

BRUNSWICK CITY SAFETY & ENVIRONMENT COMMITTEE

Agenda

JUNE 12, 2023

6:40 PM

**or Immediately Following
Planning & Zoning Committee**

1. Discussion Items

ORD. NO. 44-2023 - An ordinance establishing Section 432.47 of the City of Brunswick Codified Ordinances Titled "Distracted Driving." - **1st Reading** (To be brought from Safety & Environment Committee, *Administration/Robert Safran*)

2. General Discussion

3. Adjournment

PROPOSED LEGISLATION



DATE: 6/12/2023

TO: Vice Mayor Nicholas Hanek and Members of City Council

FROM: Carl S. DeForest, City Manager
Brian Ohlin

COPY: Mayor Ron Falconi

LEGISLATION: **ORD. NO. 44-2023** - An ordinance establishing Section 432.47 of the City of Brunswick Codified Ordinances Titled "Distracted Driving." - **1st Reading** (To be brought from Safety & Environment Committee, *Administration/Robert Safran*)

BACKGROUND: On or about December 14, 2022 the Ohio General Assembly adopted Senate Bill 288 wherein Ohio Revised Code Section 4511.204 was revised to prohibit distracted driving through the use of electronic wireless communication devices.

PURPOSE AND EXPLANATION: Update the city ordinance chapter on the basis of Senate Bill 288.

IMPLEMENTATION SCHEDULE: To become law following 3 readings and 30 days.

FINANCIAL INFORMATION:

FINANCIAL SUMMARY:

RECOMMENDED ACTION:

One Reading	No
Two Readings	No
Three Readings	Yes
Emergency	No
Suspension of Rules	No

If emergency or suspension of the rules, why the request?

ADDITIONAL

INFORMATION:

1
CITY OF BRUNSWICK, OHIO
ORDINANCE NO. 44-2023

BY: Mr. Kuczma, Mr. Delsanter, Mrs. Piper

AN ORDINANCE ESTABLISHING SECTION 432.47 OF THE CITY OF BRUNSWICK CODIFIED ORDINANCES TITLED “DISTRACTED DRIVING”.

WHEREAS: On or about December 14, 2022, the Ohio General Assembly adopted Am. Sub. S.B. 288 wherein Ohio Revised Code Section 4511.204 was revised to prohibit distracted driving through the use of electronic wireless communication devices.

WHEREAS: The provisions of revised Ohio Revised Code Section 4511.204 contained in Am. Sub. S.B. 288 became effective on April 4, 2023, wherein written warnings are required to be issued during the first six (6) months.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY ORDAINS:

SECTION 1: That Section 432.47 of the Codified Ordinances is hereby established to read as follows:

“432.47 DISTRACTED DRIVING.

- (A) No person shall operate a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic while using, holding, or physically supporting with any part of the person’s body an electronic wireless communications device.
- (B) Division (A) of this section does not apply to any of the following:
 - (1) A person using an electronic wireless communications device to make contact, for emergency purposes, with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;
 - (2) A person driving a public safety vehicle while using an electronic wireless communications device in the course of the person’s duties;
 - (3) A person using an electronic wireless communications device when the person’s motor vehicle is in a stationary position and is outside a lane of travel, at a traffic control signal that is currently directing traffic to stop, or parked on a road or highway due to an emergency or road closure;
 - (4) A person using and holding an electronic wireless communications device directly near the person’s ear for the purpose of making, receiving, or conducting a telephone call, provided that the person does not manually enter letters, numbers, or symbols into the device;
 - (5) A person receiving wireless messages on an electronic wireless

communications device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle, provided that the person does not hold or support the device with any part of the person's body;

- (6) A person using the speaker phone function of the electronic wireless communications device, provided that the person does not hold or support the device with any part of the person's body;
 - (7) A person using an electronic wireless communications device for navigation purposes, provided that the person does not do either of the following during the use:
 - (a) Manually enter letters, numbers, or symbols into the device;
 - (b) Hold or support the device with any part of the person's body.
 - (8) A person using a feature or function of the electronic wireless communications device with a single touch or single swipe, provided that the person does not do either of the following during the use:
 - (a) Manually enter letters, numbers, or symbols into the device;
 - (b) Hold or support the device with any part of the person's body.
 - (9) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;
 - (10) A person operating a utility service vehicle or a vehicle for or on behalf of a utility, if the person is acting in response to an emergency, power outage, or circumstance that affects the health or safety of individuals;
 - (11) A person using an electronic wireless communications device in conjunction with a voice-operated or hands-free feature or function of the vehicle or of the device without the use of either hand except to activate, deactivate, or initiate the feature or function with a single touch or swipe, provided the person does not hold or support the device with any part of the person's body;
 - (12) A person using technology that physically or electronically integrates the device into the motor vehicle, provided that the person does not do either of the following during the use:
 - (a) Manually enter letters, numbers, or symbols into the device;
 - (b) Hold or support the device with any part of the person's body.
 - (13) A person storing an electronic wireless communications device in a holster, harness, or article of clothing on the person's body.
- (C)
- (1) Whoever violates division (A) of this section is guilty of operating a motor vehicle while using an electronic wireless communication device, an unclassified misdemeanor.
 - (a) Except as provided in divisions (C)(1)(b), (c), (d) and (2) of this section, the court shall impose upon the offender a fine of not more than one hundred fifty dollars.

