

**ORDINANCE NO. 670-19**

**AN ORDINANCE OF THE TOWN OF FLORENCE, PINAL COUNTY, ARIZONA AMENDING TOWN OF FLORENCE CODE OF ORDINANCES, TITLE VII, CHAPTER 72, BY ADDING A NEW SECTION 72.05 RELATING TO THE USE OF PORTABLE WIRELESS COMMUNICATION DEVICES INCLUDING SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE AND REPEALING CONFLICTING ORDINANCES.**

**WHEREAS**, the use of handheld devices by motor vehicle drivers continues to increase in numbers; and

**WHEREAS**, the use of such devices while driving causes the drivers to be distracted and less attentive to driving and thereby more likely to be involved in a motor vehicle accident; and

**WHEREAS**, the Town of Florence desires to discourage such use and thereby provide safer roadways for all person using the roadways.

**NOW THEREFORE BE IT ORDAINED** by the Council of the Town of Florence, as follows:

SECTION 1. That the Town of Florence Code of Ordinances, Title VII, Chapter 72.05 is hereby amended by adding a new section 72.05 to read as follows:

1. Definitions.

- a. "Hands-Free Use" means the use of a wireless communication device without the use of either hand.
- b. "Wireless communication device" means a wireless communication device that is designated to engage in calls; and/or receive and transmit text, images, and/or data.
- c. "Operating a motor vehicle" means being in actual physical control of a motor vehicle on a highway or street and includes being temporarily stopped because of traffic, a traffic light or stop sign or otherwise, but excludes operating a motor vehicle when the vehicle has pulled over to the side of the road or off a roadway and has stopped at a location in which the vehicle can safely remain stationary.

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

3. Exemptions. This section shall not apply to:
  - a. The use of wireless communication device for the sole purpose of communication with any of the following regarding an immediate emergency situation, safety hazard or criminal activity:
    - i. An emergency response operator;
    - ii. An ambulance company;
    - iii. Fire department and rescue service personnel;
    - iv. Law enforcement personnel;
    - v. A hospital; or
    - vi. A physician's office or health clinic.
  - b. The activation, initiation or deactivation of hands-free use.
  - c. Law enforcement and public safety personnel, and persons operating authorized emergency vehicles, using a wireless communication device for the purpose of communicating regarding official public safety duties.
4. It is an affirmative defense to a prosecution under this section that the driver was not operating the vehicle in a careless manner and was:
  - a. A driver 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 and who are operating fleet vehicle or who possess a commercial vehicle license are operating a commercial vehicle; or
  - b. A driver holding a valid amateur radio operator license issued by the Federal Communication Commission and using a half-duplex two-way radio.
5. Penalty. A person who violates this section commits a civil violation and is subject to a civil penalty of up to two hundred fifty (\$250) dollars plus any other penalty assessment authorized by law in accordance with the provisions of the Town of Florence Code of Ordinances Section 10.99.

SECTION 2. All ordinance, resolutions or codes in conflict with the provisions of this Ordinance or Code adopted by this Ordinance are repealed.

SECTION 3. If any section, subsection, sentence clause, phrase or portion of the Ordinance or any part of these amendments to the municipal code adopted herein is for any reason held to be invalid or unconstitutional by decision of any court of

competent jurisdiction, such decision will not bread to affect the validity of the remaining portion thereof.

SECTION 4. This ordinance will become effective thirty (30) days after passage of this ordinance by the Florence Town Council.

**PASSED AND ADOPTED** by the Mayor and Town Council of the Town of Florence, Arizona, this 19<sup>th</sup> day of February 2019.

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Tara Walter, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

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Lisa Garcia, Town Clerk

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Clifford L. Mattice, Town Attorney

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