

Introductory Local Law No. 5 Of 2009

County Of Ulster

A Local Law Prohibiting The Use Of Wireless Handsets To Compose, Read Or Send Text Messages, E-mails Or Twitter While Operating A Motor Vehicle In The County Of Ulster

BE IT ENACTED, by the Legislature of the County of Ulster, as follows:

SECTION 1. TITLE.

This law shall be known as the “Driving While Texting And/Or Twittering Law”.

SECTION 2. LEGISLATIVE FINDINGS AND INTENT.

A. The use of mobile phones also known as “cellular phones” has increased in popularity during the last several years.

B. According to studies conducted by the American Automobile Association (AAA), any activity that takes a driver’s attention off the road for more than two seconds can double a driver’s risk of crash.

C. The federal government estimates that 30% of all crashes in the United States result from driver distraction. Statistics from the 2006 New York State Department of Motor Vehicles also indicated that nearly 30% of accidents in the State involve driver distraction or inattention. According to a 2006 joint report issued by the National Highway Traffic Safety Administration and the Virginia Tech Transportation Institute, nearly 80% of crashes and 65% of near-crashes observed in their study involved a driver distracted in the three seconds prior to an accident.

D. The New York State Legislature passed a state-wide ban on the use hand-held cell phones while driving.

E. When New York State banned motorists from talking on hand-held cellular phones in 2001, text messaging was fairly uncommon. However, since that time, text messaging has become an increasingly popular form of communication. Indeed, according to a trade group for the cell phone industry, the Cellular Telecommunications and Internet Association – The Wireless Association, in 2006, United States wireless subscribers, of which there are currently 251.45 million, sent 158 billion text messages, an increase of 95% from 2005, which translate into approximately 300,000 text messages per minute.

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F. Text messaging is now one of the latest electronic obsessions and driving dangers. In fact, a January 2007 survey conducted by Nationwide Mutual Insurance Company found that 19% of motorists between the ages of 18 and 60 admitted to text messaging while driving, and that 37% of drivers between the ages of 18 and 27 indicated that they do text messaging while operating a motor vehicle (and text messaging is especially dangerous since text messaging requires drivers to take their eyes and mind off of the road, as well as their hands off of the steering wheel, while operating a motor vehicle).

G. The states of Washington and New Jersey passed laws banning text messaging while driving. Since July 2008, California drivers under the age of 18 are prohibited from using all cell phones and other electronic devices while driving, while older drivers may only use hands-free devices. There are also several bills pending in the New York State Legislature to ban the use of such devices. However, in the absence of a State law addressing text messaging while driving, and until such time as the New York State Legislature does take action, this proposed local law is warranted in order to protect motorists and pedestrians in Ulster County.

H. This local law would ban motorists from using wireless handsets to compose, read or send text messages while operating a motor vehicles on any public street or public highway within the County of Ulster. Use of hands-free wireless handsets would be permitted under the proposed law. Notably, the proposed law exempts from its coverage the use of wireless handsets by law enforcement, emergency and fire personnel in the performance of their duties, and motorists using such devices to contact law enforcement, emergency and fire personnel. The proposed law also exempts motorists using such devices while their motor vehicle is parked, standing or stopped and is removed from the flow of traffic, in accordance with applicable laws, rules or ordinances, or is stopped due to the inoperability of such motor vehicle. A vehicle is inoperable when such vehicle is incapable of being operated or being operated in a safe and prudent manner due to mechanical failure, including but not limited to, engine overheating or tire failure.

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I. The Ulster County Legislature shall request the State to include educating new drivers in pre-licensing courses on the hazards of cell phone and electronic devices while driving.

SECTION 3. DEFINITIONS.

As used in this Chapter, the following terms shall have the meanings indicated:

A. "Hands-free" shall mean the manner in which a wireless handset is operated for the purpose of composing, reading or sending text messages, by using an internal feature or function, or through an attachment or addition, including but not limited to an ear piece, head set, remote microphone or short-range wireless connection, thereby allowing the user to operate said device without use of hands.

