

ORDINANCE NO. 34-2010

DECLARING UNLAWFUL THE USE OF HAND-HELD WIRELESS COMMUNICATIONS DEVICES AS A SECONDARY OFFENSE

WHEREAS, the use of wireless communications devices by motorists has increased in recent years; and

WHEREAS, while wireless communications devices have assisted with quick reporting of road emergencies, their use has also contributed to accidents and other mishaps, thereby endangering the citizens of the City of Montgomery; and

WHEREAS, when motorists hold a wireless communication device in their hand or hands to place a call or receive a call, or to read, compose, and/or send an electronic message and attempt to drive, their chances of becoming involved in a traffic accident increase, thereby posing a threat of harm to themselves and others. Now, therefore,

BE IT HEREBY ORDAINED by the City Council of the City of Montgomery, Alabama, as follows:

SECTION I. DEFINITIONS.

For the purposes of this ordinance, the following words and phrases shall have the meaning ascribed thereto:

A. Wireless Communications Device. A full-duplex device which uses cellular or satellite technology to transmit and receive electronic data in either digital or analog format which is converted by the device to either voice, text, or graphic communication. A Wireless Communications Device shall include attachments, add-ons, or built in features which allow a car stereo receiver, or components thereof, to be used as a two-way communications device.

B. Hand-held Wireless Communication Device. A Wireless Communication Device which requires physical manipulation of the device to send or receive data. A Hand-held Wireless Communications Device shall include a Hands-free Wireless Communications Device which is manually manipulated by the driver in the same manner as a Hand-held Device.

C. Hands-free Wireless Communications Device. A Wireless Communications Device which is activated by the user without being physically manipulated by the user and which does not have to be held to the driver's ear.

SECTION II. VIOLATION.

It shall be and is hereby declared unlawful and shall be a separate offense for any person within the corporate limits or police jurisdiction of the City of Montgomery, Alabama to use a hand-held wireless communication device while committing any violation included in the Alabama Rules of the Road Act (§ 32-5A-1 et. seq.). Use of a hands-free wireless communications device, as defined herein, shall not be a violation of this ordinance. Any person found to have been in violation of this section shall be punished as follows:

- A. Any person found to have been in violation of this ordinance on any one occasion shall be punished by a fine of not more than fifty dollars (\$50.00), or by imprisonment in the city jail for not more than ten (10) days;**
- B. Any person found to have been in violation of this ordinance on a second occasion within a twelve-month period shall be punished by a fine of not more than one hundred dollars (\$100.00), or by imprisonment in the city jail for not more than ten (10) days, or by any combination of said fine and imprisonment;**
- C. Any person found to have been in violation of this ordinance on a third or subsequent occasion within a twelve-month period shall be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment in the city jail for not more than three months, or by any combination of said fine and imprisonment.**

SECTION III. EXCEPTIONS.

A person operating a motor vehicle shall not be found to have been in violation of this ordinance where that person is:

- A. using a hand-held wireless communications device as a global positioning or navigation system where the device is affixed to the motor vehicle at the time of its use;**
- B. using hand-held wireless communications device to obtain emergency assistance to report a traffic accident, medical emergency, traffic hazard, or a crime—whether the crime has been committed, is in the process of being committed, or has recently been committed—or where the person operating an automobile has a reasonable belief that a person’s life or safety is in immediate danger; or**
- C. an operator of an authorized emergency vehicle and engaged in the line and scope of his or her duties; or**

- D. an employee of a company providing utility services to the public and engaged in emergency response or repair services during or immediately after a utility emergency which poses a threat to human life or public safety; or**
- E. an operator of an amateur radio during a natural or man-made disaster or emergency where other wired and wireless communications have become inoperable or ineffective. For the purposes of this section an amateur radio is a radio transceiver which allows the user to change or manipulate the radio frequencies used to transmit and receive messages.**

ADOPTED this the 3rd day of August, 2010.

/s/ TODD STRANGE, MAYOR

ATTEST:

/s/ BRENDA GALE BLALOCK, CITY CLERK