

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE CREATING A NEW SECTION 16-266 TO PROHIBIT THE PASSING OF ITEMS TO AND FROM THE OCCUPANTS OF MOTOR VEHICLES ON PUBLIC STREETS OR HIGHWAYS OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

Section 1. Chapter 16, motor vehicles and traffic, is amended by creating a new Section 16-266, the passing of items to or from the occupant of a motor vehicle on a roadway, as follows:

Sec. 16-266. The passing of items to or from the occupant of a motor vehicle on a roadway is prohibited.

1. *Intent of section.* This section is intended to provide for the free flow of motor vehicle traffic on public streets and highways in the city. The city council finds that persons who distribute any item to, receive any item from or exchange any item with the occupant of a motor vehicle upon a roadway presents a threat to the free and safe flow of motor vehicle traffic. By this section, the city council intends to promote the health, safety and welfare of the citizens traveling by vehicle or on foot in the city.
2. *Definitions.* For purposes of this section, the following definitions apply:
 - a. **Pass/passing** means distributing any item to, receiving any item from, or exchanging any item with the occupant of a motor vehicle that is located in a lane of travel on the roadway.
 - b. **Roadway** means all public streets and highways within the city. This definition excludes private roads and private property. This definition also excludes areas in which parking is permitted in the city.
 - c. **Item** means any physical object.
3. *Prohibition on roadways.* It shall be unlawful to violate any of the prohibitions set forth below in the city.
 - a. No person shall knowingly distribute any item to, receive any item from, or exchange any item with the occupant of any motor vehicle when the vehicle is located in a lane of travel on the roadway.
 - b. This section shall not apply to the distribution, receipt or exchange of any item with the occupant of a motor vehicle on private property or in a permitted parking area.
 - c. This section shall not apply to any law enforcement officer acting within the scope of his/her official duty.
 - d. This section shall not apply to the distribution, receipt or exchange of any item with the occupant of a motor vehicle located in the roadway in order to assist the occupant after a motor vehicle accident, with a disabled motor vehicle or where the occupant is experiencing a medical emergency.

4. *Exemption.* So long as it does not impede the normal movement of traffic on the street or highway, this section shall not apply to the distribution of newspapers on the non-traveled portion of any street or highway pursuant to N.C.G.S. § 20-175(d).
5. *Enforcement.* Sworn officers of the Fayetteville Police Department are authorized to issue civil citations for violation of this section.
6. *Penalty.* Violation of this section shall be a civil violation, and carry a civil penalty.
 - a. Amount of penalty:
 - i. For a first violation – written warning
 1. It shall be prima facie evidence that a person has already received a written warning under this section if the records management system of the Fayetteville Police Department indicates that such a warning has been given. No officer or other person shall be required to testify or otherwise be present to establish the fact that a prior warning was given in any civil proceeding to enforce this section.
 - ii. For a second violation - \$25.00 civil penalty
 - iii. For a third or subsequent violation - \$100.00 civil penalty
7. *Severability.* If any provision of this section is declared invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall be severable and shall continue in full force and effect.

Section 2. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Fayetteville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the ____ day of _____, 2018.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk