

From: Councilman Pat Dixon
To: Lago Vista City Council and the public
Subject: Cell phone in school zone ordinance

Fellow council members,

The bottom line is that the language of the ordinance we are considering tonight does not appear to be fully baked. Below I point out some concerns in the language used in this ordinance. I am asking that a motion be made to postpone consideration of this ordinance until our next meeting so that language addressing the holes in this draft are completed.

If I owned a road I would want it to be safe. People would not be likely to use my road otherwise. There are private roads and streets that are governed by private entities and it is very reasonable to establish policies that keep them safe. The vast majority of roads are owned by government entities and we need to be cautious in the approach to what we allow government to do.

I have a great deal of faith and trust in our police chief and our officers. My concerns are not so much directed at them. My concerns are that someday we may have a different police chief and officers. History has shown that without reasonable limitations on government power, government can become too intrusive and civil rights can be compromised.

1. Section 1 states the above premises (whereas clauses) are true, which I don't believe is common in previous ordinances I have seen. The only reason I point it out is while I agree cell phones are a distraction and drivers should not use them in transit, we had the police chief admit that turning off or putting away a cell phone is also a distraction. Do we have any hard evidence that the intended consequences outweigh the unintended consequences? It seems to me the greatest danger is drivers taking their eyes off the road. If the offense as described in section 2d of holding a phone next to the ear is outlawed but the act of dialing or other interactions with the phone which take eyes off the road is legal, have we created a bigger risk?
2. Section 2a and 2c seem to refute one another. 2a seems to be much less forgiving and if interpreted on its own seems to render 2c mute.
3. Also, 2a says it prohibits use in a "moving motor vehicle". Does this mean a vehicle that can move or a vehicle that is moving? I presume a vehicle with a motor in it but a broken down transmission is incapable of moving, while a car in perfect condition that is stopped is capable of moving. Does the vehicle have to be in motion? Also, I presume a golf cart falls in the same classification as any other vehicle?
4. Section 2b3 defines hands free devices. Are you familiar with how a hands free iPhone works? In this case you still might need to use a hand to dial or adjust volume, but while you are speaking and listening you are hands free. Would the act of dialing or adjusting volume or anything involving touching the device mean it is no longer hands free?

5. Section 2e1 mentions exceptions to enforcement. How would a police officer determine what was being said in the call? Would they need a warrant? Can the person simply say it was an emergency?
6. On 2e2, don't these government personnel (police, EMS, etc) already use hands free devices in their vehicles? Would the police radio qualify as hands free if they don't have to put something to their ear to listen (as defined in 2d) but do have to hold the microphone and click a button to speak? I presume most of these people use their radios and not cell phones to communicate for emergency situations. Should they really be immune?
7. Section 4 mentions text messaging for the first time. It seems there is no previous mention or definition of text messaging. Should the text messaging part be deleted or should there be embellishment to further cover the details of text messaging?

Lastly, I will mention that it appears that most traffic safety concerns in our community are due to deer. We have already had this discussion previously.