

AGENDA

TOWN OF FLOWER MOUND TRANSPORTATION COMMISSION MEETING

OCTOBER 10, 2017

**FLOWER MOUND TOWN HALL
2121 CROSS TIMBERS ROAD
FLOWER MOUND, TEXAS**

6:30 P.M.

AN AGENDA INFORMATION PACKET IS AVAILABLE ONLINE
WWW.FLOWER-MOUND.COM/AGENDACENTER

- A. CALL REGULAR MEETING TO ORDER – 6:30 PM**
- B. PLEDGE OF ALLEGIANCE**
- C. PUBLIC PARTICIPATION**

Please fill out an "Appearance Before Transportation Commission" form in order to address the Transportation Commission, and turn the form in prior to Public Participation, or by 6:40 p.m. to the Town staff. Speakers are normally limited to three minutes. Time limits can be adjusted by the Chair as to accommodate more or fewer speakers.

The purpose of this item is to allow the public an opportunity to address the Transportation Commission on issues that are not the subject of a public hearing. Any item requiring Public Hearing will allow the public to speak at the time that the item appears on this agenda as indicated as a "Public Hearing".

D. COMMISSION MEMBER INTRODUCTIONS

- Robert Gunter – Place 1
- Robert Caput – Place 2
- Ron Hogue – Place 3
- Brian Smiley – Place 4
- Donald Gilmore – Place 5
- Chris Reed – Place 6
- Thomas Walker – Place 7
- Ed Horn – Place 8 (Alternate)
- Drew Larson – Place 9 (Alternate)

E. ELECTIONS

Election of a Chair will be conducted by the Traffic Engineer.

Election of a Vice-Chair will be conducted by the newly elected Transportation Commission Chair.

F. TRAFFIC ENGINEER REPORT

- Update status report related to operational issues, capital improvement projects, and TxDOT projects
- Future Transportation Commission meeting dates

G. CONSENT AGENDA – Consent Items

This agenda consists of non-controversial or "housekeeping" items and may be approved with a single motion. A member of the Transportation Commission may request an item(s) be withdrawn from the consent agenda and moved to regular agenda for discussion by making such request prior to a motion and vote on the Consent Agenda.

1. Consider approval of minutes from the regular meeting of the Transportation Commission held on September 10, 2017.

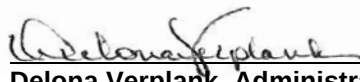
H. WORKSESSION ITEMS

2. Discussion regarding the update to the Texas Texting and Driving Ban from the 85th Legislature Special Session.

I. ADJOURNMENT


Matthew Hotelling, Traffic Engineer

I do hereby certify that the Notice of Meeting was posted on the bulletin board in Town Hall of the Town of Flower Mound, Texas, a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time: October 6, 2017 at 2:00 PM, at least 72 hours prior to the scheduled time of said meeting.


Delona Verplank, Administrative Assistant

The Flower Mound Town Hall and Council Chambers are wheelchair accessible. Requests for accommodations or interpretive services must be made at least 48 hours prior to this meeting by contacting Delona Verplank, Administrative Assistant at 972-874-6317. Reasonable accommodations will be made to assist your needs.



TRANSPORTATION COMMISSION AGENDA ITEM NO. 1

CONSENT ITEM

DATE: October 10, 2017

FROM: Matthew J. Hotelling, P.E., PTOE, Traffic Engineer

ITEM: Consider approval of the minutes from the regular meeting of the Transportation Commission held on September 12, 2017.

BACKGROUND INFORMATION: This agenda item is to consider approval of the minutes from the September 12, 2017 regular meeting of the Transportation Commission.

CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft minutes from the September 12, 2017 regular meeting of the Transportation Commission.

RECOMMENDATION: Move to approve the minutes from the September 12, 2017 regular meeting of the Transportation Commission.

THE FLOWER MOUND TRANSPORTATION COMMISSION REGULAR MEETING HELD ON THE 12TH DAY OF SEPTEMBER, 2017 IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD, IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 6:30 P.M.

