

AN ORDINANCE 2008-08-21-0727

AMENDING CHAPTER 19, ARTICLE VII OF THE CITY CODE BY ADDING SECTION 19-254 PROHIBITING THE USE OF A HAND-HELD MOBILE TELEPHONE TO ENGAGE IN A CALL OR THE USE OF A MOBILE COMMUNICATION DEVICE TO SEND, READ, OR WRITE A TEXT MESSAGE WHILE OPERATING A MOVING MOTOR VEHICLE IN AN ACTIVE REDUCED SPEED SCHOOL ZONE WHERE PROHIBITED BY SIGN AND PROVIDING FOR A FINE OF UP TO \$200.00 PER VIOLATION.

WHEREAS, the city council finds that the use of a hand-held mobile telephone to engage in a call or the use of a mobile communication device to send, read, or write a text message while operating a moving motor vehicle in an active reduced speed school zone is a traffic hazard and a danger to the public and creates a particular danger or probability of danger to school children traveling to and from schools and other educational facilities in the city of San Antonio; and

WHEREAS, the city council believes that prohibiting the use of hand-held mobile telephones to engage in calls or mobile communication devices to send, read, or write text messages while driving in active reduced speed school zones, with certain defenses, would further and protect the public health, safety, and welfare, especially of school-aged children; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. That Division 1, "Generally," of Article VII, "School Zones and School Buses," of CHAPTER 19, "Motor Vehicles and Traffic," of the San Antonio City Code, is amended by adding new Section 19-254, entitled "Regulating the Use of Hand-Held Mobile Telephones and Mobile Communication Devices in Reduced Speed School Zones," to read as follows:

SEC. 19-254 REGULATING THE USE OF HAND-HELD MOBILE TELEPHONES AND MOBILE COMMUNICATION DEVICES IN REDUCED SPEED SCHOOL ZONES.

(a) In this section:

- (1) ENGAGING IN A CALL means talking into, dialing, or listening on a hand-held mobile telephone, but does not include holding a mobile telephone to activate or deactivate the telephone.
 - (2) HAND-HELD MOBILE TELEPHONE means 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).
 - (3) HANDS-FREE MOBILE TELEPHONE means 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 the mobile telephone, by which a 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 or deactivate the mobile telephone.
 - (4) MOBILE COMMUNICATION DEVICE means a text-messaging device or other electronic, two-way communication device that is designed to receive and transmit voice communication, text communication, or both. The term includes a mobile telephone and a personal digital assistant (PDA).
 - (5) MOBILE TELEPHONE means a device used by subscribers and other users of wireless telephone service to access such service.
 - (6) SCHOOL ZONE means a reduced speed school traffic zone as designated in Section 19-251 of this chapter.
 - (7) 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.
 - (8) WIRELESS TELEPHONE SERVICE means two-way, real time voice telecommunications service that is interconnected to a public switched telephone network and is commonly referred to as cellular service or personal communication service.
- (b) A person commits an offense if the person uses a hand-held mobile telephone to engage in a call or uses a mobile communication device to send, read, or write a text message, while operating a moving motor vehicle in a reduced speed school zone;

- (1) on an official school day;
 - (2) during the hours when a reduced speed school zone is in effect;
 - (3) when signs are conspicuously posted to indicate the beginning and end of the reduced speed school zone; and
 - (4) when signs indicating hand-held cell phone use is prohibited are conspicuously posted at each entrance to the reduced speed school zone.
- (c) An operator of a motor vehicle who holds a mobile telephone to or in the immediate proximity of his or her ear while the vehicle is in motion is presumed to be engaging in a call under this section. Immediate proximity is any distance that permits the user of a mobile telephone to hear telecommunications transmitted over the telephone and does not require physical contact with the user's ear.
- (d) It shall be an affirmative defense to prosecution under this section that the person was:
- (1) operating an authorized emergency vehicle and using the mobile telephone or mobile communication device in the course and scope of the person's official duties;
 - (2) using the mobile telephone or mobile communication device to:
 - (A) report illegal activity to a law enforcement agency;
 - (B) 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; or
 - (C) prevent injury to a person or property; or
 - (3) using a hands-free mobile telephone in a hands-free manner.
- (e) A person convicted of an offense under this section shall be punished by a fine of up to \$200. Only warning citations may be issued for the first 30 days following the effective date of this ordinance so that an educational effort by the City of San Antonio and the city's school districts may be conducted to inform the public about the importance and requirements of this new ordinance.
- (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 San Antonio, this section may be enforced by a peace officer of another entity, including those employed by school districts, duly authorized to issue traffic citations within the City of San Antonio.

SECTION 2. That CHAPTER 19 of the San Antonio City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 3. Should any article, section, part, paragraph, sentence, phrase, clause, or word of this ordinance, for any reason, be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 4. The publishers of the City Code of San Antonio, Texas are authorized to amend said code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing code.

SECTION 5. The City Clerk of the City of San Antonio is hereby directed to publish notice of this ordinance as required by the Charter of the City of San Antonio and the laws of the State of Texas.

SECTION 6. This ordinance shall take effect in 20 days from the date of passage or 10 days from the date of publication of this ordinance, whichever comes first.

