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11/23/2022	1	City Council	Sent to Mayor for Signature	
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10/24/2022	1	Finance & Government Operations Committee	Sent to Council Without Recommendation, as Amended	Pass
10/3/2022	1	President	Referred	
10/3/2022	1	City Council	Introduced and Referred	

CITY of ALBUQUERQUE TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-44 ENACTMENT NO. _____

SPONSORED BY: Brook Bassan and Isaac Benton, by request

ORDINANCE

Amending Chapter 8, Article 2, Part 7 Of The Traffic Code, Relating To Pedestrian Safety In
Medians And Pedestrian-Vehicle Interactions (Bassan, Benton, by request)

AMENDING CHAPTER 8, ARTICLE 2, PART 7 OF THE TRAFFIC CODE, RELATING TO PEDESTRIAN SAFETY IN MEDIANS AND PEDESTRIAN-VEHICLE INTERACTIONS.

WHEREAS, according to the National Highway Traffic Safety Administration (NHTSA), more than 6,000 pedestrians die and 75,000 are injured by encounters with vehicle traffic annually; and

WHEREAS, New Mexico was among the worst states for pedestrian fatalities per 1,000,000 population from 2009 through 2019, and had the highest rate of pedestrian fatalities per 100,000 population in 2019, the latest year for which data is available; and

WHEREAS, one source of pedestrian deaths or injuries is the occupation of medians that are not designed for use by pedestrians; and

WHEREAS, Albuquerque suffered an unfortunate and avoidable tragedy on September 15, 2020, when Rachanda Myers, a mother of three boys, was killed after being struck by a vehicle while sitting in a narrow section of the median on the Pan American Freeway; and

WHEREAS, communities across New Mexico and the country have also reported pedestrian injuries and deaths resulting from people occupying medians. Numerous examples were cited in support of the amendment to Chapter 8, Article 1, Part 1, Section 2. Throughout the country, those deaths and injuries have continued. For example:

- **In September 2019 a Redwood City, California police officer lost control of his vehicle and struck two pedestrians, including one standing in a median** (<<https://www.nbcbayarea.com/news/local/redwood-city-officer-loses-control-hits->
 - **In February 2020, a man standing in a median was struck and killed by a car driving in reverse in Milwaukee, Wisconsin** (<<https://www.youtube.com/watch?v=J-ZIEcJBwiw>>);
- **In August 2020 a man was struck and killed while standing on a median in Las Vegas, Nevada** (<<https://news3lv.com/news/local/pedestrian-dies-after-crash-near-las-vegas-boulevard->>);
- **In April 2021, five women suffered injuries when they were struck by a car while standing on a median in Randolph County, Missouri** (<<https://www.komu.com/news/midmissourinews/5-women-hurt-in-pedestrian->
 - **In May 2021, a pedestrian was struck and killed while standing on a median in Memphis, Tennessee** (<<https://wreg.com/news/homeless-man-killed-at-kirby-parkway-385-driver-says->
 - **In September 2021, a man standing on a median in Berkeley, California, was killed in a hit-and-run crash** (<<https://www.berkeleyside.org/2021/09/15/hit-run-crash-killed-man-berkeley-median-adeline-street-police-seek-driver>>);
- **In November 2021, a man standing on a median in Park City, Utah died when a car drove up onto the median** (<<https://kutv.com/news/local/identity-released-of-pedestrian-killed-in-chain-reaction-car-crash>>);

- In November 2021, a man selling flowers on a median in Harris County, Texas was struck and killed after two cars in the roadway collided
(<https://abc13.com/man-hit-and-killed-selling-flowers-airline-drive->
- In November 2021, a man standing on a median in Kimball Junction, Utah was struck and killed in a multi-car collision
(<https://www.parkrecord.com/news/summit-county/pedestrian-dead-after-multi->
- In December 2021, a man standing on a median in Medford, Oregon was killed in a hit-and-run crash (<https://www.fox26medford.com/medford-police-investigate-fatal-hit-and-run-crash>);
- In January 2022, a pedestrian standing on a median in Santa Cruz, California was killed by a passing car (<https://www.santacruzsentinel.com/2022/01/10/letter-panhandling-accidents-waiting-to-happen>);
- In March 2022, two pedestrians were struck, and one killed, in a median in Forsyth County, Georgia (<https://www.fox5atlanta.com/news/1-pedestrian-dead-1-injured-after-vehicle-crash-in-forsyth-county>);
- In April 2022, a man standing in a center median in Brooklyn, New York was killed by a van from the New York Police Department
(<https://nypost.com/2022/04/08/nypd-van-fatally-strikes-man-in-brooklyn-cops>);
- In April 2022, a man standing in Springfield, Virginia was struck and killed while standing in a median (<https://www.ffxnow.com/2022/04/07/springfield-man-dies-after-three-vehicle-crash-the-fifth-pedestrian-killed-this-year>); and