The Transportation Commission met in regular session with the following members present:

Thomas Walker	Chair
Chris Reed	Vice Chair
Robert Caput	Commissioner, Place 2
Ron Hogue	Commissioner, Place 3
Brian Smiley	Commissioner, Place 4
Donald Gilmore	Commissioner, Place 5
Ed Horne	Commissioner, Place 8
Andy Allen	Commissioner, Place 9

Constituting a quorum with the following members absent:

Robert Gunter	Commissioner, Place 1
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(Places 8 and 9 of the Commission do not vote on items unless they sit in place of one of the regular members; Places 1-7.)

With the following members of the Town Staff participating:

Matthew Hotelling	Traffic Engineer
Delona Verplank	Administrative Assistant

A. CALL TO ORDER - REGULAR SESSION – 6:30 P.M.

B. PLEDGE OF ALLEGIANCE

C. PUBLIC PARTICIPATION

None.

D. TRAFFIC ENGINEER REPORT

- Update status report related to operational issues, capital improvement projects, and TxDOT projects
- Future Transportation Commission meeting dates

E. CONSENT AGENDA

1. Consider approval of minutes from the regular meeting of the Transportation Commission held on July 11, 2017.

Vice Chair Reed made a motion to approve the July 11, 2017 minutes as presented. Commissioner Smiley seconded the motion.

VOTE ON THE MOTION*Motion passed*

AYES: Caput, Smiley, Reed, Allen, Hogue, Gilmore

NAYS: None

ABSTAIN: None

ABSENT: Gunter

F. REGULAR ITEMS

2. Consider a recommendation regarding a Thoroughfare Plan Amendment for the section of Lake Forest Boulevard south of Lakeside Parkway to Silveron Boulevard to the Town Council.

Presenter

Matt Hotelling, Traffic Engineer

Guest Speaker

Jeff Whitacre, Kimley-Horn & Associates

Spoke In Favor –

None

Spoke In Opposition –

None

Commission Deliberation

Commissioner Allen made a motion to recommend that Lake Forest Boulevard south of Lakeside Parkway to Silveron Boulevard be removed from the Thoroughfare Plan. Vice Chair Reed seconded the motion.

VOTE ON THE MOTION*Motion passed*

AYES: Gilmore, Hogue, Allen, Reed, Smiley

NAYS: Caput

ABSTAIN: None

ABSENT: Gunter

G. ADJOURNMENT – 7:15 P.M.

TOWN OF FLOWER MOUND
TRANSPORTATION COMMISSION

, Chairman

ATTEST:

Delona Verplank, Administrative Assistant

DRAFT



TRANSPORTATION COMMISSION AGENDA ITEM NO. 2

WORK SESSION ITEM

DATE: October 10, 2017

FROM: Matthew J. Hotelling, P.E., PTOE, Traffic Engineer

ITEM: Discussion regarding the update to the Texas Texting and Driving Ban from the 85th Legislature Special Session.

BACKGROUND INFORMATION: This item is for discussion on the Texas Texting and Driving Ban that went into effect on September 1, 2017. According to Executive Director James Bass of the Texas Department of Transportation, one in five crashes in Texas is caused by distracted driving. During the 85th Regular Texas Legislative Session, the legislature passed and the Governor signed into law a No Texting and Driving Ban. This ban can be found in the Texas Transportation Code under section 545 pending publication of HB 62. Portions of HB 62 also affect Sections 521 and 543. Section 521 deals with driver license examination. Section 543 deals with notice to appear in court.

Section 545.424 adds language for drivers under the age of 18 that prohibits the use of a wireless communications device except in the case of emergency and does not apply to a person licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device. The same language is added for drivers under 17 years of age with a restricted motorcycle license or moped license. Fine punishable by such an offense is at least \$25 but no more than \$99 unless it is found that the defendant was convicted at least one time of the same offense. Then the fine is raised to at least \$100 but no more than \$200.

