



Cellphones and Driving

THE TOPIC

JULY 2011

Increased reliance on cellphones has led to a rise in the number of people who use the devices while driving. There are two dangers associated with driving and cellphone use, including text messaging and using the Internet, jeopardizing the safety of vehicle occupants and pedestrians. First, drivers must take their eyes off the road and hands off the wheel to manipulate the devices when dialing, texting and surfing the Web. Second, people can become so absorbed in their conversations and other uses that their ability to concentrate on the act of driving is severely impaired. Since the first law was passed in New York in 2001 banning hand-held cellphone use while driving, there has been debate as to the exact nature and degree of hazard. The latest research shows that using a cellphone when driving is just one of many types of distracted driving that may lead to crashes and near crashes.

RECENT DEVELOPMENTS

- **Statistics:** In September 2010 the Transportation Department released a report showing that the number of fatalities linked to distracted drivers declined 6 percent in 2009, compared with the previous year. According to the report, 5,474 people were killed in 4,898 crashes caused by distraction in 2009, compared with 5,838 killed in 5,307 crashes in 2008. However, because the total number of traffic crashes declined slightly in the U.S. last year, distracted driving was a factor in 16 percent of crashes and fatalities in both 2008 and 2009. The number of people injured in crashes linked to distractions declined 4 percent, or 448,000, and accounted for 20 percent of all injuries in highway accidents. The number of deaths caused by distracted driving in 2009 increased 22 percent, compared with 2005, although the total number of fatalities declined by 22 percent during the same period. In 2005 only 10 percent of crashes were caused by distraction.
- **New Technology:** A number of cellphone companies are considering developing technology that will prevent people from receiving calls and texting while driving. The technology is intended to limit dangerous distractions by temporarily interrupting service so that people do not answer their phones when they are behind the wheel. One carrier has already introduced a service that automatically disables rings and alerts and sends calls to voice mail when phones are in a moving car. Some safety advocates said that it is unclear whether consumers would avail themselves of the technologies or whether the technologies would be effective.
- **Research:** Studies about cellphone use while driving have focused on several different aspects of the problem. Some have looked at its prevalence as the leading cause of driver distraction. Others have looked at the different risks associated with hand-held and hands-free devices. Still others have focused on the seriousness of injuries in crashes involving cellphone users and the demographics of drivers who use cellphones. Of increasing concern is the practice of texting and, with the growth of popularity of so-called smartphones, high-tech cellphones with computer-like features, surfing the Internet while driving.

The following is a summary of some recent research on the issue.

- In an informal online survey conducted by State Farm in November 2010, approximately one in five drivers acknowledged surfing the Internet while behind the wheel. In the survey, more than 19 percent of respondents admitted to having gone online via a cellphone at least once a week while driving, 74 percent reported making or receiving calls at least once a week while driving and 35 percent reported sending or receiving text messages as frequently. State Farm said that it plans to conduct a more thorough study in 2011. The insurer said that the 19 percent estimate of Web use might be low because most respondents to the survey were in their 30s, while the largest users of cellphones tend to be younger.
- **Public Attitude Monitor 2010:** Texting While Driving, a survey released in November 2010 by the Insurance Research Council, found that 18 percent of drivers in the U.S. reported texting while driving in the last 30 days. This figure includes 31 percent of drivers age 16 to 24, 41 percent of drivers age 25 to 39 and only 5 percent of drivers 55 and older.
- A study by the Highway Loss Data Institute (HLDI), released in September 2010, found that texting bans may not reduce crash rates. The study looked at collision claims patterns in four states—California, Louisiana, Minnesota and Washington—before and after text bans went into effect. Collisions went up slightly in all the states, except Washington, where the change was statistically insignificant. Adrian Lund, president of HLDI and the Insurance Institute for Highway Safety, said that the findings “call into question the way policymakers are trying to address the problem of distracted driving crashes. They’re

focusing on a single manifestation of distracted driving and banning it. This ignores the endless sources of distraction and relies on banning one source or another to solve the whole problem.”

