

ORDINANCE NO 4024-A

AN ORDINANCE AMENDING THE CITY OF MUSKOGEE CODE OF ORDINANCES BY AMENDING CHAPTER 78, TRAFFIC AND VEHICLES, ARTICLE V, DRIVING, OVERTAKING AND PASSING, SECTION 78-171, DEFINITIONS, ADDING ADDITIONAL TERMS; COMPOSING, SENDING, READING *TEXT* MESSAGE WHILE VEHICLE IN MOTION; PENALTIES, MODIFYING TO ALLOW DISTINCT PENALTY FOR COMMERCIAL AND NONCOMMERCIAL OPERATORS; EXCEPTIONS., BY PROVIDING FOR REPEALER, SEVERABILITY AND DECLARING AN EMERGENCY.

WHEREAS, the City of Muskogee is obligated through its police powers to protect the public order and the safety of its citizens. 2007 OK AG 11 (internal citations omitted).

WHEREAS, the National Safety Council reports the texting while driving results in 1.6 million accidents per year; and

WHEREAS, a Harvard Center for Risk Analysis study found that 330,000 injuries per year were the result of texting while driving; and

WHEREAS, the National Highway Transportation Safety Administration reports that texting while driving increases the likelihood of a vehicle accident by 23 times; and

WHEREAS, the current ordinance relating to texting while driving carries a maximum penalty of not more than \$100.00 and does not address drivers of commercial vehicles:

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSKOGEE, OKLAHHOMA, AS FOLLOWS:

AN EMERGENCY ORDINANCE

Section 1. That Section 78-171, *Definitions; Composing, Sending, Reading Text Message While Vehicle in Motion; Penalties; Exceptions*, is hereby amended in Chapter 78, *Traffic and Vehicles*, Article V, *Driving, Overtaking and Passing*, as follows:

Sec. 78-171. - Definitions; composing, sending, reading *text* message while vehicle in motion; penalties; exceptions.

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them as follows:

Cellular telephone means an analog or digital wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular telephones;

Compose, send or read with respect to a text message means the manual entry, sending or retrieval of a *text* message to communicate with any person or device;

Electronic communication device means an electronic device that permits the user to manually transmit a communication of written *text* by means other than through an oral transfer or wire communication. This term does not include a device that is physically or electronically integrated into a motor vehicle or a voice-operated global positioning or navigation system that is affixed to a motor vehicle, or a hands-free device that allows the user to write, send or read a *text* message without the use of either hand except to activate, deactivate or initiate a feature or function; and

Text message includes a *text*-based message, instant message, electronic message, photo, video or electronic mail.

Operate means operating on a street or highway, including while temporarily stationary because of traffic, a traffic control device or other momentary delays. Operating does not include when the driver of a commercial motor vehicle has moved the vehicle to the side of or off a street or highway and has halted in a location where the vehicle can safely remain stationary;

Public transit driver means

- a. any operator of a public transit vehicle owned and operated by the State of Oklahoma, any public trust authority, county, municipality, town or city within this state,
- b. any operator of a school bus or multi-passenger motor vehicle owned and approved to operate by the State Department of Education or any school district within this state, or
- c. any operator, conductor or driver of a locomotive engine, railway car or train of cars; and

Write, send, or read a text-based communication, also known as texting, means manually entering alphanumeric text into, sending text, or reading text from, an electronic device, and includes, but is not limited to, short message service (SMS), e-mailing, instant messaging (IM), a command or request to access a World Wide Web page, or engaging in any other form of electronic text retrieval or entry, for present or future communication. As used in this paragraph, texting does not include:

- a. using voice commands to select or enter a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call,
- b. inputting, selecting, or reading information on a global positioning system or navigation system, or
- c. using a device capable of performing multiple functions for a purpose that is not otherwise prohibited in this part, including, but not limited to,

fleet management systems, dispatching devices, smart phones, citizens band radios, and music players.

(b) It shall be unlawful for any person to operate a motor vehicle on any street or highway within this state while using a hand-held electronic communication device to manually compose, send or read an electronic *text* message while the motor vehicle is in motion.

(c) It shall be unlawful for any person to operate a commercial motor vehicle or for a public transit driver to operate a motor vehicle on any street or highway within this state while:

1. Using a cellular telephone or electronic communication device to write, send, or read a text-based communication; or
2. Using a hand-held mobile telephone while operating a commercial motor vehicle.

(d) Penalties

- i. Any person who violates the provisions of section (b) shall, upon conviction, be punished by a fine of not more than \$100.00.
- ii. Any person who violates the provisions of section (c) shall, upon conviction, be punished by a fine of not more than \$400.00.

(d) Exceptions. The prohibitions of this section shall not apply if the person is using the cellular telephone or electronic communication device for the sole purpose of communicating with any of the following regarding an imminent emergency situation:

- i. An emergency response operator;
- ii. A hospital, physician's office or health clinic;
- iii. A provider of ambulance services;
- iv. A provider of firefighting services; or
- v. A law enforcement agency.

Section 2. REPEALER. All other ordinances or parts of ordinances in direct conflict herewith are repealed to the extent of the conflict only.

Section 3. SEVERABILITY. Should any part section, subsection, sentence, provision, clause or phrase hereof be held invalid, void, or unconstitutional for any reason, such holding shall not render invalid, void, or unconstitutional any other section, subsection, sentence, provision, clause, or phrase of this ordinance, and the same are deemed severable for this purpose.

Section 4: EMERGENCY. This ordinance being designated to protect the public health, safety and welfare of the inhabitants of the City of Muskogee, Oklahoma, and its passage being immediately necessary, an emergency is hereby declared to exist and by reason whereof this

ordinance shall take effect immediately upon its passage, approval and publication as provided by law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MUSKOGEE, OKLAHOMA, THIS _____ DAY OF _____, 2017.

CITY OF MUSKOGEE

JOHN R. COBURN, MAYOR

ATTEST:

TAMMY TRACY, CITY CLERK

(seal)

Approved as to form and legality this _____ day of _____, 2017.

ROY D. TUCKER, CITY ATTORNEY