

BILL NO. _____

ORDINANCE NO. _____

**AN ORDINANCE AMENDING SECTION 340.280 OF THE CITY CODE
RELATING TO HANDS-FREE DRIVING**

WHEREAS, with the passage of Section 304.822, RSMo., the Missouri General Assembly preempted the field of regulating the use of electronic communication devices by the operators of commercial and noncommercial motor vehicles and thereby superseded any local laws, ordinances, orders, rules, or regulations enacted by a municipality to regulate the use of electronic communication devices by the operator of a commercial or noncommercial motor vehicle that are not in strict conformity with the cited statute; and

WHEREAS, the City Council wishes to repeal its prior ordinance relating to the use of hand-held electronic communication devices by vehicle operators and enact regulations that strictly follow the state law;

NOW, THEREFORE, be it ordained by the City Council of the City of Excelsior Springs, Missouri, as follows:

SECTION 1. That Section 340.280 of Chapter 340 of the Code of Ordinances of the City of Excelsior Springs, Missouri, is hereby repealed and a new Section 340.280 is hereby enacted in lieu thereof to read as follows:

Section 340.280. Use of Electronic Communication Devices While Driving.

A. As used in this section, the following terms shall mean:

(1) "**Commercial motor vehicle**", a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property:

(a) If the vehicle has a gross combination weight rating or gross combination weight of twenty-six thousand one or more pounds, whichever is greater, inclusive of a towed unit which has a gross vehicle weight rating or gross vehicle weight of more than ten thousand pounds, whichever is greater;

(b) If the vehicle has a gross vehicle weight rating or gross vehicle weight of twenty-six thousand one or more pounds, whichever is greater;

(c) If the vehicle is designed to transport sixteen or more passengers, including the driver; or

(d) If the vehicle is transporting hazardous materials and is required to be placarded under the Hazardous Materials Transportation Act (46 U.S.C. Section 1801, et seq.);

(2) "**Electronic communication device**", a portable device that is used to initiate, receive, store, or view communication, information, images, or data electronically;

(a) Such term shall include but not be limited to: cellular telephones; portable telephones; text-messaging devices; personal digital assistants; pagers; broadband personal communication devices; electronic devices with mobile data access; computers, including but not limited to tablets, laptops, notebook computers, and electronic or video game systems; devices capable of transmitting, retrieving, or displaying a video, movie, broadcast television image, or visual image; and any substantially similar device that is used to initiate or receive communication or store and review information, videos, images, or data;

(b) Such term shall not include: radios; citizens band radios; commercial two-way radio communication devices or their functional equivalent; subscription-based emergency communication devices; prescribed medical devices; amateur or ham radio devices; or global positioning system receivers, security, navigation, communication, or remote diagnostics systems permanently affixed to the vehicle;

(3) "**Highway**", any public thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways, or alleys in any municipality;

(4) "**Noncommercial motor vehicle**", a motor vehicle or combination of motor vehicles not defined by the term commercial motor vehicle in this section;

(5) "**Operating**", the actual physical control of a vehicle;

(6) "**Operator**", a person who is in actual physical control;

(7) "**School bus**", a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier as defined by the Secretary of Transportation of the United States;

(8) "**Voice-operated or hands-free feature or function**", a feature or function, whether internally installed or externally attached or connected to an electronic communication device, that allows a person to use an electronic communication device without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

B. Except as otherwise provided in this section, while operating a noncommercial motor vehicle or commercial motor vehicle on any highway or property open to the public for vehicular traffic in this city, no operator shall:

(1) Physically hold or support, with any part of his or her body, an electronic communication device;

(2) Write, send, or read any text-based communication, including but not limited to a text message, instant message, email, or social media interaction on an electronic

communication device. This subdivision shall not apply to operators of a noncommercial motor vehicle using a voice- operated or hands-free feature or function that converts the message to be sent as a message in a written form, provided that the operator does not divert his or her attention from lawful operation of the vehicle;

(3) Make any communication on an electronic communication device, including a phone call, voice message, or one-way voice communication; provided however, that this prohibition shall not apply to use of a voice- operated or hands-free feature or function;

(4) Engage in any form of electronic data retrieval or electronic data communication on an electronic communication device;

(5) Manually enter letters, numbers, or symbols into any website, search engine, or application on an electronic communication device;

(6) Watch a video or movie on an electronic communication device, other than watching data related to the navigation of the vehicle; or

(7) Record, post, send, or broadcast video, including a video conference, on an electronic communication device, provided that this prohibition shall not apply to electronic devices used for the sole purpose of continually monitoring operator behavior by recording or broadcasting video within or outside the vehicle.