- A survey conducted for State Farm Insurance by Harris Interactive released in September 2010 found that a large percentage of teens between the ages of 14 and 17 strongly believe that drunk driving was more likely to cause a fatal accident than texting. More teens also thought that drunk driving was more likely than texting to cause a crash and result in ticketing and arrest. The survey seems to indicate that despite public awareness campaigns about the dangers of distracted driving many teens still do not understand the risk.
- Also in September 2010 the AAA Foundation for Traffic Safety released its third-annual Traffic Safety Culture Index, which reported that 52 percent of drivers said they feel less safe on the roads now than they did five years ago. The leading reason cited (88 percent) was distracted driving by motorists who drive while texting and emailing. The study also showed that while 62 percent of respondents feel that talking on a cellphone is a serious safety threat they do not always behave accordingly. Almost 70 percent of drivers surveyed admitted to talking on their phones, and 24 percent said they read or sent text messages or emails while driving in the previous month.
- A survey released in August 2010 showed that nearly 90 percent of teenage drivers acknowledged such distracted driving behavior as texting or talking on a cellphone although most respondents were aware that the behavior increased the risk of an accident. The online survey, conducted by Seventeen magazine and AAA, the auto club, gathered responses from 1,999 drivers between the ages of 16 and 19. Eighty-four percent said they were aware that distracted driving increased the risk of a crash, yet 86 percent acknowledged such behaviors as texting, talking on cellphones, eating, adjusting radios, applying makeup or driving with four or more passengers.
- A study released in January 2010 by the Highway Loss Data Institute (HLDI), an affiliate of the Insurance Institute for Highway Safety (IIHS), shows that the number of traffic crashes have not declined in California, Connecticut, New York and Washington, DC, the three states and jurisdiction that prohibit drivers from using handheld cellphones. The study was based on an analysis of insurance claims for crash damage. Officials said more research is needed to clarify the findings, which run counter to the result of other IIHS research.
- Also in January 2010 the National Safety Council (NSC) released a report that estimates that at least 1.6 million crashes (28 percent of all crashes) are caused each year by drivers talking on cellphones (1.4 million crashes) and texting (200,000 crashes). The estimate is based on data of driver cellphone use from the National Highway Traffic Safety Administration and from peer-reviewed research that quantifies the risks using cellphones and texting while driving.
- **State and Federal Initiatives:** In September 2010 the Governors Highway Safety Association decided not to endorse a proposal calling for a total ban on cellphone use by drivers. In response to a California proposal calling for the group to ask state legislatures to consider a complete ban, the association questioned whether the prohibition could be enforced.
- In March 2010 the Treasury Department proposed that an interim plan prohibiting texting by drivers of interstate buses and trucks over 10,000 pounds announced by Transportation Secretary LaHood in January be made permanent. On October 1, 2009 President Obama signed an executive order prohibiting federal employees from texting while driving. The order applies to employees using cars or cellphones provided by the government or using their own cars or phones for government business. The order applies to some 4.5 million federal employees, including the military.
- The number of state legislatures debating measures that address the problem of cellphone use while driving and other driver distractions continues to rise.
- As of June 2011 ten states—California, Connecticut, Delaware, Maryland, Nevada, New Jersey, New York, Oregon, Utah and Washington State—plus the District of Columbia, had laws on the books banning the use of hand-held cellphones while driving. Almost all of the laws have “primary enforcement” provisions, meaning a motorist may be ticketed for using a hand-held cellphone while driving without any other traffic offense taking place, according to the Insurance Institute for Highway Safety.
- Also as of June 2011, 34 states and the District of Columbia banned the practice of texting with a cellphone while driving. Most of these laws have primary enforcement provisions. The Utah law, passed in May 2009, is the toughest in the nation. Offenders convicted of causing an accident that injures or kills someone while texting behind the wheel face up to 15 years in prison. The law does not consider a crash caused by a multitasking driver as an accident but rather as an inherently reckless act, like drunk driving.
- **Businesses:** Businesses are increasingly prohibiting workers from using cellphones while driving to conduct business. Exxon Mobil and Shell are examples of large companies that ban employees’ use of any type of cellphone while driving during work hours. The California Association of Employers recommends that employers develop a cellphone policy that requires employees to pull off the road before conducting business by cellphone.
- **Court Decisions:** In December 2007 International Paper Co. agreed to pay a \$5.2 million settlement to a Georgia woman who was rear-ended by one of its employees. The employee was driving a company car and talking on a company cellphone at the time of the accident. The settlement was reached even though the employee had violated her company’s policy of requiring the use of hands-free headsets while driving. The suit is among the most recent of several cases where an employer has been held liable for an accident caused by a driver using a cellphone. (See background section on Employer and Manufacturer Liability.)

