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

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

L0 It shall be unlawful for any person to:

L4 (B) Drive a vehicle while having either arm around another person.

16 mechanism or the acceleration of the vehicle.

21 [+](E) Except as otherwise provided below, no person shall operate a
22 motor vehicle upon a public highway while using a mobile telephone to
23 engage in a call while such vehicle is in motion.

25 (a) "Engage in a call" shall mean talking into or listening on a

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

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

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

13 (d) "Mobile telephone" shall mean the device used by
14 subscribers and other users of wireless telephone service to access such
15 service.

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

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

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

29 (a) the use of a mobile telephone for the sole purpose of
30 communicating with any of the following regarding an emergency situation: an
31 emergency response operator; a hospital, physician's office or health clinic;
32 an ambulance company or corps; a fire department, district or company; or a
33 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 (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 3. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.

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