New section in the Transportation Code is Section 545.4251 regarding use of portable wireless communication device for electronic messaging. Attachment 2 shows the entire markup of the changes that go along with HB 62. The basic law is that an operator commits an offense if the operator uses a wireless communication device to read, write or send an electronic message while operating a motor vehicle unless the vehicle is stopped. The behavior must be in the presence of or within the view of a peace officer or established by other evidence. Exceptions include:

- using in conjunction with a hands-free device;
- to navigate using global positioning system or navigation system;
- to report illegal activity;
- summon emergency help;
- enter information into an app that provides information relating to traffic and road conditions;
- to read an electronic message that the person reasonably believes concerned an emergency;
- Use a device that is permanently or temporarily fixed to relay information in the course of the operator's occupational duties between the operator and
 - o Dispatcher or
 - o Digital network
- Activate a function that plays music

The restrictions of this section do not apply to authorized emergency or law enforcement vehicle using a portable wireless communication device. The base fine is the same as stated above unless it is shown at trial that the offense caused death or serious bodily injury. If the latter is proven true, then the result is a Class A misdemeanor punishable by a fine not to exceed \$4,000 and a jail term not to exceed 1 year. If the offense can be tried under other state laws, the person may be tried under this either law or both laws. Other changes are listed in Attachment 2.

After the conclusion of the regular session of the 85th legislative session, the Governor called the legislature back into a special session for the 85th legislature with one of the items requested to be further refined was

the recently passed No Texting and Driving law. As such SB 15 was filed on July 17, 2017. A copy of the bill is attachment 3. Two other senate bills were filed, SB 25 and SB 92 however, SB 15 made it furthest through the system. One common thread among all three bills was the preemption of state law over any law passed by local government. SB 25 strengthened the fine for distracted driving by making the first offense a Class C misdemeanor; or if death or serious bodily injury was shown in trial that it would be a state jail felony. According to the Texas Legislature Online website, <http://www.capitol.state.tx.us/Home.aspx>, none of these three bills made it to the Governor's desk during the special session. SB 15 was voted on and passed by the Senate but was not heard by the House nor approved by the Governor.

ALTERNATIVES/OPTIONS: N/A.

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. HB 62 – 85th Legislature Regular Session
2. Mark up of changes to the Transportation Code
3. SB 15 – 85th Legislature Special Session

RECOMMENDATION: No action is required. This item is for discussion and information only.

H.B. No. 62

1 AN ACT
2 relating to the use of a wireless communication device while
3 operating a motor vehicle; creating a criminal offense; modifying
4 existing criminal penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. This Act may be cited as the Alex Brown Memorial
7 Act.

8 SECTION 2. Sections 521.161(b) and (c), Transportation
9 Code, are amended to read as follows:

10 (b) The examination must include:

11 (1) a test of the applicant's:

12 (A) vision;

13 (B) ability to identify and understand highway
14 signs in English that regulate, warn, or direct traffic;

15 (C) knowledge of the traffic laws of this state;

16 [~~and~~]

17 (D) knowledge of motorists' rights and
18 responsibilities in relation to bicyclists; and

19 (E) knowledge of the effect of using a wireless
20 communication device, or engaging in other actions that may
21 distract a driver, on the safe or effective operation of a motor
22 vehicle;

23 (2) a demonstration of the applicant's ability to
24 exercise ordinary and reasonable control in the operation of a

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1 motor vehicle of the type that the applicant will be licensed to
2 operate; and

3 (3) any additional examination the department finds
4 necessary to determine the applicant's fitness to operate a motor
5 vehicle safely.

6 (c) The department shall give each applicant the option of
7 taking the parts of the examination under Subsections (b)(1)(B),
8 (C), ~~[and]~~ (D), and (E) in writing in addition to or instead of
9 through a mechanical, electronic, or other testing method. If the
10 applicant takes that part of the examination in writing in addition
11 to another testing method, the applicant is considered to have
12 passed that part of the examination if the applicant passes either
13 version of the examination. The department shall inform each
14 person taking the examination of the person's rights under this
15 subsection.

