

AN ORDINANCE

AMENDING TITLE 10 OF THE MUNICIPAL CODE TO ALIGN WITH RECENT STATE LEGISLATION ON USE OF ELECTRONIC MOBILE DEVICES AND CHILD RESTRAINT SYSTEMS

WHEREAS, the City of Lakewood ("Lakewood" or "City") is a home rule municipality organized and existing under Article XX, Section 6 of the Colorado Constitution;

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce criminal laws through a municipal court is clearly within the Constitutional grant of power to the City and is necessary and proper for the government and administration of local and municipal matters relating to the City;

WHEREAS, pursuant to such authority, the City has created a municipal court and adopted and enacted criminal codes whose enforcement is administered through the municipal court;

WHEREAS, the City prosecutes traffic offenses;

WHEREAS, the State of Colorado has enacted legislation amending the laws related to use of electronic mobile devices while driving and requirements for child restraint systems;

WHEREAS, the City desires to amend its Code to conform with recently passed State laws and those laws referenced therein;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Amending Section 10.60 of the Lakewood Municipal Code.
10.60.240 of the Lakewood Municipal Code shall be amended as follows:

~~10.60.240 - Misuse of a wireless telephone.~~ Misuse of a mobile electronic device.

- A. ~~A person under 18 years of age shall not use a wireless telephone.~~ No person shall use a mobile electronic device while operating a motor vehicle. This subsection does not apply to acts specified in subsection (B) of this section.
- B. ~~A person shall not use a wireless telephone for the purpose of engaging in text messaging or other similar forms of manual data entry or transmission while operating a motor vehicle.~~ Subsection (A) shall not apply to a person who is using a mobile electronic device:

1. To contact a public safety entity;
 2. During an emergency;
 3. When an employee or contractor of a utility is acting within the scope of the employee's or contractor's duties when responding to a utility emergency;
 4. When an employee or contractor of a city or county is acting within the scope of the employee's or contractor's duties as a code enforcement officer or animal protection officer; or
 5. During the performance of a first responder's official duties.
- C. ~~Subsection (A) or (B) shall not apply to a person who is using a wireless telephone: (1) to contact a public safety entity; or (2) during an emergency.~~ Except as provided in subsection (E) of this section, a person who violates this section commits a class 3 traffic offense, and the court shall assess a penalty as follows:
1. A fine of seventy-five dollars and a surcharge of ten dollars for the first offense within the immediately preceding twenty-four months;
 2. A fine of one hundred fifty dollars and a surcharge of ten dollars for the second offense within the immediately preceding twenty-four months;
 3. A fine of two hundred fifty dollars and a surcharge of ten dollars for the third or subsequent offense within the immediately preceding twenty-four months.
- D. ~~A person who operates a motor vehicle in violation of subsection (A) commits a Class 3 traffic offense. A person who operates a motor vehicle in violation of subsection (B) of this section commits a Class 2 traffic offense.~~ For purposes of this section:
1. "Emergency" is defined as a situation in which a person:
 - a. Has reason to fear for such person's life or safety or believes that a criminal act may be perpetrated against such person or another person requiring the use of a mobile electronic device while driving a motor vehicle; or
 - b. Reports a fire, a traffic accident in which one or more injuries are apparent, a serious road hazard, a medical or hazardous materials emergency, or a person who is driving in a reckless, careless, or unsafe manner.

2. "Hands-free accessory" means an accessory with a feature or function that enables a person to use a mobile electronic device without using either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.
3. "Mobile electronic device" means a handheld or portable electronic device capable of providing voice communication between two or more persons, amusement, or the wireless transfer of data, but does not include:
 - a. A radio, citizens band radio, or citizens band radio hybrid;
 - b. A commercial two-way radio communication device or its functional equivalent;
 - c. A subscription-based emergency communication device;
 - d. A prescribed medical device;
 - e. An amateur or ham radio device; or
 - f. Systems that are designed for and installed within the vehicle's electronics, such as an in-vehicle security, navigation, communications, or remote diagnostics system.
4. "Operating a motor vehicle" means driving a motor vehicle on a public highway or street. "Operating a motor vehicle" shall not mean maintaining the instruments of control of a motor vehicle while the motor vehicle is at rest in a shoulder lane or lawfully parked.
5. "Use" or "using" means:
 - a. Physically holding a mobile electronic device in the driver's hand or pinning a mobile electronic device to a driver's ear to conduct voice-based communication; except that a person may use a speaker or other listening device that is built into protective headgear or a device or portion of a device that only covers all or a portion of one ear and that is connected to a wireless, handheld telephone as provided in section 10.60.210;
 - b. Watching a video or movie on a mobile electronic device, other than watching data related to the navigation of the motor vehicle; or
 - c. Writing, sending, or reading text-based communication, including a text message, instant message, e-mail, or internet data, on a mobile electronic device; except that text-based communication does not include:
 - i. A voice-based communication that is automatically converted by the mobile electronic device to be sent as a message in written form; or
 - ii. Communication concerning the navigation of a motor vehicle.

