

January 23, 2018

ORDINANCE NO. 11520

RELATING TO DISTRACTED DRIVING; DESIGNATING A VIOLATION OF TUCSON CODE SECTION 20-160, RELATING TO THE USE OF HANDHELD MOBILE TELEPHONES OR PORTABLE ELECTRONIC DEVICES AS A PRIMARY OFFENSE; AND REDUCING ASSOCIATED FINE AMOUNTS; BY AMENDING CHAPTER 20, MOTOR VEHICLES AND TRAFFIC, ARTICLE V, SECTION 20-160; SETTING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

WHEREAS, on April 1, 2012, the Mayor and Council adopted Ordinance No. 10966, which created Tucson Code Section 20-160, prohibiting certain uses of handheld wireless communication devices while operating a motor vehicle; and

WHEREAS, Ordinance 10966 only prohibited certain limited types of uses of these devices, and was difficult to enforce because of those limitations; and

WHEREAS, on March 21, 2017, the Mayor and Council adopted Ordinance No. 11442, which repealed and replaced Tucson Code Section 20-160 (effective May 1, 2017) so that the Section prohibited any use of a mobile communications or portable electronic device while operating a motor vehicle, with certain exemptions, and established fines for violations of its provisions; and

WHEREAS, Ordinance No. 11442 designated the offense of using a mobile communications device while operating a motor vehicle as a secondary offense, having the effect that a law enforcement officer shall not stop a vehicle or issue a citation for the violation unless the officer has reasonable cause to believe the person has committed another violation of the law; and

WHEREAS, the designation of violations of Tucson Code 20-160 has made the prohibition against the use of mobile communications devices while driving difficult to enforce;

and

WHEREAS, the Mayor and Council desire to promote and protect public health and safety by designating violations of Tucson Code 20-160 as a primary offense; while at the same time desire to reduce the associated penalties in order to avoid the imposition of overly-punitive sanctions:

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. Tucson Code Section 20-160, as adopted pursuant to Ordinance No. 11442, is hereby amended to read as follows:

Sec. 20-160. Use of Handheld Mobile Telephone or Portable Electronic Device; Prohibited Conduct; Exceptions.

A. Definitions.

1. "Hands-free use" means the use of a mobile communication device or portable electronic device without the use of either hand by employing an internal feature of, or an attachment to, the device.

2. "Mobile communication device" and "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 a motor vehicle" means being in actual physical control of a motor vehicle on a highway or street and includes being temporarily stopped because of traffic, a traffic light or stop sign or otherwise, but excludes operating a motor vehicle when the vehicle has pulled over to the side of the road or off an active roadway and has stopped at a location in which the vehicle can safely remain stationary.

B. No person shall, except as otherwise provided in this section, use a mobile communication device or portable electronic device while operating a motor vehicle upon a street or highway, regardless of whether the motor vehicle is in motion or not, unless that device is specifically designed or configured to allow hands-free use and is used in that manner while operating a motor vehicle.

C. Exemptions. This section shall not apply to:

1. The use of a mobile communication device or 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 mobile telephone or 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 mobile communications device or portable electronic device while operating a vehicle in the course and scope of his or her duties.

#### D. Penalty

1. A violation of this section is a civil traffic violation, and is a primary offense, meaning that a law enforcement officer may initiate a stop and issue a citation to a person operating a motor vehicle for a violation of this section if the law enforcement officer has reasonable cause to believe there is a violation of this section.

2. A person who violates this section and is not involved in a motor vehicle collision is subject to a civil penalty of \$50 for the first violation, \$100 for the second violation, and \$200 for the third or any subsequent violation.

3. A person who violates this section and is involved in a motor vehicle collision is subject to a civil penalty of a minimum amount of \$250.

SECTION 2. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Ordinance.

SECTION 3. The amendment of Section 20-160 as adopted pursuant to this Ordinance does not affect any punishment or penalty incurred before the effective date of this Ordinance as provided in Section 5 below, and does not affect any legal actions, prosecutions or proceedings relating to the repealed Section 20-160 that were begun or were pending prior to the effective date of this Ordinance.

SECTION 4. If any provision of this Ordinance, or of its application thereof, to any person or circumstance is invalid, that invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this Ordinance are severable.

SECTION 5. Section 1 of this Ordinance will be effective on and after February 1, 2018.

SECTION 6. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this Ordinance become immediately effective, an emergency is hereby declared to exist, and this Ordinance shall be effective immediately upon its passage and adoption.

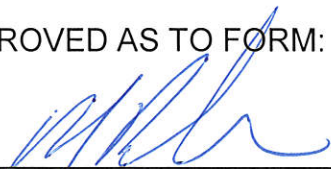
PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, January 23, 2018.

  
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MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

REVIEWED BY:

  
\_\_\_\_\_  
CITY MANAGER

MR/dg  
1/24/18