BACKGROUND

Cellphones play an integral role in our society. However, the convenience they offer must be judged against the hazards they pose. Their use contributes to the problem of inattentive driving, which also includes talking, eating, putting on make up and attending to children.

As many as 40 countries may restrict or prohibit the use of cellphones while driving. Countries reported to have laws related to cellphone use include Australia, Austria, Belgium, Brazil, Botswana, Chile, the Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, India, Ireland, Israel, Italy, Japan, Jordan, Kenya, Malaysia, the Netherlands, Norway, the Philippines, Poland, Portugal, Romania, Russia, Singapore, the Slovak Republic, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Turkey, Turkmenistan, the United Kingdom and Zimbabwe. Most countries prohibit the use of hand-held phones while driving.

Supporters of restrictions on driving while using a cellphone say that the distractions associated with cellphone use while driving are far greater than other distractions. Conversations using a cellphone demand greater continuous concentration, which diverts the driver's eyes from the road and his mind from driving. Opponents of cellphone restrictions say drivers should be educated about the effects of all driver distractions. They also say that existing laws that regulate driving should be more strictly enforced.

Earlier Studies: Over the past decade numerous studies have been conducted on driver inattention, in particular focusing on the use of cellphones. Below is a summary of some these studies.

Motorists who use cellphones while driving are four times as likely to get into crashes serious enough to injure themselves, according to a study of drivers in Perth, Australia, conducted by the Insurance Institute for Highway Safety. The results, published in July 2005, suggest that banning hand-held phone use will not necessarily improve safety if drivers simply switch to hand-free phones. The study found that injury crash risk didn't vary with type of phone.

Many studies have shown that using hand-held cellphones while driving can constitute a hazardous distraction. However, the theory that hands-free sets are safer has been challenged by the findings of several studies. A study from researchers at the University of Utah, published in the summer 2006 issue of *Human Factors*, the quarterly journal of the Human Factors and Ergonomics Society, concludes that talking on a cellphone while driving is as dangerous as driving drunk, even if the phone is a hands-free model. An earlier study by researchers at the university found that motorists who talked on hands-free cellphones were 18 percent slower in braking and took 17 percent longer to regain the speed they lost when they braked.

A September 2004 study from the National Highway Traffic Safety Administration (NHTSA) found that drivers using hand-free cellphones had to redial calls 40 percent of the time, compared with 18 percent for drivers using hand-held sets, suggesting that hands-free sets may provide drivers with a false sense of ease.

A study released in April 2006 found that almost 80 percent of crashes and 65 percent of near-crashes involved some form of driver inattention within three seconds of the event. The study, *The 100-Car Naturalistic Driving Study*, conducted by the Virginia Tech Transportation Institute and the NHTSA, broke new ground. (Earlier research found that driver inattention was responsible for 25 to 30 percent of crashes.) The newer study found that the most common distraction is the use of cellphones, followed by drowsiness. However, cellphone use is far less likely to be the cause of a crash or near-miss than other distractions, according to the study. For example, while reaching for a moving object such as a falling cup increased the risk of a crash or near-crash by nine times, talking or listening on a hand-held cellphone only increased the risk by 1.3 times.

