

ORDINANCE NO. 201-2009

**TITLE: AMEND BARBERTON CODIFIED ORDINANCES
“TEXT MESSAGING WHILE DRIVING PROHIBITED”**

AN ORDINANCE AMENDING PART THREE OF THE BARBERTON CODIFIED ORDINANCES, “TRAFFIC CODE,” BY INCLUDING A NEW SECTION, “TEXT MESSAGING WHILE DRIVING PROHIBITED,” THEREBY ESTABLISHING RESTRICTIONS FOR TEXT MESSAGING WHILE DRIVING IN THE CITY OF BARBERTON, AND DECLARING AN EMERGENCY.

WHEREAS, this Council finds and determines that it is necessary and in the best interest of the residents of the City of Barberton to include a section in the “Traffic Code” of the Barberton Codified Ordinances entitled, “Text Messaging While Driving Prohibited,” to provide for the general safety of its residents.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Barberton, State of Ohio:

SECTION 1. That Part Three of the Barberton Codified Ordinances, “Traffic Code,” is hereby amended by including a new Section entitled, “Text Messaging While Driving Prohibited,” in order to establish restrictions for text messaging while driving in the City of Barberton as follows:

**PART THREE – TRAFFIC CODE
“TEXT MESSAGING WHILE DRIVING PROHIBITED”**

I. Definitions.

Words and terms are used in this Chapter with the following meanings:

- (a) “Hands-free” shall mean the manner in which a wireless handset is operating 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 the use of hands.
- (b) “Inoperability” shall mean a motor vehicle that 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.
- (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.

(g) “Use” shall mean to hold a wireless handset in one’s hand.

(h) “Wireless handset” shall mean a portable electronic or computing device, including but not limited to, cellular telephones, laptop computers, and personal digital assistants (PDAs), or other similar electronic or computing device capable of transmitting data to the form of a text message.

II. Text Messaging While Driving Prohibited.

(a) No person shall use a wireless handset to compose, read, or send text messages while operating a motor vehicle on any public street or public highway within the City of Barberton.

(b) Notwithstanding subsection (a), this law shall not be construed to prohibit the use of any wireless handset by:

(1) 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.

(2) A person using a wireless handset to contact an individual listed in subsections (b)(1); or

(3) 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.

III. Enforcement and Penalties.

A violation of any provisions of this section shall constitute a minor misdemeanor and be punishable by a fine not exceeding One Hundred Fifty Dollars and No Cents (\$150.00) for each single violation. Each such violation shall constitute a separate and distinct offense.

IV. Preemption.

This section 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 Council of Barberton.

SECTION 2. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were meetings open to the public in compliance with the law.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, convenience and welfare of the City of Barberton and the inhabitants thereof, and for the reason that the law go into effect immediately upon adoption due to safety issues for residents, and provided it receives the necessary votes required by the City Charter, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Passed _____ 2009

Clerk of Council

President of Council

Approved _____ 2009

Mayor