E. For purposes of this section:

1. ~~"Emergency" is defined as a situation in which a person:~~
 - a. ~~Has reason to fear for such person's life or safety or believes that a criminal act may be perpetrated against such person or another person requiring the use of a wireless telephone while the car is moving; or~~
 - b. ~~Reports a fire, a traffic accident in which one or more injuries are apparent, a serious road hazard, a medical or hazardous materials emergency, or a person who is driving in a reckless, careless, or otherwise unsafe manner.~~
 2. ~~"Operating a motor vehicle" means driving a motor vehicle on a public highway, but "operating a motor vehicle" shall not mean maintain the instruments of control while the motor vehicle is at rest in a shoulder lane or lawfully parked.~~
 3. ~~"Use" means talking on or listening to a wireless telephone or engaging the wireless telephone for text messaging or other similar forms of manual data entry or transmission.~~
 4. ~~"Wireless telephone" means a telephone that operates without a physical, wireline connection to the provider's equipment. The term includes, without limitation, cellular and mobile telephones..An operator of a motor vehicle shall not be cited for a violation of subsection (A) of this section unless a law enforcement officer saw the operator use, as defined in paragraph (5) of subsection (D) of this section, a mobile electronic device in a manner that caused the operator to drive in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances, as prohibited by section 10.18.020.~~
- F.
1. ~~An operator of a motor vehicle shall not be cited for a violation of subsection (A) of this section unless the operator was under 18 years of age and a law enforcement officer saw the operator use, as defined in paragraph (3) of subsection (E) of this section, a wireless telephone.~~
 2. ~~An operator of a motor vehicle shall not be cited for a violation of subsection (B) of this section unless a law enforcement officer saw the operator use a wireless telephone for the purpose or engaging in text messaging or other forms of manual data entry or transmission, in a manner that caused the operator to drive in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances, as prohibited by Section 10.18.020. The provisions of this section do not authorize the seizure and forfeiture of a mobile electronic device, unless otherwise provided by law.~~
- G. ~~The provisions of this section shall not be construed to authorize the seizure and forfeiture of a wireless telephone, unless otherwise provided by law. do not apply to a person with a commercial driver's license who is operating a commercial vehicle.~~

- H. ~~This section does not restrict operation of an amateur radio station by a person who holds a valid amateur radio operator license issued by the federal communications commission.~~

10.60.210 of the Lakewood Municipal Code shall be amended as follows:

10.60.210 - Use of earphones while driving.

- A. No person shall operate a motor vehicle while wearing earphones.
- B. For purposes of subsection (A), "earphones" includes any headset, radio, tape player, or other similar device, which provides the listener with radio programs, music, or other recorded information through a device attached to the head and which covers all of or a portion of the ears. "Earphones" does not include speakers or other listening devices which are built into protective headgear or a device or portion of a device that only covers all or a portion of one ear and that is connected to a wireless, handheld telephone.
- C. Any person who violates this section commits a Class 4 traffic offense.

10.60.190 of the Lakewood Municipal Code shall be amended as follows:

10.60.190 - Child restraint system required.

- A. As used in this section, unless the context otherwise requires:

1. "Child care center" means a facility required to be licensed under the ~~"Child Care Licensing Act," Article 6 of Title 26, C.R.S~~ "Foster Care, Residential, Day Treatment, and Agency Licensing Act," part 9 of article 6 of title 26, or the "Child Care Licensing Act," part 3 of article 5 of title 26.5.
2. "Child restraint system" means a specially designed seating system that is designed to protect, hold, or restrain a child in a motor vehicle in such a way as to prevent or minimize injury to the child in the event of a motor vehicle accident that is either permanently affixed to a motor vehicle or is affixed to such vehicle by a safety belt or a universal attachment system, and that meets the federal motor vehicle safety standards set forth in Section 49 CFR 571.213, as amended.
3. "Motor vehicle" means a passenger car; a pickup truck; or a van, minivan, or sport utility vehicle with a gross vehicle weight rating of less than 10,000 pounds. "Motor vehicle" does not include motorcycles that are not autocycles low-power scooters, ~~motorscooters, motorbicycles, motorized bicycles,~~ and farm tractors and implements of husbandry deigned primarily or exclusively for use in agricultural operations.

