

ORDINANCE NO. 18-06

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING TOWN CODE CHAPTER 12 “TRAFFIC” BY RENUMBERING EXISTING SECTION 12-2-13 “PENALTIES”; ADOPTING SECTION 12-2-13 “USE OF PORTABLE ELECTRONIC DEVICE; PROHIBITED CONDUCT; EXCEPTIONS”; AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Fountain Hills is concerned about the threat to public safety created by drivers who are texting while driving; and

WHEREAS, the Town of Fountain Hills desires to prohibit such conduct in order to mitigate the threat to public safety; and

WHEREAS, the Town Council has determined that it is in the best interest of the residents of the Town of Fountain Hills to amend Chapter 12 of the Town Code, by renumbering existing Section 12-2-13 “Penalties” as “12-2-14,” and adopting Section 12-2-13 “Use of Portable Electronic Devices; Prohibited Conduct; Exceptions” as set forth in Exhibit A; and

WHEREAS, the Town Council has determined that the changes to the Town Code are necessary to protect the health, safety, and general welfare of the residents of Fountain Hills.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The use of portable electronic devices while driving shall be subject to the requirements of Section 12-2-13 of the Town Code.

SECTION 3. If any section, subsection, clause, phrase or portion of this Ordinance or any part of the Town Code Section 12-2-13 adopted by this Ordinance is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. Because of the urgent need for the implementation of the Town’s regulations concerning the use of electronic portable devices while driving, and the immediate operation of this Ordinance is necessary for the preservation of the health, safety, and general welfare, an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor and Council as required by law and is hereby exempt from the referendum provisions of the Constitution and laws of the State of Arizona.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, April 17, 2018.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:



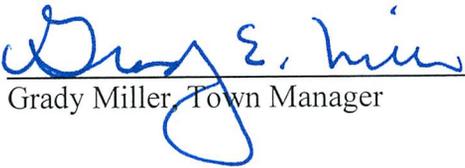
Linda M. Kavanagh, Mayor



Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:



Grady Miller, Town Manager



Dickinson Wright PLLC, Town Attorney

EXHIBIT A
TO
ORDINANCE 18-06

[TOWN CODE SECTIONS 12-2-13 AND 12-3-14]

See following pages.

Section 12-2-13 Use of portable electronic device; prohibited conduct; exceptions

- A. A person shall not operate a motor vehicle or a bicycle on a street, sidewalk, or trail while using a portable electronic device to compose manually, send, or read a written message for the purpose of non-voice interpersonal communication, including but not limited to texting, emailing, and instant messaging, while the motor vehicle or bicycle is in motion.
- B. Definitions
1. "Hands-free use" means the use of a portable electronic device without the use of either hand by employing an internal feature of, or an attachment to, the device.
 2. "Portable electronic device" means a wireless communication device that is designed to engage in calls; and/or receive and transmit text, images, and/or data; but excludes devices that are physically or electronically integrated into a motor vehicle and are operated hands-free so that the user composes, sends, accesses, communicates, or receives messages or data without the use of a hand except to activate, deactivate or initiate the hands-free use.
 3. "Operating" means being in actual physical control of a motor vehicle or bicycle on a street, sidewalk, or trail and includes being temporarily stopped because of traffic, a traffic light, stop sign, or otherwise, but excludes operating a motor vehicle or bicycle when pulled over to the side of the road or off an active roadway and when stopped at a location in which the motor vehicle or bicycle can safely remain stationary.
- C. Exceptions. This section does not apply to any of the following:
1. The use of a portable electronic device for the sole purpose of communicating with any of the following regarding an immediate emergency situation:
 - a. An emergency response operator;
 - b. An ambulance company;
 - c. Fire department and rescue service personnel;
 - d. Law enforcement personnel;
 - e. A hospital; or
 - f. A physician's office or health clinic.

2. The activation or deactivation of hands-free use, as long as the portable electronic device is securely configured and attached to the vehicle or integrated into the vehicle.
3. Law enforcement and public safety personnel, and persons operating authorized emergency vehicles, using a portable electronic device while operating a vehicle in the course and scope of his or her duties.

D. Enforcement and Penalties.

1. Any peace officer may stop a motor vehicle or bicycle if the officer has reasonable cause to believe a violation of this section is occurring.
2. Any person who violates this section shall be guilty of a civil traffic violation and shall be fined one hundred dollars (\$100.00) plus court assessments for the first offense, two hundred fifty dollars (\$250.00) plus court assessments for a second offense, and five hundred dollars (\$500.00) plus court assessments for any subsequent offense within a twenty-four (24) month period.
3. Aggravated. A person commits aggravated use of a portable electronic device when he or she violates subsection (A) and in committing the violation he or she was involved in a motor vehicle or bicycle accident that results in great bodily harm, permanent disability, disfigurement, or death to another and the violation was a proximate cause of the injury or death. Any person who commits aggravated use of a portable electronic device shall be guilty of a Class 1 Misdemeanor.

(18-06, Adopted, 04/17/2018)

Section 12-2-14 Penalties

Violations of this article shall be punishable as set forth in Chapter 1, Article 1-8, Section 1-8-2, Subsection B, of this code.

(18-06, Renumbered, 04/17/2018; 12-02, Amended, 03/01/2012; 98-08, Added, 02/19/1998)