

**AN ORDINANCE OF MONTGOMERY COUNTY, TEXAS
PROHIBITING THE OPERATOR OF A VEHICLE
FROM USING A WIRELESS COMMUNICATION DEVICE
WHILE IN A SCHOOL CROSSING ZONE
AND PROHIBITING THE OPERATOR OF A PASSENGER BUS
FROM USING A WIRELESS COMMUNICATION DEVICE
WITH A MINOR PASSENGER ON THE BUS
AND IMPOSING A CRIMINAL PENALTY FOR
VIOLATION OF THIS ORDINANCE**

WHEREAS, the Commissioners Court of Montgomery County, Texas has determined that prohibiting operators of vehicles from using wireless communication devices while in a school crossing zone would be a valuable law enforcement tool of benefit to the public by lessening the danger to schoolchildren and other pedestrians, and by decreasing the number of accidents to which public safety agencies must respond at the expense of the taxpayers; and

WHEREAS, the Commissioners Court of Montgomery County, Texas has determined that prohibiting operators of passenger buses from using wireless communication devices with a minor passenger on the bus would be a valuable law enforcement tool of benefit to the public by lessening the danger to the public, and by decreasing the number of accidents to which public safety agencies must respond at the expense of the taxpayers; and

WHEREAS, Section 545.425 of the Texas Transportation Code establishes authority for the Commissioners Court of Montgomery County to install appropriate signage to prohibit operators of vehicles from using wireless communication devices while in a school crossing zone on all county roads that are under the jurisdiction of the Commissioners Court; and

WHEREAS, the Commissioners Court of Montgomery County finds and determines that it is necessary for safety to the public and to schoolchildren to install the appropriate signage to allow enforcement of Texas Transportation Code Section 545.425 in school crossing zones on county roads under the jurisdiction of the Commissioners Court.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF MONTGOMERY COUNTY, TEXAS:

Article I. Definitions

Section 1.1 In this Ordinance, the following words and phrases shall have the meaning ascribed in the Texas Transportation Code and in this Section 1.1:

Commissioners Court: Montgomery County, Texas, acting by and through its Commissioners Court.

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.

Passenger bus: A motor vehicle used to transport persons and designed to accommodate more than 10 passengers, including the operator.

Person: An individual, company, partnership, firm, corporation, association, or other legal entity.

School crossing zone: A reduced-speed zone designated on a street by a local authority 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.

Wireless communication device: A device that uses a commercial mobile service, as defined by 47 U.S.C. Section 332.

Article II. Offense

Section 2.1 Pursuant to the provisions of Section 545.425(b) of the Texas Transportation Code, an operator may not use a wireless communication device while operating a motor vehicle within a school crossing zone, unless the vehicle is stopped, or the wireless communication device is used with a hands-free device.

Section 2.2 Pursuant to the provisions of Section 545.425(c) of the Texas Transportation Code, an operator may not use a wireless communication device while operating a passenger bus with a minor passenger on the bus, unless the passenger bus is stopped.

Section 2.3 The Commissioners of each County precinct shall cause signs to be posted in each respective precinct at the entrance to each school crossing zone in the County, which signs shall comply with the standards described in Texas Transportation Code Section 545.425(b-1) and thereby inform each vehicle operator that the use of a wireless communication device is prohibited in the school crossing zone, and the operator is subject to a fine if the operator uses a wireless communication device in the school crossing zone contrary to this Ordinance and the applicable Texas statute. Each Commissioner shall determine whether the signs to be posted in their respective precinct are to be attached to existing signs or posted as stand-alone signs.

Section 2.4 A person commits a misdemeanor offense punishable by a fine not to exceed Two Hundred (\$200.00) Dollars consistent with Texas Transportation Code Section 542.301 if the person violates this Ordinance.

Article III. Affirmative Defenses

Section 3.1 It is an affirmative defense to prosecution of an offense under Section 2.1 and Section 2.2 that the wireless communication device was used to make an emergency call to: (1) an emergency response service, including a rescue, emergency medical, or hazardous material response service; (2) a hospital; (3) a fire department; (4) a health clinic; (5) a medical doctor's office; (6) an individual to administer first aid treatment; or (7) a police department.

Section 3.2 It is an affirmative defense to prosecution of an offense under Section 2.1 that a sign required under Section 2.3 was not posted at the entrance to the school crossing zone at the time of an offense committed in the school crossing zone.

Article IV. Exceptions

Section 4.1 This offense does not apply to an operator of an authorized emergency vehicle using a wireless communication device while acting in an official capacity.

Section 4.2 This offense does not apply to an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device.

Article V. Effective Date

Section 5.1 The effective date of this Ordinance shall be September 15, 2009.

Article VI. General Provisions

Section 6.1 All ordinances or parts of ordinances inconsistent with the terms of this Ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency of other ordinances regulating and governing the subject matter covered by this Ordinance.

Section 6.2 If any provision, section, exception, subsections, paragraph, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, shall for any reason be held unconstitutional, void, or invalid, such provision(s) of this Ordinance or its(their) application to other sets of circumstances are declared to be severable.

RESOLUTION AND ORDER

On this the 14th day of September, 2009, at a Regular Session meeting of the Commissioners Court of Montgomery County, Texas, there came on for consideration and approval a motion including the following action: (1) approve and adopt an Ordinance Prohibiting the Operator of a Vehicle from Using a Wireless Communication Device While in a School Crossing Zone and Prohibiting the Operator of a Passenger Bus from Using a Wireless Communication Device with a Minor Passenger on the Bus and Imposing a Penalty for Violation as set forth in House Bill 55, passed by the 81st Texas Legislative Regular Session and amending Texas Transportation Code Section 545.425, in accordance with the Ordinance attached hereto and incorporated herein; (2) order the installation of appropriate signage to allow enforcement of said Ordinance in public and private school crossing zones pursuant to the requirements of Texas Transportation Code Section 545.425; and (3) instruct the Commissioner of each County precinct to install signs in each respective precinct as soon as possible, with funding for said signs to be from each precinct Commissioner's individual budget.

Motion was made by Commissioner Chance and seconded by Commissioner Doyal, that said Commissioners' Court does hereby acknowledge the need for such regulation and approves and adopts the attached document as an Ordinance for Montgomery County.

Said Motion being put to vote, it carried by a vote of 4 "aye" votes to 0 "naye" votes.

THEREFORE, IT IS HEREBY APPROVED AND ORDERED that the attached Ordinance Prohibiting the Operator of a Vehicle from Using a Wireless Communication Device While in a School Crossing Zone and Prohibiting the Operator of a Passenger Bus from Using a Wireless Communication Device with a Minor Passenger on the Bus and Imposing a Penalty for Violation shall be applicable to all effective September 15, 2009, in accordance with the terms and provisions contained in the Ordinance, and that the Commissioner of each County precinct is hereby instructed to install signs in each respective precinct as soon as possible, with funding for said signs to be from each precinct Commissioner's individual budget.

ATTEST:

Mark Turnbull
Mark Turnbull,
County Clerk

COUNTY OF MONTGOMERY

Alan B. Sadler
Alan B. Sadler, County Judge

Mike Meador
Mike Meador, Commissioner Pct. 1

Craig Doyal
Craig Doyal, Commissioner Pct. 2

Ed Chance
Ed Chance, Commissioner Pct. 3

Ed Rinehart
Ed Rinehart, Commissioner Pct. 4