

COUNCIL PENDING ORDINANCE NO. CPO-07 - 79
ORDINANCE NO. 8131
As Amended _____
Certification Date _____
Certified By _____
Favorably _____
Unfavorably _____

AN ORDINANCE REGULATING THE USE OF MOBILE TELEPHONES IN THE CITY OF GARY, INDIANA

WHEREAS, the improper usage of mobile telephones by persons operating motor vehicles is a proven hazard to public safety; and

WHEREAS, the National Highway Traffic Safety Administration statistics indicate that improperly utilized cellular telephones – when a driver is using one hand for telephoning and the other hand for steering- were a contributing factor in 2,600 fatal crashes in 2005, the most recent year for which figures are available; and

WHEREAS, there is a direct correlation between distracted drivers and traffic accidents caused by such drivers; and

WHEREAS, the ever increasing use of cell phones while driving is one distraction that gives rise to the City of Gary’s need to protect the health, safety, and welfare of its citizenry; and

WHEREAS, studies show that drivers who use hands-free cell phone devices have improved steering accuracy, faster braking reaction time, and less speed variation than drivers who use hand-held phones.

WHEREAS, it is in the best interest of the City of Gary to increase safety by raising awareness about the dangers of cell-phone distracted driving and encourage drivers to engage in safe use practices; and

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF GARY:

Section 1. USE OF MOBILE TELEPHONES

(A): Except as provided by subsection (B) of this section, it shall be unlawful for any person to operate a motor vehicle on any street or highway within the city limits while using a mobile telephone to engage in a call or create, send, or read text messages while such vehicle is in motion.

(1): For purposes of this subsection the following definitions apply:

- (a) “Engage in a call” shall mean talking into, dialing or listening on a hand-held mobile telephone, but shall not include holding a mobile telephone to activate, deactivate or initiate a function of such telephone.
- (b) “Hands-free mobile telephone” shall mean a mobile telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, by which a user engages in a call without the use of either hand (or prosthetic device or aid in the case of a physically disabled person), whether or not the use of either hand (or prosthetic device) is necessary to activate, deactivate or initiate a function of such telephone.
- (c) “Hand-held mobile telephone” shall mean a mobile telephone with which a user engages in a call using a least one hand (or prosthetic device or aid in the case of a physically disabled person).

- (d) "Mobile telephone" shall mean the device used by subscribers and other users of wireless telephone service to access such service and shall include Personal Digital Assistants, commonly referred to as PDAs.
- (e) "Personal Digital Assistant" shall mean a device operated using a wireless telecommunications service that provides for data communication other than by voice.
- (f) "Wireless telephone service" shall mean two-way real time voice telecommunications service that is interconnected to a public switched telephone network and commonly referred to as cellular service or personal communication service.

(2) An operator of a motor vehicle who holds a mobile telephone to, or in the immediate proximity of his or her ear while such vehicle is in motion is presumed to be engaged in a call within the meaning of this section. The presumption established by this subdivision is rebuttable by evidence tending to show that the operator was not engaged in a call. "Immediate proximity" shall mean that distance as permitted by the operator of a mobile telephone to hear telecommunications transmitted over such mobile telephone, but shall not require physical contact with such operator's ear.

(B): The provisions of the ordinance shall not apply to:

- (1) Law enforcement officers and operators of emergency vehicles when on duty and while acting in their official capacities.
- (2) Persons using a telephone with a "hands-free" device allowing the driver to talk into and listen to the other party without the use of hands.
- (3) Persons using a telephone to call 911 telephone numbers or other emergency telephone numbers to contact public safety forces.
- (4) Person using a telephone while maintaining a motor vehicle in a stationary parked position, and not in gear.

(C): Any person who violates subsection (a) of this section shall be subject to a fine of fifty dollars (\$50.00), provided however, that if a violation occurs at the time of a traffic accident, the driver may be subject to an additional fine not to exceed two hundred dollars (\$200.00). All subsequent violations of subsection (a) shall be one hundred dollars (\$100.00).

Section 2. SEVERABILITY CLAUSE.

In the event that any part of this Ordinance is ever declared invalid, unconstitutional or otherwise null and void, the Common Council specifically intends that all of the remaining portions thereof shall constitute to have full force, effect, and validity until declared otherwise.

Section 3. EFFECTIVE DATE.

This ordinance shall be in full force and effect from and after January 1, 2008 and after publication according to law.

PASSED and ADOPTED by the Common Council of the City of Gary, Indiana this _____ day of _____, 2007.

 JEROME PRINCE, President
 GARY COMMON COUNCIL

ATTEST:

CITY CLERK

Presented by me to the Mayor for his approval and signature this ____ day of _____, 2007.

SUZETTE RAGGS, CITY CLERK

APPROVED and SIGNED by me this ____ day of _____, 2007.

RUDOLPH CLAY, Mayor

PREPARED BY: CITY OF GARY LAW DEPARTMENT (HLC/ccj)

SPONSORED BY: Councilman Roy Pratt, At Large
PREPARED BY: CITY OF GARY LAW DEPARTMENT (HLC/ccj)

COMMITTEE ASSIGNMENT_____	Reported-out/Date_____
1st Reading/Date_____	Committee Hearing/Date_____
2nd Reading/Date_____	Public Hearing/Date_____
3rd Reading/Date_____	Final Reading/Date_____
Passed/Date_____	Defeated/Date_____
	Deferred/Date_____
Tabled/Date_____	Override/Date_____
	Adopted/Date_____
Publication/Date_____	Community Hearing/Date_____
Veto Date_____	Pocket Veto Date_____
	Adopted Date_____