Employer and Manufacturer Liability: Although only a handful of high-profile cases have gone to court, employers are still concerned that they might be held liable for accidents caused by their employees while driving and conducting work-related conversations on cellphones. Under the doctrine of vicarious responsibility, employers may be held legally accountable for the negligent acts of employees committed in the course of employment. Employers may also be found negligent if they fail to put in place a policy for the safe use of cellphones. In response, many companies have established cellphone usage policies. Some allow employees to conduct business over the phone as long as they pull over to the side of the road or into a parking lot. Others have completely banned the use of all wireless devices.

In an article published in the June 2003 edition of the North Dakota Law Review, attorney Jordan Michael proposed a theory of cellphone manufacturer liability for auto accidents if they fail to warn users of the dangers of driving and talking on the phone at the same time. The theory holds that maker liability would be similar to the liability of employers who encourage or demand cellphone use on the road. Holding manufacturers liable would cover all persons who drive and use cellphones for personal calls. Michael notes that some car rental agencies have already placed warnings on embedded cellphones in their cars.

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KENT CITY PLANNING COMMISSION
BUSINESS MEETING
SEPTEMBER 20, 2011

COUNCIL CHAMBERS
KENT CITY HALL
325 S. DEPEYSTER STREET
7:00 P.M.

A G E N D A

- I. CALL TO ORDER
- II. ROLL CALL
- III. READING OF PREAMBLE
- IV. ADMINISTRATION OF OATH
- V. MEETING MINUTES July 19, 2011 Joint Meeting (no action required)
August 16, 2011 Regular Meeting
- VI. CORRESPONDENCE
- VII. OLD BUSINESS
- VIII. NEW BUSINESS
 - A. PC11-018 LESLIE COGGINS DAY CARE FACILITY
 830 N. MANTUA STREET
 Conditional Zoning Certificate & Site Plan Review

The applicant is requesting a Conditional Zoning Certificate
and Site Plan Review and Approval in order to operate a day
care facility. The subject property is zoned C-R: Commercial
High Density Residential District.

 - 1) Public Hearing
 - 2) Planning Commission Discussion/Action
 - B. PC11-019 HOOKAH CAFFE
 1417 S. WATER STREET
 Conditional Zoning Certificate & Site Plan Review

The applicant is requesting a Conditional Zoning Certificate and Site Plan Review and Approval in order to operate a coffee shop. The subject property is zoned R-C: High Density-Multifamily Commercial District.

- 1) Public Hearing
- 2) Planning Commission Discussion/Action

IX. OTHER BUSINESS

X. ADJOURNMENT



CITY OF KENT, OHIO

DEPARTMENT OF COMMUNITY DEVELOPMENT

DATE: September 13, 2011
TO: Kent City Planning Commission
FROM: Jennifer Barone, PE, Development Engineer
RE: Staff Report for the September 20, 2011 Planning Commission Meeting

The following items appear on the agenda for the September 20, 2011 Planning Commission meeting:

NEW BUSINESS:

CASE NO: PC11-018

APPLICANT: Leslie Coggins Day Care Facility

SITE LOCATION: 830 North Mantua Street

STATUS OF APPLICANT: The applicant will be renting space from Dale Thomas the owner of the plaza.

REQUESTED ACTION: Conditional Zoning Certificate and Site Plan Review & Approval for a day care facility

ZONING: C-R: Commercial - High Density Residential

TRAFFIC: The parcel is accessed from North Mantua Street.

SURROUNDING LAND USES: The property is surrounded by residential uses to the west and commercial uses on the east, north and south sides.

