

**ORDINANCE NO. 29-18**

**AN ORDINANCE TO AMEND SECTIONS 432.42(a) and (c) OF THE  
CODIFIED ORDINANCES OF THE CITY OF AVON TO ESTABLISH  
“TEXTING WHILE DRIVING” AS A PRIMARY OFFENSE**

**WHEREAS**, on August 31, 2012, legislation passed by the Ohio State Legislature, viz., ORC §4511.204, made it a secondary offense to text while driving; and

**WHEREAS**, the City then passed identical legislation locally to prohibit the same conduct and also followed the State’s formula of making it a secondary offense, i.e., one must be stopped for some other traffic offense before the officer can issue a citation for texting while driving; and

**WHEREAS**, more and more drivers are being observed within the City limits being involved in and/or causing automobile collisions and other traffic related problems associated with a lack of attention to driving their vehicles; and

**WHEREAS**, in an effort to address this problem, City Council invited the Chief of Police to a Legal Committee Meeting to discuss possible legislative changes that could be implemented to address the issue and begin to curtail some of the problems being generated by inattention; and

**WHEREAS**, on March 19, 2018, by a vote of Three (3) in favor and Zero (0 ) opposed, Legal Committee recommended amendments to ACO §432.42(a) and (c); and

**WHEREAS**, the full Council, considering the recommendation of Legal Committee and the comments of the City’s Chief of Police, finds that amending ACO §432.42(a) and (c) is reasonable and in the best interests of the safety, health and welfare of the citizens of Avon in operating motor vehicles with the proper regard for the safety of other motorists and pedestrians in the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, STATE OF OHIO THAT:**

Section 1 -That Section 432.42, subsections (a) and (c), which currently read as follows:

432.42 TEXTING WHILE DRIVING PROHIBITED.

(a) No person shall drive a motor vehicle on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication.

(c) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (a) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect

any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed

**Shall be amended to read as set forth below:**

432.42 TEXTING WHILE DRIVING PROHIBITED.

(a) No person shall drive a motor vehicle on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication **or to send, read, create or interact with Internet-based content, play games or otherwise interact with the Internet.**

(c) **Violation of paragraph (a) of this section shall be a primary offense.**  
~~Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (a) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.~~

Section 2 - The Codifier is hereby instructed to insert the amendments into Section 432.42 as contained in this legislation. All other language contained in Section 432.42 not specifically amended herein shall remain in full force and effect.

Section 3 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted 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 actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance shall take effect and be in force at the earliest date allowed by law.

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Third Reading: \_\_\_\_\_

PASSED: \_\_\_\_\_

DATE SIGNED: \_\_\_\_\_

By: \_\_\_\_\_  
Craig L. Witherspoon, Council President

DATE APPROVED BY THE MAYOR: \_\_\_\_\_

\_\_\_\_\_  
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
John A. Gasiar, Law Director  
City of Avon, Ohio

ATTEST:

\_\_\_\_\_  
Barbara Brooks  
Clerk of Council

Posted: \_\_\_\_\_  
In Five Places as  
Provided by Council

Prepared By:  
John A. Gasiar, Esq.  
Law Director