



## Legislation Details (With Text)

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**File created:** 3/20/2023      **In control:** City Council

**Final action:** 5/1/2023

**Enactment date:** 5/25/2023      **Enactment #:** O-2023-017

**Title:** Amending Chapter 7, Article 15, Section 4, Enabling The City To Create Parking Offense For Vehicles With Multiple Automated Speed Enforcement Fines Concurrently In Default; Amending Chapter 8, Article 5, Section 1 Creating A City Code Petty Misdemeanor Offense For Parking A Vehicle On City Streets With Multiple Automated Speed Enforcement Fines Concurrently In Default, And Amending Chapter 8, Article 1, Section 3, Subsection 12 Enabling The City To Immobilize Vehicles After One Outstanding Parking Violation Issued Pursuant To § 8-5-1-43 Repeated Nonpayment Of Automated Speed Enforcement System Fines (Bassan, Benton, and Peña, by request)

**Sponsors:** Brook Bassan (By Request), Isaac Benton (By Request), Klarissa J. Peña (By Request)

**Indexes:**

**Code sections:**

**Attachments:** 1. O-78, 2. O-78Enacted

Date	Ver.	Action By	Action	Result
5/25/2023	1	City Clerk	Published	
5/18/2023	1	Mayor	Signed by the Mayor	
5/9/2023	1	City Council	Sent to Mayor for Signature	
5/1/2023	1	City Council	Amended	Pass
5/1/2023	1	City Council	Amended	Pass
5/1/2023	1	City Council	Passed as Amended	Pass
4/17/2023	1	City Council	Accepted with a recommendation Do Pass, As Amended	
4/10/2023	1	Finance & Government Operations Committee	Amended	Pass
4/10/2023	1	Finance & Government Operations Committee	Amended	Pass
4/10/2023	1	Finance & Government Operations Committee	Amended	Pass
4/10/2023	1	Finance & Government Operations Committee	Sent to Council with a recommendation of Do Pass, as Amended	Pass
3/20/2023	1	President	Referred	
3/20/2023	1	City Council	Introduced and Referred	

# CITY of ALBUQUERQUE

## TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-23-78 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Brook Bassan, Isaac Benton, and Klarissa Peña by request

ORDINANCE

Amending Chapter 7, Article 15, Section 4, Enabling The City To Create Parking Offense For Vehicles With Multiple Automated Speed Enforcement Fines Concurrently In Default; Amending Chapter 8, Article 5, Section 1 Creating A City Code Petty Misdemeanor Offense For Parking A Vehicle On City Streets With Multiple Automated Speed Enforcement Fines Concurrently In Default, And Amending Chapter 8, Article 1, Section 3, Subsection 12 Enabling The City To Immobilize Vehicles After One Outstanding Parking Violation Issued Pursuant To § 8-5-1-43 Repeated Nonpayment Of Automated Speed Enforcement System Fines (Bassan, Benton, and Peña, by request)

AMENDING CHAPTER 7, ARTICLE 15, SECTION 4, ENABLING THE CITY TO CREATE PARKING OFFENSE FOR VEHICLES WITH MULTIPLE ASE FINES CONCURRENTLY IN DEFAULT; AMENDING CHAPTER 8, ARTICLE 5, SECTION 1 CREATING A CITY CODE PETTY MISDEMEANOR OFFENSE FOR PARKING A VEHICLE ON CITY STREETS WITH MULTIPLE ASE FINES CONCURRENTLY IN DEFAULT; AND AMENDING CHAPTER 8, ARTICLE 1, SECTION 3, SUBSECTION 12 ENABLING THE CITY TO IMMOBILIZE VEHICLES AFTER ONE OUTSTANDING PARKING VIOLATION ISSUED PURSUANT TO § 8-5-1-43 REPEATED NONPAYMENT OF AUTOMATED SPEED ENFORCEMENT SYSTEM FINES.

WHEREAS, traffic safety is an important piece of the City’s overall effort to improve public safety, and Automated Speed Enforcement (“ASE”) supports that effort; and

WHEREAS, although a majority of individuals who receive an ASE system fine notice pay their fines or complete community service pursuant to the ASE Ordinance, a small percentage receive two or more system fines and default upon those system fines; and

WHEREAS, the City seeks an additional enforcement mechanism to discourage scofflaws from chronic nonpayment of fines issued pursuant to the ASE Ordinance; and

WHEREAS, the parking function of the City is an enterprise function; and

WHEREAS, parking is an integral component of economic activity in the City; and

WHEREAS, enforcement of existing laws and regulations, as well as meaningful enforcement of said laws and regulations, are a key component of the City’s police power to protect and preserve the health and safety of those in the City; and

WHEREAS, it shall be improper for vehicles associated with multiple ASE system fine notices which are in default to park on City-owned property, on or in city-owned facilities; or on or in City-managed facilities; and

WHEREAS, the City should seek to accomplish the objectives set forth in the ASE Ordinance in a manner that preserves the safety of all residents and exhausts alternative avenues to promote compliance.

