

ORDINANCE NO. 10-03

AN ORDINANCE OF THE CITY OF TOLAR, TEXAS AMENDING CHAPTER 8 “TRAFFIC CONTROL DEVICES” OF THE CODE OF ORDINANCES OF THE CITY OF TOLAR BY ADDING A NEW SECTION 5 TO BE ENTITLED “USE OF HAND-HELD MOBILE TELEPHONES IN SCHOOL ZONES”; DIRECTING THE CITY MAYOR TO ERECT SIGNS SAME IN AFFECTED AREAS; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED TWO HUNDRED DOLLARS (\$200.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

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 and the City of Tolar have adopted certain laws regulating the speed of motor vehicles in a “school zone,” applying only on official school days and during school hours when the school zone is in effect; and

WHEREAS, using a hand-held mobile telephone (“cell phone”) while operating a motor vehicle distracts a driver from operating the vehicle and affects the driver’s ability to steer and maneuver effectively, thus diminishing the driver’s ability to fully concentrate on driving safely; and

WHEREAS, the City Council of the City of Tolar, Texas (“City Council”) 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 danger (or probability of it) to school children and other residents; and

WHEREAS, the safety of all school-aged children traveling to and from schools and other educational facilities located in the City is of paramount importance to the City Council, 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 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 Council desires to implement rules and regulations to protect health, life, and property and that preserve good government, order, and security of the City and its inhabitants;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOLAR, TEXAS, THAT:

Chapter 8 “Traffic Control Devices” of the Code of Ordinances of the City of Tolar, Texas be and is hereby amended by adding a new Section 5 to be entitled “Use of Hand-Held Mobile Telephones in School Zones,” without repeal, amendment or change to any other article, part or section of Chapter 8, said new Section 5 to read in its entirety as follows:

“Section 5. Use of hand-held mobile telephones in school zones.

A. *Definitions.* For purposes of this section, the following definitions shall apply, unless clearly indicated to the contrary.

- (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) “Hands-free mobile telephone” shall mean a 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, or is a part of the motor vehicle, by which the 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 device) is necessary to activate, deactivate or initiate a function of such telephone.
- (3) “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).
- (4) “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.
- (5) “Mobile telephone” shall mean a device used for wireless telephone service and/or a personal digital assistant for data or telecommunication services other than voice.
- (6) “Personal Digital Assistant” shall mean a device operated using a wireless telecommunications service that provides for data communication other than by voice.
- (7) “Wireless telephone service” shall mean two-way real time voice telecommunications service that is interconnected to a public switched telephone

network and commonly referred to as a cellular service or personal communication service.

B. Restrictions; exemptions.

- (1) Except as otherwise provided herein, it shall be unlawful for a person to drive or operate a motor vehicle in a school zone, as designated pursuant to Ordinance 10-02 Section 4 A and B 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 messages or data.
- (2) An operator of a motor vehicle who holds a mobile telephone to, or in the immediate proximity of the operator's ear while such vehicle is in motion is presumed to be engaging in a call within the meaning of this section.
- (3) This Subsection shall not apply to:
 - (a) The use of a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, a physician's office or health clinic; a public safety department;
 - (b) Any law enforcement, police officer, emergency services official, first aid, emergency medical technicians and personnel, or any fire safety official in the performance of duties arising out of and in the course of his or her employment as such; or
 - (c) The use of a hands-free mobile telephone when being used in a hands-free manner.

C. Liability. The violation of this section is a strict liability offense.”

SECTION 2. The City Council hereby directs the City Mayor to cause the placement of signs prohibiting hand-held mobile telephone use in affected school zones.

SECTION 3. All ordinances of the City of Tolar, Hood County, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed; provided, however that all other provisions of said ordinances not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

SECTION 5. An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 6. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances, as amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Hundred Dollars (\$200) for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 7. This ordinance shall take effect immediately from and after its passage, and publication of the caption, as the law and charter in such cases provide.

DULY APPROVED AND PASSED by the City Council of the City of Tolar, Texas on the 22nd day of February 2010

Terry R. Johnson, Mayor

ATTEST:

Joyce Johnson, City Secretary