

Placed on first reading and referred to Public Safety Committee 1/22/19, second reading 2/4/19). Please substitute for the original.

ORDINANCE NO. 05-19

Anderson, Bullock, George, Litten,  
BY: O'Leary, O'Malley, Rader

AN ORDINANCE to take effect on the 90th day following its adoption by Council and approval by the Mayor provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law amending Section 331.345, Using Communications Device while Driving, of the Codified Ordinances of the City of Lakewood in order to update the Code so as to regulate the use of electronic devices while driving in the City.

WHEREAS, the National Highway Traffic Safety Administration has reported that nearly 4,000 Americans are killed and close to 400,000 are injured annually in accidents involving distracted drivers; and

WHEREAS, this public safety concern shows no signs of abating, given the prevalence of alternatives to handheld mobile phone use, and the fact that handheld cell phone use continues to be highest among 16-24 year old drivers according to the National Occupant Protection Use Survey; and

WHEREAS, the City of Lakewood, Ohio, is a walkable, bikeable, and densely populated community in which it is of heightened importance that drivers remain aware of their surroundings; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power of local self-government; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power to enact laws that are for the health, safety, welfare, comfort and peace of the citizens of the municipality; and

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this ordinance is an emergency measure and that it shall take effect on the 90th day after it is approved by the Mayor, and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments, in that time must be given to educate the public on the change to this traffic ordinance; now, therefore,

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. Section 331.345, Using Communications Device while Driving, of the Codified Ordinances of the City of Lakewood, currently reading as follows:

**331.345 USING COMMUNICATIONS DEVICE WHILE DRIVING.**

(a) No person shall drive a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication.

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

(1) A person using a handheld electronic wireless communications device in that manner for emergency purposes, including an emergency contact 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 electronic wireless communications device in that manner in the course of the person's duties;

(3) A person using a handheld electronic wireless communications device in that manner whose motor vehicle is in a stationary position and who is outside a lane of travel;

(4) A person reading, selecting, or entering a name or telephone number in a handheld electronic wireless communications device for the purpose of making or receiving a telephone call;

(5) A person receiving wireless messages on a 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;

(6) A person receiving wireless messages via radio waves;

(7) A person using a device for navigation purposes;

(8) A person conducting wireless interpersonal communication with a device that does not require manually entering letters, numbers or symbols 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 using a handheld electronic wireless communications device in conjunction with a voice-operated or hands-free device feature or function of the vehicle.

(c) No holder of a temporary instruction permit who has not attained the age of eighteen years and no holder of a probationary driver's license shall drive a motor vehicle on any street, highway or property used by the public for purposes of vehicular traffic or parking while using in any manner an electronic wireless communications device.

(d) Subsection (c) of this section does not apply to any of the following:

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

(2) A person using an electronic wireless communications device whose motor vehicle is in a stationary position and the motor vehicle is outside a lane of travel;

(3) A person using a navigation device in a voice-operated or hands-free manner who does not manipulate the device while driving.

(e) Whoever violates subsection (a) of this section on a first offense is guilty of a minor misdemeanor. Whoever violates subsection (c) of this section shall be adjudicated in accordance with juvenile court law and procedure.

(f) 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 subsection (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.

(g) As used in this section:

(1) "Electronic wireless communication device" includes a wireless telephone; a text-messaging device; a personal digital assistant; a computer, including a laptop computer and a computer tablet; and any other substantially similar wireless device that is designed or used to communicate text or via voice, image or written word.

(2) "Voice-operated or hands-free device" means a device that allows the user to vocally compose or send, or to listen to a text-based communication without the use of either hand except to activate or deactivate a feature or function.

(3) "Write, send or read a text-based communication" means 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.

shall be and hereby is amended to read as follows:

#### 331.345 USING COMMUNICATIONS DEVICE WHILE DRIVING.

(a) No person shall drive a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic while using an electronic wireless communications device to write, send, or read a text-based communication, or to dial, talk, answer or listen for the purposes of making an audible communication.

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

(1) A person using an electronic wireless communications device in that manner for emergency purposes, including an emergency contact 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 an electronic wireless communications device in that manner in the course of the person's duties;

(3) A person using an electronic wireless communications device in that manner whose motor vehicle is in a stationary position and who is outside a lane of travel;

(4) A person using an electronic wireless communications device for the purpose of making or receiving a telephone call or for the purpose of navigation if the call or navigation is made or received using the device's one-touch capability and the device is not handheld;

(5) A person receiving wireless messages on a 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;

(6) A person receiving wireless messages via radio waves;

(7) A person using a device for the purpose of accepting or transmitting acceptance of a fare if the device is not handheld;

(8) A person conducting wireless interpersonal communication with a device that does not require manually entering letters, numbers or symbols 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, if the terminal is not handheld;

(10) A person using an electronic wireless communications device in conjunction with a voice-operated or hands-free device feature or function of the vehicle.

(c) No holder of a temporary instruction permit who has not attained the age of eighteen years and no holder of a probationary driver's license shall drive a motor vehicle on any street, highway or property used by the public for purposes of vehicular traffic or parking while using in any manner an electronic wireless communications device.

(d) Subsection (c) of this section does not apply to any of the following:

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

(2) A person using an electronic wireless communications device whose motor vehicle is in a stationary position and the motor vehicle is outside a lane of travel;

(3) A person using a navigation device in a voice-operated ~~or~~ and hands-free manner who does not manipulate the device while driving.

(e) Whoever violates subsection (a) of this section on a first offense is guilty of a minor misdemeanor. Whoever violates subsection (c) of this section shall be adjudicated in accordance with juvenile court law and procedure.

(f) (Reserved.)

(g) As used in this section:

(1) "Electronic wireless communication device" includes a wireless telephone; a text-messaging device; a personal digital assistant; a computer, including a laptop computer and a computer tablet; and any other substantially similar wireless device that is designed or used to communicate text or via voice, image or written word.

(2) "Voice-operated ~~or~~ and hands-free device" means a device that allows the user to vocally compose or send, or to listen to a text-based communication or to dial, talk, answer or listen for the purposes of making an audible communication, without the use of either hand.

(3) "Write, send or read a text-based communication" means 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.

(4) "Handheld" means within a person's hand at the time of use.

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were passed in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such actions were in meetings open to the public and in compliance with legal requirements.

Section 3. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this ordinance, and provided it receives the affirmative vote of at least two thirds of the members of Council, this ordinance shall take effect and be in force on the 90th day following its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: 9/3/19

  
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President of Council

*Marianne M. Bach*

Clerk of Council

Approved: Sept 4 2019

*Michael S. ...*

Mayor