

AN ORDINANCE AMENDING CODIFIED ORDINANCE SECTION 432.43, ENTITLED TEXTING WHILE DRIVING PROHIBITED AND DECLARING AN EMERGENCY.

WHEREAS, on January 3, 2023, the Governor of the State of Ohio signed Senate Bill 288 of the 135th General Assembly amending Section 4511.204 of the Ohio Revised Code pertaining to driving while texting; and

WHEREAS, the City desires to update its Codified Ordinances to reflect changes in Section 4511.204 of the Ohio Revised Code by amending Codified Ordinance Section 432.43, Texting While Driving Prohibited; and

WHEREAS, Council coming now to consider said recommendation approves it in full.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That Codified Ordinance Section 432.43 is hereby amended as follows:

432.43 TEXTING WHILE DRIVING PROHIBITED.

(a) No person shall ~~drive~~ operate a motor vehicle on any street, highway, or property open to the public for vehicular traffic while using holding, or physically supporting with any part of the person's body an ~~a handheld~~ electronic wireless communications device ~~to write, send, or read a text-based communication.~~

(b) Division (a) of this section does not apply to any of the following:

(1) A person using an ~~an handheld~~ electronic wireless communications device to make in that manner for emergency purposes, including an emergency contact, for emergency purposes, with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;

(2) A person driving a public safety vehicle ~~who uses a handheld while using an~~ electronic wireless communications device ~~in that manner~~ in the course of the person's duties;

(3) A person using an ~~an handheld~~ electronic wireless communications device ~~in that manner whose when the person's~~ motor vehicle is in a stationary position and ~~who~~ is outside a lane of travel at a traffic control signal that is currently directing traffic to stop, or parked on a road or highway due to an emergency or road closure;

(4) A person ~~reading, selecting, or entering a name or telephone number in using and holding an handheld~~ electronic wireless communications device directly near the person's ear

for the purpose of making, ~~or-receiving,~~ or conducting a telephone call, provided that the person does not manually enter letters, numbers, or symbols into the device;

(5) A person receiving wireless messages on an electronic wireless communications device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle, provided that the person does not hold or support the device with any part of the person's body;

(6) A person using the speaker phone function of the electronic wireless communications device, provided that the person does not hold or support the device with any part of the person's body~~receiving wireless messages via radio waves;~~

(7) A person using an electronic wireless communications device for navigation purposes, provided that the person does not do either of the following during the use:

A. Manually enter letters, numbers, or symbols into the device;

B. Hold or support the device with any part of the person's body;

(8) A person ~~conducting using~~ a feature or function of the electronic wireless ~~interpersonal communications~~ with a device with a single touch or single swipe, provided that the person does not do either of the following during the use:

A. ~~that does not require m~~Manually entering letters, numbers, or symbols into the device;

B. Hold or support the device with any part of the person's body;

~~or reading text messages, except to activate, deactivate, or initiate the device or a feature or function of the device;~~

(9) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;

(10) A person operating a utility service vehicle or a vehicle for or on behalf of a utility, if the person is acting in response to an emergency, power outage, or circumstance that affects the health or safety of individuals;

(11) A person using an ~~handheld~~ electronic wireless communications device in conjunction with a voice-operated or hands-free ~~device~~ feature or function of the vehicle or of the device without the use of either hand except to activate, deactivate, or initiate the feature or function with a single touch or swipe, provided the person does not hold or support the device with any part of the person's body;

(12) A person using technology that physically or electronically integrates the device into the motor vehicle, provided that the person does not do either of the following during the use:

A. Manually enter letters, numbers, or symbols into the device;

B. Hold or support the device with any part of the person's body;

(13) A person storing an electronic wireless communications device in a holster, harness, or article of clothing on the person's body.

(c) (1) On January 31 of each year, the department of public safety shall issue a report to the general assembly that specifies the number of citations issued for violations of this section during the previous calendar year. Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (a) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(2) If a law enforcement officer issues an offender a ticket, citation, or summons for a violation of division (a) of this section, the officer shall do both of the following:

A. Report the issuance of the ticket, citation, or summons to the officer's law enforcement agency;

B. Ensure that such report indicates the offender's race.

(d) - (1) Whoever violates division (a) of this section is guilty of operating a motor vehicle while using an electronic wireless communication device, an ~~minor unclassified~~ misdemeanor.

A. Except as provided in divisions (d)(1)B, C, D, and (2) of this section, the court shall impose upon the offender a fine of not more than one hundred fifty dollars.

B. If, within two years of the violation, the offender has been convicted of or pleaded guilty to one prior violation of this section or a substantially equivalent ordinance from another jurisdiction, the court shall impose upon the offender a fine of not more than two hundred fifty dollars.

