



City of South Bend Common Council

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Sixth District

Gavin Ferlic
At Large

John Voorde
At Large

Karen White
At Large

July 17, 2019

South Bend Common Council
4th Floor, County-City Building
South Bend, IN 46601

Filed in Clerk's Office

JUL 17 2019

KAREEMAH FOWLER
CITY CLERK, SOUTH BEND, IN

Re: AN ORDINANCE OF THE COMMON COUNCIL OF SOUTH BEND, INDIANA, AMENDING THE SOUTH BEND MUNICIPAL CODE BY REPEALING CURRENT CHAPTER 20, ARTICLE 13 AND THE INCLUSION OF NEW CHAPTER 20, ARTICLE 13, ENTITLED "REGULATIONS ON THE USE OF HAND-HELD MOBILE OR WIRELESS TELEPHONES, ELECTRONIC COMMUNICATIONS DEVICES AND TELECOMMUNICATIONS DEVICES WHILE DRIVING"

Dear Council Members:

As you know, the South Bend Municipal Code prohibits the use of many hand-held communication devices by drivers in school zones. Many studies, however, have determined that the problem with distracted driving, together with resultant property damage and personal injuries, is not limited to school zones, but exists on virtually every roadway.

This proposed ordinance repeals the current ordinance and, in its place, expands the regulations on the use of hand-held communication devices while driving on all roadways in South Bend. The proposed ordinance also creates very limited exceptions, primarily for police, fire and other first responders acting within the course and scope of their employment.

Distracted driving is a danger to everyone in the community, be it the distracted driver himself, other motorists using the roadway, pedestrians and all who are connected to anyone injured or killed. This proposed ordinance is a step in the right direction and within the jurisdiction of the Common Council to reduce distracted driving.

I am requesting that this proposed ordinance be given first reading at the Council meeting on July 22, 2019 with the public hearing and second and third readings at the following meeting.

I appreciate your support.

Sincerely Yours,

Gavin Ferlic, South Bend Common Council Member at-Large.

Filed in Clerk's Office

JUL 17 2019

KAREEMAH FOWLER
CITY CLERK, SOUTH BEND, IN

BILL NO. 24-19

ORDINANCE NO. _____

AN ORDINANCE OF THE COMMON COUNCIL OF SOUTH BEND, INDIANA,
AMENDING THE SOUTH BEND MUNICIPAL CODE BY REPEALING CURRENT
CHAPTER 20, ARTICLE 13 AND THE INCLUSION OF NEW CHAPTER 20, ARTICLE 13,
ENTITLED "REGULATIONS ON THE USE OF HAND-HELD MOBILE OR WIRELESS
TELEPHONES, ELECTRONIC COMMUNICATIONS DEVICES AND
TELECOMMUNICATIONS DEVICES WHILE DRIVING"

STATEMENT OF PURPOSE AND INTENT

The current version of Chapter 20, Article 13 of the South Bend Municipal Code prohibits the use of certain hand-held communication devices only in school zones. Subsequent data has made it clear that distracted driving through use of hand-held communication devices has increased accidents resulting in personal injuries and property damages on all types of roadways, not just in school zones. Indiana Code 9-21-1-2 provides local authorities, with the right to adopt, by ordinance, traffic regulations with respect to highways under the local authority's jurisdiction, as long as the ordinance does not conflict with, or duplicate, a statute. This ordinance does not conflict with or duplicate a statute and is designed to reduce the number of motor vehicle accidents caused by distracted driving by expanding the prohibition on the use of hand-held communication devices while driving on any roadway within the City of South Bend.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE
CITY OF SOUTH BEND, INDIANA, as follows:

Section I. Chapter 20, Article 13 is hereby amended to read in its entirety as follows:

ARTICLE 13.- REGULATIONS ON THE USE OF HAND-HELD MOBILE OR WIRELESS
TELEPHONES, ELECTRONIC COMMUNICATIONS DEVICES
AND TELECOMMUNICATIONS DEVICES WHILE DRIVING

Sec. 20-130. - Definitions.

In this article:

- (1) *Electronic communications device*, except as provided in subsection (h), means any of the following:
 - (a) A broadband personal communications device.
 - (b) A gaming system or device capable of displaying games.
 - (c) A handheld device, laptop computer, or tablet computer

with mobile data access.

(d) A pager or two-way messaging device.

(e) A personal digital assistant.

(f) A mobile or wireless telephone.

(g) The functional equivalent or successor to any device listed in subdivisions (a) through (f).

(h) The term does not include the following:

(1) Amateur radio equipment that is being operated by a person licensed as an amateur radio operator by the Federal Communications Commission under 47 CFR Part 97.

(2) A communications system installed in a commercial motor vehicle weighing more than ten thousand (10,000) pounds.