16 SECTION 3. Section 543.004(a), Transportation Code, is
17 amended to read as follows:

18 (a) An officer shall issue a written notice to appear if:

19 (1) the offense charged is:

20 (A) speeding;

21 (B) the use of a wireless communication device
22 under Section 545.4251; or

23 (C) a violation of the open container law,
24 Section 49.031 ~~[49.03]~~, Penal Code; and

25 (2) the person makes a written promise to appear in
26 court as provided by Section 543.005.

27 SECTION 4. Section 545.424, Transportation Code, is amended

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1 by amending Subsections (a), (b), and (c) and adding Subsection (g)
 2 to read as follows:

3 (a) A person under 18 years of age may not operate a motor
 4 vehicle while using a wireless communication [~~communications~~]
 5 device, except in case of emergency. This subsection does not apply
 6 to a person licensed by the Federal Communications Commission while
 7 operating a radio frequency device other than a wireless
 8 communication device.

9 (b) A person under 17 years of age who holds a restricted
 10 motorcycle license or moped license may not operate a motorcycle or
 11 moped while using a wireless communication [~~communications~~]
 12 device, except in case of emergency. This subsection does not apply
 13 to a person licensed by the Federal Communications Commission while
 14 operating a radio frequency device other than a wireless
 15 communication device.

16 (c) Subsection (a-1) [This section] does not apply to[+
 17 [~~(1)~~] a person operating a motor vehicle while
 18 accompanied in the manner required by Section 521.222(d)(2) for the
 19 holder of an instruction permit[; or

20 [~~(2)~~ a person licensed by the Federal Communications
 21 Commission to operate a wireless communication device or a radio
 22 frequency device].

23 (g) An offense under Subsection (a) or (b) is a misdemeanor
 24 punishable by a fine of at least \$25 and not more than \$99 unless it
 25 is shown on the trial of the offense that the defendant has been
 26 previously convicted at least one time of an offense under either
 27 subsection, in which event the offense is punishable by a fine of at

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1 least \$100 and not more than \$200.

2 SECTION 5. The heading to Section 545.425, Transportation
3 Code, is amended to read as follows:

4 Sec. 545.425. USE OF WIRELESS COMMUNICATION DEVICE IN A
5 SCHOOL CROSSING ZONE OR WHILE OPERATING A SCHOOL BUS WITH A MINOR
6 PASSENGER; POLITICAL SUBDIVISION SIGN REQUIREMENTS; OFFENSE.

7 SECTION 6. Section 545.425(a)(1), Transportation Code, is
8 amended to read as follows:

9 (1) "Hands-free device" means speakerphone
10 capability, [or] a telephone attachment, or another function or
11 other piece of equipment, regardless of whether permanently
12 installed in or on a wireless communication device or in a [the]
13 motor vehicle, that allows use of the wireless communication device
14 without use of either of the operator's hands, except to activate or
15 deactivate a function of the wireless communication device or
16 hands-free device. The term includes voice-operated technology and
17 a push-to-talk function.

18 SECTION 7. Section 545.425(b-2), Transportation Code, is
19 amended to read as follows:

20 (b-2) A municipality, county, or other political
21 subdivision that by ordinance or rule prohibits the use of a
22 wireless communication device while operating a motor vehicle,
23 including a prohibition that contains an exception for the use of a
24 wireless communication device with a hands-free device, throughout
25 the jurisdiction of the political subdivision is not required to
26 post a sign as required by Subsection (b-1) and shall [if the
27 political subdivision]:

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1 (1) post [~~posts~~] signs that are located at each point
 2 at which a state highway, U.S. highway, or interstate highway
 3 enters the political subdivision and that state:

4 (A) that an operator is prohibited from using a
 5 wireless communication device while operating a motor vehicle in
 6 the political subdivision, and whether use of a wireless
 7 communication device with a hands-free device is allowed in the
 8 political subdivision; and

9 (B) that the operator is subject to a fine if the
 10 operator uses a wireless communication device while operating a
 11 motor vehicle in the political subdivision; and

12 (2) subject to all applicable United States Department
 13 of Transportation Federal Highway Administration rules, post
 14 [~~posts~~] a message that complies with Subdivision (1) on any dynamic
 15 message sign operated by the political subdivision located on a
 16 state highway, U.S. highway, or interstate highway in the political
 17 subdivision.

