



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

September 2, 2010

Honorable Board of Aldermen
City Hall
93 Highland Avenue
Somerville, MA 02143

Re: Order No. 189685
Ordinance Banning Text Messaging

Dear Honorable Board Members:

You have asked that the City Solicitor draft an ordinance banning text messaging while driving within the City of Somerville.

Chapter 155 of the Act of 2010, a copy of which is attached hereto, was passed by the House and Senate, and signed into law by Governor Patrick on July 2, 2010. The law takes effect on October 1, 2010. The law prohibits drivers from texting while operating a motor vehicle and also prohibits use of all cell phones by operators of motor vehicles under the age of 18.

Given the above, it appears that your objective is already accomplished by this legislation.

Please feel free to contact me if you have any additional questions.

Very truly yours,

David Shapiro
Assistant City Solicitor

cc: Mayor Joseph Curtatone
Janice Delory, Chief of Staff
Omar Boukili, Mayor's Aide
Francis X. Wright, Jr., Acting City Solicitor

Chapter 155 of the Acts of 2010

AN ACT RELATIVE TO SAFE DRIVING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Section 1 of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the definition of “Department” the following definition:-

“Electronic message”, a piece of digital communication that is designed or intended to be transmitted between a mobile electronic device and any other electronic device; provided, however, that electronic message shall include, but not be limited to, electronic mail, electronic message, a text message, an instant message, a command or request to access an internet site, or any message that includes a keystroke entry sent between mobile devices.

SECTION 2. Said section 1 of said chapter 90, as so appearing, is hereby further amended by inserting after the definition of “Gross vehicle weight rating” the following definition:-

“Hands-free mobile telephone”, a hand-held mobile telephone that has an internal feature or function, or that is equipped with a hands-free accessory, whether or not permanently part of such hand-held mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate or initiate a telephone call.

SECTION 3. Said section 1 of said chapter 90, as so appearing, is hereby further amended by inserting after the definition of “Mobile construction crane”, the following 2 definitions:-

“Mobile electronic device”, any hand-held or other portable electronic equipment capable of providing data communication between 2 or more persons, including, without limitation, a mobile telephone, a text messaging device, a paging device, a personal digital assistant, a laptop computer, electronic equipment that is capable of playing a video game or digital video disk, equipment on which digital photographs are taken or transmitted or any combination thereof, or equipment that is capable of visually receiving a television broadcast; provided, however, that mobile electronic device shall not include any audio equipment or any equipment installed, or affixed, either temporarily or permanently, in a motor vehicle for the purpose of providing navigation or emergency assistance to the operator of such motor vehicle or video entertainment to the passengers in the rear seats of such motor vehicle.

“Mobile telephone”, a handheld or portable cellular, analog, wireless, satellite or digital telephone, including a telephone with 2-way radio functionality, capable of sending or receiving telephone communications and with which a user initiates, terminates or engages in a call using at least 1 hand. For the purposes of this chapter, “mobile telephone” shall not include amateur radios operated by those licensed by the Federal Communications Commission to operate such radios, or citizen band radios.

SECTION 4. The fourteenth paragraph of section 8 of said chapter 90, as so appearing, is hereby amended by adding the following sentence:- An applicant for the renewal of a license 75 years of age or older shall apply for a renewal in person at a registry branch office.

SECTION 5. Said section 8 of said chapter 90, as so appearing, is hereby further amended by adding the following paragraph:-

An applicant for a license or renewal thereof appearing in person at a registry branch shall take and pass a vision test administered by the registry; provided, however, that except as required by the registrar in regulations, instead of passing the vision test an applicant may provide a vision screening certificate, signed by an optometrist or ophthalmologist to demonstrate compliance with minimum visual standards to obtain and hold license.

SECTION 6. Said chapter 90 is hereby further amended by inserting after section 8L the following section:-

Section 8M. No person under 18 years of age shall use a mobile telephone, hands-free mobile telephone or mobile electronic device while operating a motor vehicle on any public way. For the purposes of this section, a junior operator shall not be considered to be operating a motor vehicle if the vehicle is stationary and not located in a part of the public way intended for travel.

