



**Item:** Public Hearing on Ordinance 3146, “AN ORDINANCE AMENDING TITLE 10, CHAPTER 39, SECTION 110 SUBSECTION 2 OF THE OFFICIAL CODE OF THE CITY OF GREAT FALLS (OCCGF), PERTAINING TO THE PENALTY FOR THE USE OF ELECTRONIC COMMUNICATION DEVICES WHILE OPERATING A MOTORIZED VEHICLE OR A BICYCLE.”

**From:** Joseph Cik, Assistant City Attorney

**Initiated By:** Greg Doyon, City Manager

**Presented By:** Joseph Cik, Assistant City Attorney

**Action Requested:** Conduct Public Hearing and adopt Ordinance 3146.

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**Public Hearing:**

1. Mayor opens and conducts public hearing, calling three times each for proponents and opponents.
2. Mayor closes public hearing and asks the will of the Commission.

**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (adopt/deny) Ordinance 3146.”

2. Mayor requests a second to the motion, Commission discussion, and calls for the vote.
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**Background:**

Recently, discussion began amongst the members of the City Commission and City Staff regarding the continued use of electronic devices by motor vehicle drivers within the City limits. An analysis of the problem and alternatives for enhancing penalties for violations of the Official Code of the City of Great Falls (OCCGF) §10.39.110 was conducted, and alternative potential penalties were presented to the City Commission.

OCCGF §10.39.110 provides the following prohibition and penalty for operating a motorized vehicle or bicycle while using an electronic device:

**1. Electronic communication device usage while driving prohibited.**

- (a) No person operating a motorized vehicle or a bicycle on a public highway within the city limits of Great Falls shall use a mobile telephone to engage a call and/or use any other hand held electronic communication device to compose, send, view or retrieve email, a text message, or other electronic data.
- (b) "Hand held electronic communication device" includes wireless or cellular phones, laptop and notebook computers, GPS and navigational systems, pagers, electronic games and any other device that would permit wireless communications to and from the user of the device.
- (c) Exceptions.
  - (1) This provision shall not apply to any person reporting a health, fire, safety, or police emergency.
  - (2) This provision shall not apply to governmental fire agencies, ambulance services, law enforcement agencies, emergency responders, or any other "authorized emergency vehicle" as defined in Montana Code Annotated Sec. 61-8-102(2)(a).
  - (3) This provision shall not apply to operators or passengers of a motorized vehicle using a hand held electronic communication device while in a parking lane or space out of moving traffic lanes.
  - (4) This provision shall not apply to persons using a "hands free device." A "hands free device" is an external device that connects to a wireless telephone, wireless or electronic communication device that allows use of the hands free device.
  - (5) This provision shall not apply to drivers using two-way radios while in the performance and scope of their work-related duties, or to drivers holding a valid amateur radio operator license issued by the Federal Communications Commission while using a two-way radio.

**2. Violation; penalty:** A person who is found to have committed a violation of Section 10.39.110 shall be fined a minimum penalty of one hundred dollars (\$100.00) up to a maximum penalty of five hundred dollars (\$500.00).

(Ord. No. 3090, § 1(Exh. A), 7-3-2012, eff. 8-2-2012).

Municipal Court records dating back to 2013 indicate a large number of citations being issued for violations of the above cited OCCGF provision. In 2013, the total number of citations filed in Great Falls Municipal Court totaled 286. In 2014, the citations totaled 811. In 2015, the number of citations totaled 761. As of September 20, 2016, the number of citations totaled 883. These statistics indicate the number of violations have increased over the last several years. These statistics also indicate the number of citations written for a violation of this provision could surpass 1000 for 2016. Great Falls Police Department highly discourages the issuing of warnings for violating this OCCGF section. Notwithstanding, these numbers do not take into account any warnings which may have been issued by law enforcement for violation of the OCCGF provision.

In comparison, as of September 8, 2016, 411 citations for speeding had been filed in Great Falls Municipal Court. The speeding citations include all of the MCA codified violations including, construction and school zone violations.

According to the National Highway Traffic Safety Administration (NHTSA), a division of the U.S. Transportation Department, distracted driving is driving while engaging in, "any activity that could divert a person's attention away from the primary task of driving." This includes texting or making calls on a cell phone. It consists of any activity that diverts a driver's attention, and puts that driver, any passengers, and everyone else sharing the road, at serious risk.

