

ORDINANCE NO. 10-06

AN ORDINANCE OF THE CITY OF TOLAR, TEXAS AMENDING ORDINANCE 01-03 ALTERING THE PRIMA FACIE SPEED LIMITS ESTABLISHED FOR VEHICLES UNDER THE PROVISIONS OF SECTION 167 AND 169 OF ARTICLE XIX, R.C.S. 6701d, UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS, UPON THE BASIS OF AN ENGINEERING AND TRAFFIC INVESTIGATION UPON CERTAIN STREETS AND HIGHWAYS, OR PARTS THEREOF, WITHIN THE CORPARTE LIMITS OF THE CITY OF TOLAR AS SET OUT IN THE ORDINANCE: AND PROVIDING A PENALTY OF A FINE NOT TO EXCEED \$ 500.00 FOR VIOLATION OF SECTIONS 1 THROUGH 2 OF THIS ORDINANCE; AND BY ADDING A NEW SECTIONS; 3, THROUGH 9 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 VIOLATION OF SECTIONS 3 THROUGH 9; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 167 and 169 or Article XIX, R.C.S. 6701d, Uniform Act Regulating Traffic on Highways, provides that whenever the governing body of the City shall determine upon the basis of an engineering and traffic investigation that any prima facie speed therein set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a street or highway, with the City taking into consideration the width and condition of the pavement and other circumstances on such portion of said street or highway, as well as the usual traffic thereon, said governing body may determine and declare a reasonable and safe prima facie speed limit thereat or thereon by the passage of an ordinance, which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or part of the street or highway, now therefore,

BE IT ORDAINED by the city council of the City of Tolar, Texas, to read in its entirety as follows:

Section 1. Upon the basis of an engineering and traffic investigation hereto made as authorized by the provisions of Section 167 and 169 or Article XIX, R.C.S. 6701d, Uniform Act Regulating Traffic on Highways the following prima facie speed limits hereafter indicated for vehicles are hereby determined and declared to be reasonable and safe; and such speed limits are hereby fixed at the rate of speed indicated for vehicles traveling upon the named streets and highways, or parts thereof, described as follows:

Control-section 80-03 US Highway 377
From MP 12.767 west 0.822 miles to MP 13.589, zoned at 45-MPH.
From MP 13.589 west 0.185 miles to MP 13.774, zoned at 55- MPH.

School Zone MP 13.131 west 0.224 miles to MP 13.355, zoned "35-MPH WHEN FLASHING",
"45-MPH ALL OTHER TIMES."

Section 2. Any person, firm or corporation violating any of the provisions in Section 1 and 2 of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not more than five-hundred (\$500.00) dollars for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

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;

Section 3. 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 4. 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 5. 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 6. 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 7. 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 8. 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 9. 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 26th day of April 2010

Terry R. Johnson, Mayor

ATTEST:

Joyce Johnson, City Secretary