



Lisette Camilo
Commissioner

To: Vision Zero/Fleet Leads

From: Keith T. Kerman

Keith Todd Kerman
Chief Fleet Management
Officer

Date: March 9, 2016

Re: Vision Zero Policy Recommendation: Barring use of
Hands-Free Devices while operating City vehicles

1 Centre Street
17th Floor
New York, NY 10007

212 386 0239 tel
nyc.gov/dcas

At the Vision Zero inter-agency meeting on July 10, 2015 agencies were encouraged to develop policy recommendations to further advance and strengthen our Vision Zero and safety efforts.

In conjunction with Volpe, DCAS Fleet has been doing research on the safety of hands-free devices while operating vehicles. Currently, City Fleet policy mirrors NY State Law which bans handheld cell phone use but allows hands-free devices.

Based on our review below, DCAS recommends NYC take a further step and ban use of hands-free and Bluetooth devices when actively driving and operating a City vehicle. This is a step that has already been taken by MTA and TLC for taxis.

At the most basic level, it is distraction while driving that reduces the capacity of vehicle operators to drive safely and respond to changing traffic conditions. Use of hands-free devices is a distraction and creates unneeded risk and danger. Extensive research supports this position including recommendations from NTSB and NHTSA. One NHTSA study suggests that operation of a vehicle while using a hands-free phone is the equivalent to operation of a vehicle while legally intoxicated.

Already hands-free sets are banned for City Taxi drivers by TLC and also by the MTA. In October 2015, the national fleet management association, NAFA adopted a policy prohibiting the use of handheld and hands-free devices by its employees, contractors, and volunteers. *We recommend this policy be adopted for the City fleet, maintaining only the emergency related exemptions as outlined below.* This policy change will continue our leadership in safe driving practices and serve as an opportunity to further educate all drivers on the dangers of distraction.

There are five exceptions in NY State law to portable device laws. The first, in bold, is being proposed as a change in this policy recommendation.

1. **When the driver uses a hands-free mobile telephone, which allows the user to communicate without the use of either hand.**
2. Using a handheld electronic device that is affixed to a vehicle surface. [ie CB or Emergency RADIOS]
3. Using a GPS device that is attached to the vehicle.
4. When the purpose of the phone call is to communicate an emergency to a police or fire department, a hospital or physician's office, or an ambulance corps.
5. When operating an authorized emergency vehicle in the performance of official duties.

This change would be implemented through revised text for the Fleet Management Manual and City Vehicle Driver handbook. The current fleet manual text is below:

Do not operate a vehicle while talking on a non-hands free phone, texting, or emailing. Don't do anything that will interfere with the safe operation of the vehicle, and always pay attention to the road.

Proposed revised text is as follows:

“Do not operate a vehicle while talking on a phone, including hand-held, hands-free, or phones affixed to a vehicle. Don't do anything that will interfere with the safe operation of the vehicle, and this specifically includes texting or emailing while you are driving. Always pay attention to the road. If you must make a phone call, find a safe place to pull over. Consistent with NY State Law governing hand-held use, the only exceptions are for emergency 911 calls or when operating an authorized emergency vehicle in the performance of official duties.”

Background

1) Current Laws & Regulations. As of July 21, 2015 two leading policies govern the use of handheld devices for City fleet drivers. The first is New York State law, codified by Vehicle Traffic Law (VTL) **Article 33, §1225-c. Use of mobile telephones; and §1225-d. Use of Portable Electronic Devices.**

The New York State DMV summarizes these two laws as follows on its official website:

“Under New York State law you cannot use a hand-held mobile telephone or portable electronic device while you drive. Illegal activity includes holding a portable electronic device and

- *talking on a handheld mobile telephone*
- *composing, sending, reading, accessing, browsing, transmitting, saving, or retrieving electronic data such as e-mail, text messages, or webpages*
- *viewing, taking, or transmitting images*
- *playing games*

If you use a portable electronic device while you drive (except to call 911 or to contact medical, fire or police personnel about an emergency), you can receive a traffic ticket and be subject to a fine and a surcharge.

