

# THE CITY COUNCIL OF NORTH ROYALTON, OHIO

ORDINANCE NO. 09-121

INTRODUCED BY: Kasaris, Petrusky, Nickell,  
Gentile, Farrell

AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE CITY OF NORTH ROYALTON, PART 4 TRAFFIC CODE, CHAPTER 434 OVI/RECKLESS OPERATION/SPEED, BY CREATING A NEW SECTION 434.026 TEXTING OR TYPING ON MOBILE COMMUNICATION DEVICES DRIVING PROHIBITED, HAND HELD WIRELESS TELEPHONE, MINORS PROHIBITED, AND DECLARING AN EMERGENCY

- WHEREAS: In 2009 the National Safety Council has called for a ban on the use of cell phones by drivers of motor vehicles; and
- WHEREAS: Jurisdiction-wide ban on driving while talking on a hand held cell phone is in place in 7 states (California, Connecticut, New Jersey, New York, Oregon, Utah, and Washington) and the District of Columbia; and
- WHEREAS: A recent study by Consumer Reports dated September 29, 2009 reported that the American Automobile Association consisting of 11 automakers are developing hands-free and voice recognition systems that will allow drivers to send and receive phone calls without looking away from the road and without using a hand held cell phone; and
- WHEREAS: A University of Utah study concluded that distracted driving caused by drivers using hand held cell phones reduce a drivers reaction time as much as having a blood alcohol concentration at the legal limit of .08 the legal limit in the State of Ohio and the national legal limit; and
- WHEREAS: The Director of Transportation when discussing cell phone use by drivers and other distractive driving causes has stated that “ cell phone use occurs more frequently and for longer durations than other, riskier behaviors. Thus, the #1 source of driver inattention is cell phones. (Virginia Tech 100-car study for NHTSA)” ; and
- WHEREAS: According to the Insurance Institute for Highway Safety drivers that use hand held devices are four times as likely to get into crashes serious enough to injure themselves; and
- WHEREAS: According to the National Safety Council on any given day in 2008, more than 800,000 vehicles were driven by someone using a hand held cell phone and that research shows that the most common users are the youngest and least experienced drivers: men and women under 20 years of age; and
- WHEREAS: Dave McCurdy, President & CEO Alliance for Automobile Manufacturers has stated that “Clearly, using a hand held device to call while driving is a safety risk that makes it incompatible with maintaining the focus necessary to safely drive a vehicle.” ; and
- WHEREAS: In 2008, 5,870 people lost their lives and an estimated 515,000 people were injured in police-reported crashes in which at least one form of driver distraction was reported on the crash report; and
- WHEREAS: Hand held cell phone use by drivers of motor vehicles is the leading cause of distractive driving accidents; and
- WHEREAS: It is the desire of this Council to enact legislation which coupled with a teen-education program will reduce the chance of automobile accidents on the public streets within North Royalton; and
- WHEREAS: Using a cell phone or other mobile communication device to text message while operating a motor vehicle on the streets and highways of this city poses a serious risk of injury to nearby motorists and pedestrians; and

WHEREAS: A number of states have already acted to prohibit such dangerous activity while operating a motor vehicle, and the Ohio General Assembly presently has such a bill pending before it; and

WHEREAS: It is therefore the desire of this Council to amend the Codified Ordinances of the City of North Royalton, Part 4 Traffic Code, Chapter 434 OVI/Reckless Operation/Speed, by creating a new Section 434.026 Texting or Typing on Mobile Communication Devices Driving Prohibited, Hand Held Wireless Telephone, Minors Prohibited.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH ROYALTON, COUNTY OF CUYAHOGA AND STATE OF OHIO, THAT:

Section 1. Part 4 Traffic Code, Chapter 434 OVI/Reckless Operation/Speed of the Codified Ordinances of the City of North Royalton are hereby amended by creating a new Section 434.026 Texting or Typing on Mobile Communication Devices Driving Prohibited, Hand Held Wireless Telephone, Minors Prohibited, which shall read as follows:

