INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE NO. 02-378

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE INCORPORATED COUNTY OF LOS ALAMOS BY AMENDING SECTIONS 38-92 AND 38-315 OF CHAPTER 38, TRAFFIC AND VEHICLES, RELATING TO THE PENALTY FOR USE OF HANDHELD MOBILE COMMUNICATION DEVICES WHILE DRIVING

WHEREAS, the Incorporated County of Los Alamos has general authority to enact and/or amend legislation designed to protect the safety, health, and welfare of its citizens and the general public; and

WHEREAS, on May 6, 2025 the County Council adopted Code Ordinance 02-367, *An Ordinance Amending the Code of Ordinances of the Incorporated County of Los Alamos by Amending Section 38-299 of Chapter 38, Traffic and Vehicles, Relating to the Use of Handheld Mobile Communication Devices while Driving, and Repealing Section 38-315 in its Entirety and Replacing it with a New Section 38-315, Relating to Distracted Driving*; and

WHEREAS, the County Council provided that a violation of Section 28-315 shall be treated as a penalty assessment misdemeanor as provided for in Section 315(f) with a penalty assessment of TWO HUNDRED DOLLARS ($200.00) without amending Section 38-92 to add this offense to the list of offenses that qualify for the penalty assessment program as provided for in Section 38-92 of the County Code; and

WHEREAS, the purpose of this amendment is to make consistent how penalty assessment misdemeanors are provided for in the County Code by listing the offense in Section 38-92 and removing reference to the penalty assessment language in Section 315(f); and

WHEREAS, the purpose of this amendment is to maintain consistency in the County Code regarding penalty assessment language in the County Code and clearly bring violations of Sections 38-15 under the same requirements for other penalty assessment misdemeanors in the County Code.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS that:

Section 1. Section 38-92(b)(1), penalty assessment program, Penalty for violation – base amount, of Chapter 38 of the Code of the Incorporated County of Los Alamos is amended, as follows:

Section 38-92. Penalty assessment program.

(a) As used in this chapter, the term "penalty assessment misdemeanor" means violation of any of the sections referenced in section 38-92 (b).

(b) The following base penalty assessments are established for penalty assessment misdemeanors:

(1) *Penalty for violation—base amount.*

Common Name of Offense	Section	Base Penalty Assessment
Obedience to traffic-control device	38-193	$50.00
Failure to obey signal	38-196	50.00
	38-198	
Speeding:		
1—5 mph over the speed limit	38-242	25.00
6—10 mph over the speed limit	38-242	50.00
11—15 mph over the speed limit	38-242	75.00
16—20 mph over the speed limit	38-242	100.00
21—25 mph over the speed limit	38-242	150.00
26—30 mph over the speed limit	38-242	200.00
31—35 mph over the speed limit	38-242	250.00
Minimum speed	38-244	50.00
Failure to drive to right side of street	38-247	50.00
Passing in no passing zone	38-253	50.00
Improper lane	38-257	50.00
Following too closely	38-258	50.00
Failure to yield right-of-way at intersection	38-265	50.00
Failure to yield right-of-way, left	38-266	50.00
Failure to yield/stop at sign	38-267	50.00
Failure to obey sign	38-271	50.00
Improper turning	38-272	50.00
Improper-U Turn	38-273	50.00
Improper stopping, starting or turning	38-275	50.00
Unattended motor vehicle	38-278	50.00
Improper backing	38-279	50.00
Obstructing driver's view or driving mechanism	38-280	50.00
Driving on sidewalk or private property	38-287	50.00
Emerging from alley, building or driveway	38-288	50.00
Obstructing traffic	38-289	50.00
Passing a stopped school bus	38-290	200.00
Prohibited activities while driving	38-299	50.00
Permitting unauthorized persons to drive	38-304	50.00
Unlawful riding	38-306	50.00
Injurious material on roadway	38-308(a)	300.00
	38-308(b)	300.00
	38-308(c)	300.00
	38-308(d)	100.00
	38-308(e)	100.00
Opening or closing of doors	38-310	50.00
Mandatory use of seatbelts	38-314	50.00
Distracting driving	38-315	200.00
Parking in a designated disabled space	38-351	250.00
Improper stopping, standing or parking	38-352	50.00
	38-353	50.00

	38-355	50.00
	38-356	50.00
	38-358	50.00
	38-359	50.00
	38-360	50.00
	38-364(a)	50.00
	38-367	50.00
	38-370	50.00
	38-371(a)	50.00
	38-375(a)	50.00
	38-376(a)	50.00
Failure to Display Current Valid Registration Plate	38-411	50.00
Driving on administratively suspended license	38-416	25.00
Failure to yield to pedestrian	38-452	50.00
Jaywalking, when prohibited to cross roadway	38-455	50.00
Minor on motorcycle without helmet	38-496	300.00
Operating of bicycles and other non-motorized vehicles	38-543	50.00
	38-544	50.00
	38-545	50.00
	38-546	50.00
	38-547	50.00
	38-548	50.00
	38-549	50.00
	38-550	50.00
	38-551	50.00
	38-552	50.00
	38-553	50.00
Improper equipment	38-591	50.00
Unsafe vehicle	38-592	50.00
No slow-moving emblem or flashing yellow light	38-673	50.00
Unauthorized use of skateboards and other similar devices	38-6	50.00