Conviction of a cell phone use, portable electronic device use or a texting violation will also result in points being added to your DMV driving record. If you receive 11 points in an 18 month period, your driver license may be suspended.”

The second applicable policy is codified by the **City of New York, City Vehicle Driver Handbook, February 2014 edition**. This re-iterates New York VTL for all City vehicle drivers, including allowing for the use of hands-free technology:

Do not operate a vehicle while using any portable electronic device. *City Authorized Drivers are reminded that pursuant to Section 1225-D of the New York Vehicle and Traffic Law, effective November 1, 2009, no person shall operate a motor vehicle while using any portable electronic devices while the vehicle is in motion. Such devices include but are not limited to cell phones, laptop computers, pagers, personal digital assistants and two-way messaging devices. However, the law permits the use of hands-free technology (e.g., Bluetooth) while operating a moving motor vehicle and City Authorized Drivers may do so while using such technology.*

In compliance with the law and to help ensure public safety, drivers are reminded that under no circumstances should you communicate by way of text message (e.g., Blackberry) or other such prohibited transmissions while operating a moving City Government Vehicle, or a moving personal vehicle authorized for official City business.

In both policies, drivers using hands-free technology such as wired earbud or Bluetooth headset while operating a vehicle would be considered in compliance, as are drivers engaged in calls related to emergency activity. These policies are largely in line with the vast majority of public and private fleet policies across the United States in allowing hands-free technology.

2) Studies and Recommendations on Mobile Telephones and Electronic Devices. A large amount of evidence has been compiled since the 1990s indicating a higher risk of collision for drivers who engage in mobile phone use on the road. Most states have subsequently banned the use of handheld devices, including in New York for all drivers as stated above. An exception has been built into the policies for law enforcement and emergency response.

Multiple bodies studying vehicle safety, injury, and fatality have also published new recommendations affecting hands-free technology behind the wheel. In summary, these show that:

- *hands-free sets are nearly or equally as distracting as handhelds for the visual and manual tasks that all drivers must conduct*
- hands-free phones are not any safer than handheld phones
- all phone conversations cause changes in cognitive function
- hands-free sets still require actions to administer a call as well as participate in it
- hands-free sets cause a false sense of security among drivers.

Below are some examples.

- a) The National Traffic Safety Board (NTSB), a US federal government agency, has recommended since 2011 for state governments to ban all portable devices except GPS units, without distinguishing between handheld and hands-free sets.
- b) The National Safety Council has published information stating that about 26% of all car crashes involve cell phone use, including hands-free.
- c) The Virginia Tech Transportation Institute released a driving study in 2013 that indicates a higher level of risk in operating vehicles with handheld as well as hands-free sets.
- d) A study in the British Medical Journal (BMJ) conducted in Australia concluded that cellular phone calls, irrespective of handheld or hands-free, greatly increase the risk of collisions and hospital trips. Included verbatim in the conclusion: “Using a hands-free phone is not any safer.”

- e) The National Highway Traffic Safety Administration (NHTSA) has conducted numerous and ongoing studies indicating increased risk to drivers of hands-free sets as well as handheld devices. One NHTSA study concludes that the likelihood of collision is equal to that of someone with a .08 blood alcohol level (BAC), at which point drivers are considered to be legally intoxicated.
- f) Research by a Canadian brain study using MRI technology demonstrates that the brain function required for safe driving can be compromised by phone conversations during driving, especially during left turns.
- g) The USDOT has declared that 30 separate research studies have all concluded that hands-free sets aren't safer than handheld.

3) Bans on All Mobile Telephones and Electronic Devices. As a result of studies and recommendations, numerous states, municipalities, and taxi regulators have implemented bans on all mobile telephones and electronic devices by certain classes of drivers, including hands-free sets.

In 2010, the New York City Taxi & Limousine Commission (TLC) announced regulations banning the use of all forms of distractive electronic devices by its licensees in the taxicab, livery, black car, luxury limousine, commuter van and paratransit industries. This included a provision prohibiting the presence of Bluetooth devices in the proximity of drivers' ears. Also included is a "three strikes" rule that revokes TLC licenses for three violations within a 15-month period. The rule was implemented for both safety and customer service reasons.

