

ORDINANCE NO. 294 (22-23)

An Ordinance to amend Section 333.11, (Electronic Wireless Communication Device Use Prohibited While Driving) of the Codified Ordinances of the City of Marietta, Ohio.

WHEREAS, due to numerous accidents across the nation, caused by drivers who were texting while driving, or distracted by talking on hand held electric devices, the City of Marietta decided to draft legislation that would prohibit texting or using a hand-held device while driving within the city limits; and

WHEREAS, in early 2016, Section 333.11 (Electronic Wireless Communication Device Use Prohibited While Driving) was created by the passage of Ordinance No. 58 (16-17), passed on May 5, 2016; and

WHEREAS, since the passage of Ordinance No. (16-17), various State laws have been modified or enacted, concerning texting while driving and the use of hand held electronics while driving; and

WHEREAS, due to the changes in State Law regarding "Electronic Wireless Communication Device Use", the City of Marietta, Ohio now needs to modify its current Codified Ordinance No. 333.11, so that it corresponds with Ohio State law; now therefore

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARIETTA, OHIO:

Section 1: That Section 333.11 of the Codified Ordinance of the City of Marietta, Ohio, shall be and is hereby amended to read as follows:

*The Walter H. Drane Company*  
*State Law Changes/SB 288/ORC 4511.204*

**333.11 ELECTRONIC WIRELESS COMMUNICATION DEVICE USE PROHIBITED WHILE DRIVING.**

(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) Subsection (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;
    - 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;
    - 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 subsection (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) (1) Whoever violates subsection (a) of this section is guilty of operating a motor vehicle while using an electronic wireless communication device, an unclassified misdemeanor.
- A. Except as provided in subsections (d)(1)B., (d)(1)C., (d)(1)D. and (d)(2) of this section, the court shall impose upon the offender a fine of not more than one hundred fifty dollars (\$150.00).
  - B. If, within two years of the violation, the offender has been convicted of or pleaded guilty to one prior violation of this section, Ohio R.C. 4511.204, or a substantially equivalent municipal ordinance, the court shall impose upon the offender a fine of not more than two hundred fifty dollars (\$250.00).
  - C. 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, Ohio R.C. 4511.204, or a substantially equivalent or municipal ordinance, the court shall impose upon the offender a fine of not more than five hundred dollars (\$500.00). 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.



- D. Notwithstanding subsections (d)(1)A. to (d)(1)C. 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 Ohio R.C. 4511.98, 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 subsections (d)(1)A., (d)(1)B., or (d)(1)C. of this section, as applicable.
- (2) In lieu of payment of the fine of one hundred fifty dollars (\$150.00) under subsection (d)(1)A. of this section and the assessment of points under subsection (d)(4) of this section, the offender instead may elect to attend the distracted driving safety course, as described in Section 303.991. 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.
  - (3) The court may impose any other penalty authorized under Ohio R.C. 2929.21 to 2929.28. However, the court shall not impose a fine or a suspension not otherwise specified in subsection (d)(1) of this section. The court also shall not impose a jail term or community residential sanction.
  - (4) Except as provided in subsection (d)(2) of this section, points shall be assessed for a violation of subsection (a) of this section in accordance with Ohio R.C. 4510.036.
  - (5) The offense established under this section is a strict liability offense and Ohio R.C. 2901.20 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.
- (e) A prosecution for an offense in violation of this section does not preclude a prosecution for an offense in violation of Ohio R.C. 4511.204 based on the same conduct. However, the two offenses are allied offenses of similar import under Ohio R.C. 2941.25.
- (f) (1) A law enforcement officer does not have probable cause and shall not stop the operator of a motor vehicle for the 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.
- (2) A law enforcement officer who stops the operator of a motor vehicle for a violation of subsection (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:
- A. Access the device without a warrant unless the operator voluntarily and unequivocally gives consent for the officer to access the device;

- B. Confiscate the device while awaiting the issuance of a warrant to access the device;
  - C. 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) "Utility" means an entity specified in Ohio R.C. 4905.03(A), (C), (D), (E) or (G).
- (3) "Utility service vehicle" means a vehicle owned or operated by a utility.
- (4) "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.
- (ORC 4511.204)

Section 2: That existing Section 333.11 of the Codified Ordinances of the City of Marietta, Ohio, shall be and is hereby repealed in its entirety.

Section 3: That this Ordinance shall take effect and be in full force from and after the earliest time allowed by law.



WHEREFORE, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

Introduced by the Police and Fire Committee, William Farnsworth, Chairman.

William Farnsworth  
Chairman

Passed this 3<sup>rd</sup> day of August, 2023.

Loren Vessels  
President of Council

ATTEST:

Michelle Newbanks  
Clerk of Council

Approved this 3<sup>rd</sup> day of August, 2023.

ORDINANCE NO. 294 (22-23)  
PAGE SEVEN



\_\_\_\_\_  
Mayor

First Reading July 6, 2023

Second Reading July 20, 2023

Third Reading August 3, 2023