According to (NHTSA), in 2011, 3,331 people were killed in crashes involving distracted drivers and an estimated additional 387,000 were injured in distracted driving crashes. According to NHTSA research, of those people killed in distraction-affected crashes, 385 died in crashes in which at least one of the drivers was using a cell phone at the time of the crash. Use of a cell phone includes talking, listening to a cell phone, dialing, texting, or other cell phone related activities.

Also according to NHTSA, in 2014, there were 2,955 fatal crashes that occurred on U.S. roadways that involved distraction (10% of all fatal crashes). These crashes involved 3,000 distracted drivers, as some crashes involved more than one distracted driver.

According to the Great Falls Police Department Data-Driven Approaches to Crime and Traffic Safety (DDACTS) statistics, in August 2016, 156 accidents occurred in the City of Great Falls. In a majority of these crashes, explanations were given to Law Enforcement which included reasons such as reaching for a dropped wallet, checking mirrors, and sneezing. However, in many of these distracted driving type accidents, law enforcement suspected the use of an electronic device contributing to the accident.

Many other first class cities in Montana have similar prohibitions on the use of electronic devices while driving. Of the top seven largest cities in the state, Great Falls, Billings, Missoula, Bozeman, Helena, and Butte-Silver Bow prohibit the use of electronic devices while driving, with certain exceptions. Kalispell is the only city in the top seven that does not prohibit the use of an electronic device while driving.

Of all the cities listed above, none have the possibility of a fine up to \$500.00 for a first offense that does not result in an accident. In fact, Bozeman, Helena, and Butte-Silver Bow impose a fine of only \$100.00 or less.

Compared to the other six largest cities in Montana, Great Falls implements the most stringent fines for driving while using an electronic device. Citations for this violation continue to be issued at alarming numbers, and the use of electronic devices continues to be suspected as a contributing factor in traffic accidents within the incorporated City limits. It appears from these statistics that fines alone do not create the level of deterrence that Law Enforcement and City management would hope for.

This is illustrated even more so when one considers the number of citations issued for driving while using an electronic device compared to other traffic offenses. The possibility of being fined is simply not compelling many drivers to keep the phone in their pockets or purchase a “Blue Tooth” or other type of hands free device.

There is no Montana State law specifically regulating the use of an electronic device while operating a motor vehicle. Typically, this type of behavior may be cited under a violation of MCA §61-8-302, “Careless Driving.” Because there is no state law outlining this specific conduct as a traffic violation, the driver’s official driving record is not affected by a conviction of a cell phone violation. This type of conviction will, therefore, also not have any impact on the driver’s liability insurance premiums.

Pursuant to the City’s Charter, Great Falls exercises self-governing powers. This means the City Commission may enact ordinances and City Code that regulate driving conduct within the incorporated City limits that are more stringent than state law. The OCCGF may provide more restrictive driving regulations within the City, but it may not supersede or disregard State regulations. Therefore, the City of Great Falls may amend the penalty provision of OCCGF §10.39.110, to incorporate alternative penalties to help deter driving while using an electronic device.

**Concurrences:**

The first draft of the proposed ordinance was prepared by Assistant City Attorney, Joseph Cik. It was then reviewed by the City Manager, City Attorney, City Clerk, Chief of Police, and discussed with the Honorable Judge Bolstad. It was also formatted appropriately for inclusion in the City Code. Their suggestions, comments, and proposed amendments have been incorporated into the proposal now before the Commission. All concur with the provisions.

**Public Comments as of October 18, 2016:**

A speaker at the podium commented that pedestrians crossing City streets outside of the designated crosswalks is a hazard he would like to see addressed. The same speaker commented that he wanted to see more statistics in the agenda report. The same speaker commented that if public officials are seen driving while using an electronic device, it would hurt the public image about, “what is right.”

**Recommendation:**

City Staff recommends that the City Commission adopt Ordinance 3146.

**Alternatives to Ordinance 3146:**

1. The Commission could maintain the current version of OCCGF pertaining to the penalty for using an electronic device while operating a motorized vehicle or bicycle. However, staff does not recommend this alternative; and
2. The Commission could suggest revisions to the proposed code revision, which would be considered for input.

**Fiscal Impact:**

None.

