



## City of Ketchum

December 2, 2019

Mayor Bradshaw and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

### **Recommendation To Adopt for First Reading Ordinance 1205 Prohibiting the Use of Handheld Wireless Devices While Operating a Vehicle Upon a Street or Highway within the City of Ketchum**

#### Recommendation and Summary

Staff is recommending the council adopt the following motion:

**I move to adopt for first reading Ordinance 1205 and read by title only**

The reasons for the recommendation are as follows:

- In 2016 the City of Ketchum adopted Ordinance 1152 prohibiting the use of wireless communication devices while driving
- Recent court action necessitates the need to update Ketchum regulations to ensure more effective enforcement
- The proposed ordinance is recommended by the Chief Kassner and the City's Prosecuting Attorney Rick Allington

#### Introduction and History

In 2016 the City of Ketchum adopted Ordinance 1152 and was one of the first jurisdictions in Idaho to prohibit the use of wireless communications devices while driving. Chief Kassner recommended the ordinance after researching the data regarding cell phone use while driving. He found the use of cell phones while driving was creating a risk to the community that needed to be addressed. He worked with the city attorney to draft an ordinance prohibiting the use of hand-held cell phones in the City of Ketchum and Council adopted the ordinance in March 2016.

Since Ketchum adopted the ordinance, other cities have adopted similar regulations. Recently there was a legal challenge questioning the right of cities to enact restrictions on cell phone use while driving. The court ruled cities can adopt restrictions. As a result of the legal challenge, the Police Chief and the City's Prosecuting Attorney reviewed Ketchum's ordinance to ensure it can withstand a challenge. It was determined, the existing ordinance should be amended to be more effective.

#### Analysis

The proposed ordinance is identical to the recent ordinance adopted by the City of Meridian. This ordinance has been determined to contain the most effective language for enforcement.

The City of Hailey recently adopted a hands-free cell phone ordinance for cyclists. Chief Kassner contacted the League of American Bicyclists to gather information to determine if this activity is presenting a problem and how other cities have addressed the issue. It was determined there is no need to adopt this restriction in the City of Ketchum.

Financial Impact

There is no financial impact resulting from the proposed ordinance.

Attachments:

Proposed Ordinance 1205

Redlined Ordinance

## ORDINANCE 1205

**AN ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY IDAHO, REPEALING KETCHUM MUNICIPAL CODE SECTION 10.08.310 USE OF WIRELESS COMMUNICATION DEVICES AND REPLACING WITH SECTION 10.08.310 USE OF HANDHELD WIRELESS DEVICES, PROHIBITING THE USE OF HANDHELD WIRELESS DEVICES WHILE OPERATING A VEHICLE UPON A STREET OR HIGHWAY WITHIN THE CITY OF KETCHUM AND ADOPTING A SAVINGS AND SEVERABILITY CLAUSE, A REPEALER CLAUSE, A PUBLICATION CLAUSE AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, distracted driving adversely impacts public safety by contributing to traffic accidents, injuries, and fatalities;

**WHEREAS**, the use of handheld wireless devices while operating a vehicle is a cause of distracted driving; and,

**WHEREAS**, distracted driving can be a cause of road rage which may lead to violence between motorists; and,

**WHEREAS**, in 2016 the City of Ketchum adopted Ordinance 1152 prohibiting use of wireless communication devices; and,

**WHEREAS**, The City of Ketchum Ordinance needs to be revised to reflect recent court decisions related to prohibiting the use of handheld wireless devices while operating a vehicle;

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KETCHUM, IDAHO:**

**Section 1.** That section 10.08.310 is repealed from the Ketchum Municipal Code.

**Section 2.** That Section 10.08.310 be added to the Ketchum Municipal Code as follows:

### **10.08.310: USE OF HANDHELD WIRELESS DEVICES**

#### **A. PROHIBITED ACTS:**

It shall be unlawful to use a handheld wireless device while operating a vehicle upon a street or highway within the City of Ketchum.

