

ORDINANCE NO. 3983

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 9 OF THE CODE OF THE CITY OF MESQUITE, TEXAS, BY ADDING A NEW SECTION 9-147(3) THEREBY PROHIBITING THE USE OF HANDHELD MOBILE TELEPHONES IN SCHOOL ZONES; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED TWO HUNDRED (\$200.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE THEREOF.

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

SECTION 1. That Chapter 9 of the Code of the City of Mesquite, Texas, is hereby amended by adding a new Section 9-147(3) to read as follows, in all other respects said Code, Chapter and Section to remain in full force and effect:

Sec. 9-147. Same – school zones.

(3) Use of handheld mobile telephones prohibited in school zones.

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

1. *Engaging in a call* shall mean talking into, dialing or listening on a handheld mobile telephone, but shall not include holding a mobile telephone to activate or deactivate such telephone.
2. *Hands-free mobile telephone* shall mean 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.
3. *Handheld 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).
4. *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 operator's ear.

5. *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.
 6. *Personal digital assistant* shall mean a device operated using a wireless telecommunications service that provides for data communication other than by voice.
 7. *Wireless telephone service* shall mean a 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.
- (b) Except as otherwise provided below, it shall be unlawful for a person to drive or operate a motor vehicle in a school zone, as designated in Section 9-147(3), on official school days, during the hours when school zones are in effect or when the school zone lights are flashing and in effect, and when school zone signs and signs prohibiting handheld mobile telephone use are posted in place, while using a handheld mobile telephone to engage in a call or to create, send or read messages.
- (c) An operator of a motor vehicle who holds a mobile telephone to or in the immediate proximity of his ear while such vehicle is in motion is presumed to be engaging in a call within the meaning of this section.
- (d) Subsection (b) shall not apply to:
1. The use of a mobile telephone for the sole purpose of communicating with an emergency responder;
 2. Any law enforcement, public safety or police officers, emergency services officials, first aid, emergency medical technicians and personnel, or any fire safety officials in the performance of duties arising out of and in the course of their employment as such; or
 3. The use of a hands-free mobile telephone when being used in a hands-free manner.
- (e) The violation of this section is a strict liability offense.


SECTION 2. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 4. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punished by a fine not to exceed Two Hundred (\$200.00) Dollars for each offense.

SECTION 5. That this ordinance shall take effect on and after October 1, 2008.


DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 2nd day of September, 2008.



John Monaco
Mayor

ATTEST:

APPROVED:



Judy Womack
City Secretary



B. J. Smith
City Attorney