**Attachments/Exhibits:**

Ordinance 3146 & Exhibit A

**ORDINANCE 3146**

**AN ORDINANCE AMENDING TITLE 10, CHAPTER 39, SECTION 110 OF THE OFFICIAL CODE OF THE CITY OF GREAT FALLS (OCCGF), PERTAINING TO THE PENALTY FOR THE USE OF ELECTRONIC COMMUNICATION DEVICES WHILE OPERATING A MOTORIZED VEHICLE OR A BICYCLE**

**WHEREAS**, the City Commission recognizes the dangers of distracted driving including the use of electronic devices; and

**WHEREAS**, on July 3, 2012, the City Commission adopted Ordinance 3090 which became effective on August 2, 2012, prohibiting the use of electronic devices while operating a motorized vehicle or bicycle in the incorporated city limits of Great Falls; and

**WHEREAS**, driving while using an electronic device violations are occurring in unacceptable numbers in the City of Great Falls.

**NOW, THEREFORE**, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, that:

Section 1. Title 10, Chapter 39, Section 110, Subsection 2 of the OCCGF pertaining to the penalty for the use of electronic communication devices while operating a motorized vehicle or a bicycle be amended as depicted in Exhibit "A" attached hereto, which removes any language indicated by a ~~strike-out~~ and adds any language which is **bolded**; and,

Section 2: This ordinance shall be in full force and effect thirty (30) days after second reading and final adoption by the City Commission.

APPROVED by the City Commission on first reading October 18, 2016.

ADOPTED by the City Commission of the City of Great Falls, Montana on second reading November 1, 2016.

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Bob Kelly, Mayor

ATTEST:

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Lisa Kunz, City Clerk

(CITY SEAL)

APPROVED FOR LEGAL CONTENT:

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Sara R. Sexe, City Attorney

State of Montana     )  
County of Cascade    : ss  
City of Great Falls    )

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do certify that I did post as required by law and as prescribed and directed by the Commission, Ordinance 3146 in three conspicuous places within the limits of said City to-wit:

On the Bulletin Board, first floor, Civic Center Building;  
On the Bulletin Board, first floor, Cascade County Courthouse;  
On the Bulletin Board, Great Falls Public Library

(CITY SEAL)

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Lisa Kunz, City Clerk

EXHIBIT "A"

Title 10 - VEHICLES AND TRAFFIC

Chapter 39 MISCELLANEOUS DRIVING RULES

**Chapter 39 MISCELLANEOUS DRIVING RULES**

**Sections:**

...

10.39.110 Use of electronic communication devices while operating a motorized vehicle or a bicycle.

...

**10.39.110 Use of electronic communication devices while operating a motorized vehicle or a bicycle.**

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EXHIBIT "A"

Title 10 - VEHICLES AND TRAFFIC

Chapter 39 MISCELLANEOUS DRIVING RULES

2. ~~Violation; penalty: A person who is found to have committed a violation of Section 10.39.110 shall be fined a minimum penalty of one hundred dollars (\$100.00) up to a maximum penalty of five hundred dollars (\$500.00).~~ **Penalty: The penalty(ies) for a person who is found to have committed a violation of Section 10.39.110 shall be as follows:**
- (a) **A first conviction for a violation of Section 10.39.110, shall be punishable by a fine not less than two hundred dollars (\$200.00) and not more than five hundred dollars (\$500.00).**
  - (b) **A second conviction, within 24 months after the first conviction, for a violation of Section 10.39.110, shall be punishable by a fine not less than three hundred dollars (\$300.00) and not more than five hundred dollars (\$500.00). The Defendant shall further participate in twenty (20) hours of Court approved community service to be completed within ninety (90) days of the date of the second conviction. The Defendant shall provide completion of community service to the Great Falls Municipal Court.**
  - (c) **A third or subsequent conviction, within 24 months after the first conviction, for a violation of Section 10.39.110, shall be punishable by a fine not less than four hundred dollars (\$400.00) and more than five hundred dollars (\$500.00). The Defendant shall further participate in forty (40) hours of community service to be completed within ninety (90) days of the date of conviction. Additional penalties may include forfeiture of license plates of the vehicle, driven at the time of the offense, or forfeiture of the Defendant's driver's license for a period not to exceed 180 days, or both.**

(Ord. 3146, 2016; Ord. 3090, § 1(Exh. A), 7-3-2012, eff. 8-2-2012)