

INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE NO. 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 38-135, RELATING TO DISTRACTED 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, Chapter 38 of the Code of the Incorporated County of Los Alamos governs Traffic and Vehicles; and

WHEREAS, traffic crash data maintained by the Los Alamos County Police Department indicates that distracted driving consistently contributes to injury and non-injury crashes; and

WHEREAS, the most recent Youth Risk and Resiliency Survey indicated a higher percentage of Los Alamos County teens self-reporting texting while driving than teens state wide, with over 50% of Los Alamos High School juniors and seniors reporting texting while driving behavior; and

WHEREAS, the purpose of this amendment is to encourage traffic safety and promote awareness of the risks associated with distracted driving.

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

Section 1. Section 38-299 of Chapter 38 of the Code of the Incorporated County of Los Alamos is hereby amended as follows:

Sec. 38-299. - Prohibited activities while driving.

No person shall:

- ~~(1) Drive a vehicle while engaged in any activity which interferes with the safe operation of the vehicle;~~
- (21) Drive while having in his lap any person, adult or minor, or any animal;
- (32) Drive while seated in the lap of another person while the vehicle is in motion;
- (43) Drive a vehicle while having either arm around another person; ~~or~~
- (54) Operate a motor vehicle's equipment including, but not limited to, the vehicle horn or lights, in such manner as to distract other motorists on the public way or in such a manner as to disturb the peace.

Section 2. Section 38-315 of Chapter 38 of the Code of the Incorporated County of Los Alamos is repealed in its entirety and replaced with the following:

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) A violation of the provisions of this section is punishable by a fine of **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 6th day of May 2025.

**COUNCIL OF THE INCORPORATED
COUNTY OF LOS ALAMOS**

**Theresa Cull,
Council Chair**

ATTEST: (SEAL)

**Michael D. Redondo,
Los Alamos County Clerk**