APPLICABLE CODE SECTIONS: Chapter 1107, 1113, 1145 and 1171 of the Kent Codified Ordinance

ANALYSIS:

PROJECT DESCRIPTION:

The applicant is proposing to open a daycare facility at 830 North Mantua Street (next to Circle K). The facility will accommodate up to 39 children and 6 employees. Renovation of the interior of the building will be done to create classrooms, restrooms, etc., and an exit door from the infant room will be installed. The applicant is also proposing to have a fenced in play area in the rear. The hours of operation are from 6 am to midnight. This space has been used as a day care facility in the past and the applicant currently operates a similar facility in Bedford.

A daycare is conditionally permitted in the C-R zoning district and is subject to some other requirements outlined in Sections 1171.01(1), (2), (3), (5), (9), (11), (17) and (54) of the Kent Codified Ordinances as listed below. These conditions have been met except (1) which will require a variance from the Board of Zoning Appeals.

- (1) All structures and activity areas shall be located at least 100 feet from all property lines.
- (2) Loudspeakers which cause a hazard or annoyance shall not be permitted.
- (3) All points of vehicular entrance or exit shall be located no closer than 200 feet from the intersection of two major thoroughfares, or no closer than 100 feet from the intersection of a major thoroughfare and a local or collector thoroughfare.
- (5) No lighting shall constitute a nuisance or in any way impair safe movement of traffic on any street or highway; no lighting shall shine directly on adjacent properties.
- (9) Such uses shall not require uneconomical extensions of utility services at the expense of the community.
- (11) Such uses shall be properly landscaped to be harmonious with surrounding residential uses.
- (17) All permitted installations shall be maintained in a neat orderly condition so as to prevent injury to any single property, any individual, or to the community in general; a bond may be required to insure that this provision will be met.
- (54) (a) That an outdoor recreation or play area be provided in order to accommodate the number of children being cared for at the facility. This area shall be fenced so as to provide a secure play area.
(b) That a noise and visual buffer be installed on the portion of the site abutting a roadway and/or residential use.
(c) That the facility comply with all applicable codes, as well as the specific requirements for child day care facilities as set forth in Chapter 5104 of the Ohio Revised Code.

TRAFFIC/PARKING:

Ingress and egress will be from North Mantua Street. The project is required to provide 13 spaces and 15 parking spaces are provided in the existing parking lot. The spaces are located in front of the proposed day care and along the southern side. There is also one space in the rear of the building for the day care manager. The alley located behind the building is private and will be blocked to through traffic.

UTILITIES:

Existing water and sanitary mains will service the utility needs.

STORMWATER:

There is no change to the impervious area of the site, hence, no storm water management is required.

SIGNAGE:

A sign will be placed on the front of the building and a sign will be installed on the existing pole sign.

LIGHTING/LANDSCAPING/DUMPSTER:

There is existing lighting on site. The applicant is proposing additional exterior lighting (floodlights). A security system will also be installed where parents/guardians will have to enter a code to get into the building.

No additional landscaping is proposed other than to mulch the playground area.

There is an existing dumpster in the rear of the property.

ARCHITECTURAL ADVISORY BOARD:

The Architectural Review Board IS not required to review this project.

VARIANCES:

The applicant will need to obtain a variance from the Board of Zoning Appeals for the 100 foot setback from all activity areas to the property lines.

RECOMMENDATION:

Staff is recommending approval with the conditions listed below.

The Planning Commission may approve, approve with conditions, or disapprove the application. Should Planning Commission wish to approve this project, the following language may be used:

I move that in Case PC11-018 Planning Commission approve the Site Plan and Conditional Zoning to convert the existing space at 830 N. Mantua Street into a day care facility subject to the following conditions.

1. Obtain a food service license from the City of Kent Health Dept.
2. Obtain the appropriate state licensure for a day care facility
3. Technical Plan Review and Approval
4. Obtain setback variance from Board of Zoning Appeals

List of Enclosures for this Project:

1. Applicant information received July 27, 2011.
2. Aerial Topo, Orthophoto and Zoning Map.

CASE NO: **PC11-019**

APPLICANT: Hookah Caffé

SITE LOCATION: 1417 South Water Street

STATUS OF APPLICANT: The applicant will be renting space from Tammie Shirey the owner of the plaza.