#### **B. EXCEPTIONS:**

Section 10.08.310 A shall not apply to the following:

1. Use of a handheld wireless device in a voice-operated mode, where the operator of the vehicle does not hold or manually operate the device, except to activate or deactivate the voice-operated function of the device.
2. Use of a navigation feature on a handheld wireless device, provided that the operator of the vehicle does not hold or manually enter information into the device, except to activate or deactivate the navigation feature on the device.
3. Use of a handheld wireless device to report an emergency to a law enforcement agency, fire department, health care provider, or other emergency services provider.
4. Use of a handheld wireless device while the vehicle is parked off the roadway.
5. Use of a handheld wireless device by a peace officer, firefighter, paramedic, emergency medical technician, or other public safety first responder during the performance of that person's official duties.
6. Use of a handheld wireless device by a public utility employee or contractor acting within the scope of that person's employment while responding to a public utility emergency.

C. DEFINITIONS:

The definitions set forth in Title 49, Chapter 1, Idaho Code shall apply to terms used in this Section. Further, for purposes of this Section, the following terms shall be defined as follows:

1. **Handheld Wireless Device.** Any handheld or portable electronic device capable of receiving, producing, displaying, or providing wireless data or voice communication. "Handheld wireless device" shall not include a radio designed for the citizen band service or the amateur radio service of the Federal Communications Commission or a commercial two-way radio communications device.

**Section 3: SAVINGS AND SEVERABILITY CLAUSE.** It is hereby declared to be the legislative intent that the provisions and parts of this Ordinance shall be severable. If any paragraph, part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid for any reason by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

**Section 4: REPEALER CLAUSE.** All City of Ketchum Ordinances or parts thereof which are in conflict herewith are hereby repealed.

**Section 5: PUBLICATION.** This Ordinance, or a summary thereof in compliance with Section 50-901A, Idaho Code, substantially in the form annexed hereto shall be published

once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

**Section 6: EFFECTIVE DATE.** This Ordinance shall be in full force and effect after its passage, approval and publication, according to law.

PASSED BY the CITY COUNCIL and APPROVED by the MAYOR of Ketchum, Idaho, on this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

APPROVED BY the Mayor of the City of Ketchum, Idaho, this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

APPROVED:

\_\_\_\_\_  
Neil Bradshaw, Mayor

ATTEST:

\_\_\_\_\_  
Robin Crotty, City Clerk

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### **D. PENALTIES:**

1. Every person who violates this section shall be guilty of an infraction and punishable by a fixed penalty set by the City plus court costs.
2. A conviction under this section shall not result in violation point counts as prescribed in section 49-326 Idaho Code. In addition, a conviction under this section shall be deemed a non-moving traffic violation and shall have no points assessed as prescribed by Idaho Code.

**~~10.08.310: USE OF WIRELESS COMMUNICATION DEVICES:~~**

~~A. The use of a wireless telephone or mobile electronic device by an operator of a motor vehicle on a public road or highway within the City limits of Ketchum shall be unlawful except when the telephone is a hands free wireless telephone or the electronic communication device is used hands free.~~

~~B. The operator of a motor vehicle may use a handheld wireless telephone while driving with one hand on the steering wheel only if:~~

- ~~1. The operator has reason to fear for his life or safety, or believes that a criminal act may be perpetrated against himself or another person; or~~
- ~~2. The operator is using the telephone to report to appropriate authorities a fire, a traffic accident, a serious road hazard or medical or hazardous materials emergency, or to report the operator of another motor vehicle who is driving in a reckless, careless or otherwise unsafe manner or who appears to be driving under the influence of alcohol or drugs. A handheld wireless telephone user's telephone records or testimony or written statement from appropriate authorities receiving such calls shall be deemed sufficient evidence of the existence of all lawful calls made under this paragraph.~~

~~C. A person who is found guilty of this infraction shall be fined in an amount set by the City.~~

~~D. No motor vehicle points or automobile insurance eligibility points shall be assessed for this offense.~~

~~E. The prohibitions set forth in this section shall not be applicable to any of the following persons while in the actual performance of their official duties: 1) a law enforcement officer; 2) a member of a paid or volunteer Fire Department; or 3) an operator of an authorized emergency vehicle. (Ord. 1179, 2017)~~