

ORDINANCE 190-2024(PD), *Second Reading*

By Mayor Seren

An Ordinance enacting Section 331.46 of the Codified Ordinances of Cleveland Heights, entitled "Driving while texting."

WHEREAS, the State of Ohio enacted R.C. 4511.204, effective April 4, 2023, to prohibit a person from using, holding, or physically supporting an electronic wireless communications device while operating a motor vehicle, trackless trolley, or streetcar.

WHEREAS, under Article XVIII, Section 3, of the Ohio Constitution, the City of Cleveland Heights has the authority to concurrently adopt and enforce within its limits local police, sanitary, and other similar regulations;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Council hereby adopts and enacts Section 331.46 of the Codified Ordinances of Cleveland Heights, entitled "Driving while texting," in the form set forth in Exhibit A attached hereto and incorporated herein by reference.

SECTION 2. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Ordinance shall take effect and be in force at the earliest time permitted by law.



TONY CUDA
President of Council



ADDIE BALESTER
Clerk of Council

ORDINANCE 190-2024(PD)

PASSED: October 21, 2024

Presented to Mayor: 10/24/2024 Approved: 10/31/2024



KAHLIL SEREN
Mayor

EXHIBIT A

CHAPTER 331

Operation Generally

* * *

331.46 DRIVING WHILE TEXTING.

(a) No person shall operate a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic while using, holding, or physically supporting with any part of the person's body an electronic wireless communications device.

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

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

(3) A person using an electronic wireless communications device when the person's motor vehicle is in a stationary position and is outside a lane of travel, at a traffic control signal that is currently directing traffic to stop, or parked on a road or highway due to an emergency or road closure;

(4) A person using and holding an electronic wireless communications device directly near the person's ear for the purpose of making, receiving, or conducting a telephone call, provided that the person does not manually enter letters, numbers, or symbols into the device;

(5) A person receiving wireless messages on an electronic wireless communications 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, provided that the person does not hold or support the device with any part of the person's body;

(6) A person using the speaker phone function of the electronic wireless communications device, provided that the person does not hold or support the device with any part of the person's body;

(7) A person using an electronic wireless communications device for navigation purposes, provided that the person does not do either of the following during the use:

(A) Manually enter letters, numbers, or symbols into the device;

(B) Hold or support the device with any part of the person's body.

ORDINANCE 190-2024(PD)

(8) A person using a feature or function of the electronic wireless communications device with a single touch or single swipe, provided that the person does not do either of the following during the use:

(A) Manually enter letters, numbers, or symbols into the device;

(B) Hold or support the device with any part of the person's body.

(9) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;

(10) A person operating a utility service vehicle or a vehicle for or on behalf of a utility, if the person is acting in response to an emergency, power outage, or circumstance that affects the health or safety of individuals;

(11) A person using an electronic wireless communications device in conjunction with a voice-operated or hands-free feature or function of the vehicle or of the device without the use of either hand except to activate, deactivate, or initiate the feature or function with a single touch or swipe, provided the person does not hold or support the device with any part of the person's body;

(12) A person using technology that physically or electronically integrates the device into the motor vehicle, provided that the person does not do either of the following during the use:

(A) Manually enter letters, numbers, or symbols into the device;

(B) Hold or support the device with any part of the person's body.

(13) A person storing an electronic wireless communications device in a holster, harness, or article of clothing on the person's body.

(c) Whoever violates subsection (a) of this section is guilty of operating a motor vehicle while using an electronic wireless communication device, an unclassified misdemeanor, and shall be punished as provided in subsections (c)(1) to (5) of this section.

(1) The offender shall be fined, and is subject to a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, as follows:

(A) Except as provided in subsections (c)(1)(B), (C), (D), and (2) of this section, the court shall impose upon the offender a fine of not more than one hundred fifty dollars.

(B) If, within two years of the violation, the offender has been convicted of or pleaded guilty to one prior violation of this section, Ohio R.C. 4511.204, or a substantially equivalent municipal ordinance, the court shall impose upon the offender a fine of not more than two hundred fifty dollars.

