

**Ordinance No. 853**

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, A MUNICIPAL CORPORATION OF ARIZONA, ADOPTING BY REFERENCE A DOCUMENT ENTITLED "USE OF HANDHELD MOBILE COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE" (DECLARED BY RESOLUTION NO. 2076 TO BE A PUBLIC RECORD), WHICH ENACTS SECTION 11-02-180 "USE OF HANDHELD MOBILE COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE" IN ARTICLE 11-02 "TRAFFIC CONTROL" IN CHAPTER 11 "TRAFFIC" IN THE TOWN CODE OF THE TOWN OF PRESCOTT VALLEY; PROVIDING THAT ALL OTHER CHAPTERS, ARTICLES AND SECTIONS OF THE TOWN CODE, NOT HEREIN REPEALED, RE-ENACTED OR AMENDED, SHALL REMAIN IN FULL FORCE AND EFFECT; PROVIDING THAT, IF ANY PROVISION IN THIS ORDINANCE IS HELD INVALID BY A COURT OF COMPETENT JURISDICTION, THE REMAINING PROVISIONS SHALL NOT BE AFFECTED BUT SHALL CONTINUE IN FULL FORCE AND EFFECT; AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE THIRTY (30) DAYS AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, towns are vested with exclusive control over the streets and avenues within their boundaries pursuant to A.R.S. §9-240; and

WHEREAS, local authorities, including towns, may adopt traffic regulations that are not in conflict with the uniform traffic regulations set forth in chapters 3, 4 and 5 of Title 28 of the Arizona Revised Statutes; and

WHEREAS, there is currently no State law regulating the use of handheld mobile communication devices by drivers; and

WHEREAS, recent studies indicate that drivers distracted by electronic devices contribute significantly to the frequency and severity of traffic accidents; and

WHEREAS, Yavapai County and the City of Prescott have recently adopted regulations for the use of handheld mobile communication devices by drivers; and

WHEREAS, the Town has a substantial and compelling interest in promoting safe driving and the safety of its residents and visitors; and

WHEREAS, the Town Council finds that these Town Code regulations are designed to help preserve the peace, health and safety of the community and are consistent with those of neighboring communities; and

WHEREAS, A.R.S. § 9-802 provides for adoption by reference of "public records" (except that any penalty clauses therein shall not be adopted by reference but shall be included in the adopting ordinance per A.R.S. § 9-803); and

WHEREAS, the document entitled “Use of Handheld Mobile Communication Devices While Operating a Motor Vehicle” has been declared by Resolution No. 2076 to be a “public record”;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA, AS FOLLOWS:

SECTION ONE. That certain document entitled “Use of Handheld Mobile Communication Devices While Operating a Motor Vehicle” declared to be a “public record” by Resolution No. 2076 (and available for public inspection in the Office of the Town Clerk, 7501 East Civic Circle, Prescott Valley, Arizona, 86314), is hereby referred to, adopted and made a part hereof as if fully set forth herein.

SECTION TWO. That the following penalty clause contained in Section 11-02-180 “Use of Handheld Mobile Communication Devices While Operating a Motor Vehicle” in Article 11-02 “TRAFFIC CONTROL” in Chapter 11 “TRAFFIC” in the Town Code of the Town of Prescott Valley is hereby enacted and set forth as follows:

**11-02-180 Use of Handheld Mobile Communication Devices While Operating a Motor Vehicle.**

...

- E. **Penalty.** In accordance with Town Code §1-08-101(C), a person who violates this Section commits a civil traffic violation and is subject to a civil penalty of one hundred dollars (\$100) for a first offense and up to two thousand five hundred dollars (\$2,500) for any subsequent violations occurring within twelve (12) months of a prior offense.

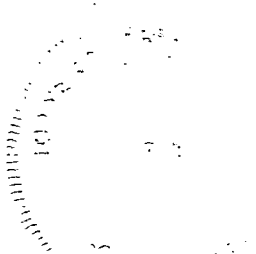
(Ord. No. 853, Enacted, 12/20/18)

SECTION THREE. That, all other Chapters, Articles and Sections of the Town Code not herein repealed, re-enacted and amended shall remain in full force and effect.

SECTION FOUR. That, if any provision in this Ordinance is held invalid by a Court of competent jurisdiction, the remaining provisions shall not be affected but shall continue in full force and effect.

SECTION FIVE. That this Ordinance shall be effective thirty (30) days after its passage and approval according to law.

PASSED AND APPROVED by the Mayor and Common Council of the Town of Prescott Valley, Arizona, this 20<sup>th</sup> day of December, 2018.



Harvey C. Skoog  
Harvey C. Skoog, Mayor

ATTEST:

Diane Russell  
Diane Russell, Town Clerk

APPROVED AS TO FORM:

Ivan Legler  
Ivan Legler, Town Attorney

**USE OF HANDHELD MOBILE COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE**

**SECTION 1.** That a new section 11-02-180 “Use of Handheld Devices While Operating a Motor Vehicle” in Article 11-02 “TRAFFIC CONTROL” in Chapter 11 “TRAFFIC” in the Town Code of the Town of Prescott Valley is hereby enacted to read as follows:

**11-02-180 Use of Handheld Mobile Communication Devices While Operating a Motor Vehicle.**

**A. In this Section, unless the context otherwise requires:**

- 1. “Hands-free use” means the use of a mobile communication device without the use of either hand.**
- 2. “Mobile communication device” means a wireless communication device or portable electronic device that is designed to engage in calls, and/or receive and transmit text, images and/or data and includes (without limitation) mobile telephones, personal digital assistants, laptops, tablets, computers, pagers, electronic games, and computing devices.**
- 3. “Operating a motor vehicle” means (as defined in Title 28, Arizona Revised Statutes) being in actual physical control of a motor vehicle on a highway or street (including being temporarily stopped because of traffic or an official traffic control device, but excluding being stopped at the side or off of the highway or street at a location where the vehicle can safely remain stationary).**

**B. No person shall, except as otherwise provided in this Section, use a mobile communication device while operating a motor vehicle upon a highway or street unless that device is specifically designed or configured to allow hands-free use and is used in that manner while operating the motor vehicle. A law enforcement officer may stop a motor vehicle if the officer has reasonable suspicion to believe a violation of this Section is occurring.**

**C. Exemptions. This Section shall not apply to:**

- 1. Use of a mobile communication device for the sole purpose of communicating with public safety, law enforcement, fire, rescue, or medical personnel regarding immediate criminal activity, safety hazards, or other emergency situations.**
- 2. Use of a mobile communication device by public safety, law enforcement, fire, rescue, or medical personnel operating authorized emergency vehicles for the purpose of communicating regarding their official duties.**
- 3. Initiation, activation or deactivation of hands-free use of a mobile communication device.**

D. It is an affirmative defense to a prosecution under this Section that the driver was not operating the motor vehicle in a careless manner and:

1. possessed a commercial vehicle license or was operating fleet vehicles and was using a two-way radio or a private Land Mobile Radio System within the meaning of Title 47 Code of Federal Regulations Part 90 while in the performance and scope of their work-related duties; or

2. held a valid amateur radio operator license issued by the federal communications commission and was using a half-duplex two-way radio under that license.

E. Penalty. In accordance with Town Code §1-08-010(C), a person who violates this Section commits a civil traffic violation and is subject to a civil penalty of one hundred dollars (\$100) for a first offense and up to two thousand five hundred dollars (\$2,500) for any subsequent violations occurring within twelve (12) months of a prior offense.

Ord. No. 853, Enacted, 12/20/18)