

TOWN OF LOCHBUIE, COLORADO

ORDINANCE NO. 627

**AN ORDINANCE AMENDING CHAPTER 8 OF THE MUNICIPAL CODE
BY ADDING A NEW SUBSECTION (8) TO SECTION 8-1-20(b) GOVERNING
MISUSE OF A WIRELESS TELEPHONE AND SETTING THE PENALTIES FOR
VIOLATION THEREOF**

WHEREAS, the Town of Lochbuie (the "Town") is a Colorado municipal corporation authorized by state law, including, but not limited to, Section 31-15-401 of the Colorado Revised Statutes ("C.R.S."), to exercise its police powers to promote and protect the health, safety, and welfare of the community and its citizens; and

WHEREAS, pursuant to Section 31-15-702(1)(a)(I), C.R.S., the Town is authorized to regulate the use of streets; and

WHEREAS, pursuant to Section 42-1-102(48), C.R.S., the Town has the authority to adopt local police regulations under the constitution and laws of the State of Colorado; and

WHEREAS, as codified in Chapter 8 of the Town of Lochbuie Municipal Code, the Town has previously adopted the 2003 edition of the Model Traffic Code as promulgated by the Colorado Department of Transportation, by reference, with certain amendments thereto; and

WHEREAS, since the adoption of the 2003 edition of the Model Traffic Code, the Colorado General Assembly has adopted new laws governing vehicles, traffic, and the use of the streets; and

WHEREAS, pursuant to its authority, the Board of Trustees desires to incorporate new legislation and laws passed by the State since the adoption of the 2003 edition of the Model Traffic Code by amending the 2003 version of the Model Traffic Code as previously adopted; and

WHEREAS, the Town desires to amend Chapter 8 of the Municipal Code with the addition of a new Subsection (b)(8) to Section 8-1-20 adding a new provision to the 2003 Model Traffic Code as adopted by the Town and governing misuse of a wireless telephone.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE
TOWN OF LOCHBUIE, COLORADO:**

Section 1. Section 8-1-20 of the Town of Lochbuie Municipal Code is hereby amended with the addition of a new subsection (b)(8) to read as follows in its entirety:

(8) A new Section 239 is hereby added, said new section providing as follows:

239. Misuse of a wireless telephone – definitions - preemption.

(1) As used in this Section, unless the context otherwise requires:

(a) “*Emergency*” means a situation in which a person:

(i) Has reason to fear for such person’s life or safety or believes that a criminal act may be perpetrated against such person or another person, requiring the use of a wireless telephone while the car is moving; or

(ii) Reports a fire, a traffic accident in which one or more injuries are apparent, a serious road hazard, a medical or hazardous materials emergency, or a person who is driving in a reckless, careless, or otherwise unsafe manner.

(b) “*Operating a motor vehicle*” means driving a motor vehicle on a public highway, but “operating a motor vehicle” shall not mean maintaining the instruments of control while the motor vehicle is at rest in a shoulder lane or lawfully parked.

(c) “*Use*” means talking on or listening to a wireless telephone or engaging the wireless telephone for text messaging or other similar forms of manual data entry or transmission.

(d) “*Wireless telephone*” means a telephone that operates without a physical, wireline connection to the provider’s equipment. The term includes, without limitation, cellular and mobile telephones.

(2) A person under eighteen (18) years of age shall not use a wireless telephone while operating a motor vehicle. This subsection (2) does not apply to acts specified in subsection (3) of this Section.

(3) A person shall not use a wireless telephone for the purpose of engaging in text messaging or other similar forms of manual data entry or transmission while operating a motor vehicle.

(4) Subsection (2) or (3) of this Section shall not apply to a person who is using the wireless telephone:

(a) To contact a public safety entity; or

(b) During an emergency.

(5) (a) A person who violates subsection (2) of this Section shall be assessed a

fine of fifty dollars.

(b) A second or any subsequent violation of subsection (2) of this Section shall be assessed a fine of one hundred dollars.

(5.5) (a) Except as provided in subsections (5.5)(b) and (5.5)(c) of this Section, a person who violates subsection (3) of this Section shall be assessed a fine of three hundred dollars.

(b) If the person's actions are the proximate cause of bodily injury to another, the person shall be prosecuted in district court pursuant to Section 42-4-239(5.5)(b), of the Colorado Revised Statutes.

(c) If the person's actions are the proximate cause of death to another, the person shall be prosecuted in district court pursuant to Section 42-4-239(5.5)(c), of the Colorado Revised Statutes.

(6) (a) An operator of a motor vehicle shall not be cited for a violation of subsection (2) of this Section unless the operator was under eighteen years of age and a law enforcement officer saw the operator use, as defined in paragraph (c) of subsection (1) of this Section, a wireless telephone.

(b) An operator of a motor vehicle shall not be cited for a violation of subsection (3) of this Section unless a law enforcement officer saw the operator use a wireless telephone for the purpose of engaging in text messaging or other similar forms of manual data entry or transmission, in a manner that caused the operator to drive in a careless and imprudent manner without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances, as prohibited by Section 1402 of the Model Traffic Code.

(7) The provisions of this Section shall not be construed to authorize the seizure and forfeiture of a wireless telephone, unless otherwise provided by law.

(8) This Section does not restrict operation of an amateur radio station by a person who holds a valid amateur radio operator license issued by the federal communications commission.

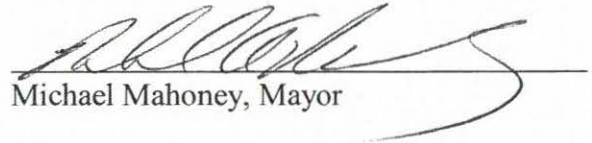
Section 2. Severability. If any provision of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining provisions of this Ordinance will remain valid, it being the intent of the Town of Lochbuie that the provisions of this Ordinance are severable.

Section 3. Repealer. All ordinances or resolutions, or parts thereof, in conflict with this Ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

Section 4. Effective Date. This Ordinance shall take effect thirty (30) days after publication, as provided by C.R.S. § 31-16-105 and Section 1-3-60 of the Lochbuie Municipal Code.

PASSED, ADOPTED, AMENDED AND ORDERED PUBLISHED IN FULL this 15th day of August, 2017.

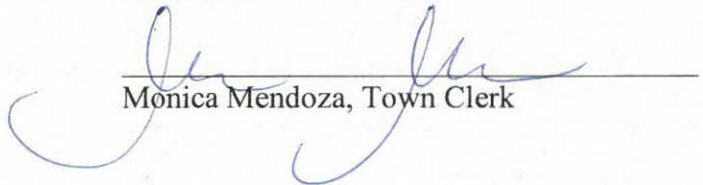
TOWN OF LOCHBUIE, COLORADO


Michael Mahoney, Mayor

I hereby certify that the above Ordinance was adopted by the Board of Trustees of the Town of Lochbuie at its meeting of August 15, 2017, and ordered published in full one time by *The Brighton Blade* newspaper on August 23, 2017.



ATTEST:


Monica Mendoza, Town Clerk