A junior operator who violates the preceding paragraph shall be punished by a fine of \$100 and shall have his license or permit suspended for 60 days for a first offense and shall not be eligible for license reinstatement until he also completes a program selected by the registrar that encourages attitudinal changes in young drivers; for a second offense by a fine of \$250 and shall have his license or permit suspended for 180 days; and for a third or subsequent offense by a fine of \$500 and shall have his license or permit suspended for 1 year.

It shall be an affirmative defense for a junior operator to produce evidence that the use of a mobile telephone, hands-free mobile telephone or mobile electronic device that is the basis of the alleged violation was for emergency purposes. For the purpose of this section, an emergency shall mean that the junior operator used the hands-free mobile telephone or mobile electronic device to communicate with another to report any of the following: (i) that the motor vehicle was disabled; (ii) that medical attention or assistance was required; (iii) that police intervention, fire department or other emergency service was necessary for the personal safety of the operator or a passenger; or (iv) that a disabled vehicle or an accident was present in the public way.

A penalty under this subsection shall not be a surchargeable offense under section 113B of chapter 175.

SECTION 7. Said chapter 90 is hereby further amended by inserting after section 12 the following section:-

Section 12A. (a) No operator of a vehicle or vessel used in public transportation, including a train, passenger bus, school bus or other vehicle used to transport pupils, passenger ferry boat, water shuttle or other equipment used in public transportation owned by, or operated under the authority of the Massachusetts Bay Transportation Authority, the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, Massachusetts Port Authority, or the Massachusetts Department of Transportation, shall use a mobile telephone, hands-free mobile telephone or other mobile electronic device while operating such vehicle or vessel; provided, however that this section shall not apply to the operator of a vehicle or vessel used in public transportation using a mobile telephone, hands-free mobile telephone or mobile electronic device in the performance of the operator's official duties; provided, however, that in order for the use of any such device to be made "in the performance of the operator's official duties," such use must have been made in conformance with applicable written guidelines issued by a public entity listed in this paragraph relative to circumstances when operators are permitted to use said devices in the performance of their official duties or pursuant to directives from federal authorities having regulatory jurisdiction over such public entity's operations.

Whoever violates this section shall be punished by a fine of \$500. A violation of this section shall not be a moving violation for purposes of the safe driver insurance plan under section 113B of chapter 175.

(b) It shall be an affirmative defense for an operator under this section to produce evidence that the use of a mobile telephone that is the basis of the alleged violation was in the case of an emergency. For the purpose of

this paragraph, an emergency shall mean that the operator needed to communicate with another to report any of the following: (1) that the vehicle or vessel was disabled; (2) that medical attention or assistance was required on the vehicle or vessel; (3) that police intervention, fire department or other emergency services was necessary for the personal safety of a passenger or to otherwise ensure the safety of the passengers; or (4) that a disabled vehicle or an accident was present on a roadway.

SECTION 8. Section 13 of said chapter 90, as appearing in the 2008 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-

No person, when operating a motor vehicle, shall permit to be on or in the vehicle or on or about his person anything which may interfere with or impede the proper operation of the vehicle or any equipment by which the vehicle is operator or controlled, except that a person may operate a motor vehicle while using a federally licensed 2-way radio or mobile telephone, except as provided in sections 8M, 12A and 13B, as long as 1 hand remains on the steering wheel at all times.

SECTION 9. Said chapter 90 is hereby further amended by inserting after section 13A the following section:-

Section 13B. (a) No operator of a motor vehicle shall use a mobile telephone, or any handheld device capable of accessing the internet, to manually compose, send or read an electronic message while operating a motor vehicle. For the purposes of this section, an operator shall not be considered to be operating a motor vehicle if the vehicle is stationary and not located in a part of the public way intended for travel.

(b) A violation of this section shall be punishable by a fine of \$100 for a first offense, by a fine of \$250 for a second offense and by a fine of \$500 for a third or subsequent offense.

(c) A penalty under this section shall not be a surchargeable offense under section 113B of chapter 175.

SECTION 10. Said chapter 90 is hereby further amended by inserting after section 22H the following section:-

Section 22I. (a) For the purposes of this section, "health care provider" shall mean a registered nurse, licensed practical nurse, physician, physician assistant, psychologist, occupational therapist, physical therapist, optometrist, ophthalmologist, osteopath or podiatrist who is a licensed health care provider under chapter 112.

