

City Ordinance No. 348

Title 10

VEHICLES AND TRAFFIC

CHAPTER 10.32

PROHIBITING USE OF ELECTRONIC COMMUNICATION
DEVICES WHILE OPERATING A MOTOR VEHICLE

Sections:

10.32.050 USE OF ELECTRONIC COMMUNICATIONS DEVICE WHILE DRIVING.

10.32.060 PENALTY

10.32.050 USE OF ELECTRONIC COMMUNICATIONS DEVICE WHILE DRIVING.

- (a) No person shall use or have in their immediate physical possession a hand held electronic communications device while operating a motor vehicle, motorcycle, quadricycle, or a bicycle on a way of the state within the city limits.
- (b) "Hand held electronic communications device" includes wireless or cellular phones, PDAs, Blackberries, smart phones, laptop and notebook computers utilizing VOIP (voice over internet protocol) technology, wireless and cellular phones utilizing push-to-talk technology, GPS systems, navigational systems, and any other mobile communication device that uses short-wave analog or digital radio transmissions between the device and a transmitter to permit wireless communications to and from the user of the device.
- (c) "Immediate physical possession" means touching the hand held electronic communications device, or physically holding the device in one's hand or up to one's ear. Simply having the electronic communications device on one's person or in a motor vehicle does not constitute immediate physical possession.

(d) Exceptions.

- (1) This provision shall not apply to any person reporting a health, fire, safety, or police emergency.
- (2) This provision shall not apply to governmental fire agencies, ambulance services, law enforcement agencies, emergency responders, or any other "Authorized Emergency Vehicle" as defined in MCA 61-8-102(2)(a).
- (3) This provision shall not apply to passengers in a motor vehicle, or persons using a hand held electronic communications device while maintaining a motor vehicle in a stationary position, not in gear, while in a parking lane or space out of moving traffic lanes.
- (4) This provision shall not apply to persons using a "hands free device." A "hands free device" is an external device that connects to a wireless telephone, wireless communications device or electronic communications device that allows use of the device without touching the telephone or wireless or electronic communications device with one's hands, and includes voice-activated technologies that can be utilized without touching the device. Use of a hands free device is permitted while operating a motor vehicle provided the driver does not touch the wireless telephone or wireless or electronic communications device with one's hands while operating a motor vehicle.
- (5) This provision shall not apply to drivers using two-way radios while in the performance and scope of their work-related duties.
- (6) This provision shall not apply to drivers holding a valid amateur radio operator license issued by the Federal Communications Commission while using a two-way radio.

10.32.060 PENALTY.

Persons found to have committed a violation of this division shall be subject to civil penalties as follows:

- (a) For a first violation, a civil penalty of not more than three hundred dollars (\$300.00) shall be imposed.
- (b) For each repeat violation, a civil penalty not to exceed five hundred dollars (\$500.00) shall be imposed. Each day that a violation occurs or is permitted to exist constitutes a separate and distinct infraction.

(c) Seeking a civil penalty as authorized in this article does not preclude the city from seeking alternative relief from the court in the same action.

(d) Statutory surcharges and required city surcharges must be imposed, as provided in MCA 3-1-317(1)(a), 3-1-318(1), and 46-18-236(6), on municipal infractions that are criminal offenses under state law, and the amounts must be distributed as provided in those sections.

(e) All penalties and forfeitures collected by the municipal court for a municipal infraction shall be remitted to the city in the same manner as fines and forfeitures collected for criminal offenses.

(f) A defendant against whom judgment is entered shall pay court costs and fees as in small claims court under Title 25, Chapter 35 of the Montana Code Annotated in addition to the penalties imposed by the court.

(g) In addition to the imposition of civil penalties authorized by law against a defendant, the court may impose alternative relief in the same action. Alternative relief may consist of any of the following:

- (1) Direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court;
- (2) Order the defendant to abate or cease the violation;
- (3) Authorize the city to abate or correct the violation;
- (4) Order the city's costs for abatement or correction of the violation be entered as a judgment against the defendant or assessed against the property where the violation occurred or both.

(h) The municipal court may assess or enter judgment for costs of abatement or correction in any amount not to exceed the jurisdictional amount for a money judgment in a civil action under MCA 3-11-103. If the city seeks abatement or correction costs in excess of this amount, the matter shall be referred to district court for hearing and entry of an appropriate order. The procedure for hearing in the district court shall be the same procedure as that for a small claims appealed under MCA 25-35-803.

(i) A defendant who willfully violates the terms of an order imposed by the municipal court is guilty of contempt.