18 SECTION 8. Subchapter I, Chapter 545, Transportation Code,
 19 is amended by adding Section 545.4251 to read as follows:

20 Sec. 545.4251. USE OF PORTABLE WIRELESS COMMUNICATION
 21 DEVICE FOR ELECTRONIC MESSAGING; OFFENSE. (a) In this section:

22 (1) "Electronic message" means data that is read from
 23 or entered into a wireless communication device for the purpose of
 24 communicating with another person.

25 (2) "Wireless communication device" has the meaning
 26 assigned by Section 545.425.

27 (b) An operator commits an offense if the operator uses a

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1 portable wireless communication device to read, write, or send an
2 electronic message while operating a motor vehicle unless the
3 vehicle is stopped. To be prosecuted, the behavior must be
4 committed in the presence of or within the view of a peace officer
5 or established by other evidence.

6 (c) It is an affirmative defense to prosecution of an
7 offense under this section that the operator used a portable
8 wireless communication device:

9 (1) in conjunction with a hands-free device, as
10 defined by Section 545.425;

11 (2) to navigate using a global positioning system or
12 navigation system;

13 (3) to report illegal activity, summon emergency help,
14 or enter information into a software application that provides
15 information relating to traffic and road conditions to users of the
16 application;

17 (4) to read an electronic message that the person
18 reasonably believed concerned an emergency;

19 (5) that was permanently or temporarily affixed to the
20 vehicle to relay information in the course of the operator's
21 occupational duties between the operator and:

22 (A) a dispatcher; or

23 (B) a digital network or software application
24 service; or

25 (6) to activate a function that plays music.

26 (d) Subsection (b) does not apply to:

27 (1) an operator of an authorized emergency or law

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1 enforcement vehicle using a portable wireless communication device
2 while acting in an official capacity; or

3 (2) an operator who is licensed by the Federal
4 Communications Commission while operating a radio frequency device
5 other than a portable wireless communication device.

6 (e) An offense under this section is a misdemeanor
7 punishable by a fine of at least \$25 and not more than \$99 unless it
8 is shown on the trial of the offense that the defendant has been
9 previously convicted at least one time of an offense under this
10 section, in which event the offense is punishable by a fine of at
11 least \$100 and not more than \$200.

12 (f) Notwithstanding Subsection (e), an offense under this
13 section is a Class A misdemeanor punishable by a fine not to exceed
14 \$4,000 and confinement in jail for a term not to exceed one year if
15 it is shown on the trial of the offense that the defendant caused
16 the death or serious bodily injury of another person.

17 (g) If conduct constituting an offense under this section
18 also constitutes an offense under any other law, the person may be
19 prosecuted under this section, the other law, or both.

20 (h) The Texas Department of Transportation shall post a sign
21 at each point at which an interstate highway or United States
22 highway enters this state that informs an operator that:

23 (1) the use of a portable wireless communication
24 device for electronic messaging while operating a motor vehicle is
25 prohibited in this state; and

26 (2) the operator is subject to a fine if the operator
27 uses a portable wireless communication device for electronic

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1 messaging while operating a motor vehicle in this state.

2 (i) A peace officer who stops a motor vehicle for an alleged
3 violation of this section may not take possession of or otherwise
4 inspect a portable wireless communication device in the possession
5 of the operator unless authorized by the Code of Criminal
6 Procedure, the Penal Code, or other law.

7 (j) This section preempts all local ordinances, rules, or
8 other regulations adopted by a political subdivision relating to
9 the use of a portable wireless communication device by the operator
10 of a motor vehicle to read, write, or send an electronic message.

11 SECTION 9. Section 708.052, Transportation Code, is amended
12 by adding Subsection (e-1) to read as follows:

13 (e-1) Notwithstanding Subsection (b), the department may
14 not assign points to a person's license if the offense of which the
15 person was convicted is the offense of using a portable wireless
16 communication device for electronic messaging as described by
17 Section 545.4251.