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

SECTION 1. CHAPTER 7, ARTICLE 15, Part 4, Subsection B is amended as follows:

(B) ASE fine notice.

(1) The ASE fine notice shall state and contain the name of the registered owner or nominee, the effective date of the ASE fine notice, the type of violation, the date, time, and location of the violation, a picture of the violation, the license plate number of the vehicle, the name and identification of the issuing Albuquerque Police Department official, the amount of the fine, the response due date and the return address. The ASE fine notice shall inform the registered owner or the nominee of the option to complete community service in lieu of payment of the ASE fine, and the right to request a hearing. The ASE fine notice shall clearly explain the process for requesting a hearing, explain the hearing options, provide the deadline to request a hearing, and identify where the request shall be submitted.

(2) Delivery. The ASE fine notice shall be delivered to the address of the registered owner according to the address registered with the Department of Motor Vehicles, from information obtained from the Metropolitan Court, from Department Records, or from any other documentation or records reasonably relied upon by police officers, or it shall be delivered to the address of the nominee according to the owner's affidavit.

(C) Response to an ASE fine notice. The registered owner shall pay the fine, elect to complete community service, file an owner's affidavit making a nomination, or request a hearing by the response due date as indicated by the ASE fine notice.

(D) Nomination. A registered owner not driving the car at the time of the violation may either accept the responsibility and pay the ASE fine, or identify the driver so an ASE fine notice can be sent to the driver.

(1) If the registered owner claims that another person was driving the vehicle at the time of the violation, the registered owner shall so indicate on the owner's affidavit and identify the person

who was driving the vehicle. Any registered owner who submits an owner's affidavit does so under penalty of perjury.

(2) A new ASE fine notice will be delivered to the nominee. If the nominee successfully appeals the allegation that they were the driver, the City may proceed against the registered owner. The registered owner is also responsible for payment of the ASE fine if the City cannot assert jurisdiction over the nominee, subject to the remaining defenses available in this article.

(E) Default. If the City does not receive payment of the ASE fine, an election to complete community service, a nomination, or a request for a hearing by the response due date as indicated by the ASE fine notice, the registered owner is in default. If the default is not cured, the City may pursue all remedies for collection of a debt and is entitled to an award of reasonable attorney's fees incurred.

(F) Hearing. Pursuant to Section 3-18-17, NMSA 1978, an individual may select a mail-in hearing or an in-person or remote hearing option to contest an automated speed violation. In the event of a demand for an in-person or remote hearing, the Hearing Officer shall hold a hearing pursuant to the procedures outlined in the Independent Office of Hearings "IHO" Ordinance, ROA 1994, §§ 2-7-8-1 to 2-7-8-9. The hearing shall be conducted following the rules of evidence and rules of civil procedure for the district courts. In either hearing option, a mail-in hearing, or an in-person or remote hearing, the Department has the burden to prove the violation by a preponderance of the evidence. The respondent has the burden to prove any defenses by a preponderance of the evidence. If the Department prevails, the respondent shall pay the fine within 30 consecutive days from the date of the decision. Following a hearing, the respondent may appeal the decision of the Hearing Officer to the District Court within 30 days of the decision and may recover the costs of filing the appeal if successful.

SECTION 2. CHAPTER 7, ARTICLE 15 of the Albuquerque Municipal Code is amended to add the following subsection:

§ 7-15-4 ENFORCEMENT

(I) *Effect of Multiple ASE System Fine Notices in Default*

(1) *Jurisdiction.* This section of the ASE ordinance shall be enforced on all streets and roadways within the City; on or in any City-owned parking facility; on or in any City-managed parking facility; or on any other City-owned real property within the City limits. When a street is the boundary line between the City and the County, the entire public way shall be deemed within the City.

(2) *Notice of Multiple Concurrent ASE System Fine Notices in Default.* If an alleged violator is concurrently in default on one or more ASE system fines, a letter shall be sent to the registered owner of such vehicle setting forth:

- (a) the name of the registered owner;
- (b) the dates of the ASE system fines were incurred;
- (c) the type of violation;
- (d) the dates, times, and locations of the violations;
- (e) the license plate number(s) of the vehicle(s);
- (f) the amount of the respective fines;
- (g) the citation numbers associated with the unpaid fines;
- (h) the response due date;
- (i) and the return address;

(j) The notice shall furthermore recite the prescribed “Responses to an ASE fine notice” as set forth in § 7-15-4(C). The notice shall also inform the registered owner that the time to appeal the fine notice or elect to complete community service in lieu of payment has expired; and that if the registered owner fails to resolve a sufficient number of unpaid ASE fines within twenty (20) calendar days, such that the registered owner no longer has more than one (1) unpaid ASE system fine notices concurrently in default for any given vehicle, the registered owner may be subject to a parking citation and immobilization and impoundment of their vehicle, if their vehicle is found to be parked on any street or roadway within the city; on or in any City-owned parking facility; on or in any City-managed parking facility; or on any other City-owned real property within the City limits. All notices must include verbiage describing how to receive additional information in the top five non-English languages spoken in Albuquerque.