B. "Inoperability" shall mean a motor vehicle that is incapable of being operated or incapable of being operated in a safe and prudent manner due to mechanical failure, including but not limited to engine overheating, non-functioning brakes or tire failure.

C. "Motor vehicle" shall mean any vehicle that is self-propelled by a motor, including but not limited to, automobiles, trucks, vans, construction vehicles, etc.

D. "Person" shall mean any natural person, corporation, unincorporated association, firm, partnership, joint venture, joint stock association or other entity, or business organization of any kind.

E. "Stopped" shall mean not in motion.

F. "Text Message" also referred to as "Short Messaging Service (SMS)" shall mean the process by which users send, read or receive messages on a wireless handset, including but not limited to, text messages, instant messages, electronic messages or e-mails, in order to communicate with any person or device.

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G. "Twittering" shall mean [social networking](#) and using [micro-blogging](#) service that enables its users to send and read other users' updates known as *tweets*. Tweets are text-based posts of up to 140 characters in length which are displayed on the user's profile page and delivered to other users who have subscribed to them (known as *followers*). Senders can restrict delivery to those in their circle of friends or, by default, allow anybody to access them. Users can send and receive tweets via a "twitter" website, [Short Message Service \(SMS\)](#) or external applications. The service is free to use over the Internet, but using SMS may incur phone service provider fees.

H. "Use" shall mean to hold a wireless handset in one's hand or read or touch one within arm's length of the driver.

I. "Wireless handset" shall mean a portable electronic or computing device, including but not limited to cellular telephones, portable computers and personal digital assistants (PDAs), capable of transmitting data in the form of a text message.

SECTION 4. BAN OF THE USE OF WIRELESS HANDSETS TO COMPOSE, READ OR SEND TEXT MESSAGES AND/OR TWITTER MESSAGES WHILE OPERATING A MOTOR VEHICLE.

A. No person shall use a wireless handset to compose, read or send text messages and/or twitter messages while operating a motor vehicle on any public street or public highway within the County of Ulster.

B. Notwithstanding Section 3 A, this law shall not be construed to prohibit the use of any wireless handset by:

a. Any law enforcement, public safety or police officers, emergency services officials, first aid, emergency medical technicians and personnel, and fire safety officials in the performance of duties arising out of and in the course of their employment as such;

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b. A person using a wireless handset to contact an individual listed in subsection (a) in furtherance of obtaining or giving assistance to first responders, or addressing emergency service or public safety matters, except as may be prohibited by other laws; or

c. A person using a wireless handset inside a motor vehicle while such motor vehicle is parked, standing or stopped and is removed from the flow of traffic, in accordance with applicable laws, rules or ordinances, or is stopped due to the inoperability of such motor vehicle.

C. Notwithstanding subsection "A", this law shall not be construed to prohibit a person operating a motor vehicle from utilizing a hands-free wireless handset other than as prohibited above.

SECTION 5. ENFORCEMENT AND PENALTIES.

A. A violation of any provision of this chapter shall constitute an offense and be punishable by a fine of \$250.00 imposed on any person violating this law and a \$1,000.00 fine for anyone violating this law while driving in a school zone or where highway workers are present, for each single violation. Each such violation shall constitute a separate and distinct offense.

B. This law shall be enforced by the Ulster County Sheriff's Department and shall be enforced by any other law enforcement agency having jurisdiction to act in the County of Ulster who shall enforce the provisions of this law by the issuance of a summons to a party violating the provisions of this act.

SECTION 6. REVERSE PREEMPTION.

This law shall be null and void on the day that statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Ulster. The Ulster County Legislature may determine by resolution whether or not identical or substantially similar statewide legislation or pertinent preempting

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state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

SECTION 7. SEVERABILITY.

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

SECTION 8. EFFECTIVE DATE.

This Local Law shall become effective immediately upon its filing in the Office of the New York Secretary of State pursuant to Section 27 of the Municipal Home Rule Law.