ORDINANCE AMENDING CHAPTER 58, OFFENSES, OF THE CODE OF ORDINANCES OF THE CITY OF ALICE, TEXAS, BY ADDING A NEW SECTION 58-4, TRAFFIC AND VEHICLES, 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; PROVIDING AN EFFECTIVE DATE AND INCORPORATING CHANGES INTO APPENDIX C, FEE SCHEDULE, CITY OF ALICE CODE OF ORDINANCES; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.

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

Section 1. The Code of Ordinances of the City of Alice, Texas, is hereby amended by adding a new Section 58-4, Traffic and Vehicles, Use of Certain Wireless Communication Devices While Driving Prohibited, to Chapter 58 Offenses, Article I. In General, as follows:

ARTICLE I. IN GENERAL, TRAFFIC AND VEHICLES, USE OF CERTAIN WIRELESS COMMUNICATION DEVICES WHILE DRIVING PROHIBITED

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Sec. 58-4. 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.

(a) 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 in 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.”

- (b) An operator of a motor vehicle may not use a wireless communication device while operating a motor vehicle within the city limits.
- (c) This section does not apply to an operator of a motor vehicle using a wireless communications device:
 - (1) While the vehicle is parked;
 - (2) That is affixed to the vehicle and used as a global positioning or navigation system;
 - (3) That is used with a hands-free device;
 - (4) Who is an operator of an authorized emergency vehicle while acting in an official capacity;
 - (5) Who is licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device; or
 - (6) While driving a motor vehicle on private property.
- (d) It is an affirmative defense to prosecution of an offense under this section if a wireless communications device is used to make an emergency call to:
 - (1) An emergency response service, including a rescue, emergency medical, or hazardous material response service;
 - (2) A hospital;
 - (3) A fire department;
 - (4) A health clinic;
 - (5) A medical doctor's office;
 - (6) An individual to administer first aid treatment; or
 - (7) A police department.
- (e) A violation of this section is a class C misdemeanor punishable as provided in the Code of Ordinances.
- (f) The culpable mental state required by V.T.C.A., Penal Code § 6.02, is specifically negated and dispensed with and a violation under this subsection is a strict liability offense.
- (g) To the extent that this section conflicts with the Texas Transportation Code, 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 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 Alice. 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 Alice, 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.

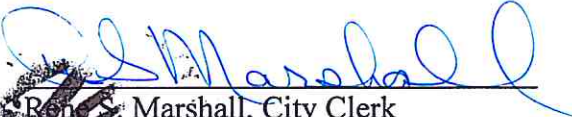
Section 5: The City Clerk shall publish the caption of this Ordinance, including the penalty for the violation thereof, in the official newspaper of the City of Alice twice within ten (10) days of passage of this ordinance. The City Clerk shall note on this Ordinance, the caption of which is required to be published and on the record thereof, the fact that same has been published as required by charter, and the date of such publication.

Section 6. 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.



Larry Martinez
Mayor

ATTEST:



Rene Marshall, City Clerk
Effective: April 21, 2014


SOUTH