

# CITY of ALBUQUERQUE SEVENTEENTH COUNCIL

COUNCIL BILL NO. F/S O-06-57 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Michael Cadigan

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
2

## ORDINANCE

AMENDING SECTION 8-2-1-24 ROA 1994, A PORTION OF THE TRAFFIC CODE,  
TO PROVIDE A CRIMINAL PENALTY FOR TALKING ON OR OTHERWISE  
OPERATING A HAND-HELD CELLULAR PHONE WHILE DRIVING A VEHICLE;  
CREATING EXCEPTIONS.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
ALBUQUERQUE:

Section 1. Section 8-2-1-24 ROA 1994 is amended to read as follows:

“§ 8-2-1-24 DRIVER'S PROHIBITED ACTS.

It shall be unlawful for any person to:

(A) Drive while having in his lap any person, adult or minor, or any  
animal, nor shall the driver of a vehicle be seated in the lap of any other  
person.

(B) Drive a vehicle while having either arm around another person.

(C) Knowingly permit any other person to interfere with the steering  
mechanism or the acceleration of the vehicle.

(D) Carry any animal in or upon any vehicle in a cruel, inhumane,  
or unsafe manner. Animals carried in the bed of trucks must be crated or  
restrained upon a non metal mat so that they cannot fall or jump from the  
truck.

(E) Except as otherwise provided below, no person shall operate a  
motor vehicle upon a public highway while using a mobile telephone to  
engage in a call or create, send or read text messages while such vehicle is in  
motion.

(1) For purposes of this subsection the following definitions apply:

(a) "Engage in a call" shall mean talking into, dialing or

[+Bracketed/Underscored Material+] - New  
[-Bracketed/Strikethrough Material-] - Deletion

[+Bracketed/Underscored Material+] - New  
[-Bracketed/Strikethrough Material-] - Deletion

3  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

listening on a hand-held mobile telephone, but shall not include holding a mobile telephone to activate, deactivate or initiate a function of such telephone.

(b) "Hands-free mobile telephone" shall mean a mobile telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, by which a user engages in a call without the use of either hand (or prosthetic device or aid in the case of a physically disabled person), whether or not the use of either hand(or prosthetic device) is necessary to activate, deactivate or initiate a function of such telephone.

(c) "Hand-held mobile telephone" shall mean a mobile telephone with which a user engages in a call using at least one hand (or prosthetic device or aid in the case of a physically disabled person).

(d) "Mobile telephone" shall mean the device used by subscribers and other users of wireless telephone service to access such service and shall include Personal Digital Assistants.

(e) "Personal Digital Assistant" shall mean a device operated using a wireless telecommunications service that provides for data communication other than by voice.

(f) "Wireless telephone service" shall mean two-way real time voice telecommunications service that is interconnected to a public switched telephone network and commonly referred to as cellular service or personal communication service.

(2) An operator of a motor vehicle who holds a mobile telephone to, or in the immediate proximity of his or her ear while such vehicle is in motion is presumed to be engaging in a call within the meaning of this section. The presumption established by this subdivision is rebuttable by evidence tending to show that the operator was not engaged in a call. "Immediate proximity" shall mean that distance as permits the operator of a mobile telephone to hear telecommunications transmitted over such mobile telephone, but shall not require physical contact with such operator's ear.

(3) Subdivision (E) shall not apply to:

[+Bracketed/Underscored Material+] - New  
[-Bracketed/Strikethrough Material-] - Deletion

5  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

(a) the use of a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office or health clinic; an ambulance company or corps; a fire department, district or company; or a police department;

(b) any law enforcement, public safety or police officers, emergency services officials, first aid, emergency medical technicians and personnel, or any fire safety officials in the performance of duties arising out of and in the course of their employment as such; or

(c) the use of a hands-free mobile telephone when being used in a hands free manner.

(F) The penalty for a first conviction or plea of nolo contendere for a violation of Subsection E shall be \$100.00. The penalty for all subsequent convictions or pleas of nolo contendere for violation of Subsection E shall be \$200.00.”

**Section 2. SEVERABILITY CLAUSE.** If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

**Section 3. COMPILATION.** Section 1 of this ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

**Section 4. EFFECTIVE DATE.** This ordinance shall take effect five days after publication by title and general summary.

7

1 C:\Documents and Settings\Journal\Local Settings\Temporary Internet  
2 Files\Content.IE5\812VSLEZ\5210[1].doc

[+Bracketed/Underscored Material+] - New  
[-Bracketed/Strikethrough Material-] - Deletion