4. "Safety belt" means a lap belt, a shoulder belt, or any other belt or combination of belts installed in a motor vehicle to restrain drivers and passengers, except any such belt which is physically a part of a child restraint system. "Safety belt" includes the anchorages, the buckles and all other equipment directly related to the operation of safety belts. Proper use of a safety belt means the shoulder belt, if present, crosses the shoulder and chest and the lap belt crosses the hips, touching the thighs.
5. "Seating position" means any motor vehicle interior space intended by the motor vehicle manufacturer to provide seating accommodations while the motor vehicle is in motion.

B.

1. Unless exempted pursuant to subsection (C) of this section, and except as otherwise provided in subparagraphs ~~(a) and (b)~~ (a), (b), and (c) of this paragraph, every child, who is under ~~eight~~ nine years of age and who is being transported in this city in a motor vehicle or in a vehicle operated by a child care center, shall be properly restrained in a child restraint system, according to the manufacturer's instructions.
 - a. If the child is ~~less than one year of age and weighs less than 20 pounds, the child shall be properly restrained in a rear-facing child restraint system in a rear seat of the vehicle.~~ under two years of age, the child shall be properly restrained in a rear seat of the vehicle, if a rear seat is available, and:
 - i. In a rear-facing child restraint system if the child weighs under forty pounds; or
 - ii. In a rear-facing or forward-facing child restraint system if the child weighs forty pounds or more.
 - b. If the child is ~~one year of age or older, but less than four years of age, and weighs less than 40 pounds, but at least 20 pounds, the child shall be properly restrained in a rear-facing or forward-facing child restraint system.~~ two years of age or older, but under four years of age, and weighs at least twenty pounds, the child shall be properly restrained:
 - i. In a rear-facing or forward-facing child restraint system; and
 - ii. In the rear seat of a vehicle, if a rear seat is available.
 - c. If the child is four years of age or older, but under nine years of age, and weighs at least forty pounds, the child shall be properly restrained:
 - i. In a child restraint system or booster seat; and
 - ii. In the rear seat of a vehicle, if a rear seat is available.

2. Unless excepted pursuant to subsection (C) of this section, every child, who is at least ~~eight~~ nine years of age but ~~less than 16~~ under 18 years of age who is being transported in this city in a motor vehicle or in a vehicle operated by a child care center, shall be properly restrained in a safety belt or child restraint system according to the manufacturer's instructions.
 3. If a parent is in the motor vehicle, it is the responsibility of the parent to ensure that his or her child or children are provided with and that they properly use a child restraint system or safety belt system. If a parent is not in the motor vehicle, it is the responsibility of the driver transporting a child or children, subject to the requirements of this section, to ensure that such children are provided with and that they properly use a child restraint system or safety belt system.
- C. Except as provided in Section 42-2-105.5(4), C.R.S., subsection (B) of this section does not apply to a child who:
1. Is ~~less than eight~~ under nine years of age and is being transported in a motor vehicle as a result of a medical or other life-threatening emergency and a child restraint system is not available;
 2. Is being transported in a commercial motor vehicle as defined in Section 42-2-402(4)(a), C.R.S., that is operated by a child care center;
 3. Is the driver of a motor vehicle and is subject to the safety belt requirements provided in Section 42-4-237, C.R.S.; or
 4. Is being transported in a motor vehicle that is operated by the business of transporting persons for compensation or hire by or on behalf of a common carrier or a contract carrier as those terms are defined in Section 40-10.1-101, C.R.S., or an operator of a luxury limousine service as defined in Section 40-10.1-301, C.R.S.
- D. No person shall use a safety belt or child restraint system, whichever is applicable under the provisions of this section, for children under 16 years of age in a motor vehicle unless it conforms to all applicable federal motor vehicle safety standards.
- E. Any person who violates any provision of this section commits a Class 4 traffic offense.
- F. The fine may be waived if the defendant presents the court with satisfactory evidence of the acquisition, purchase, or rental of a child restraint system by the time of the court appearance.

SECTION 2. This ordinance shall take effect thirty (30) days after final publication.

SECTION 3. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that within and foregoing Ordinance was introduced and read on first reading at a hybrid regular meeting of the Lakewood City Council on the 24th day of February, 2025; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 27th day of February, 2025; set for public hearing to be held on the 24th day of March, 2025; read, finally passed and adopted by the City Council on the 24th day of March, 2025; and signed by the Mayor on the 25th day of March, 2025.



Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney