

ORDINANCE NO. 2023-08

AN ORDINANCE TO AMEND SECTION 333.11 OF THE CODIFIED ORDINANCES OF THE VILLAGE OF HIRAM TO ESTABLISH A PROHIBITION AGAINST CELL PHONE AND COMPUTER USE WHILE DRIVING WITHIN THE VILLAGE OF HIRAM.

WHEREAS, the Mayor has requested the Village Council consider enacting a regulation against cell phone and computer use while driving in the Village of Hiram in a fashion consistent with the prohibitions set forth in Ohio Revised Code 4511.204; and

WHEREAS, the Hiram Village Council has considered the recommended prohibitions as revisions to Section 333.11 of the Village Codified Ordinances as are set forth in this legislation and has determined that a revision of the Traffic code section is needed so as to establish the requested prohibitions.

NOW THEREFORE BE IT ORDAINED by the Council of the Village of Hiram, Portage County, Ohio a majority or more of the members thereto concurring that:

SECTION 1: Section 333.11 of the Village of Hiram Codified Ordinances as it is currently enacted is hereby repealed.

SECTION 2: Section 333.11 of the Village of Hiram Codified Ordinances as is set forth in the attached Exhibit "A" is hereby enacted.

SECTION 3: It is hereby 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 the deliberations of the Council and 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 Revised Code of the State of Ohio.

SECTION 4: This Ordinance shall take effect at the earliest time allowed by law.

First Reading: April 11, 2023

~~Second Reading: May 9, 2023~~

~~Passed in Council on Third Reading: June 13, 2023~~


Mayor Lou Bertrand

ATTEST:


Fiscal Officer Susan J. Skrovan-DeYoung

Approved as to Form:


Village Solicitor Thomas Reitz

I SUSAN, Fiscal Officer of the Village of Hiram, Ohio, hereby certify that the foregoing ~~Resolution or~~ Ordinance No. 2023-08 has been duly posted in the required 5 places.

4/13/2023 
Date Fiscal Officer, Village of Hiram

ORDINANCE 2023-08, Exhibit "A"

333.11 Prohibition against Cell Phone and Computer Use while Driving.

(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) Division (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;

(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)

(1) Whoever violates division (A) of this section is guilty of operating a motor vehicle while using an electronic wireless communication device, an unclassified misdemeanor.

(a) Except as provided in divisions (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 or a substantially equivalent municipal ordinance or state code provision, 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 or a substantially equivalent municipal ordinance or state code provision, the court shall impose upon the offender a fine of not more than five hundred dollars. The court may *also* impose a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for ninety days.

(d) Notwithstanding divisions (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 section 4511.98 of the Revised Code, 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 division (C)(1)(a), (b), or (c) of this section, as applicable.

(2) In lieu of payment of the fine of one hundred fifty dollars under division (C)(1)(a) of this section and the assessment of points under division (C)(4) of this section, the offender instead may elect to attend the distracted driving safety course, as described in section 4511.991 of the Revised Code. 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.

(3) The court may impose any other penalty authorized under the Village Codified Ordinances. However, the court shall not impose a fine or a suspension not otherwise specified in division (C)(1) of this section. The court also shall not impose a jail term or community residential sanction.

(4) Except as provided in division (C)(2) of this section, points shall be assessed for a violation of division (A) of this section in accordance with section 4510.036 of the Revised Code.

(5) The offense established under this section is a strict liability offense. 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)

(1) A Village police 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 Village police officer who stops the operator of a motor vehicle, trackless trolley, or streetcar for a violation of division (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:

(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.

(E) 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 section 4905.03 of the Revised Code.

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