

RECORD OF ORDINANCES

Ordinance No. 2023-34

Passed MAY 3, 2023

SPONSOR: SAFETY COMMITTEE

AN ORDINANCE AMENDING SECTIONS 72.090 AND 70.99 OF THE CODIFIED ORDINANCES OF THE VILLAGE OF MOGADORE TO PROHIBIT OPERATION OF A MOTOR VEHICLE WHILE USING OR HOLDING AN ELECTRONIC WIRELESS COMMUNICATION DEVICE, AND TO PROVIDE SPECIFIC PENALTIES FOR DISTRACTED DRIVING, AND DECLARING AN EMERGENCY.

WHEREAS, the Ohio General Assembly recently amended Section 4511.204 of the Ohio Revised Code, which prohibits the operation of a motor vehicle on any street, highway, or property open to the public for vehicular traffic while using, holding, or physically supporting with any part of the person's body an electronic wireless communication device; and

WHEREAS, the Ohio General Assembly further amended Section 4511.991 of the Ohio Revised Code to provide specific penalties for distracted driving; and

WHEREAS, this Council previously adopted Ordinance No. 2013-36, which created Section 72.090 of the Village's Codified Ordinances related to driving while texting; and

WHEREAS, this Council finds it appropriate and necessary to amend Section 72.090 of the Village's Codified Ordinances to mirror the new provisions of Section 4511.204 of the Ohio Revised Code governing the operation of a motor vehicle on a street within the Village while using, holding, or physically supporting with any part of the person's body an electronic communication device; and

WHEREAS, this Council further finds it appropriate and necessary to amend section 70.99 of the Village's Codified Ordinances to mirror the new provisions of Section 4511.991 of the Ohio Revised Code concerning penalties for distracted driving; and

WHEREAS, this Council finds and determines, after reviewing all pertinent information, that it is necessary and in the best interest of the Village of Mogadore to amend Section 72.090 and Section 70.99 of the Village's Codified Ordinances.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Village of Mogadore, Counties of Summit and Portage, State of Ohio, that:

SECTION 1: Section 72.090 of the Village of Mogadore Codified Ordinances is hereby amended as set forth in Exhibit A, attached hereto and made a part hereof.

SECTION 2: Section 70.99 of the Village of Mogadore Codified Ordinances is hereby

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amended as set forth in Exhibit B, attached hereto and made a part hereof.

SECTION 3: Any prior Resolutions or Ordinances adopted by this Council, or any provisions thereof, that are in conflict with Section 1 of this Ordinance are hereby rescinded and repealed in their entirety.

SECTION 4: This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in open meetings of this Council and any deliberations of this Council and any of its committees that resulted in this formal action were in meetings open to the public, in compliance with all legal requirements.

SECTION 5: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the residents of the Village of Mogadore and for the purpose of immediately ensuring the safe operation of motor vehicles and to prevent distracted driving within the Village, and, provided this Ordinance receives the affirmative vote of at least five (5) members elected or appointed to this Council, it shall take effect and be in force upon its passage by Council and approval by the Mayor, otherwise it shall take effect and be in force at the earliest period allowed by law.

Michael Raddish 5-3-23
President of Council Date

Pravin G. Ti 5-3-23
Mayor Date

Attest:

Sotkr
Clerk-Treasurer

EXHIBIT A

SECTION 72.090 PROHIBITING OPERATION OF A MOTOR VEHICLE WHILE USING OR HOLDING AN ELECTRONIC WIRELESS COMMUNICATION DEVICE; DRIVING WHILE TEXTING.

(A) No person shall operate a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic while using, holding, or physically supporting with any part of the person's body an electronic wireless communications device.

(B) Division (A) of this Section does not apply to any of the following:

(1) A person using an electronic wireless communications device to make contact, for emergency purposes, with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;

(2) A person driving a public safety vehicle while using an electronic wireless communications device in the course of the person's duties;

(3) A person using an electronic wireless communications device when the person's motor vehicle is in a stationary position and is outside a lane of travel, at a traffic control signal that is currently directing traffic to stop, or parked on a road or highway due to an emergency or road closure;

(4) A person using and holding an electronic wireless communications device directly near the person's ear for the purpose of making, receiving, or conducting a telephone call, provided that the person does not manually enter letters, numbers, or symbols into the device;

(5) A person receiving wireless messages on an electronic wireless communications device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle, provided that the person does not hold or support the device with any part of the person's body;

(6) A person using the speaker phone function of the electronic wireless communications device, provided that the person does not hold or support the device with any part of the person's body;

(7) A person using an electronic wireless communications device for navigation purposes, provided that the person does not do either of the following during the use:

(a) Manually enter letters, numbers, or symbols into the device;

(b) Hold or support the device with any part of the person's body ;

(8) A person using a feature or function of the electronic wireless communications device with a single touch or single swipe, provided that the person does not do either of the following during the use:

(a) Manually enter letters, numbers, or symbols into the device;

(b) Hold or support the device with any part of the person's body ;

(9) A person operating a commercial truck while using a mobile data terminal that transmits and

receives data;

(10) A person operating a utility service vehicle or a vehicle for or on behalf of a utility, if the person is acting in response to an emergency, power outage, or circumstance that affects the health or safety of individuals;

(11) A person using an electronic wireless communications device in conjunction with a voice-operated or hands-free feature or function of the vehicle or of the device without the use of either hand except to activate, deactivate, or initiate the feature or function with a single touch or swipe, provided the person does not hold or support the device with any part of the person's body;

(12) A person using technology that physically or electronically integrates the device into the motor vehicle, provided that the person does not do either of the following during the use:

(a) Manually enter letters, numbers, or symbols into the device;

(b) Hold or support the device with any part of the person's body.

(13) A person storing an electronic wireless communications device in a holster, harness, or article of clothing on the person's body.

(C) (1) Whoever violates division (A) of this Section is guilty of operating a motor vehicle while using an electronic wireless communication device, a minor misdemeanor.

(a) Except as provided in divisions (C)(1)(b), (c), (d), and (2) of this Section, the court shall impose upon the offender a fine of not more than one hundred fifty dollars.

(b) If, within two years of the violation, the offender has been convicted of or pleaded guilty to one prior violation of this Section or a substantially equivalent municipal ordinance, the court shall impose upon the offender a fine of not more than two hundred fifty dollars.

(c) If, within two years of the violation, the offender has been convicted of or pleaded guilty to two or more prior violations of this Section or a substantially equivalent municipal ordinance, the court shall impose upon the offender a fine of not more than five hundred dollars. The court also may impose a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for ninety days.

(d) Notwithstanding divisions (C)(1)(a) to (c) of this Section, if the offender was operating the motor vehicle at the time of the violation in a construction zone where a sign was posted in accordance with Section 4511.98 of the Revised Code, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two times the amount imposed for the violation under division (C)(1)(a), (b), or (c) of this Section, as applicable.

(2) In lieu of payment of the fine of one hundred fifty dollars under division (C)(1)(a) of this Section and the assessment of points under division (C)(4) of this Section, the offender instead may elect to attend the distracted driving safety course, as described in Section 70.99 of this Traffic Code and Section 4511.991 of the Revised Code. If the offender attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall not be required to pay the fine and shall not have the points assessed

against that offender's driver's license if the offender submits the written evidence to the court.

(3) The court may impose any other penalty authorized under Sections 2929.21 to 2929.28 of the Revised Code. However, the court shall not impose a fine or a suspension not otherwise specified in division (C)(1) of this Section. The court also shall not impose a jail term or community residential sanction.

(4) Except as provided in division (C)(2) of this Section, points shall be assessed for a violation of division (A) of this Section in accordance with Section 4510.036 of the Revised Code.

(5) The offense established under this Section is a strict liability offense and Section 2901.20 of the Revised Code does not apply. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.

(D) (1) A law enforcement officer does not have probable cause and shall not stop the operator of a motor vehicle for purposes of enforcing this Section unless the officer visually observes the operator using, holding, or physically supporting with any part of the person's body the electronic wireless communications device.

(2) A law enforcement officer who stops the operator of a motor vehicle, trackless trolley, or streetcar for a violation of division (A) of this Section shall inform the operator that the operator may decline a search of the operator's electronic wireless communications device. The officer shall not do any of the following:

(a) Access the device without a warrant, unless the operator voluntarily and unequivocally gives consent for the officer to access the device;

(b) Confiscate the device while awaiting the issuance of a warrant to access the device;

(c) Obtain consent from the operator to access the device through coercion or any other improper means. Any consent by the operator to access the device shall be voluntary and unequivocal before the officer may access the device without a warrant.

(E) As used in this Section:

(1) "Electronic wireless communications device" includes any of the following:

(a) A wireless telephone;

(b) A text-messaging device;

(c) A personal digital assistant;

(d) A computer, including a laptop computer and a computer tablet;

(e) Any device capable of displaying a video, movie, broadcast television image, or visual image;

(f) Any other substantially similar wireless device that is designed or used to communicate text, initiate or receive communication, or exchange information or data.

An "electronic wireless communications device" does not include a two-way radio transmitter or receiver used by a person who is licensed by the federal communications commission to participate in the amateur radio service.

(2) "Voice-operated or hands-free feature or function" means a feature or function that allows a person to use an electronic wireless communications device without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

(3) "Utility" means an entity specified in division (A), (C), (D), (E), or (G) of Section 4905.03 of the Revised Code.