C. If, within two years of the violation, the offender has been convicted of or pleaded guilty to two or more prior violations of this section or a substantially equivalent ordinance of another jurisdiction, the court shall impose upon the offender a fine of not more than five hundred dollars. The court also may impose a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for ninety days.

D. Notwithstanding divisions (d)(1)A to C of this section, if the offender was operating the motor vehicle at the time of the violation in a construction zone where a sign was posted in accordance with Ohio R.C. 4511.98, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two times the amount imposed for the violation under division (d)(1)A, B, or C of this section, as applicable.

(2) In lieu of payment of the fine of one hundred fifty dollars under division (d)(1)A of this section and the assessment of points under division (d)(4) of this section, the offender instead may elect to attend the distracted driving safety course, as described in Ohio R.C. 4511.991. If the offender attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall not be required to pay the fine and shall not have the points assessed against that offender's driver's license if the offender submits the written evidence to the court.

(3) The court may impose any other penalty authorized under section 408.02 of the Codified Ordinances. However, the court shall not impose a fine or a suspension not otherwise specified in division (d)(1) of this section. The court also shall not impose a jail term or community residential sanction.

(4) Except as provided in division (d)(2) of this section, points shall be assessed for violation of division (a) of this section in accordance with Ohio R.C. 4510.036.

(5) The offense established under this section is a strict liability offense and Ohio R.C. 2901.20 of the Revised Code does not apply. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.

(e) A prosecution for an offense in violation of this section does not preclude a prosecution for an offense in violation of Ohio R.C. § 4511.204 based on the same conduct. However, ~~if an offender is convicted of or pleads guilty to a violation of this section and is also convicted of or pleads guilty to a violation of R.C. § 4511.204 based on the same conduct,~~ the two offenses are allied offenses of similar import under Ohio R.C. § 2941.25.

(f) (1) A law enforcement officer does not have probable cause and shall not stop the operator of a motor vehicle for purposes of enforcing this section unless the officer visually observes the operator using, holding, or physically supporting with any part of the person's body the electronic wireless communications device.

(2) A law enforcement officer who stops the operator of a motor vehicle for a violation of division (a) of this section shall inform the operator that the operator may decline a search of the operator's electronic wireless communications device. The officer shall not do any of the following:

A. Access the device without a warrant, unless the operator voluntarily and unequivocally gives consent for the officer to access the device;

B. Confiscate the device while awaiting the issuance of a warrant to access the device;

C. Obtain consent from the operator to access the device through coercion or any other improper means. Any consent by the operator to access the device shall be voluntary and unequivocal before the officer may access the device without a warrant.

(g) As used in this section:

(1) "Electronic wireless communications device" ~~includes~~ any of the following:

- A. A wireless telephone;
- B. A text-messaging device;
- C. A personal digital assistant;
- D. A computer, including a laptop computer and a computer tablet;
- E. Any device capable of displaying a video, movie, broadcast television image, or visual image;

F. Any other substantially similar wireless device that is designed or used to communicate text, initiate or receive communication, or exchange information or data..

(2) "Voice-operated or hands-free ~~device~~ feature or function;" means a feature or function ~~A device that allows the user to vocally compose or send, or to listen to a text-based communication a person to use an electronic wireless communications device~~ without the use of either hand except to activate, ~~or deactivate, or initiate the~~ a feature or function with a single touch or single swipe.

(3) ~~"Write, send, or read a text-based communication." To manually write or send, or read a text-based communication using an electronic wireless communications device, including manually writing or sending, or reading communications referred to as text messages, instant messages, or electronic mail~~ Utility" means an entity specified in Ohio R.C. 4905.03 divisions (A), (C), (D), (E), or (G).

(4) "Utility service vehicle" means a vehicle owned or operated by a utility.

(R.C. § 4511.204)

Statutory reference:

No preemption for local regulations imposing greater penalties, see R.C. § 4511.204(E)

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees which resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this Ordinance is hereby declared to be an emergency measure, the emergency being the immediate preservation of the public health, safety, morals, convenience, and the general welfare of the community. Therefore,

this Ordinance shall be in full force and effect from and immediately after passage and approval by the Mayor.

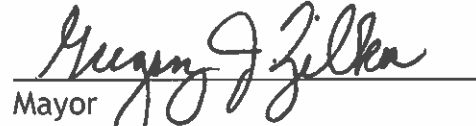
PASSED: 4/10/2023


President of Council

POSTED: 4/14/2023

APPROVED: 4/11/2023

ATTEST: 
Clerk of Council


Mayor