REQUESTED ACTION: Conditional Zoning Certificate and Site Plan Review & Approval to open a coffee/hookah shop.

ZONING: R-C: High Density Multifamily-Commercial District

TRAFFIC: The parcel is accessed from South Water Street and from Rellim Drive.

SURROUNDING LAND USES: The property is surrounded by commercial uses on the north, west and south and residential uses on the east side.

APPLICABLE CODE SECTIONS: Chapters 1107, 1113, 1137 and 1171 of the Kent Codified Ordinances.

ANALYSIS:

PROJECT DESCRIPTION:

The applicant would like to open a coffee shop serving coffee, tea, smoothies, beverages and apparatus/tobacco to smoke hookah at 1417 South Water Street (previously Curves).

Establishments engaged in retail trade are conditionally permitted in the R-C zoning district and are subject to some other requirements outlined in Sections 1171.01(4), (5), (8), (10), (11), and (46) of the Kent Codified Ordinances as listed below. These conditions have either been met or are "grandfathered" into the existing plaza.

- (4) There shall be no more than one advertisement oriented to each abutting road identifying the activity.
- (5) No lighting shall constitute a nuisance or in any way impair safe movement of traffic on any street or highway; no lighting shall shine directly on adjacent properties.
- (8) Such development shall be located adjacent to nonresidential uses such as churches, parks, industrial or commercial districts.
- (10) Site locations shall be preferred that offer natural or man-made barriers that would lessen the effect of intrusion into a residential area.

- (11) Such uses shall be properly landscaped to be harmonious with surrounding residential uses.
- (46) The architectural design should be developed with consideration given to this district and commercial use shall be so designed as to minimize possible disruptive effect on the character of properties in adjacent residential zones. Parking shall be provided for each commercial use according to the provisions of Chapter 1167. Parking for commercial uses shall be in addition to that required for the multifamily dwellings. Parking areas should be designed to separate parking oriented to commercial enterprises from parking oriented to the multifamily portion of the structure. Signs shall conform to the provisions of Chapter 1165, except as otherwise provided in this Code.

TRAFFIC/PARKING:

Ingress and egress is from South Water Street or Rellim Drive. The project is required to provide 7 spaces. The existing parking lot has more than adequate spaces (45) to accommodate this use.

UTILITIES:

Existing water and sanitary mains will service the utility needs.

STORMWATER:

There is no change to the impervious area of the site, hence, no storm water management is required.

SIGNAGE:

A sign will be placed on the front of the building replacing the previous signage. Resurfacing of the existing pole sign may also be done.

LIGHTING/LANDSCAPING/DUMPSTER:

This is an existing site with existing lighting, landscaping and dumpster(s).

ARCHITECTURAL ADVISORY BOARD:

The Architectural Review Board is not required to review this project.

VARIANCES:

No variances are required.

OHIO SMOKING LAW:

The current law in Ohio requires that any retail tobacco store be located in a freestanding structure occupied solely by the business and that smoke from the business may not migrate into an enclosed area where smoking is prohibited.

RECOMMENDATION:

Staff cannot recommend approval as submitted because of the Ohio Smoking Law.

The Planning Commission may approve, approve with conditions, or disapprove the application. Should Planning Commission wish to make a motion for this project the following language may be used:

I move that in Case PC11-019, the Planning Commission not approve the Conditional Zoning Certificate and Site Plan to open a coffee/hookah shop at 1417 S. Water Street.

List of Enclosures for this Project:

1. Applicant Cover Letter dated August 15, 2011.
2. Plans received August 16, 2011
3. Aerial Topo, Orthophoto and Zoning Map.

cc: Gary Locke, Community Development Director
Jim Bowling, City Engineer
Eric Fink, Assistant Law Director
Heather Phile, Development Planner
Applicants
PC Case Files