(b) If a health care provider acting in his professional capacity or law enforcement officer has reasonable cause to believe that an operator is not physically or medically capable of safely operating a motor vehicle or has a cognitive or functional impairment that will affect that person's ability to safely operate a motor vehicle, the health care provider or officer may make a report to the registrar, requesting medical evaluation of the operator's ability to safely operate a motor vehicle; provided, however, that such report shall not be made solely on the basis of age. The report shall state the health care provider's or officer's good faith belief that the operator cannot safely operate a motor vehicle and shall disclose the medical information underlying his good faith belief in his report to the registrar. The good faith belief shall be based upon personal observation, physical evidence, or, in the case of a law enforcement officer, an investigation which shall be described in the report. A report regarding an operator's ability to safely operate a motor vehicle shall not be based solely on the diagnosis of a medical condition or cognitive or functional impairment, but shall be based on observations or evidence of the actual affect of that condition or impairment on the operator's ability to safely operate a motor vehicle.

A health care provider or law enforcement officer who reports, in good faith, pursuant to this section shall be immune from civil liability that might otherwise result from making the report. A health care provider or law

enforcement officer who does not report shall be immune from civil liability that might otherwise result from not making the report.

(c) Not later than 30 days after receipt of the report, the registrar shall conduct a review to determine the operator's capacity for continued licensure to operate a motor vehicle. The commissioner of public health shall, in consultation with the registrar and with medical experts on cognitive or functional impairments, and with the medical advisory board established in section 8C, promulgate regulations designating the cognitive or functional impairments that are likely to affect a person's ability to safely operate a motor vehicle. The registrar shall consider information contained in a report under subsection (b) in determining whether to issue or suspend a license to operate a motor vehicle.

(d) A report to the registry pursuant to this section shall be confidential and shall be used by the registrar only to determine a person's qualifications to operate a motor vehicle. All reports made and all medical records reviewed and maintained by the registry under this section shall be confidential, or upon written request of the respondent to examine any medical records or reports made about the respondent under this section.

A report made under this section shall not be a public record as defined in section 7 of chapter 4.

The registrar shall include the information about the procedures authorized in this section on the electronic website of the registrar.

SECTION 11. Section 24 of said chapter 90, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "vehicle", in line 730, the following words:- or whoever while operating a motor vehicle in violation of section 8M, 12A or 13B, such violation proved beyond a reasonable doubt, is the proximate cause of injury to any other person, vehicle or property by operating said motor vehicle negligently so that the lives or safety of the public might be endangered.

SECTION 12. Section 113B of chapter 175 of the General Laws, as so appearing, is hereby amended by striking out the fourteenth paragraph and inserting in place thereof the following paragraph:-

Upon receiving notification from the merit rating board that a driver has had 3 surchargeable incidents within the past 24 months, the registrar shall, after a hearing based solely on the accuracy of the merit rating board's records, require the driver to participate in and complete a driver education program satisfactory to the registrar. If the driver fails to provide to the registrar proof of completion of the driver education program within 90 days after the registrar mails to the driver notice of the requirement, the registrar shall suspend the driver's license or right to operate a motor vehicle until the registrar receives proof of completion of the driver education program.

SECTION 13. Notwithstanding any general or special law to the contrary, the registrar of motor vehicles shall not impose any additional fee for transactions conducted by telephone or in person at any registry location in excess of those fees charged for transactions conducted through the commonwealth's website.

SECTION 14. The registrar of motor vehicles, in cooperation with the highway safety division, shall develop and implement a public awareness campaign for both junior and adult operators which shall include, but not be limited to, the dangers and consequences of distracted driving, information on the restrictions of mobile telephone and mobile electronic device use while operating a motor vehicle under sections 8M, 12A and 13B of chapter 90 of the General Laws, and information on the fines and punishments which may be imposed for violations of said chapter 90. Said campaign shall commence not later than January 1, 2011.

SECTION 15. Section 12 shall apply to surchargeable offenses that occur on or after the effective date of this act.

Approved, July 2, 2010.

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