

ORDINANCE NO. 77-2023
INTRODUCED BY: Lentine

AN ORDINANCE AMENDING TITLE FIVE OF THE TRAFFIC CODE TO AMEND SECTION 333.12, "TEXTING WHILE DRIVING PROHIBITED", AND SECTION 335.15, "USE OF ELECTRONIC COMMUNICATION DEVICES WHILE DRIVING", OF THE CODIFIED ORDINANCES.

WHEREAS, the Ohio General Assembly enacted new Ohio Revised Code Section 4511.204, "Driving while texting", and new Ohio Revised Code Section 4511.991, "'Distracted' defined; violations committed while distracted", both of which became effective April 4, 2023;

WHEREAS, to protect the health, safety and general welfare of the public, the Chief of Police has recommended, and this Council finds it necessary, to adopt the within Ordinance to enact new Codified Ordinance Section 331.12 with respect to texting while driving and new Section 335.15 with respect to traffic violations committed while distracted to mirror the state law provisions with respect to violations for texting while driving and violations committed while distracted.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: Codified Ordinance Title Five, "Vehicles," is hereby amended to add new Section 333.12, "Texting While Driving Prohibited", to provide as follows:

"333.12 TEXTING WHILE DRIVING PROHIBITED.

(a) No person shall operate a motor vehicle 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; or

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; or

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) If a law enforcement officer issues an offender a ticket, citation, or summons for a violation of division (a) of this section, the officer shall do both of the following:

(1) Report the issuance of the ticket, citation, or summons to the officer's law enforcement agency;

(2) Ensure that such report indicates the offender's race.

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

(1) Except as provided in divisions (d)(2) and (3) of this section, the court shall impose upon the offender a fine of not more than one hundred fifty dollars.

(2) If, within two years of the violation, the offender has been convicted of or pleaded guilty to one prior violation of this section, the court shall impose upon the offender a fine of not more than two hundred fifty dollars.

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

(4) Notwithstanding divisions (d)(1) to (3) 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 Ohio 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 (d)(1), (2) or (3) of this section, as applicable.

(5) In lieu of payment of the fine of one hundred fifty dollars under division (d)(1) of this section and the assessment of points under division (d)(7) of this section, the offender instead may elect to attend the distracted driving safety course, as described in section 4511.991 of the Ohio 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.

(6) The court may impose any other penalty authorized under sections 2929.21 to 2929.28 of the Ohio Revised Code. However, the court shall not impose a fine or a suspension not otherwise specified in division (d) of this section. The court also shall not impose a jail term or community residential sanction.

(7) Except as provided in division (d)(5) of this section, points shall be assessed for a violation of division (a) of this section in accordance with section 4510.036 of the Ohio Revised Code.

(8) The offense established under this section is a strict liability offense and section 2901.20 of the Ohio Revised Code 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.

(9) A prosecution for an offense in violation of this section does not preclude a prosecution for an offense in violation of a substantially equivalent state statute based on the same conduct. However, the two offenses are allied offenses of similar import under section 2941.25 of the Ohio Revised Code.

(e) 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.

(f) A law enforcement officer who stops the operator of a motor vehicle 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:

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

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

(3) 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.

(g) 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 Ohio Revised Code.

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

Section 2: Codified Ordinance Title Five, "Vehicles," is hereby amended to add new Section 335.15, "Distracted Driving," to provide as follows:

"335.15 DISTRACTED DRIVING.

(a) As used in this section and each section referenced in division (b) of this section, all of the following apply:

(1) "Distracted" means doing either of the following while operating a vehicle:

A. Using an "electronic wireless communications device", as defined in section 333.12 of the Codified Ordinances, in violation of that section; and /or

B. Engaging in any activity that is not necessary to the operation of a vehicle and impairs, or reasonably would be expected to impair, the ability of the operator to drive the vehicle safely.

(2) "Distracted" does not include operating a motor vehicle while wearing an earphone or earplug over or in both ears at the same time. A person who so wears earphones or earplugs may be charged with a violation of section 331.42 of the Codified Ordinances.

(3) "Distracted" does not include conducting any activity while operating a utility service vehicle or a vehicle for or on behalf of a utility, provided that the driver of the vehicle is acting in response to an emergency, power outage, or a circumstance affecting the health or safety of individuals.

(4) As used in division (a)(3) of this section:

A. "Utility" means an entity specified in division (A), (C), (D), (E), or (G) of section 4905.03 of the Ohio Revised Code.

B. "Utility service vehicle" means a vehicle owned or operated by a utility.

(b) If an offender violates a section of Chapter 331 or 333 of the Codified Ordinances while distracted and the distracting activity is a contributing factor to the commission of the violation, the offender is subject to the applicable penalty for the violation and, notwithstanding section 2929.28 of the Ohio Revised Code, is subject to an additional fine of not more than one hundred dollars as follows:

(1) Subject to Ohio Traffic Rule 13, if a law enforcement officer issues an offender a ticket, citation, or summons for a violation of any of the aforementioned sections of Chapters 331 or 333 of the Codified Ordinances or that indicates that the offender was distracted while committing the violation and that the distracting activity was a contributing factor to the commission of the violation, the offender may enter a written plea of guilty and waive the offender's right to contest the ticket, citation, or summons in a trial provided that the offender pays the total amount of the fine established for the violation and pays the additional fine of one hundred dollars.

In lieu of payment of the additional fine of one hundred dollars, the offender instead may elect to attend the distracted driving safety course, as described in section 4511.991 of the Ohio 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 be required to pay the total amount of the fine established for the violation but shall not be required to pay the additional fine of one hundred dollars, so long as the offender submits to the court both the offender's payment in full and such written evidence.

(2) If the offender appears in person to contest the ticket, citation, or summons in a trial and the offender pleads guilty to or is convicted of the violation, the court, in addition

to all other penalties provided by law, may impose the applicable penalty for the violation and may impose the additional fine of not more than one hundred dollars.

If the court imposes upon the offender the applicable penalty for the violation and an additional fine of not more than one hundred dollars, the court shall inform the offender that, in lieu of payment of the additional fine of not more than one hundred dollars, the offender instead may elect to attend the distracted driving safety course described in division (b)(1) of this section. If the offender elects the course option and attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall be required to pay the total amount of the fine established for the violation but shall not be required to pay the additional fine of not more than one hundred dollars, so long as the offender submits to the court the offender's payment and such written evidence.

(3) If a law enforcement officer issues an offender a ticket, citation, or summons for a violation of any of the sections in Chapters 331 or 333 of the Codified Ordinances or a substantially equivalent state statute based on the same conduct that indicates that the offender was distracted while committing the violation and that the distracting activity was a contributing factor to the commission of the violation, the officer shall do both of the following:

A. Report the issuance of the ticket, citation, or summons to the officer's law enforcement agency;

B. Ensure that such report indicates the offender's race."

Section 3: Existing Section 333.12 and existing Section 335.15 of the Codified Ordinances are hereby repealed.

Section 4: It is 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 all deliberations of this 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 Ohio Revised Code.

Section 5: This Ordinance shall take effect and be in force on October 4, 2023.

PASSED: May 23, 2023

APPROVED: May 23, 2023

ATTEST: Donnie L. Hunter
Donnie L. Hunter
Clerk of Council

Kim A. Thomas
Kim A. Thomas, Mayor

Bobby Jordan
Bobby Jordan
President of Council