

ORDINANCE NO. 662

(Renumbered administratively by City Clerk - was Ordinance No. 660)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POLSON, MONTANA, PROHIBITING THE USE OF HAND HELD ELECTRONIC COMMUNICATIONS DEVICES WHILE OPERATING A MOTOR VEHICLE WITHIN CITY LIMITS AND PROVIDING A CIVIL PENALTY.

WHEREAS, the regulations regarding motor vehicles and traffic are found at Title 10 of the Polson Municipal Code; and,

WHEREAS, the Council finds that the use of mobile telephones and other electronic communications devices as further defined herein while operating a motor vehicle is likely to constitute a driving distraction contrary to the interests of public safety;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Polson:

Section 1: Title 10, VEHICLES AND TRAFFIC, of the Polson Municipal Code is amended to include a new Chapter 10.06, entitled USE OF HAND HELD ELECTRONIC COMMUNICATIONS DEVICES WHILE OPERATING A MOTOR VEHICLE, the text of which shall be as follows:

“Section 10.06.01. **DEFINITIONS:** As used in this chapter, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning is intended:

HAND HELD ELECTRONIC COMMUNICATIONS DEVICE: Includes wireless or cellular phones, personal digital assistants (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 communications 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.

HANDS FREE DEVICE: 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.

Section 10.06.02. ELECTRONIC COMMUNICATIONS DEVICES:
Electronic communications device usage while driving prohibited.

- 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 public roadway as defined in Section 61-1-101(23), MCA within the city limits.
- B. "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.
- C. 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 Section 61-8-102(2)(a), MCA.
 - 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." 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.

D. Violation; Penalty: A person who violates this section shall be deemed to have committed a municipal infraction, a civil offense, and for a first violation, a civil penalty of not more than \$100.00 shall be imposed, and for each repeat violation, a civil penalty of not more than \$300.00 shall be imposed.”

Section 2: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 3: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Polson, Montana.

First Reading: February 22, 2012 (Failed on First Reading)

Second Reading: None

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF POLSON, MONTANA, THIS _____ DAY OF _____, 2012.

PAT DEVRIES, MAYOR

ATTEST:

Cindy Dooley, City Clerk