PASSED AND APPROVED this 21st day of August, 2008.


M A Y O R
PHIL HARDBERGER

ATTEST:


City Clerk

APPROVED AS TO FORM: _____


City Attorney

Agenda Item:	22						
Date:	08/21/2008						
Time:	12:18:58 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance amending Chapter 19, Article VII of the City Code by adding Section 19-254 prohibiting the use of a hand-held mobile telephone to engage in a call or the use of a mobile communication device to send, read, or write a text message while operating a moving motor vehicle in an active reduced speed school zone where prohibited by sign, and providing for a fine of up to \$200.00 per violation. [Erik J. Walsh, Assistant City Manager; William McManus, Police Chief]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2			x			
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5			x			
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x			x	
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				x



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 22
Council Meeting Date: 8/21/2008
RFCA Tracking No: R-3267

DEPARTMENT: SAPD

DEPARTMENT HEAD: William McManus

COUNCIL DISTRICT(S) IMPACTED:
City Wide

SUBJECT:
Council Consideration Request – Hand-held Cell Phones in School Zones

SUMMARY:

This ordinance will amend Division 1, “Generally,” of Article VII, “School Zones and School Buses,” of Chapter 19, “Motor Vehicles and Traffic,” of the San Antonio City Code, by adding a new Section, 19-254, entitled “Regulating the Use of Hand-Held Mobile Telephones and Mobile Communication Devices in School Zones.”

BACKGROUND INFORMATION:

In February 2008, staff received a Council Communication Request (CCR) from Councilman Rodriguez to bring forward an item to consider the ban of hand-held cell phones in school zones.

On February 12, 2008, the matter of restricting the use of cell phones in school zones was presented to the City Council’s Governance Committee, which referred the matter to the Public Safety Committee for discussion. On April 9, 2008, the Public Safety Committee recommended moving the item forward for full City Council consideration. Based on discussions at the committee level, it was determined that the City should proceed with a pilot program. Eighteen sites were designated for the pilot program. Each site was based on 100 or more speeding violations ticketed within the school zone from October 1, 2007 through April 1, 2008.

Currently in San Antonio, there are over 1570 school zones. Of those, only 444 are designated by flashing lights. While talking on a cell phone is currently allowed in school zones, the City does have in place enhanced penalties for school zones. For example, the fee for speeding in a non-school zone is \$166.00 for the first 10 miles over the speed limit and an additional \$5.00 per mile after that. Speeding in a school zone automatically raises that base fee to \$206.00 for the first 10 miles over the speed limit. Other traffic violations that occur in a school zone, such as running a stop sign, also have enhanced penalties.

Under the new code a person will be prohibited from using a hand-held mobile telephone to

engage in a call and/or using a mobile communication device to send, read, or write a text message

- While operating a moving motor vehicle in a reduced speed school zone
- During an official school day
- During the hours when a reduced speed school zone is in effect;
- When signs are conspicuously posted to indicate the beginning and end of the reduced speed school zone;
- When signs indicating hand held cell phone use is prohibited are conspicuously posted at each entrance to the reduced speed school zone.

The ordinance will allow for hands free cell phone usage in a hands free manner and provide exemptions for calling 911, the fire department, law enforcement, a doctor's office or health clinic regarding a medical emergency and calling to prevent injury to a person or property. If passed, the ordinance will take effect on August 31, 2008. In addition, the ordinance will authorize peace officers from other governmental entities to enforce the ordinance pursuant to an inter-local agreement.

The City will allow for a 30 day grace period starting on the day the ordinance takes effect. The San Antonio Police Department will be contacting the affected school districts and schools giving them notice of the signs. We will provide a flyer to pass out to parents notifying them of the new ordinance.

ISSUE:

The use of a hand-held mobile telephone to engage in a call or the use of a mobile communication device to send, read, or write a text message, while operating a moving motor vehicle in an active reduced speed school zone, is deemed to be a traffic hazard and a danger to the public and to school children traveling to and from schools in the City of San Antonio.

This ordinance seeks to improve public safety in school zones by prohibiting distracting and potentially dangerous activities.

ALTERNATIVES:

As an alternative to the development of an ordinance restricting cell phone usage in school zones, City Council could choose to direct the funding required for signage to add flashers to school zones that are currently marked by signage only.

FISCAL IMPACT:

The estimated cost to install signs to designate areas covered by the hand-held cell phone restriction will be \$140.00 per sign. Up to four signs per school zone are needed; the total estimated cost to designate 18 pilot school zones would not exceed \$10,000.00. Funding is available in the Child Safety Fund.

RECOMMENDATION:

Staff recommends approval of the restrictions on the use of hand held cell phones and text messaging while operating a moving motor vehicle in an active reduced speed school zone. Additionally, staff recommends that school districts be approached to cooperate with this effort to the extent allowed by law and as permitted by the policies of each school district in San Antonio.

ATTACHMENT(S):

File Description	File Name
Top 18 School Speeding Violations	#3267 Top 18 School Speeding Violations.pdf
Voting Results	
Ordinance/Supplemental Documents	200808210727.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

William McManus Police Chief SAPD

APPROVED FOR COUNCIL CONSIDERATION:

Erik Walsh Assistant City Manager