C. The operator of a school bus shall not use or operate an electronic communication device while the school bus is in motion unless the device is being used in a similar manner as a two-way radio to allow live communication between the operator and school officials or public safety officials. The operator of a school bus shall not use or operate an electronic communication device or a two-way radio while loading or unloading passengers.

D. This section shall not apply to:

(1) Law enforcement officers or operators of emergency vehicles, as such term is defined in Section 304.022, RSMo., who are both using the electronic communication device and operating the emergency vehicle in the performance of their official duties;

(2) Operators using an electronic communication device for the sole purpose of reporting an emergency situation and continuing communication with emergency personnel during the emergency situation;

(3) Operators of noncommercial motor vehicles using an electronic communication device solely through a voice-operated or hands-free feature or function;

- (4) Operators of commercial motor vehicles using a voice-operated or hands-free feature or function, as long as the operator remains seated and is restrained by a seat belt as required by law;
- (5) Operators of commercial motor vehicles reading a message displayed on a permanently installed communication device designed for a commercial motor vehicle with a screen that does not exceed ten inches tall by ten inches wide in size;
- (6) Operators using electronic communication devices while the vehicle is lawfully stopped or parked;
- (7) Commercial motor vehicles that are responding to a request for roadside assistance, when such response is conducted by a motor club as defined in Section 385.450, RSMo. or a towing company as defined in Section 304.001, RSMo.;
- (8) The use of an electronic communication device to relay information between a transit or for-hire vehicle operator and that operator's dispatcher, provided the device is mounted or affixed to the vehicle;
- (9) The use of an electronic communication device to access or view a map for navigational purposes;
- (10) The use of an electronic communication device to access or listen to an audio broadcast or digital audio recording; or
- (11) The use of an electronic communication device to relay information through a transportation network company's digital network to a transportation network company driver, provided the device is mounted or affixed to the vehicle.

E. Penalties for violations of this section shall be as provided in this subsection.

- (1) For a conviction under this section where there is no prior conviction under this section within the preceding twenty-four months, the court shall impose a fine of up to one hundred fifty dollars.
- (2) For a conviction under this section where there is one prior conviction under this section within the preceding twenty-four months, the court shall impose a fine of up to two hundred fifty dollars.
- (3) For a conviction under this section where there are two or more prior convictions under this section in the preceding twenty-four months, the court shall impose a fine of up to five hundred dollars.
- (4) For a conviction under this section where the violation occurred in a work zone when workers are present, or for a conviction under this section where the violation occurred in an area designated as a school zone and marked in any way that would alert

a reasonably prudent operator to the presence of the school zone, the court shall impose a fine of up to five hundred dollars.

(5) A violation of this section while operating a commercial motor vehicle shall be deemed a serious traffic violation for purposes of commercial driver's license disqualification.

F. A law enforcement officer who stops a noncommercial motor vehicle for a violation of this section shall inform the operator of the operator's right to decline a search of their electronic communication device. No warrant shall be issued to confiscate or access an electronic communication device based on a violation of this section unless the violation results in serious bodily injury or death.

G. A violation of this section shall not be used to establish probable cause for any other violation.

H. The provisions of this section shall be subject to the reporting requirements set forth in Section 590.650, RSMo.

I. Prior to January 1, 2025, a law enforcement officer who stops a noncommercial motor vehicle for a violation of this section shall not issue a citation for a violation of this section and shall only issue a warning.

J. No person shall be stopped, inspected, or detained solely for a violation of this section.

SECTION 2. That this ordinance shall be in full force and effect from and after the date of its passage and approval.

INTRODUCED IN WRITING, read by title two times, passed and approved this ____day of _____, 2024.

Mark D. Spohn, Mayor

ATTEST:

Shannon Stroud, City Clerk

REVIEWED BY:

Molly McGovern, City Manager