- (2) *Engaging in a call* means talking into, dialing or listening on a hand-held mobile or wireless telephone, but does not include holding a mobile telephone to activate or deactivate the telephone by pressing not more than one (1) button to initiate or terminate a voice communication or other transmission described in this article.
- (3) *Hand-held mobile telephone* means a mobile or wireless 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).
- (4) *Hands-free mobile telephone* means a mobile or wireless telephone that has an internal feature or function or that is equipped with an attachment or addition, whether or not permanently part of the mobile or wireless 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 or deactivate the mobile telephone.
- (5) *Mobile communication device* means a text-messaging device or other electronic, two-way communication device that is designed to receive and transmit voice communication, text communication, or both. The term includes a mobile telephone and a personal digital assistant (PDA).
- (6) *Mobile telephone* means a device used by subscribers and other users of wireless telephone service to access such service.
- (7) *School crossing zone* means a part of a roadway distinctly indicated for crossing by children on the way to or from school by lines or other markings on the surface of the roadway or by signs as addressed by Indiana Code §9-13-2-161.5.
- (8) *Text message* means a two-way communication (whether real-time or asynchronous) in which data (composed in whole or in part of text, numbers, images or symbols) is sent, entered or received by a method other than by voice and transmitted through either a short message service (SMS) or a computer network. The term includes electronic or e-mails. The term does not include a communication transmitted through a global positioning or navigation system.

- (9) *Telecommunications device* means an electronic or digital telecommunications device or digital telecommunications device as addressed in Indiana Code §9-13-2-177.3 and includes hand-held mobile or wireless telephones and mobile communication devices.
- (10) *Wireless telephone* means a device used by subscribers and other users of wireless telephone service to access such service.
- (11) *Wireless telephone service* means two-way, real time voice telecommunications service that is interconnected to a public switched telephone network and is commonly referred to as cellular service or personal communication service.

Sec. 20-131. - Drivers prohibited from using hand-held mobile or wireless telephones, mobile communication devices and telecommunication devices while driving .

- (1) Except as provided in Sec. 20-132, a person may not:
 - (a) hold or handle an electronic communications device;
 - (b) participate in text messaging; or
 - (c) view, record, or broadcast images or video;

while operating a moving motor vehicle.

- (2) An operator of a motor vehicle who holds a mobile telephone or telecommunications device or an electronic communications device to or in the immediate proximity of his or her ear while the vehicle is in motion is presumed to be engaging in a call under this article. Immediate proximity is any distance that permits the user of a mobile telephone or telecommunication device to hear telecommunications transmitted over the telephone or device and does not require physical contact with the user's ear.

Sec. 20-132. - Limited exceptions.

Section 20-131 does not apply to the following:

- (1) A law enforcement officer who is operating within the scope of the officer's employment, including while the law enforcement officer is:
 - (A) working in a plainclothes capacity;
 - (B) working in an undercover capacity; or
 - (C) responding to an emergency.

(2) A firefighter, emergency medical technician (EMT), paramedic, other first responder or other emergency personnel while acting within the scope of their employment and while responding to an emergency.

(3) A driver using an electronic communications device for the sole purpose of communicating with emergency personnel or law enforcement regarding an emergency.

(4) A driver using an electronic communications device by means of hands free or voice operated technology, including by:

(A) use of a headset or earpiece to conduct a voice communication;

(B) use of a device that is:

(i) designed to be worn on the wrist; and

(ii) capable of being used to conduct hands free voice communication;

(C) use of technology that uses voice recognition to convert a voice communication into text for purposes of transmission as a text message, electronic mail message, or other electronic data; if the device requires the driver to press not more than one (1) button to initiate or terminate a voice communication or transmission described in this subdivision.

(4) A driver using an electronic communications device while parked on the shoulder of a public highway.

(5) A driver using an electronic communications device when:

(A) the vehicle is not in motion; and

(B) the vehicle's transmission is in "park".

(6) A driver using:

(A) a navigation or global positioning feature of an electronic communications device; or

(B) a fixed device that is designed to continuously record or broadcast video from within or outside a motor vehicle; without holding or handling the device.

(7) A driver using a manufacturer installed system that is embedded or integrated into the vehicle.

Sec. 20-133. - Violations and penalties.

(1) Any person violating any provisions of this article shall be issued a citation and be subject to the following fines:

- (a) Seventy-five dollars (\$75.00) for the first violation;
- (b) One hundred twenty-five dollars (\$125.00) for the second violation;
- (c) Two hundred fifty dollars (\$250.00) for all subsequent violations.

However, if a person is violating any provisions of this article in a school crossing zone, the citation shall automatically result in a fine of two hundred fifty dollars (\$250.00).

- (2) Any person issued a citation for violating any provision of this article shall make payment through the Ordinance Violations Bureau. Failure to make payment within thirty (30) days of the issuance of the citation shall result in the assessment of a late fee of fifty dollars (\$50.00).
- (3) Each violation of this article shall constitute a separate offense.

Sec. 20-134. - Deposit of fine monies into Police Department Training Fund.

- (1) All monies collected and retained by the City for violation of this article shall be deposited into the Police Department Training Fund (Fund #220). Such monies shall be used solely for the purposes designated for such fund. All interest earned on the monies deposited in Fund #220 shall not revert to the General Fund.
- (2) The Department of Administration and Finance shall send monthly written reports to the Office of the City Clerk detailing the amount of money collected and the amount of interest earned, with such reporting being filed no later than the last business day of each month.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of South Bend, Indiana, as follows:

Section I. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval of the Mayor.

Tim Scott, Council President
South Bend Common Council

Attest:

Kareemah N. Fowler, City Clerk
Office of the City Clerk

Presented by me, the undersigned Clerk of the City of South Bend, to the Mayor of the City of South Bend, Indiana on the _____ day of _____, 2019, at _____ o'clock ____ . m.

Kareemah N. Fowler, City Clerk
Office of the City Clerk

Approved and signed by me on the _____ day of _____, 2019, at ____ o'clock
____.m.

Pete Buttigieg, Mayor
City of South Bend, Indiana