- (b) If, within two years of the violation, the offender has been convicted of or pleaded guilty to one prior violation of this section, Ohio Revised Code Section 4511.204 or a substantially equivalent municipal ordinance, the court shall impose upon the offender a fine of not more than two hundred fifty dollars.
 - (c) If, within two years of the violation, the offender has been convicted of or pleaded guilty to two or more prior violations of this section, Ohio Revised Code Section 4511.204 or a substantially equivalent municipal ordinance, the court shall impose upon the offender a fine of not more than five hundred dollars. The court also may impose a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for ninety days.
 - (d) Notwithstanding divisions (C)(1)(a) to (c) of this section, if the offender was operating the motor vehicle at the time of the violation in a construction zone where a sign was posted in accordance with Ohio Revised Code Section 4511.98 or a substantially equivalent municipal ordinance, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two times the amount imposed for the violation under division (C)(1)(a), (b) or (c) of this section.
 - (2) In lieu of payment of the fine of one hundred fifty dollars under division (C)(1)(a) of this section and the assessment of points under division (C)(4) of this section, the offender instead may elect to attend the distracted driving safety course, as described in Ohio Revised Code Section 4511.991. If the offender attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall not be required to pay the fine and shall not have the points assessed against that offender's driver's license if the offender submits the written evidence to the court.
 - (3) The court may impose any other penalty authorized under Ohio Revised Code Sections 2929.21 to 2929.28. However, the court shall not impose a fine or a suspension not otherwise specified in division (C)(1) of this section. The court also shall not impose a jail term or community residential sanction.
 - (4) Except as provided in division (C)(2) of this section, points shall be assessed for a violation of division (A) of this section in accordance with Ohio Revised Code Section 4510.036.
 - (5) The offense established under this section is a strict liability offense and Ohio Revised Code Section 2901.20 does not apply. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.
- (D)
- (1) A law enforcement officer does not have probable cause and shall not stop the operator of a motor vehicle for purposes of enforcing this

section unless the officer visually observes the operator using, holding, or physically supporting with any part of the person's body the electronic wireless communications device.

(2) A law enforcement officer who stops the operator of a motor vehicle, trackless trolley, or streetcar for a violation of division (A) of this section shall inform the operator that the operator may decline a search of the operator's electronic wireless communications device. The officer shall not do any of the following:

- (a) Access the device without a warrant, unless the operator voluntarily and unequivocally gives consent for the officer to access the device;
- (b) Confiscate the device while awaiting the issuance of a warrant to access the device;
- (c) Obtain consent from the operator to access the device through coercion or any other improper means. Any consent by the operator to access the device shall be voluntary and unequivocal before the officer may access the device without a warrant.

(E) As used in this section"

(1) "Electronic wireless communications device" includes any of the following:

- (a) A wireless telephone;
- (b) A text-messaging device;
- (c) A personal digital assistant;
- (d) A computer, including a laptop computer and a computer tablet;
- (e) Any device capable of displaying a video, movie, broadcast television image, or visual image;
- (f) Any other substantially similar wireless device that is designed or used to communicate text, initiate or receive communication, or exchange information or data.

An "electronic wireless communications device" does not include a two-way radio transmitter or receiver used by a person who is licensed by the federal communications commission to participate in the amateur radio service.

(2) "Voice-operated or hands-free feature or function" means a feature or function that allows a person to use an electronic wireless communications device without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

(3) "Utility" means an entity specified in Ohio Revised Code Section 4905.03(A), (C), (D), (E) or (G).

(4) "Utility service vehicle" means a vehicle owned or operated by a utility."

SECTION 2: (A) As used in this section, “interim period” means the period of time beginning on April 4, 2023 and ending six months thereafter.

(B) Notwithstanding any provision of law to the contrary, during the interim period, a law enforcement officer may stop a motor vehicle operator for an action that is a violation of City of Brunswick Codified Ordinance Section 432.47 or Ohio Revised Code Section 4511.204. In lieu of issuing the person a ticket, citation, or summons, the law enforcement officer shall issue the person a written warning explaining the provisions of City of Brunswick Codified Ordinance Section 432.47 or Ohio Revised Code Section 4511.204. The written warning may notify the person of the specific date after the interim period when law enforcement officers are authorized to begin issuing tickets, citations, and summons for violations of City of Brunswick Codified Ordinance Section 432.47 or Ohio Revised Code Section 4511.204.

(C) After the interim period, a law enforcement officer may issue a ticket, citation, or summons for a violation of City of Brunswick Codified Ordinance Section 432.47 or Ohio Revised Code Section 4511.204.

SECTION 3: That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 1st Reading _____

2nd Reading _____

3rd Reading _____

ADOPTED: _____

AYES _____

NAYS _____

ATTEST: _____

Clerk of Council
Laura E. Timura