

## **ORDINANCE NO. 101221-B**

**AN ORDINANCE OF THE CITY OF FRANKSTON, TEXAS ESTABLISHING "USE OF WIRELESS COMMUNICATION DEVICES IN CERTAIN LOCATIONS," RELATING TO THE USE OF WIRELESS COMMUNICATION DEVICES; ESTABLISHING DEFINITIONS; ESTABLISHING EXCEPTIONS; ESTABLISHING AFFIRMATIVE DEFENSES; PROVIDING FOR A PENALTY OF A FINE NOT TO EXCEED TWO HUNDRED DOLLARS (\$200.00) FOR EACH OFFENSE; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City Council of the City of Frankston, Texas ("City"), wishes to serve and protect school-aged children traveling to and from elementary and secondary schools and other educational facilities throughout the state, and to that end, the State of Texas has adopted certain laws regulating the use of wireless communication devices within vehicles in a "school crossing zone," applying only to official school days during the hours when the school zone is in effect;

**WHEREAS**, using a wireless communication device while operating a motor vehicle necessarily distracts the driver from the driver's operation of a motor vehicle and thus causes the driver to concentrate less on driving safely;

**WHEREAS**, the City Council of the City of Frankston, Texas, finds that the use of a mobile or cellular telephone while operating a motor vehicle in a "school crossing zone" (on official school days and during hours when the school zone is in effect) creates a danger, or the probability thereof, to school children and others that the City seeks to minimize;

**WHEREAS**, the safety of all school-aged children traveling to and from schools and other educational facilities located in the City is of paramount importance to the City, and as such, demands a high standard of care and control; and

**WHEREAS**, the City desires to implement those rules and regulations that protect health, life and property and preserve good government, order and security of the City and its inhabitants.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRANKSTON, TEXAS:**

Section 1: That all of the above premises are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. That Ordinance 101221-B is hereby established and adopted to read as follows:

## **"USE OF WIRELESS COMMUNICATION DEVICES IN CERTAIN LOCATIONS**

### **Definitions.**

For purposes of this Article the following definitions shall apply:

- (1) "Hands-free device" means speakerphone capability or a telephone attachment or other piece of equipment, regardless of whether permanently installed in the motor vehicle, that allows use of the wireless communication device without use of either of the operator's hands.
- (2) "School Crossing Zone" shall mean a reduced-speed zone designated on a street by the City of Frankston to facilitate safe crossing of the street by children going to or leaving a public or private elementary or secondary school during the time the reduced speed limit applies as provided in Section 541.302 (13) of the Texas Transportation Code.
- (3) "Wireless Communication Device" shall mean a device that uses a commercial mobile service, as defined by 47 U.S.C. Section 332.

### **Use of Wireless Communication Device in School Zones.**

(a) Except as otherwise provided below, it shall be unlawful for a person to use a wireless communication device while operating a motor vehicle in a school crossing zone, as designated pursuant to this article, on official school days, during the hours when the school crossing zone is in effect, and when a school crossing zone sign and a sign providing notice of the prohibition of use of a wireless communication device in a school crossing zone are posted in place.

(b) Subsection (a) shall not apply if:

- (1) the vehicle is stopped; or
- (2) the wireless communication device is used with a hands-free device.

(c) It is an affirmative defense to prosecution of an offense under subsection (a) that:

- (1) the wireless communication device was used to make an emergency call to:
  - a. an emergency response service, including a rescue, emergency medical or hazardous material response service;
  - b. a hospital;
  - c. a fire department;

- d. a health clinic;
  - e. a medical doctor's office;
  - f. an individual to administer first aid treatment; or
  - g. a police department; or
- (2) a sign required by this ordinance of this article was not posted at the entrance to the school crossing zone at the time of an offense committed in the school crossing zone.
- (d) This section shall 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.

### **Signs.**

A sign shall be attached to the existing signage which provides notice of a school crossing zone that:

- (1) the use of a wireless communication device is prohibited in the school crossing zone; and
- (2) the operator is subject to a fine if the operator uses a wireless communication device in a school crossing zone.

### **Offense.**

- (a) A person who violates a provision of this article, or who fails to perform an act required of that person by this article, commits a misdemeanor offense.
- (b) An offense under this article is punishable by a fine not to exceed \$200.00.
- (c) Allegation and evidence of a culpable mental state is not required for the commission of an offense under this article."

Section 3. This ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except where provisions of

those ordinances are in direct conflict with the provisions of this ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 4. If any section, article, paragraph, sentence, clause, phrase or word in this ordinance, or its application to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and the City Council hereby declares it would have passed such remaining portions of this ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 5. This ordinance shall become effective from and after the date of its passage by City Council and publication as provided by law, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRANKSTON, TEXAS ON THE 12th DAY OF OCTOBER, 2021.**

CITY OF FRANKSTON

  
\_\_\_\_\_  
Tommy Carr, Mayor

ATTEST:

  
\_\_\_\_\_  
Kelli Landreth-Smith, City Secretary