(2) *Penalty enhancement in residential zones.* The penalty assessment for any penalty assessment misdemeanor committed in Los Alamos County shall be the base penalty assessment for the offense, as set out in section 38-92(b)(1) plus $20.00 unless the penalty assessment misdemeanor is committed on one of the following roadways or, if the penalty assessment misdemeanor is speeding, in a school zone:

a. 15th Street

b. Canyon Road from 15th Street to Diamond Drive

c. Central Avenue

d. Diamond Drive

e. DP Road

f. East Jemez Road (Truck Route)

g. New Mexico 501 (West Jemez Road)

h. New Mexico 502 (Trinity Drive east of Diamond Drive)

i. New Mexico State Road 4

j. North Mesa Road

k. Oppenheimer Avenue

l. Pajarito Road

m. San Ildefonso Road South of El Gancho to Alamo Road

n. West Road

o. Range Road

(3) *Penalty enhancement in congested areas.* The penalty assessment for any penalty assessment misdemeanor committed on the roadways described below in Los Alamos County shall be the base penalty assessment for the offense, as set out in section 38-92(b)(1), plus $20.00:

a. Central Avenue between 15th Street and Oppenheimer

(4) *Speeding in school zones.* The penalty assessment for speeding in a school zone shall be the base penalty assessment for the speeding offense, as set out in section 38-92(b)(1) multiplied by two.

(5) *Except as provided in subsections* 38-92(b)(2) and (b)(3), the penalty assessment for a penalty assessment misdemeanor committed in Los Alamos County shall be the base penalty assessment for the offense, as set out in section 38-92(b)(1).

(6) *Speeding in a construction zone.* The penalty assessment for speeding in a construction zone shall be the base penalty assessment for the speeding offense, as set out in section 38-92(b)(1) multiplied by two.

(c) The term "penalty assessment misdemeanor" does not include any violation that has caused or contributed to the cause of an accident resulting in property damage or injury or death to any person.

(d) The fine imposed upon conviction for a penalty assessment misdemeanor shall not exceed the penalty assessment established for the particular penalty assessment misdemeanor established in this section, and no probation imposed upon a suspended or deferred sentence shall exceed 90 days.

Section 2. Section 38-315, Distracted Driving, of Chapter 38 of the Code of the Incorporated County of Los Alamos is amended, as follows:

Section 38-315. Distracting driving.

(a) No person shall:

(1) Operate a motor vehicle while engaged in any activity which interferes with the safe operation of the vehicle;

(2) Operate a motor vehicle upon a street or highway while using a handheld mobile communication device, to create, send, or read a text message, or receive or transmit data, including but not limited to photographs, snapshots or electronically transmitted images, or any other data, whether the vehicle is in motion or not, unless said motor vehicle has pulled over to the side of or off of an active roadway, and has stopped at a location in which it can safely remain stationary; or

(3) Operate a motor vehicle upon a street or highway while using a handheld mobile communication device to dial, place, receive, or engage in a call whether the vehicle is in motion or not, unless said motor vehicle has pulled over to the side of or off of an active roadway, and has stopped at a location in which it can safely remain stationary.

(b) This section shall not apply to:

(1) the use of a handheld mobile communication device for the sole purpose of communicating with any of the following regarding an emergency situation:

a. An emergency response operator;

b. A hospital, physician's office or health clinic;

c. A fire department; or

d. A police department.

(2) the use of a mobile communication device when being used in a hands-free manner.

(c) As used in this section:

(1) “driving” means being in actual physical control of a motor vehicle on a highway or street and includes being temporarily stopped because of traffic, a traffic light or stop sign or otherwise, but “driving” excludes operating a motor vehicle when the vehicle has pulled over to the side of or off of an active roadway and has stopped at a location in which it can safely remain stationary.

(2) “handheld mobile communication device” means a wireless communication device that is designed to receive and transmit voice, text, or image messages, calls, or videos, or access the internet or application, including social media or other communication applications, or a game, but “handheld mobile communication device” excludes global positioning or navigation systems, devices that are physically or electronically integrated into a motor vehicle~~ and~~, voice-operated or hands-free devices that allow the user to compose, send or read a text message without the use of a hand except to activate, deactivate or initiate a feature or function, and a radio microphone used to communicate via a vehicle mounted radio.

(3) “hands-free manner" means using a mobile communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile communication device, 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 communication device.

(4) “text message” means a digital communication transmitted or intended to be transmitted between communication devices and includes images, electronic mail, an instant message, an electronic message, text or image communication, a command or request to an internet site or application, including social media or other communication applications, or a game; but “text message” excludes communications through the use of a computer-aided dispatch service by law enforcement or rescue personnel.

(d) An operator of a motor vehicle who holds a handheld mobile communication device to, or in the immediate proximity of, the operator’s ear is presumed to be engaging in a call within the meaning of this section. The presumption established by this section is rebuttable by evidence tending to show that the operator was not engaged in a call. Immediate proximity shall mean that distance which permits the operator of a handheld mobile communication device to hear telecommunications transmitted over such handheld mobile communication device, but shall not require physical contact with such operator's ear.

(e) The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a handheld mobile communication device. Unless otherwise provided by law, the handheld mobile communication device used in the violation of the provisions of this section is not subject to search by a law enforcement officer during a traffic stop made pursuant to the provisions of this section.

~~(f) [Whoever is guilty of a violation of any provision of this section shall be subject to a penalty assessment of two hundred dollars ($200).]~~

Section 3. Effective Date. This Ordinance shall become effective thirty (30) days after publication of its notice of adoption.

Section 4. Severability. Should any section, paragraph, clause or provision of this ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 5. Repealer. All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

ADOPTED this 5th day of May 2026.

COUNCIL OF THE INCORPORATED COUNTY OF LOS ALAMOS

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Randall T. Ryti,
Council Chair

ATTEST: (SEAL)

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Michael D. Redondo,
Los Alamos County Clerk