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**AN ORDINANCE TO ADD SECTION 340.340 ELECTRONIC COMMUNICATION DEVICE, USE OF WHILE DRIVING PROHIBITED, WHEN TO THE CODE OF ORDINANCES OF THE CITY OF HERCULANEUM, MISSOURI TO RESTRICT DRIVERS FROM USING A HANDHELD ELECTRONIC COMMUNICATION DEVICE WHILE DRIVING AND ENTERING AN EFFECTIVE DATE THEREFORE**

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**WHEREAS**, distracted driving is a leading cause of motor vehicle crashes in Missouri where, between 2012 and 2021, nearly 200,000 distracted driving-related crashes occurred in the State of Missouri, resulting in at least 801 fatalities; and

**WHEREAS**, a recent report from the National Safety Council has determined that cell phone use is responsible for far more distracted driving crashes than are being reported; and

**WHEREAS**, Missouri Governor Mike Parsons signed the Siddens Bening Hands-Free Law, effective August 28, 2023, which prohibits a number of uses of electronic communication devices while operating motor vehicles, as detailed in the act, as well as provides certain exceptions pursuant to Section 340.822, RSMo.; and

**WHEREAS**, the Board of Aldermen of the City of Herculaneum, Missouri, deems it to be in the best interest of the City of Herculaneum, Missouri to add a new ordinance in a fashion not inconsistent with the recently enacted Section 340.822, RSMo., referenced above.

**NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED BY THE BOARD OF ALDERMEN OF THE CITY OF HERCULANEUM, MISSOURI, AS FOLLOWS:**

SECTION 1. Section 340.340 entitled "Electronic communication device, use of while driving prohibited, when" is hereby added to read as follows:

**Section 340.340      Electronic communication device, use of while driving prohibited, when.**

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

a. "Commercial motor vehicle", the same meaning as is ascribed to such term in Section 302.700, RSMo.;

b. "Electronic communication device", a portable device that is used to initiate, receive, store, or view communication, information, images, or data electronically.

(1) 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.

(2) 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;

c. "Highway", the same meaning as is ascribed to such term in Section 302.010, RSMo.;

d. "Noncommercial motor vehicle", the same meaning as is ascribed to such term in Section 302.700, RSMo.;

e. "Operating", the actual physical control of a vehicle;

f. "Operator", a person who is in actual physical control;

g. "School bus", the same meaning as is ascribed to such term in Section 302.700, RSMo.;

h. "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.

2. 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 state, no operator shall:

a. Physically hold or support, with any part of his or her body, an electronic communication device;

b. 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;

c. 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;

d. Engage in any form of electronic data retrieval or electronic data communication on an electronic communication device;



e. Manually enter letters, numbers, or symbols into any website, search engine, or application on an electronic communication device;

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

g. 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.

3. 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.

4. This section shall not apply to:

a. 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;

b. 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;

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

d. 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;

e. 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;

f. Operators using electronic communication devices while the vehicle is lawfully stopped or parked;

g. 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.;

h. 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;

i. The use of an electronic communication device to access or view a map for navigational purposes;

j. The use of an electronic communication device to access or listen to an audio broadcast or digital audio recording; or

k. 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.

5. a. Except as otherwise provided in this subsection, violation of this section shall be an infraction. Penalties for violations of this section shall be as provided in this subsection. Prior convictions shall be pleaded and proven in the same manner as required under Section 558.021, RSMo.

b. For a conviction under this section where there is no prior conviction under this section within the preceding twenty-four (24) months, the court shall impose a fine of up to One Hundred Fifty Dollars (\$150).

c. For a conviction under this section where there is one (1) prior conviction under this section within the preceding twenty-four (24) months, the court shall impose a fine of up to Two Hundred Fifty Dollars (\$250).

d. For a conviction under this section where there are two (2) or more prior convictions under this section in the preceding twenty-four (24) months, the court shall impose a fine of up to Five Hundred Dollars (\$500).

e. For a conviction under this section where the violation occurred in a work zone when workers are present, as such terms are defined in Section 304.580, RSMo., 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 (\$500).

f. The following shall be referred to the County prosecutor: a violation of this section that is the proximate cause of:

(1) damage to property in excess of Five Thousand Dollars; or

(2) serious physical injury to another person; or

(3) the death of another person.

A violation of this Section while operating a commercial motor vehicle shall be deemed a serious traffic violation, as such term is defined in Section 302.700, RSMo., for purposes of commercial driver's license disqualification under Section 302.755, RSMo.

6. 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.



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

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

9. The State preempts the field of regulating the use of electronic communication devices by the operators of commercial and noncommercial motor vehicles. The provisions of Section 340.822, RSMo., shall supersede this Section.

10. 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.

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

SECTION 2. If any of the provisions of this ordinance or the application thereof to anyone or any circumstances is held in valid, the remainder of this ordinance and the application of such provisions to others or other circumstances shall not be affected thereby.

SECTION 3. This ordinance shall be codified.

SECTION 4. This ordinance shall be in full force and effect from and after the date of its passage.

READ (IN FULL TWO TIMES) (BY TITLE TWO TIMES, COPIES OF THE PROPOSED ORDINANCE HAVING BEEN MADE AVAILABLE FOR PUBLIC INSPECTION AT THE PLACE OF THE MEETING PRIOR TO THE TIME THE BILL WAS UNDER CONSIDERATION BY THE BOARD OF ALDERMAN) AND PASSED BY THE BOARD OF ALDERMAN OF THE CITY OF HERCULANEUM, MISSOURI, THIS 18<sup>th</sup> DAY OF September, 2023.

  
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RYAN A. WRIGHT, Mayor  
City of Herculaneum

ATTEST:

  
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LAURIE FERRETTI, City Clerk