

DATE: 6/17/2008

**CITY OF HURST, TEXAS
STAFF REPORT**

AGENDA DATE: 6/24/2008

SUBJECT: Consider Ordinance No. 2060, on first reading, restricting "Use of Hand-held Communication Devices in School Zones, Parks and Parking Lots of City Facilities".

SUPPORTING DOCUMENTS:

Ordinance No. 2060

REVIEWED BY:

CITY SECRETARY: _____	INFO SERVICES: _____
COMM SERV: _____	PLANNING: _____
FINANCE: _____	POLICE: <u>SN</u>
FIRE: _____	PUBLIC WORKS: _____
GEN SERVICES: _____	OTHER: _____



CITY MANAGER

BACKGROUND:

The use of a hand-held communication device while operating a motor vehicle in locations with a high concentration of pedestrians places these pedestrians at risk of injury due to the driver's inattention.

ANALYSIS:

Driver inattention is a major cause of traffic accidents and the use of hand-held devices while driving has added to this problem. Some drivers use these devices for making phone calls and texting, which in itself takes a lot of concentration on behalf of the user. This activity places other drivers and pedestrians at risk since the driver is not focused on the roadway or parking lots in locations where kids and adults will be walking. The proposed ordinance restricts the use of these devices in school zones, designated city park roadways and city facility parking lots where there is a high concentration of pedestrians.

Staff is recommending restricting cell phone use while driving in Chisholm and Hurst Community Parks, and in the park zone on Bluebonnet Drive on the West side of Rickel Park. The restricted locations must be designated with signs alerting the drivers that the use of the hand-held devices within the specific area is prohibited.

RECOMMENDATION: Staff recommends the City Council approve Ordinance No. 2060, on first reading, amending The Hurst Code Of Ordinances Chapter 24, by adding A New Section Entitled; "Use Of Hand-Held Communications Devices Prohibited In School Zones, Parks, And Parking Lots Of City Facilities"

ORDINANCE NO. 2060

AN ORDINANCE OF THE CITY OF HURST, TEXAS, AMENDING THE HURST CODE OF ORDINANCES CHAPTER 24, BY ADDING A NEW SECTION ENTITLED; “USE OF HAND-HELD COMMUNICATIONS DEVICES PROHIBITED IN SCHOOL ZONES, PARKS, AND PARKING LOTS OF CITY FACILITIES;” PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE IMPOSITION OF CIVIL PENALTIES AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has determined it is in the best interests and safety of the citizens of the City of Hurst that these serious matters should be addressed and eliminated, if possible.

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

Section 1: Code of Ordinances of the City of Hurst, Texas is hereby amended by adding a new Section “Use of Hand-held Communications Devices Prohibited in School Zones, Parks and Parking Lots of City Facilities” to read as follows:

“USE OF HAND-HELD COMMUNICATIONS DEVICES PROHIBITED IN SCHOOL ZONES, PARKS, AND PARKING LOTS OF CITY FACILITIES;”

Section 1: Definitions

The following words, terms and phrases when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Engaging In a Call means talking into, dialing, or listening on a hand-held Mobile Telephone, and entering or reading text messages or data.

Hands-free Mobile Telephone means a Mobile Telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such Mobile Telephone, by which a user engages in a call without the use of either hand (or prosthetic device or aid in the case of a physically disabled person), whether or not the use of either hand (or prosthetic device) is necessary to activate, deactivate, or initiate a function of such telephone.

Hand-held Communications Device means a Mobile Telephone, Personal Digital Assistant (PDA), pager, or other device by which the user communicates to another, or receives communications from another, by means of aural (voice) communications, text entry, text receipt, or any other means of electronically transferred data.

Hand-held Mobile Telephone shall mean a mobile telephone with which a user engages in a call using at least one hand (or prosthetic device or aid in the case of a physically disabled person).

Mobile Telephone shall mean the device used by subscribers and other users of Wireless Telephone Service to access such service and shall include Personal Digital Assistants.

Personal Digital Assistant shall mean a device operated using a wireless telecommunications service that provides for data communication other than by voice.

Wireless Telephone Service shall mean two-way real time voice telecommunications service that is interconnected to a public switched telephone network and commonly referred to as cellular service or personal communication service.

Section 2: Offenses - It shall be unlawful for any person to drive or operate a motor vehicle while using a Hand-held Communications Device to engage in a call or to create, send or read messages or data as follows:

1. In a school zone and on the days during the hours when school zones are in effect, and when school zone signs and signs prohibiting Hand-held Communications Device use are posted.
2. Within public park property when signs prohibiting Hand-held Communications Device use are posted.
3. For a person to drive or operate a motor vehicle upon parking lots of city facilities when signs prohibiting Hand-held Communications Device use are posted.
4. The City Manager may approve locations and authorize placement of signs at city facility locations prohibiting the use of a Hand-held Communications Device while operating a motor vehicle upon his determination that safety of the public requires such action.
5. An operator of a motor vehicle who holds a Hand-held Communications Device to, or in the immediate proximity of his or her ear while such vehicle is in motion is presumed to be Engaging in a Call within the meaning of this section. "Immediate proximity" shall mean that distance as permits the operator of a Mobile Telephone to hear telecommunications transmitted over such Mobile Telephone, but shall not require physical contact with such operator's ear.

Section 3: Defense - It shall be a defense if the operator is utilizing any communications device for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, a physician's office or health clinic; a public safety department.

Section 2: That all provisions of the ordinances of the City of Hurst in conflict with the provisions of this ordinance are, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Hurst not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 3: That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

Section 4: A person commits an offense, if he or she knowingly performs an act prohibited by this ordinance or knowingly fails to perform an act required by this ordinance. Any person who violates any provision of this ordinance shall be subject to a fine of not more than \$200 for each offense.

Section 5: This ordinance takes effect immediately from and after its passage.

AND SO IT IS ORDERED.

Passed on the first reading on the _____ day of _____, 2008, by a vote of ___ to ___.

Passed on the second reading on the _____ day of _____, 2008, by a vote of ___ to ___.

APPROVED:

Richard Ward, Mayor

ATTEST:

Rita Frick, City Secretary

Approved as to form and legality:

City Attorney