

**CITY OF DAPHNE, ALABAMA
ORDINANCE NO. 2010-65**

**AN ORDINANCE TO RESTRICT USE OF WIRELESS COMMUNICATION
DEVICES WHILE DRIVING**

WHEREAS, the City Council of the City of Daphne, Alabama, is aware of growing public concern regarding the safety implications of the widespread use of wireless communication devices while operating motor vehicles; and,

WHEREAS, the City Council of the City of Daphne, Alabama, finds that restricting the use of wireless communication devices while operating motor vehicles would best serve public health, safety and welfare; and,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, as follows:

**SECTION 1: RESTRICTED USE OF WIRELESS COMMUNICATION DEVICES
WHILE DRIVING.**

(A) Definitions.

The following words, terms, and phrases when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Except as may be otherwise provided in this division, all words and phrases used in this division which are defined in Code of Ala. 1975 § 32-1-1.1 shall have the meanings ascribed to them in that section.

Wireless Communication Device shall include a cellular, analog, wireless or digital device, computer or telephone, capable of accessing the internet or sending, receiving or downloading any electronic or digital data, including, but are not limited to, videos, pictures, or communications, such as electronic mail, instant messages and text messages. Such device may include telecommunication capabilities. Covered devices include, but are not limited to, devices commonly known as Blackberries, iPhones, iPads, Kindles, laptops, netbooks and other similarly equipped wireless devices. Covered devices shall not include voice radios, mobile radios, land mobile radios, commercial mobile radios or two-way radios with capability to transmit and receive voice transmission utilizing a “push to talk” or “press to transmit” function.

(B) Restricted Use of Wireless Communication Devices While Driving.

(a) No person shall operate a vehicle upon any highway, roadway or street while using a wireless communication device to send, receive, download or view any electronic or digital content including music, video, picture or

communication including, but not limited to, electronic mail, instant messaging or text messaging.

(C) Exceptions.

Subsection (B) shall not apply only in the following instances:

(a) an emergency services professional using a wireless communication device while operating an authorized emergency vehicle in the due course of business; personal use of a wireless communication device shall remain subject to the provisions contained in Subsection (B);

(b) an individual using a wireless communication device to make or receive a telephone call;

(c) an individual using a wireless communication device to obtain emergency services including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity;

(d) an individual using a wireless communication device while the motor vehicle is parked on the shoulder of the highway, roadway or street, or the vehicle is stopped due to normal traffic being obstructed and the vehicle transmission is in neutral or park;

(e) Global Positioning System (GPS) or navigation units that are permanently affixed to vehicle.

(D) Stopping Vehicle Solely to verify Violations of Subsection (B) is prohibited

(a) no law enforcement officer shall stop a vehicle solely for the purpose of verifying a suspected violation of Subsection (B);

(b) the provisions of Subsection (B) shall not constitute probable cause for search of the vehicle involved.

(E) Penalty.

Any person who violates any provision of this division shall upon conviction be punished, in addition to such other punishment as may be provided by the court, by fines and penalties as follows:

(a) for a first conviction, by a fine of \$100.00 or by imprisonment of not more than 10 days;

(b) for a second conviction, by a fine of \$200.00 or by imprisonment for not more than 30 days;

(c) for a third or subsequent conviction, by a fine of \$500.00 or by imprisonment for not more than three months or by both such fine and imprisonment.

SECTION 2: NOTICE

That the City of Daphne shall erect a sign on every major thoroughfare entering the City to notify persons traveling to or through the City that the use of wireless communication devices, other than to make a phone call, while operating a motor vehicle is prohibited within the City. Such signs shall be erected no later than thirty (30) days after the adoption of this ordinance.

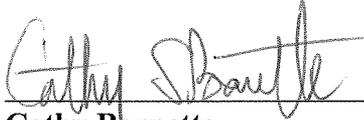
SECTION 3: SEVERABILITY

That the provisions of this Ordinance are severable. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

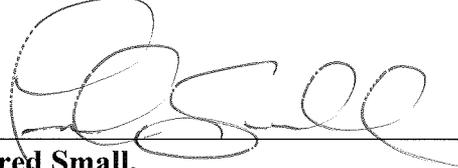
SECTION 4: EFFECTIVE DATE.

That this ordinance shall become effective sixty days (60) days from and after the date of its adoption.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA on this the 1st day of November, 2010.



Cathy Barnette,
Council President



Fred Small,
Mayor

ATTEST:



David L. Cohen,
City Clerk, MMC