434.026 TEXTING OR TYPING ON MOBILE COMMUNICATION DEVICES DRIVING PROHIBITED, HAND HELD WIRELESS TELEPHONE, MINORS PROHIBITED:

- (a) As used in this section, "mobile communication device" includes any of the following:
- (1) A wireless telephone;
  - (2) A text-messaging device;
  - (3) A personal digital assistant;
  - (4) A computer used for personal communications between persons;
  - (5) Any other substantially similar wireless device that is designed or used to communicate text or data.
  - (6) As used in this section "text message or text messaging" means the act of touching the key(s)/virtual keys(s) or mouse or mouse pad of the mobile communication device for the purpose of sending a message electronically or responding to a message received.
  - (7) Use or using means the act of talking on a cell phone, answering a cell phone or causing numbers to be entered into a cell phone so that a number may be entered and called.
- (b) No person shall text message on a mobile communication device while operating a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic.
- (c) No person shall use a mobile communication device for audio style communication while operating a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic, except and unless the mobile communication device is specifically designed for hands-free operation and employed in that manner.
- (d) No person under eighteen (18) years of age shall use any mobile communication device while operating a motor vehicle.
- (e) Penalty.
- (1) Whoever violates (b), (c) or (d) above is guilty of a minor misdemeanor;
  - (2) Whoever violates (b), (c) or (d) above having once previously been convicted of this same offense within two years is guilty of a fourth degree misdemeanor;
  - (3) Whoever violates this section after having previously been convicted of this same offense two or more times is guilty of a third degree misdemeanor;
  - (4) If the offender was involved in a motor vehicle accident and another person was injured and text messaging or use of a mobile communication device by the offender was the proximate cause of the accident, the offense is a misdemeanor of the third degree.
- (f) This section does not apply to a person using a mobile communication device for an emergency purpose, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity.

(g) This section does not apply to an emergency service professional using a mobile communication device while operating an authorized emergency vehicle, in the course and scope of his or her duties.

(h) This section does not apply to a person who removes his vehicle, trackless trolley, or streetcar from the street, highway or property open to the public for vehicular traffic, and places said vehicle, trackless trolley, or streetcar in a parked or stationary mode.

(i) Effective Date.

(1) Section (b) shall take effect ten (10) days from the effective date of this Ordinance.

(2) Section (c) and (d) shall take effect January 1, 2010.

Section 2. Part 4 Traffic Code, Chapter 434 OVI/Reckless Operation/Speed, is hereby amended as provided for herein and all other provisions of Chapter 434 shall remain in full force and effect.

Section 3. This Ordinance shall supersede all previously adopted Ordinances in direct conflict herewith.

Section 4. The Director of Legislative Services is hereby directed to forward a copy of this Ordinance to Ohio Senator Thomas Patton, Ohio Representative Matt Patten and the cities of Berea, Brecksville, Broadview Heights, Brunswick, Hinckley, Middleburg Heights, Parma, Parma Heights, and Strongsville.

Section 5. 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.

Section 6. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the city, and for the further reason that it is immediately necessary to amend the Codified Ordinances of the City of North Royalton, Part 4 Traffic Code, Chapter 434 OVI/Reckless Operation/Speed, by creating a new Section 434.026 Texting or Typing on Mobile Communication Devices Driving Prohibited, Hand Held Wireless Telephone, Minors Prohibited.

THEREFORE, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

/s/ Vincent A. Gentile  
PRESIDENT OF COUNCIL

APPROVED: /s/ Robert A. Stefanik  
MAYOR

DATE PASSED: December 15, 2009

DATE APPROVED: December 16, 2009

First reading November 17, 2009  
Second reading December 1, 2009  
Third reading December 15, 2009

ATTEST: /s/ Laura J. Haller  
DIRECTOR OF LEGISLATIVE SERVICES

YEAS: Gentile, Nickell, Petrusky, Kasaris

NAYS: Willey, Marnecheck, Antoskiewicz

Due to the failure of the emergency clause (five (5) affirmative votes required for passage) this legislation will not take effect until thirty (30) days after approval by the Mayor.

**The effective date of this legislation will be January 15, 2010.**