

ORDINANCE NO. 12052017-01

AN ORDINANCE OF THE CITY OF POTEET, TEXAS (CITY) PROHIBITING THE USE OF A HAND-HELD MOBILE COMMUNICATION DEVICE OR WIRELESS COMMUNICATION DEVICES TO ENGAGE IN A CALL, OR SEND, READ OR WRITE A TEXT MESSAGE, OR ENGAGE IN ANY OTHER USE OF THE DEVICE WHILE OPERATING A MOVING MOTOR VEHICLE; PROVIDING A FINE FOR UP TO \$200.00 PER VIOLATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A REPEALER OF ANY CONFLICTING ORDINANCES IN THEIR ENTIRETY; PROVIDING FOR AN EFFECTIVE DATE.

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**WHEREAS**, the City Council finds that the use of a hand-held mobile or wireless communication device to (1) engage in a call, (2) send, read, or write a text message, (3) view pictures or written text, whether transmitted by internet or other electronic means, (4) engage in gaming, (5) engaging in any other use of the device while operating a moving motor vehicle is a traffic hazard and a danger to the public, which creates a particular danger or probability of danger in the City of Poteet ; and

**WHEREAS**, the City Council believes that prohibiting the use of hand-held mobile or wireless communication devices to engage in any use of a mobile communication while driving, with certain defenses, would further and protect the public health, safety, and welfare of its citizens.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POTEET, TEXAS:**

**SECTION 1. REGULATING THE USE OF HAND-HELD OR WIRELESS COMMUNICATION DEVICES WHILE DRIVING:**

(a) In this section:

- (1) **ENGAGING IN A CALL** means talking to, dialing, or listening on a hand-held mobile communication device, but does not include holding a mobile communication device to activate or deactivate the device.
- (2) **HAND-HELD MOBILE COMMUNICATION DEVICE** means a two-way communication device that is designed to receive and transmit voice communication, text or pictorial communication, or both, whether by internet or other electronic means. The term includes a mobile telephone, and a personal digital assistant (PDA).
- (3) **HANDS-FREE MOBILE TELEPHONE** means a telephone that has an internal feature or function or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a use 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 or deactivate the mobile telephone.
- (4) **PARK OR PARKED** shall mean for the operator to completely cease movement of a motor vehicle in a lawful manner and location. For purposes of this Section, “Parked” does not include or mean a vehicle stopped in a lane of traffic due to

either a lawful traffic control device, or the conditions on the roadway, or traffic congestion patterns then existing.

(5) TEXT MESSAGE means a two-way communication (whether real-time or asynchronous) in which data (composed in whole or in part of text, numbers, images, or symbols) is sent, entered, or received by a method other than by voice and transmitted through either a short message service (SMS) or a computer network. The term does not include a communication transmitted through a global positioning or navigation system.

(b) A person commits an offense if the person driving a vehicle uses a hand-held mobile communication device to (1) engage in a call, (2) send, read, or write a text message; (3) view pictures or written text whether transmitted by internet or other electronic means; (4) engage in gaming; or (5) engage in any other use of the device while operating a moving motor vehicle.

(c) This section does not apply to an operator of a motor vehicle if using a hand-held mobile communication device:

- (1) while the vehicle is legally parked, out of the moving lanes of the roadway or is being driven on private property;
- (2) that is affixed to the vehicle and used as a global positioning or navigation system;
- (3) that is used with a hands free communication telephone or such other device;
- (4) while operating an authorized emergency vehicle in an official capacity;
- (5) who is licensed by the Federal Communications Commission while operating a radio frequency device or other than a hand held mobile communication device.

(d) It shall be an affirmative defense to prosecution under this section that the person was using a hand-held mobile communication device for the purpose of:

- (1) executing the person's official duties;
- (2) communicate with an emergency response operator, a fire department, a law enforcement agency, a hospital, a physician's office, or a health clinic regarding a medical or other emergency situation;
- (3) preventing injury to a person or property;
- (4) to report illegal activity to a law enforcement agency; or
- (5) in the reasonable belief that a person's life or safety is in immediate danger.

(e) Only warning citations may be issued for the first 30 days following the effective date of this chapter so that an education effort by the City of Poteet may be conducted to inform the public about the importance and requirements of this new Ordinance. Thereafter, a person convicted of an offense under this section shall be punished by a fine of not more than \$200.

(f) An offense under this section is not a moving violation and may not be made a part of a person's driving record or insurance record.

(g) In addition to enforcement by a peace officer of the City of Poteet, this section may be enforced by a peace officer of another entity, including those employed by other governmental entities, duly authorized to issue traffic citations within the City of Poteet.

**SECTION 2. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared void.

**SECTION 4. CODIFICATION.** It is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become and be a part of the Code of Ordinances of the City of Poteet, Texas, and that sections of this ordinance may be re-numbered or re-lettered to accomplish such intention.

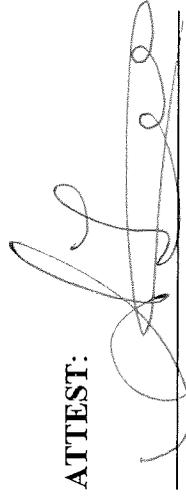
**SECTION 5. NOTICE.** The City Secretary of the City of Poteet is hereby directed to publish notice of the Ordinance as required by Texas Local Government Code Section 52.011.

**SECTION 6. REPEALER.** This Ordinance shall repeal any previous Ordinances adopted and approved by City Council of the City of Poteet in its entirety.

**SECTION 7. EFFECTIVE DATE.** The Ordinance shall be effective January 1, 2018. Thereafter, the rules contained therein will apply within the City of Poteet.

**PASSED AND APPROVED this 5<sup>th</sup> day of December 2017.**

ATTEST:

  
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Abigayle Frautschi, City Secretary

  
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Albert Trevino, Mayor

APPROVED AS TO FORM:

  
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Molly G. Solis, City Attorney