

ORDINANCE NO.

17-07

Series of 2017

**TITLE: AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 1, OF THE HUDSON MUNICIPAL CODE TO ALLOW FOR MUNICIPAL ENFORCEMENT OF MISUSE OF WIRELESS PHONES WHILE DRIVING AND DRIVING UNDER RESTRAINT**

**WHEREAS**, the Town of Hudson has previously adopted the 2003 Model Traffic Code;

**WHEREAS**, the Colorado General Assembly passed Senate Bill 17-027 on June 1, 2017, amending state law to modify the offense for misuse of wireless telephones in motor vehicles;

**WHEREAS**, the Colorado General Assembly passed House Bill 17-1162 on May 18, 2017, effective August 9, 2017, allowing for municipalities to penalize in municipal court the driving of a motor vehicle while the license of the operator is under restraint as the result of an outstanding judgment; and

**WHEREAS**, the Town Council of the Town of Hudson desires to amend the Town of Hudson Municipal Code to allow for uniformity with the state law and municipal enforcement of the rules regarding misuse of wireless telephones in motor vehicles and to allow for municipal enforcement of driving under restraint.

BE IT ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF HUDSON, COLORADO, THAT:

Section 1. Section 8.9.5 of the Hudson Municipal Code is hereby amended by the addition of a new subsection (e) to read as follows:

**Sec. 8-9.5 Deletions, modifications and additions to Model Traffic Code.**

...

(e) There is hereby added to the Model Traffic Code a new Section 239 to read as follows:

**239. Misuse of a Wireless Telephone – Definitions - Penalty - Preemption.**

(1) As used in this Section, unless the context otherwise requires:

(a) "Emergency" means a situation in which a person:

(i) Has reason to fear for such person's life or safety or believes that a criminal act may be perpetrated against such person or another person, requiring the use of a wireless telephone while the car is moving; or

(ii) Reports a fire, a traffic accident in which one or more injuries are apparent, a serious road hazard, a medical or hazardous materials emergency, or a person who is driving in a reckless, careless, or otherwise unsafe manner.

(b) "Operating a motor vehicle" means driving a motor vehicle on a public highway, but "operating a motor vehicle" shall not mean maintaining the instruments of control while the motor vehicle is at rest in a shoulder lane or lawfully parked.

(c) "Use" means talking on or listening to a wireless telephone or engaging the wireless telephone for text messaging or other similar forms of manual data entry or transmission.

(d) "Wireless telephone" means a telephone that operates without a physical, wireline connection to the provider's equipment. The term includes, without limitation, cellular and mobile telephones.

(2) A person under eighteen years of age shall not use a wireless telephone while operating a motor vehicle. This Subsection (2) does not apply to acts specified in Subsection (3) of this Section.

(3) A person shall not use a wireless telephone for the purpose of engaging in text messaging or other similar forms of manual data entry or transmission while operating a motor vehicle.

(4) Subsection (2) or (3) of this Section shall not apply to a person who is using the wireless telephone:

(a) To contact a public safety entity; or

(b) During an emergency.

(5) (a) A person who operates a motor vehicle in violation of Subsection (2) of this Section commits a traffic infraction.

(b) Except as set forth below, a person who operates a motor vehicle in violation of Section (3) shall be punished by a minimum mandatory fine of not less than three hundred dollars (\$300.00). If the person's actions are the proximate cause of bodily injury or death to another, the person shall be punished by a minimum mandatory fine of not less than three hundred dollars (\$300.00) or by imprisonment

for not fewer than ten (10) days, nor more than one year, or by both such fine and imprisonment.

(6) (a) An operator of a motor vehicle shall not be cited for a violation of Subsection (2) of this Section unless the operator was under eighteen years of age and a law enforcement officer saw the operator use, as defined in paragraph (c) of Subsection (1) of this Section, a wireless telephone.

(b) An operator of a motor vehicle shall not be cited for a violation of Subsection (3) of this Section unless a law enforcement officer saw the operator use a wireless telephone for the purpose of engaging in text messaging or other similar forms of manual data entry or transmission, in a manner that caused the operator to drive in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances, as prohibited by Section 1402 herein.

(7) The provisions of this Section shall not be construed to authorize the seizure and forfeiture of a wireless telephone, unless otherwise provided by law.

(8) This Section does not restrict operation of an amateur radio station by a person who holds a valid amateur radio operator license issued by the federal communications commission.

Section 2. Section 8-4 of the Hudson Municipal Code is hereby amended to read as follows:

**Sec. 8-4. Penalties.**

...

(c) Any violations of Section 239(3), Misuse of a Wireless Telephone; Section 1105, Speed Contests; Section 1401, Reckless Driving; or Section 1413, Eluding or Attempting to Elude a Police Officer, of the Model Traffic Code shall be misdemeanor traffic violations subject to the penalties specified in section 1-51 of this code.

...

(h) Any person found guilty or who pleads guilty or nolo contendere to a violation of section 239(3), Misuse of Wireless Telephone, shall be subject to a minimum criminal penalty fine of three hundred dollars (\$300.00). If the person's actions are the proximate cause of bodily injury or death to another, the criminal penalty is a minimum fine of not less than three hundred dollars (\$300.00) or imprisonment for a period from ten (10) days to one (1) year, or both such fine and imprisonment; provided that where the person found guilty, who pleads guilty, or who pleads nolo contendere to a violation of section 239(3) is under the age of eighteen (18) years at the time of the offense, such person shall not be subject to imprisonment for or on account of said violation.

Section 3. Chapter 8, Article 1 of the Hudson Municipal Code is amended by the addition of a new Section 8-5.5 to read as follows:

**Sec. 8-5.5. Driving Under Restraint Prohibited**

Any person who drives a motor vehicle or off-highway vehicle upon any highway or street within the Town of Hudson with knowledge that the person's license or privilege to drive, either as a resident or nonresident, is under restraint for an outstanding judgment is guilty of a traffic infraction punishable according to Section 8-4 herein.

Section 4. Safety Clause. The Town Council hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the Town of Hudson, that it is promulgated for the health, safety, and welfare of the public, and that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Council further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 5. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 6. Effective Date. This Ordinance shall become effective ten (10) days after final publication by title only.

INTRODUCED, READ BY TITLE, AND ADOPTED ON FIRST READING this 16<sup>th</sup> day of August, 2017.



TOWN OF HUDSON, COLORADO

*Raymond Patch*  
Raymond Patch, Mayor

ATTEST:

*Rebecca Utecht*  
Rebecca Utecht, Town Clerk

PASSED by a vote of 6 for and 0 against AND ORDERED PUBLISHED BY TITLE ONLY, with a complete copy available for public inspection and acquisition in the office of the town clerk this 6<sup>th</sup> day of September, 2017.

TOWN OF HUDSON, COLORADO

Laura Hargis  
~~Raymond Patch, Mayor~~  
Laura Hargis - Mayor Pro-Tem

ATTEST:

Rebecca Utecht  
Rebecca Utecht, Town Clerk



APPROVED AS TO FORM:

Corey Y. Hoffmann  
Corey Y. Hoffmann, Town Attorney