18 SECTION 10. The changes in law made by this Act to Section
19 543.004 and Chapter 545, Transportation Code, apply only to an
20 offense committed on or after the effective date of this Act. An
21 offense committed before the effective date of this Act is governed
22 by the law in effect on the date the offense was committed, and the
23 former law is continued in effect for that purpose. For purposes of
24 this section, an offense was committed before the effective date of
25 this Act if any element of the offense occurred before that date.

26 SECTION 11. This Act takes effect September 1, 2017.

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President of the Senate

Speaker of the House

I certify that H.B. No. 62 was passed by the House on March 16, 2017, by the following vote: Yeas 114, Nays 32, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 62 on May 21, 2017, by the following vote: Yeas 123, Nays 17, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 62 was passed by the Senate, with amendments, on May 19, 2017, by the following vote: Yeas 23, Nays 8.

Secretary of the Senate

APPROVED: -----

Date

Governor

AN ACT

relating to the use of a wireless communication device while operating a motor vehicle; creating a criminal offense; modifying existing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as the Alex Brown Memorial Act.

SECTION 2. Sections 521.161(b) and (c), Transportation Code, are amended to read as follows:

(b) The examination must include:

(1) a test of the applicant's:

(A) vision;

(B) ability to identify and understand highway signs in English that regulate, warn, or direct traffic;

(C) knowledge of the traffic laws of this state;

[and]

(D) knowledge of motorists' rights and responsibilities in relation to bicyclists; and

(E) knowledge of the effect of using a wireless communication device, or engaging in other actions that may distract a driver, on the safe or effective operation of a motor vehicle;

(2) a demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type that the applicant will be licensed to operate; and

(3) any additional examination the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely.

(c) The department shall give each applicant the option of taking the parts of the examination under Subsections (b)(1)(B), (C), [and] (D), and (E) in writing in addition to or instead of through a mechanical, electronic, or other testing method. If the applicant takes that part of the examination in writing in addition to another testing method, the applicant is considered to have passed that part of the examination if the applicant passes either version of the examination. The department shall inform each person taking the examination of the person's rights under this subsection.

SECTION 3. Section 543.004(a), Transportation Code, is amended to read as follows:

(a) An officer shall issue a written notice to appear if:

(1) the offense charged is:

(A) speeding;

(B) the use of a wireless communication device under Section 545.4251; or

(C) a violation of the open container law, Section 49.031 [49.03], Penal Code; and

(2) the person makes a written promise to appear in court as provided by Section 543.005.

SECTION 4. Section 545.424, Transportation Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (g) to read as follows:

(a) A person under 18 years of age may not operate a motor vehicle while using a wireless communication [communications] device, except in case of emergency. This subsection does not apply to a person licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device.

(b) A person under 17 years of age who holds a restricted

motorcycle license or moped license may not operate a motorcycle or moped while using a wireless communication ~~[communications]~~ device, except in case of emergency. This subsection does not apply to a person licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device.

(c) Subsection (a-1) ~~[This section]~~ does not apply to ~~[1]~~ a person operating a motor vehicle while accompanied in the manner required by Section 521.222(d)(2) for the holder of an instruction permit ~~[- or~~
~~[-2) - - a person licensed by the Federal Communications Commission to operate a wireless communication device or a radio frequency device]~~.

(g) An offense under Subsection (a) or (b) is a misdemeanor punishable by a fine of at least \$25 and not more than \$99 unless it is shown on the trial of the offense that the defendant has been previously convicted at least one time of an offense under either subsection, in which event the offense is punishable by a fine of at least \$100 and not more than \$200.

SECTION 5. The heading to Section 545.425, Transportation Code, is amended to read as follows:

Sec. 545.425. USE OF WIRELESS COMMUNICATION DEVICE IN A SCHOOL CROSSING ZONE OR WHILE OPERATING A SCHOOL BUS WITH A MINOR PASSENGER; POLITICAL SUBDIVISION SIGN REQUIREMENTS; OFFENSE.