(4) "Utility service vehicle" means a vehicle owned or operated by a utility.

EXHIBIT B

SECTION 70.99 PENALTY.

(A) Whoever violates any provision of this Traffic Code, inclusive of Chapters 70 through 77 of these Codified Ordinances, for which no penalty otherwise is provided in the Section violated is guilty of one of the following:

(1) Except as otherwise provided in division (A)(2) or (A)(3) of this Section, a minor misdemeanor;

(2) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, a misdemeanor of the fourth degree;

(3) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two or more predicate motor vehicle or traffic offenses, a misdemeanor of the third degree.

(B) Violations committed while distracted.

(1) As used in this Section and each Section referenced in division (2) of this Section, all of the following apply:

(a) "Distracted" means doing either of the following while operating a vehicle:

(1) Using an electronic wireless communications device, as defined in Section 72.090 of these Codified Ordinances, in violation of that Section.

(2) Engaging in any activity that is not necessary to the operation of a vehicle and impairs, or reasonably would be expected to impair, the ability of the operator to drive the vehicle safely.

(b) "Distracted" does not include operating a motor vehicle while wearing an earphone or earplug over or in both ears at the same time. A person who so wears earphones or earplugs may be charged with a violation of Section 72.085 of this Traffic Code or Section 4511.84 of the Revised Code.

(c) "Distracted" does not include conducting any activity while operating a utility service vehicle or a vehicle for or on behalf of a utility, provided that the driver of the vehicle is acting in response to an emergency, power outage, or a circumstance affecting the health or safety of individuals.

As used in division (B)(1)(c) of this Section:

(a) "Utility" means an entity specified in division (A), (C), (D), (E), or (G) of Section 4905.03 of the Revised Code.

(b) "Utility service vehicle" means a vehicle owned or operated by a utility.

(2) If an offender violates Section any provision of this Traffic Code, inclusive of Chapters 70 through 77 of these Codified Ordinances, or Sections 4511.03, 4511.051, 4511.12, 4511.121, 4511.132, 4511.21, 4511.211, 4511.213, 4511.22, 4511.23, 4511.25, 4511.26, 4511.27, 4511.28,

4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.44, 4511.441, 4511.451, 4511.46, 4511.47, 4511.54, 4511.55, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.64, 4511.71, 4511.711, 4511.712, 4511.713, 4511.72, or 4511.73 of the Revised Code while distracted and the distracting activity is a contributing factor to the commission of the violation, the offender is subject to the applicable penalty for the violation and, notwithstanding Section 2929.28 of the Revised Code, is subject to an additional fine of not more than one hundred dollars as follows:

(a) Subject to Traffic Rule 13, if a law enforcement officer issues an offender a ticket, citation, or summons for a violation of any of the aforementioned Sections of this Traffic Code or the Revised Code that indicates that the offender was distracted while committing the violation and that the distracting activity was a contributing factor to the commission of the violation, the offender may enter a written plea of guilty and waive the offender's right to contest the ticket, citation, or summons in a trial provided that the offender pays the total amount of the fine established for the violation and pays the additional fine of one hundred dollars.

In lieu of payment of the additional fine of one hundred dollars, the offender instead may elect to attend a distracted driving safety course, the duration and contents of which shall be established by the Ohio Director of Public Safety. If the offender attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall be required to pay the total amount of the fine established for the violation, but shall not be required to pay the additional fine of one hundred dollars, so long as the offender submits to the court both the offender's payment in full and such written evidence.

(b) If the offender appears in person to contest the ticket, citation, or summons in a trial and the offender pleads guilty to or is convicted of the violation, the court, in addition to all other penalties provided by law, may impose the applicable penalty for the violation and may impose the additional fine of not more than one hundred dollars.

If the court imposes upon the offender the applicable penalty for the violation and an additional fine of not more than one hundred dollars, the court shall inform the offender that, in lieu of payment of the additional fine of not more than one hundred dollars, the offender instead may elect to attend the distracted driving safety course described in division (B)(2)(a) of this Section. If the offender elects the course option and attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall be required to pay the total amount of the fine established for the violation, but shall not be required to pay the additional fine of not more than one hundred dollars, so long as the offender submits to the court the offender's payment and such written evidence.

(3) If a law enforcement officer issues an offender a ticket, citation, or summons for a violation of any of the Sections of this Traffic Code or the Revised Code listed in division (B) of this Section that indicates that the offender was distracted while committing the violation and that the distracting activity was a contributing factor to the commission of the violation, the officer shall do both of the following:

(a) Report the issuance of the ticket, citation, or summons to the officer's law enforcement agency;

(b) Ensure that such report indicates the offender's race.