(C) If, within two years of the violation, the offender has been convicted of or pleaded guilty to two or more prior violations of this section, Ohio R.C. 4511.204, or a substantially equivalent municipal ordinance, the court shall impose upon the offender a fine of not more than five hundred dollars. The court also may impose a suspension of the offender's driver's license, commercial

ORDINANCE 190-2024(PD)

driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for ninety days.

(D) Notwithstanding subsections (c)(1)(A) to (C) of this section, if the offender was operating the motor vehicle at the time of the violation in a construction zone where a sign was posted in accordance with Ohio R.C. 4511.98, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two times the amount imposed for the violation under subsections (c)(1)(A), (B), or (C) of this section, as applicable.

(2) If the offender is in the category of offenders to whom subsection (c)(1)(A) of this section applies, in lieu of payment of the fine of one hundred fifty dollars under subsection (c)(1)(A) of this section and the assessment of points under subsection (c)(4) of this section, the offender instead may elect to attend the distracted driving safety course, as described in Ohio R.C. 4511.991. If the offender attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall not be required to pay the fine and shall not have the points assessed against that offender's driver's license if the offender submits the written evidence to the court within 90 days of the violation of subsection (a) of this section. However, successful completion of the course does not result in a dismissal of the charges for the violation, and the violation is a prior offense under subsections (c)(1)(B) and (C) of this section if the offender commits a subsequent violation or violations of subsection (a) of this section within two years of the offense for which the course was completed. This subsection does not apply with respect to any offender in the category of offenders to whom subsection (c)(1)(B), (C), or (D) of this section applies.

(3) The court may impose any other penalty authorized under Ohio R.C. 2929.21 to 2929.28. However, the court shall not impose a fine or a suspension not otherwise specified in subsection (d)(1) of this section. The court also shall not impose a jail term or community residential sanction.

(4) Except as provided in subsection (c)(2) of this section, points shall be assessed for a violation of subsection (a) of this section in accordance with Ohio R.C. 4510.036.

(5) The offense established under this section is a strict liability offense and Ohio R.C. 2901.20 does not apply. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.

(d) A prosecution for an offense in violation of this section does not preclude a prosecution for an offense in violation of Ohio R.C. 4511.204 based on the same conduct. However, the two offenses are allied offenses of similar import under Ohio R.C. 2941.25.

(e) (1) A law enforcement officer does not have probable cause and shall not stop the operator of a motor vehicle for purposes of enforcing this section unless the officer visually observes the operator using, holding, or physically supporting with any part of the person's body the electronic wireless communications device.

(2) A law enforcement officer who stops the operator of a motor vehicle, trackless trolley, or streetcar for a violation of subsection (a) of this section shall inform the operator that the operator may decline a search of the operator's electronic wireless communications device. The officer shall not do any of the following:

ORDINANCE 190-2024(PD)

(A) Access the device without a warrant, unless the operator voluntarily and unequivocally gives consent for the officer to access the device;

(B) Confiscate the device while awaiting the issuance of a warrant to access the device;

(C) Obtain consent from the operator to access the device through coercion or any other improper means. Any consent by the operator to access the device shall be voluntary and unequivocal before the officer may access the device without a warrant.

(f) As used in this section:

(1) "Electronic wireless communications device" includes any of the following:

(A) A wireless telephone;

(B) A text-messaging device;

(C) A personal digital assistant;

(D) A computer, including a laptop computer and a computer tablet;

(E) Any device capable of displaying a video, movie, broadcast television image, or visual image;

(F) Any other substantially similar wireless device that is designed or used to communicate text, initiate or receive communication, or exchange information or data.

An "electronic wireless communications device" does not include a two-way radio transmitter or receiver used by a person who is licensed by the Federal Communications Commission to participate in the amateur radio service.

(2) "Voice-operated or hands-free feature or function" means a feature or function that allows a person to use an electronic wireless communications device without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

(3) "Utility" means an entity specified in division (A), (C), (D), (E), or (G) of Ohio R.C. 4905.03.

(4) "Utility service vehicle" means a vehicle owned or operated by a utility.