SECTION 6. Section 545.425(a)(1), Transportation Code, is amended to read as follows:

(1) "Hands-free device" means speakerphone capability, ~~[or]~~ a telephone attachment, or another function or other piece of equipment, regardless of whether permanently installed in or on a wireless communication device or in a [the] motor vehicle, that allows use of the wireless communication device without use of either of the operator's hands, except to activate or deactivate a function of the wireless communication device or hands-free device. The term includes voice-operated technology and a push-to-talk function.

SECTION 7. Section 545.425(b-2), Transportation Code, is amended to read as follows:

(b-2) A municipality, county, or other political subdivision that by ordinance or rule prohibits the use of a wireless communication device while operating a motor vehicle, including a prohibition that contains an exception for the use of a wireless communication device with a hands-free device, throughout the jurisdiction of the political subdivision is not required to post a sign as required by Subsection (b-1) and shall ~~[if the political subdivision]~~:

(1) post ~~[posts]~~ signs that are located at each point at which a state highway, U.S. highway, or interstate highway enters the political subdivision and that state:

(A) that an operator is prohibited from using a wireless communication device while operating a motor vehicle in the political subdivision, and whether use of a wireless communication device with a hands-free device is allowed in the political subdivision; and

(B) that the operator is subject to a fine if the operator uses a wireless communication device while operating a motor vehicle in the political subdivision; and

(2) subject to all applicable United States Department of Transportation Federal Highway Administration rules, post ~~[posts]~~ a message that complies with Subdivision (1) on any dynamic message sign operated by the political subdivision located on a state highway, U.S. highway, or interstate highway in the political subdivision.

SECTION 8. Subchapter I, Chapter 545, Transportation Code, is amended by adding Section 545.4251 to read as follows:

Sec. 545.4251. USE OF PORTABLE WIRELESS COMMUNICATION DEVICE FOR ELECTRONIC MESSAGING; OFFENSE. (a) In this section:

(1) "Electronic message" means data that is read from or entered into a wireless communication device for the purpose of communicating with another person.

(2) "Wireless communication device" has the meaning assigned by Section 545.425.

(b) An operator commits an offense if the operator uses a portable wireless communication device to read, write, or send an electronic message while operating a motor vehicle unless the vehicle is stopped. To be prosecuted, the behavior must be committed in the presence of or within the view of a peace officer or established by other evidence.

(c) It is an affirmative defense to prosecution of an offense under this section that the operator used a portable wireless communication device:

(1) in conjunction with a hands-free device, as defined by Section 545.425;

(2) to navigate using a global positioning system or navigation system;

(3) to report illegal activity, summon emergency help, or enter information into a software application that provides information relating to traffic and road conditions to users of the application;

(4) to read an electronic message that the person reasonably believed concerned an emergency;

(5) that was permanently or temporarily affixed to the vehicle to relay information in the course of the operator's occupational duties between the operator and:

(A) a dispatcher; or

(B) a digital network or software application service; or

(6) to activate a function that plays music.

(d) Subsection (b) does not apply to:

(1) an operator of an authorized emergency or law enforcement vehicle using a portable wireless communication device while acting in an official capacity; or

(2) an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a portable wireless communication device.

(e) An offense under this section is a misdemeanor punishable by a fine of at least \$25 and not more than \$99 unless it is shown on the trial of the offense that the defendant has been previously convicted at least one time of an offense under this section, in which event the offense is punishable by a fine of at least \$100 and not more than \$200.

(f) Notwithstanding Subsection (e), an offense under this section is a Class A misdemeanor punishable by a fine not to exceed \$4,000 and confinement in jail for a term not to exceed one year if it is shown on the trial of the offense that the defendant caused the death or serious bodily injury of another person.

(g) If conduct constituting an offense under this section also constitutes an offense under any other law, the person may be prosecuted under this section, the other law, or both.

(h) The Texas Department of Transportation shall post a sign at each point at which an interstate highway or United States highway enters this state that informs an operator that:

(1) the use of a portable wireless communication device for electronic messaging while operating a motor vehicle is prohibited in this state; and

(2) the operator is subject to a fine if the operator uses a portable wireless communication device for electronic messaging while operating a motor vehicle in this state.