WHEREAS, these deaths and injuries occur, in part, because roadway medians are not designed for use by pedestrians; instead, they are designed for the purposes of channelizing traffic, promoting roadway safety by separating opposing lanes of traffic, and enhancing community aesthetics through landscape and artistic features; and

WHEREAS, many existing roadway configurations in the City cannot safely accommodate the presence of pedestrians within a median; and

WHEREAS, the City has a compelling interest in adopting laws that help promote safety and prevent deaths and injuries resulting from the presence of pedestrians in narrow medians not designed for pedestrian use; and

WHEREAS, Albuquerque has adopted a multi-prong approach to addressing pedestrian safety concerns through Vision Zero, a multi-national traffic safety project that aims to achieve a system with no pedestrian fatalities or serious injuries involving road traffic. Through Vision Zero, Albuquerque has begun implementing road improvements; conducting road safety assessments; adopting road designs that encourage and accommodate pedestrian and bicycle use; improving crosswalk safety; and decreasing the speed limit throughout downtown, among other initiatives; and

WHEREAS, Albuquerque seeks, in addition to these measures designed to address

general pedestrian safety concerns, to prevent further unnecessary deaths and injuries resulting from the pedestrian occupation of medians; and

WHEREAS, notwithstanding that occupancy of any median by pedestrians presents a traffic safety risk, this amended ordinance attempts to identify and prohibit the use of only those medians that pose risks to pedestrian safety due to their narrowness and their presence in high-speed, high-intensity roadways; and

WHEREAS, because the ordinance only prohibits the occupation of narrow medians in high-speed, high-intensity roadways, it leaves available a substantial portion of the City's medians for expressive conduct, and in many instances bans pedestrians from occupying only a portion of a median, while permitting expressive conduct to take place in the wider sections of the median; and

WHEREAS, the City expects that the Albuquerque Police Department and the Albuquerque Community Safety Department will enforce the provisions of this ordinance in a fair and unbiased way, regardless of the reason any individual is engaging in proscribed activities.

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

SECTION 1: Amending Chapter 8, Article 1, Part 1, Section 2 to add the following definitions in alphabetical order, and otherwise leaving existing definitions unchanged:

"Flat - An area having a grade of eight percent or less throughout."

SECTION 2: Amending Chapter 8, Article 2, Part 7, Section 2 of the Traffic Code as follows:

"§ 8-2-7-2 OCCUPYING ROADWAYS, CERTAIN MEDIANS PROHIBITED.

(A) It is unlawful for any person to stand in any travel lane of a street, highway, or controlled access roadway or in any travel lane of the exit of entrance ramps thereto, or to otherwise enter a travel lane of a street, highway, or controlled access roadway or in any travel lane of the exit of entrance ramps thereto, except for the purpose of legally crossing;

(B) It is unlawful for any person to access, use, occupy, congregate or assemble on any median that is located on any roadway with a posted speed limit of 30 miles per hour or greater and that does not possess a flat area of at least four feet (4') in diameter.

(C) Nothing herein shall be construed as preventing maintenance, repair or construction activities within medians or roadside areas by public agencies or agents

thereof, including law enforcement officers engaged in the performance of their official duties, entering or exiting a bus or other form of public transit at authorized pick up and drop off locations, or as preventing physical interactions or exchanges between pedestrians and occupants of vehicles where the vehicle is lawfully stopped or pulled over outside of a travel lane, or parked at a location where on-street parking is permitted.

(D) A person who violates this provision shall be guilty of a petty misdemeanor and is subject to a fine of up to \$100; provided, however, that:

(1) When appropriate, the Albuquerque Community Safety Department shall respond to a report of a person violating this provision; and

(2) The penalties set forth in 12-1-99 shall apply for a violation of this section; provided, however, that a law enforcement officer shall first verify that a written warning has been issued, otherwise, the officer shall issue a Criminal Trespass Notification to a person for violating this section prior to the issuing of a citation or conducting an arrest. However, in the event of an immediate danger, a verbal warning prior to a citation or arrest is permitted.

SECTION 3. 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 4. COMPILATION. The ordinance amendment prescribed by SECTIONS 1 and 2 shall amend, be incorporated in and made part of the Revised ordinances of Albuquerque, New Mexico, 1994.

SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.

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