

CITY OF WEST LAKE HILLS

AMENDMENT No. 348

**USE OF WIRELESS COMMUNICATION DEVICES
WHILE OPERATING A MOTOR VEHICLE**

AN ORDINANCE AMENDING CHAPTER 16, ARTICLE 16.07 OF THE WEST LAKE HILLS CODE OF ORDINANCES; AMENDING THE CURRENT ORDINANCE TO SPECIFICALLY EXCLUDE OFFENSES PREEMPTED BY STATE LAW; INCORPORATE DEFINITIONS OF APPLICABLE TERMS FROM STATE LAW; REVISING PROVISIONS TO INCLUDE REFERENCES TO NEWLY INCORPORATED TERMS; CONVERTING CURRENT EXCEPTIONS TO AFFIRMATIVE DEFENSES; PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; AMENDMENT; REPEALER; SEVERABILITY; CODIFICATION; EFFECTIVE DATE; AND PROPER NOTICE & MEETING.

- WHEREAS,** the City Council of the City of West Lake Hills (“City Council”) seeks to provide clarity and consistency with newly enacted state law by revising its ordinance to exclude conduct exclusively regulated by Transportation Code section 545.4251; and
- WHEREAS,** City Council seeks to provide uniformity in regulating the use of wireless communication devices by incorporating into its ordinance definitions use in Transportation Code section 545.4251; and
- WHEREAS,** City Council seeks to aid in enforcement of the ordinance by converting the listed exceptions to enforcement to affirmative defenses to be established by the alleged offender who will have more direct access to evidence of the existence of the exception; and
- WHEREAS,** pursuant to Texas Transportation Code section 542.202 a local authority may regulate traffic in a manner that does not conflict with Subtitle C Rules of the Road; and
- WHEREAS,** pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and
- WHEREAS,** the City Council finds that the amendment proposed is reasonable, necessary, and proper for the good government of the City of West Lake Hills.

NOW, THEREFORE, BE IT ORDAINED by the City Council of West Lake Hills, Texas:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. AMENDMENT

Chapter 16, Articles 16.07 of Code of Ordinances, City of West Lake Hills, Texas, is hereby amended to read in accordance with *Attachment A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text shall be inserted into the Code and any struck-through text shall be deleted from the Code, as stated on *Attachment A*.

3. REPEALER

All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

6. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication.

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

PASSED & APPROVED this, the 13th day of December 2017, by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of West Lake Hills, Texas.

CITY OF WEST LAKE HILLS:

by: Linda Anthony
Linda Anthony, Mayor

ATTEST:

Lacie Hale
Lacie Hale, City Secretary



CODE OF ORDINANCES

CHAPTER 16

ARTICLE 16.07 USE OF WIRELESS COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE

Sec. 16.07.001 Definitions

Hands-free mode. Refers to speakerphone capability or a telephone attachment or other piece of equipment, regardless of whether permanently installed in the motor vehicle that allows the use of the wireless communication device without use of either of the operator's hands.

Telephone call. When referring to a wireless communication device in this article, refers to operation of a device for verbal communication.

Electronic message. Means data that is read from or entered into a wireless communication device for the purpose of communicating with another person.

Use. Refers to manipulating a wireless communication device while operating a motor vehicle, but does not include reading, writing, or sending an electronic message.

Wireless communication device. Has the meaning assigned in section 545.425 (use of wireless communication device; offense) of the Texas Transportation Code.

Sec. 16.07.002 Restrictions

- (a) The operator of a motor vehicle on a roadway may not use a wireless communication device.
- (b) It is an affirmative defense to prosecution of an offense under this Article that the operator used a wireless communication device:
 - (1) While the vehicle is stopped and out of the lanes of traffic;

- (2) When in a hands-free mode of operation to engage in telephone calls, telephone-based communication, or to listen to audio transmissions;
- (3) When used as a global positioning or navigation system if directions are given audibly or the wireless communication device is affixed to the vehicle;
- (4) When solely in a voice-activated or other hands-free mode; or
- (5) For obtaining emergency assistance to report a crime, traffic accident, medical emergency, or serious traffic hazard, or to prevent a crime about to be committed.

(c) This section does not apply to:

- (1) An operator of an authorized emergency vehicle using a wireless communication device while acting in an official capacity; or
- (2) An operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device.

(d) To the extent that this section conflicts with the Texas Transportation Code section 545.424, regarding the use of wireless communication devices while operating a motor vehicle by minors, or Texas Transportation Code section 545.425, regarding the use of wireless communication devices in school crossing zones, or Texas Transportation Code section 545.4251 regarding the use of wireless communication devices for electronic messaging this section does not apply.

Sec. 16.07.003 Enforcement

An offense under this article shall be punishable as a class C misdemeanor, for which the maximum fine per violation shall be \$250.00.

Sec. 16.07.004 Signage

After consulting with the chief of police, the city administrator is authorized to have traffic safety signs erected warning motorists of restrictions imposed by this article, and/or state law that comply with the requirements of Texas Transportation Code section 545.452(b-2).