(i) A peace officer who stops a motor vehicle for an alleged

violation of this section may not take possession of or otherwise inspect a portable wireless communication device in the possession of the operator unless authorized by the Code of Criminal Procedure, the Penal Code, or other law.

(j) This section preempts all local ordinances, rules, or other regulations adopted by a political subdivision relating to the use of a portable wireless communication device by the operator of a motor vehicle to read, write, or send an electronic message.

SECTION 9. Section 708.052, Transportation Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) Notwithstanding Subsection (b), the department may not assign points to a person's license if the offense of which the person was convicted is the offense of using a portable wireless communication device for electronic messaging as described by Section 545.4251.

SECTION 10. The changes in law made by this Act to Section 543.004 and Chapter 545, Transportation Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 11. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 62 was passed by the House on March 16, 2017, by the following vote: Yeas 114, Nays 32, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 62 on May 21, 2017, by the following vote: Yeas 123, Nays 17, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 62 was passed by the Senate, with amendments, on May 19, 2017, by the following vote: Yeas 23, Nays 8.

Secretary of the Senate

APPROVED:

Date

Governor

By: Huffines, et al.

S.B. No. 15

A BILL TO BE ENTITLED

AN ACT

relating to prosecution of certain offenses involving and
preemption of local regulation of the use of a wireless
communication device while operating a motor vehicle.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 542, Transportation Code,
is amended by adding Section 542.2034 to read as follows:

Sec. 542.2034. PREEMPTION OF LOCAL AUTHORITIES' REGULATION
OF USE OF WIRELESS COMMUNICATION DEVICE. (a) In this section,
"wireless communication device" has the meaning assigned by Section
545.425.

(b) The authority of a local authority to regulate or
prohibit the use of a wireless communication device while operating
a motor vehicle is preempted by this code, including Sections
545.424, 545.425, 545.4251, and 545.4252.

(c) This section does not affect the authority of a local
authority's peace officers to enforce the laws of this state
relating to the use of a wireless communication device while
operating a motor vehicle.

SECTION 2. The heading to Section 545.425, Transportation
Code, as effective September 1, 2017, is amended to read as follows:

Sec. 545.425. USE OF WIRELESS COMMUNICATION DEVICE IN A
SCHOOL CROSSING ZONE OR WHILE OPERATING A SCHOOL BUS WITH A MINOR
PASSENGER; ~~[POLITICAL SUBDIVISION SIGN REQUIREMENTS,]~~ OFFENSE.

S.B. No. 15

SECTION 3. Section 545.425(b-1), Transportation Code, is amended to read as follows:

(b-1) A local authority whose peace officers enforce ~~[Except as provided by Subsection (b-2), a municipality, county, or other political subdivision that enforces]~~ this section shall post a sign that complies with the standards described by this subsection at the entrance to each school crossing zone in the territory of the local authority ~~[municipality, county, or other political subdivision]~~. The department shall adopt standards that:

(1) allow for a sign required to be posted under this subsection to be attached to an existing sign at a minimal cost; and

(2) require that a sign required to be posted under this subsection inform an operator that:

(A) the use of a wireless communication device is prohibited in the school crossing zone; and

(B) the operator is subject to a fine if the operator uses a wireless communication device in the school crossing zone.

SECTION 4. (a) Sections 545.425(b-3), (b-4), (d-1), and (f) and 545.4252(e), Transportation Code, are repealed.

(b) Sections 545.425(b-2) and 545.4251(g) and (j), Transportation Code, as effective September 1, 2017, are repealed.

SECTION 5. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For

S.B. No. 15

1 purposes of this section, an offense was committed before the
2 effective date of this Act if any element of the offense occurred
3 before that date.

4 SECTION 6. This Act takes effect September 1, 2017, if it
5 receives a vote of two-thirds of all the members elected to each
6 house, as provided by Section 39, Article III, Texas Constitution.
7 If this Act does not receive the vote necessary for effect on that
8 date, this Act takes effect on the 91st day after the last day of the
9 legislative session.