Thirty-eight (38) states and Washington, D.C. now have bans on all cell phone use by novice drivers (generally under 18 years old). Twenty (20) states and Washington, D.C. ban all cell phone use by school bus drivers. As a note, New York State has not implemented either novice driver or bus driver restrictions on hands-free technology.

Starting November 1, 2015, the City of Tulsa, Oklahoma will ban City employee use of all electronic devices, including hands-free, while on the job. Tulsa is one of the first cities to create such a ban, and is also calling on local businesses to do the same.

4) Challenges to Implementing a Ban on All Mobile Telephones and Electronic Devices.

DCAS Fleet recently received a number of 311 calls from the public asserting unsafe vehicle operation due to use of handheld cell phones. As a practical matter, enforcement of a regulation for hands-free sets will be as or more difficult because these devices are often less visible. Earbuds, if only on the driver's right ear, may be more difficult to detect from outside of the vehicle than a handheld phone being held near the driver's ear.

This ban will also reduce the convenience that some employees feel hands-free devices allow for engaging in work or personal issues while driving. Some employees or agencies may have procured or installed hands-free devices specifically to use in City vehicles. We believe the safety

risks involved far outweigh any inconvenience as the law already acknowledges for texting and handheld use.

5) Recommendation for New York City Authorized Drivers. DCAS recommends updating the City of New York, Vehicle Driver Handbook to include a ban on all use of mobile phones and portable electronic devices, including hands-free sets for City authorized drivers. The exemption for emergency calls or response should remain. There is also an opportunity to codify the use of GPS devices as an exception, provided that the unit is a dedicated hands-free GPS device affixed to the windshield, and not a handheld mobile phone.

This recommendation will further establish a safe driving culture among New York City employees and will provide NYC an opportunity to advance discussion of distraction while driving in general.

cc DCAS Legal/Law Department

Source Links

State by State Device Laws

http://www.ghsa.org/html/stateinfo/laws/cellphone_laws.html

All Phone Conversations while Driving Equivalent Risk to 0.08 Blood Alcohol Level

<http://www.psych.utah.edu/AppliedCognitionLab/DrivingAssessment2003.pdf>

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4001667/>

nytimes.com/2009/07/19/technology/19distracted.html?pagewanted=all&referrer=

NYC TLC bans hands-free devices

http://www.nyc.gov/html/tlc/downloads/pdf/press_release_01_28_10.pdf

City of Tulsa Announces Distracted Driving Policy

<http://www.newson6.com/story/29048932/city-of-tulsa-bans-employee-use-of-electronics-while-driving-including-hands-free>

Virginia Tech Transportation Institute Driving Study

<http://www.vtti.vt.edu/featured/?p=193>

NHTSA Distracted Driving Resource Hub

<http://www.distraction.gov/stats-research-laws/research.html>

Streetsblog Editorial / NTSB Recommends Ban of Hands-Free Devices

<http://usa.streetsblog.org/2011/12/15/ntsb-states-should-ban-hands-free-calls-while-driving/>

National Safety Council Hands-Free Research

<http://www.nsc.org/learn/NSC-Initiatives/Pages/distracted-driving-hands-free-is-not-risk-free-infographic.aspx>

British Medical Journal Study on Collisions with Handheld and Hands-Free Sets

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1188107/>

USDOT article citing 30 Different Research Studies on Hands-Free Sets

<https://www.transportation.gov/fastlane/nsc-spreads-the-word-calls-kill>

Canadian Brain Study on Effect of Distracted Driving Using MRI Technology

<http://journal.frontiersin.org/article/10.3389/fnhum.2013.00053/full#h3>

NHTSA/US DOT Volpe Study on Distracted Driving

<http://www.nhtsa.gov/DOT/NHTSA/NVS/Crash%20Avoidance/Technical%20Publications/2013/811547A.pdf>

NAFA Adopts No-Tolerance Policy prohibiting use of any electronic device while driving by employees, contractors, and volunteers including hands-free sets.

<http://www.nafa.org/resource-center/safety-council/>