

ORDINANCE NO. 2009-375

SPONSOR Mr. Poda, Mr. Feeman, Mr. Kostandaras, Mrs. Rodgers, Mr. Smith and Mr. Comunale

DATE October 19, 2009

COMMITTEE Rules

**An amended Ordinance enacting Chapter 345 of the Traffic Code of the Codified Ordinances of the County of Summit entitled “Text Messaging While Driving Prohibited,” thereby establishing restrictions for text messaging while driving, for County Council, and declaring an emergency.**

WHEREAS, a study by the Virginia Tech Transportation Institute has concluded that people who send text messages while driving are 23 times more likely to be in a crash; and

WHEREAS, a test by Car and Driver Magazine found that in some cases, a person’s reaction time was harmed more by texting while driving than while driving under the influence of alcohol; and

WHEREAS, in January 2009, the National Safety Council called on state and federal lawmakers to ban the use of cell phones and text messages; and

WHEREAS, a poll by the AAA Foundation for Traffic Safety showed that 80 percent of Americans regarded texting or e-mailing while driving as a very serious safety hazard; and

WHEREAS, the County of Summit derives its home rule powers from Section 3, Article X, of the Ohio Constitution, which allows a county to adopt a charter which may provide for the “concurrent or exclusive exercise by the county, in all or part of its area, of all or any designated powers vested by the constitution or laws of Ohio in municipalities”; and

WHEREAS, Article I, Section 1.01 of the Summit County Charter authorizes the county to concurrently exercise municipal powers as well as any powers granted to counties under the Ohio Revised Code, therefore providing the county the ability to exercise the home rule powers of a municipality within its territory where there is no conflict with a municipality or township’s exercise of the powers granted to them by the Ohio Constitution or general law; and

WHEREAS, this Council, after reviewing all pertinent information, finds and determines that it is necessary and in the best interest of the residents of the County of Summit to enact Chapter 345 of the Traffic Code of the Codified Ordinances of the County of Summit, entitled “Text Messaging While Driving Prohibited” to provide for the general safety of its residents.

NOW THEREFORE, BE IT ORDAINED, by the Council of the County of Summit, State of Ohio, that:

#### SECTION 1

Chapter 345 of the Traffic Code of the Codified Ordinances of the County of Summit, entitled “Text messaging while Driving Prohibited,” is hereby enacted by this Council as follows:

SECTION 1 (continued)

**Chapter 345: "Text Messaging While Driving Prohibited"**

**345.01 Definitions.**

Words and terms are used in this Chapter with the following meanings:

- (a) "Hands-free" shall mean the manner in which a wireless handset is operated for the purpose of composing, reading or sending text messages, by using an internal feature or function, or through an attachment or addition, including but not limited to an ear piece, head set, remote microphone or short-range wireless connection, thereby allowing the user to operate said device without the use of hands.
- (b) "Inoperability" shall mean a motor vehicle that is incapable of being operated or being operated in a safe and prudent manner due to mechanical failure, including but not limited to, engine overheating or tire failure.
- (c) "Motor vehicle" shall mean any vehicle that is self-propelled by a motor, including but not limited to, automobiles, trucks, vans, construction vehicles, etc.
- (d) "Person" shall mean any natural person, corporation, unincorporated association, firm, partnership, joint venture, joint stock association or other entity or business organization of any kind.
- (e) "Stopped" shall mean not in motion.
- (f) "Text message" , also referred to as short messaging service (SMS), shall mean the process by which users send, read or receive messages on a wireless handset, including but not limited to, text messages, instant messages, electronic messages or e-mails, in order to communicate with any person or device.
- (g) "Use" shall mean to hold a wireless handset in one's hand.
- (h) "Wireless handset" shall mean a portable electronic or computing device, including but not limited to, cellular telephones, laptop computers and personal digital assistants (PDAs), or other similar electronic or computing device, capable of transmitting data in the form of a text message.

**345.02 Text Messaging While Driving Prohibited**

- (a) No person shall use a wireless handset to compose, read or send text messages while operating a motor vehicle on any public street or public highway within the County of Summit.
- (b) Notwithstanding subsection (a), this law shall not be construed to prohibit the use of any wireless handset by:
  - (1) Any law enforcement, public safety or police officers, emergency services officials, first aid, emergency medical technicians and personnel, and fire safety officials in the performance of duties arising out of and in the course of their employment as such.

SECTION 1 (continued)

- (2) A person using a wireless handset to contact an individual listed in subsection (b) (1);  
or
  - (3) A person using a wireless handset inside a motor vehicle while such motor vehicle is parked, standing or stopped and is removed from the flow of traffic, in accordance with applicable laws, rules or ordinances, or is stopped due to the inoperability of such motor vehicle.
- (c) Notwithstanding subsection (a), this law shall not be construed to prohibit a person operating a motor vehicle from utilizing a hands-free wireless handset.

**345.03 Enforcement and Penalties**

A violation of any provisions of this section shall constitute a minor misdemeanor and be punishable by a fine not exceeding \$150.00 for each single violation. Each such violation shall constitute a separate and distinct offense.

**345.04 Preemption**

This section shall be null and void on the day that statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Summit.

SECTION 2

This Ordinance is hereby declared an emergency in the interest of the health, safety and welfare of the citizens of the County of Summit and for the further reason to immediately protect residents from the dangers of text messaging while driving.

SECTION 3

Provided this Ordinance receives the affirmative vote of eight members, it shall take effect immediately upon its adoption and approval by the Executive; otherwise it shall take effect and be in force at the earliest time provided by law.

SECTION 4

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 of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including section 121.22 of the Ohio Revised Code.

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INTRODUCED September 28, 2009

ADOPTED October 19, 2009

Shirley F. Green  
CLERK OF COUNCIL

Nick Kostandaras  
PRESIDENT OF COUNCIL

APPROVED October 20, 2009

Russell M. King  
EXECUTIVE

ENACTED EFFECTIVE October 20, 2009

Voice Vote: 11-0 YES: Comunale, Crawford, Crossland, Feeman, Kostandaras  
Poda, Prentice, Rodgers, Schmidt, Shapiro, Smith