

TOWN OF RUTLAND ORDINANCE REGARDING DRIVING WHILE OPERATING PORTABLE ELECTRONIC DEVICES

I. AUTHORITY AND PURPOSE

A. Pursuant to 24 V.S.A. § 2291(4), (14), and (15), and 13 V.S.A. §7251(a), the Select Board of the Town of Rutland hereby adopts and promulgates the following Ordinance in order to regulate the use of portable electronic devices in conjunction with the operation and use of motor vehicles on public highways in the Town of Rutland.

B. The Select Board finds that the use of handheld portable electronic devices while operating a motor vehicle distracts the operator's attention from the road thereby increases the risks of accident, property damage, and bodily injury. Therefore, the use of handheld portable electronic devices while operating a motor vehicle constitutes a public nuisance.

C. The Select Board adopts and promulgates this Ordinance in order to protect the health, safety and welfare of the public, including without limitation, the health, safety, or welfare of the drivers and passengers of motor vehicles on the Town's public highways, and pedestrians and bicycle riders with whom motor vehicle operators share the public highways of the Town of Rutland.

D. This Ordinance is designated as a civil ordinance pursuant to 24 V.S.A. § 1971(b).

II. DEFINITIONS

A. "Hand-free use" means the use of a portable electronic device without use of either hand by employing an internal feature of, or an attachment to, the device.

B. "Highway(s)" are only such as are laid out in the Town of Rutland in the manner prescribed by statute; or roads which have been constructed for public travel over land which has been conveyed to and accepted by the Town of Rutland or to the State by deed of a fee or easement interest; or roads which have been dedicated to the public use and accepted by the city or town in which such roads are located; or such as may be from time to time laid out by the Agency or town. However, the lack of a certificate of completion of a State or town highway shall not alone constitute conclusive evidence that the highway is not public. The term "highway" includes rights-of-way, bridges, drainage structures, signs, guardrails, areas to accommodate utilities authorized by law to locate within highway limits, areas used to mitigate the environmental impacts of highway construction, vegetation, scenic enhancements, and structures.

C. "Operating" means operating a motor vehicle on a public highway, including while temporarily stationary because of traffic, a traffic control device, or other temporary delays. "Operating" does not include operating a motor vehicle with or without the motor running when the operator has moved the vehicle to the side of or off the

public highway and has halted in a location where the vehicle can safely and lawfully remain stationary.

D. "Portable electronic device" means a portable electronic or computing device, including a cellular telephone, personal digital assistant (PDA), or laptop computer. "Portable electronic device" does not include a two-way or Citizens Band radio, or equipment used by a licensed Amateur Radio operator in accordance with 47 C.F.R. part 97.

E "Securely mounted" means the device is placed in an accessory or location in the vehicle, other than the operator's hands, where the device will remain stationary under typical driving conditions.

F. "Texting" means the reading or the manual composing or sending of electronic communications, including text messages, instant messages, or e-mails, using a portable electronic device. Use of a global positioning or navigation system shall be governed by Article V (B)(5) of this Ordinance.

III. ENTERTAINMENT PICTURE VISIBLE TO THE OPERATOR

A person shall not operate upon a highway in the Town of Rutland a moving motor vehicle carrying or having installed a screen or other device transmitting a moving entertainment picture that is visible to the operator.

IV. JUNIOR OPERATOR USE OF PORTABLE ELECTRONIC DEVICES

- A. A person under 18 years of age shall not use any portable electronic device while operating a moving motor vehicle in a place open temporarily or permanently to public or general circulation of vehicles.
- B. A person under 18 years of age shall not use any portable electronic device while operating a motor vehicle on a highway, including while the vehicle is stationary unless otherwise provided in subsection (c) below.
- C. The prohibitions of this Article IV shall not apply when use of a portable electronic device is necessary for a person to communicate with law enforcement or emergency service personnel under emergency circumstances.

V. HANDHELD USE OF PORTABLE ELECTRONIC DEVICE PROHIBITED

- A. Use of handheld portable electronic device prohibited. A person shall not:
 - 1. Use a portable electronic device while operating a moving motor vehicle in a place open temporarily or permanently to public or general circulation of vehicles.

2. Use a portable electronic device while operating a motor vehicle on a highway in Vermont, including while the vehicle is stationary unless otherwise provided in subsection (B) below.

B. The prohibitions of this Article V shall not apply:

1. To hands-free use.
2. To activation or deactivation of hands-free use, as long as any accessory for securely mounting the device is not affixed to the windshield in violation of 23 V.S.A. §1125.
3. When use of a portable electronic device is necessary for a person to communicate with law enforcement or emergency service personnel under emergency circumstances.
4. To use of an ignition interlock device, as defined in 23 V.S.A. §1200.
5. To use of a global positioning or navigation system if it is installed by the manufacturer or securely mounted in the vehicle in a manner that does not violate 23 V.S.A. §1125.
6. To operators of commercial motor vehicles. The use of handheld mobile telephones and texting while operating a commercial motor vehicle shall be governed by the provisions Chapter 39 of Title 23 of the Vermont Statutes Annotated.

C. A person shall not be issued more than one complaint for any violation of Article IV, Article V, or Article VI of this Ordinance that arises from the same incident.

VI. TEXTING PROHIBITED

- A. A person shall not engage in texting while operating a moving motor vehicle in a place open temporarily or permanently to public or general circulation of vehicles.
- B. A person shall not engage in texting while operating a motor vehicle on a highway, including while the vehicle is stationary unless otherwise provided under this section:
- C. A person who violates this section commits a traffic violation as defined in section 2302 of this title and shall be subject to a penalty of not less than \$ 100.00 and not more than \$ 200.00 for a first violation, and of not less than \$ 250.00 and not more than \$ 500.00 for a second or subsequent violation within any two-year period.
- D. The prohibitions of this Article VI shall not apply when use of a portable electronic device is necessary for a person to communicate with law enforcement or emergency service personnel under emergency circumstances

VII. ENFORCEMENT, VIOLATIONS, and PENALTIES

- A. A civil penalty of not more than \$800 may be imposed for a violation of this Ordinance.
- B. A town constable or other law enforcement officer is authorized to recover by the issuance of a municipal complaint for a violation of this Ordinance a civil penalty of \$400 for a first violation and \$800 for a second or subsequent violation within any two-year period.
- C. In lieu of the civil penalties provided in subsection B of this Article, a town constable or other law enforcement officer is authorized to recover a waiver fee in the following amount, from any person to whom a municipal complaint is issued, who declines to contest the municipal complaint and pays the waiver fee of \$200 for a first violation and \$400 for a second or subsequent violation within any two-year period.
- D. A person who violates this Ordinance shall be subject to the all surcharges, court costs, and any other assessment established and/or administered by the Vermont Judicial Bureau and, in the event of a failure to pay an amount due, 4 V.S.A. § 1109.

VIII. SEVERIBILITY

The provisions of this Ordinance are severable. If any provision of this Ordinance, or its application to any person or circumstances or within any part of the Town of Rutland is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the invalidity shall not apply to any other portion of this Ordinance which can be given effect without the invalid provision or application thereof.

IX. EFFECTIVE DATE

This Ordinance shall become effective sixty (60) days after adoption as provided in 24 V.S.A. § 1972.