SECTION 3. CHAPTER 7, ARTICLE 15, Part 5, Subsection A of the Albuquerque Municipal Code is amended as follows:

§ 7-15-5 ADMINISTRATION

(A) The Albuquerque Police Department and the Department of Municipal Development shall be responsible for administration of this article. Reasonable rules and regulations may be promulgated by the Mayor or the Mayor’s designee to carry out the intent and purpose of this article.

SECTION 4. CHAPTER 8, ARTICLE 5, Part 1 of the Albuquerque Municipal Code is amended to add the following Section 43:

## § 8-5-1 GENERAL PROVISIONS

### § 8-5-1-43 Repeated Nonpayment of Automated Speed Enforcement System Fines.

(A) Repeated Nonpayment of Automated Speed Enforcement (“ASE”) System Fines consists of a vehicle owner who has accrued and defaulted upon two or more ASE system fines, as described in § 7-15-4(I);

(B) It shall be unlawful for any vehicle to park on any City streets or roadways, on or in any City -owned parking facility; on or in any City-managed parking facility; or on any other City-owned real property, if the vehicle has two or more accrued and defaulted ASE system fines, as described in § 8-5-1-43(A).

SECTION 5. CHAPTER 8, ARTICLE 5, Part 3, Section 1, Subsection C of the Albuquerque Municipal Code is amended as follows:

### § 8-5-3-1 FREQUENCY OF PARKING CITATIONS

(C) *Parking Citation No More Frequently Than One For Every 24-Hour Period.* Whenever a vehicle is parked in violation of §§ 8-5-1-12 <[https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque\\_nm/0-0-0-93376](https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque_nm/0-0-0-93376)>, 8-5-1-19 <[https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque\\_nm/0-0-0-93399](https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque_nm/0-0-0-93399)>, 8-5-1-25 <[https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque\\_nm/0-0-0-93423](https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque_nm/0-0-0-93423)> and 8-5-1-43 and parking citations shall not be issued more frequently than one for every 24-hour period.

## SECTION 6.

SECTION 8, CHAPTER 1, ARTICLE 3, SUBSECTION 12 of the Albuquerque Municipal Code is amended as follows:

### § 8-1-3-12 IMMOBILIZATION OF VEHICLE

**An employee of the Police Department or Parking Enforcement Officer may, and they are hereby authorized to temporarily and for a period of 72 hours, immobilize subject vehicles by installing on, or attaching to such vehicle, equipment such as a vehicle immobilization device designed to restrict the normal movement of such vehicle, and if such vehicle is so immobilized the officer so installing or attaching such device shall conspicuously affix to such vehicle a notice, in writing, on a form provided by the Chief of Police, advising the owner, driver or person in charge of such vehicle that such vehicle has been immobilized by the City for violation of one or more of the provisions of the Traffic Code and that release from such immobilization may be obtained at a designated place; that unless arrangements are made for the release of such vehicle within 72 hours, the vehicle will be removed from the streets at the direction of the Police Department, and that removing or attempting to remove the device before a release is obtained is unlawful, and containing**

such information as the Chief of Police shall deem necessary. It shall be unlawful for any person to remove or attempt to remove any such device before a release is obtained as herein provided or to move any such vehicle before the same is released by the Police Department. Where such vehicle has been properly immobilized in such manner, in addition to payment of all traffic or parking citations, a fee of \$100 shall be charged before releasing such vehicle, and the parking restrictions, if any, otherwise applicable shall not apply when such vehicle is so immobilized. If the vehicle has remained immobilized for a period of 72 hours and release has not been obtained, the police officer or employee of the City causing such immobilization shall have the vehicle impounded until such time as the release has been obtained. Immobilization of subject vehicles are authorized under the following circumstances:

A. If the alleged violator does not appear in response to a traffic or parking citation and there are at least three or more outstanding violations and further fails to respond to the notice informing the alleged violator of the violations; or

B. If the alleged violator does not appear in response to at least one or more parking citations issued pursuant to § 8-5-1-43 and further fails to respond to the notice informing the alleged violator of the violation.

**SECTION 7. 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 provisions being declared unconstitutional or otherwise invalid.

**SECTION 8. COMPILATION.** Sections 1, 2, 3, and 4 of this ordinance shall amend, be incorporated in, and made part of the Revised Ordinances of Albuquerque, New Mexico.

**SECTION 9. EFFECTIVE DATE.** This ordinance shall take effect five days after publication by title and general summary, except that SECTION 1 shall take effect on June 16, 2023. This ordinance, as amended, shall be applicable to any unpaid ASE fine that is issued on or after the effective date.

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