City of Las Cruces®
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Council Action and Executive Summary

Item # 18 **Ordinance #** 2582 **Council District:** ___

For Meeting of July 19, 2010
(Adoption Date)

AN ORDINANCE AMENDING ORDINANCE 2558, WHICH CONCERNS THE USE OF A MOBILE (CELL) TELEPHONE WHILE DRIVING, TO MAKE THIS OFFENSE A PENALTY ASSESSMENT UNDER LAS CRUCES MUNICIPAL CODE, SECTION 27-12-14-4.

PURPOSE(S) OF ACTION: The ordinance amendment is presented to convert the present penalties, sentencing and fines subsection of the ordinance into a penalty assessment.

Name of Drafter: Jared Abrams		Department: Legal		Phone: 541-2128	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Originating Department	Legal	541-2128	Budget		541-2107
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On February 2, 2010 the City Council adopted Ordinance 2558 which added an additional prohibited activity while driving: The use of a mobile telephone to engage in a call or to create, send or read text messages (with certain exceptions).

Since that time further review of Ordinance 2558 has determined that clarification and implementation of penalties, fines and sentencing for conviction under this ordinance should be a penalty assessment in the amount of $126.00. The purpose of converting the penalties, fines and sentencing to a penalty assessment is to allow the violator to sign the penalty assessment thereby acknowledging guilt and, in doing so, avoid appearing in court.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Ordinance.

2. Ordinance in legislative format, Attachment "1."

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. Adopt the ordinance. Adoption means that the penalties, sentencing and fines for convictions of LCMC, Section 27-12-6-12.18 will be converted into a penalty assessment of $126.00.

2. Do not adopt the ordinance. This means that Las Cruces Municipal Code, Section 27-12-6-12.18 will remain the same and all violations will require a court appearance.

3. Modify the ordinance and provide further direction to staff.

(Continue on additional sheets as required)

COUNCIL BILL NO. 11-002
ORDINANCE NO. 2582

AN ORDINANCE AMENDING ORDINANCE 2558, WHICH CONCERNS THE USE OF A MOBILE (CELL) TELEPHONE WHILE DRIVING, TO MAKE THIS OFFENSE A PENALTY ASSESSMENT UNDER LAS CRUCES MUNICIPAL CODE, SECTION 27-12-14-4.

The City Council is informed that:

WHEREAS, on February 2, 2010 the City Council adopted Ordinance 2558 which added an additional prohibited activity while driving; this activity being the use of a mobile (cell) telephone to engage in a call or to create, send or read text messages (with certain exceptions); and

WHEREAS, further review has determined that clarification and implementation of penalties for convictions under the ordinance shall be a penalty assessment in the amount of $126.00.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:

(I)

THAT LCMC 1997, Section 27-12-6-12.18(F)(4) is amended to read as follows:

(4) Penalties; sentencing; fines.

(a) A violation of LCMC 1997, Section 27-12-6-12.18 shall be a penalty assessment;

(b) The penalty assessment shall be $126.00; and

(c) The violator's signature on the penalty assessment notice constitutes an acknowledgment of guilt of the offense and payment of the prescribed penalty assessment is a complete satisfaction of the violation.

(II)

THAT City staff is authorized to do all deeds necessary to accomplish the intent of this Ordinance.

DONE AND APPROVED on this ____ day of July, 2010.

_____
Mayor

ATTEST:

_____
City Clerk

{SEAL}

Vote:

Moved by: _____

Seconded by: _____

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:

_____
City Attorney

Sec. 27-12-6-12.18. Prohibited activities while driving.

No person shall:

A. Drive a vehicle while engaged in any activity which interferes with the safe operation of the vehicle;

B. Drive while in his lap any person, adult or minor, or any animal;

C. Drive while seated in the lap of another person while the vehicle is in motion;

D. Drive a vehicle while having either arm around another person;

E. 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.

F. Except as otherwise provided in subdivision (3) below, drive a vehicle upon a public street or highway while using a mobile telephone to read, select or enter a telephone number or name in a mobile telephone for the purpose of making or receiving a call, engage in a call or create, send or read text messages and/or electronic mail.

(1) As used in this section:

(a) "Engage in a call" means talking into, dialing or listening on a hand-held mobile telephone, but shall not include holding a mobile telephone to activate, deactivate or initiate a function of such telephone;

(b) "Hand-held mobile telephone" means a mobile telephone with which a user engages in a call using at least one hand (or prosthetic device or aid in the case of a physically disabled person);

(c) "Hands-free mobile telephone" means a mobile telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, 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 telephone;

(d) "Mobile telephone" means the device used by subscribers and other users of wireless telephone service to access such service and shall include personal digital assistants;

(e) "Personal digital assistant" means a device using a wireless telecommunications service that provides for data communication other than by voice;

(f) "Wireless telephone service" means two-way real time voice telecommunications service that is interconnected to a public to a public switched telephone network and commonly referred to as cellular service or personal communication service.

(g) "Drive" means when the vehicle is in motion on any street or highway.

(2) An operator of a motor vehicle who holds a mobile telephone to, or in the immediate proximity of, his or her 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 as permits the operator of a mobile telephone to hear telecommunications transmitted over such mobile telephone, but shall not require physical contact with such operator's ear.

(3) Subdivision (F) above shall not apply to:

(a) The use of a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office or health clinic; an ambulance company or corps; a fire department, district or company; or a 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 responding to an emergency;

(c) The use of a hands-free mobile telephone when being used in a hands free manner; or

(d) The use of a hands-free mobile telephone when being used in a non-travel lane.

(4) Penalties; sentencing; fines.

(a) A violation of LCMC 1997, Section 27-12-6-12.18 shall be a penalty assessment;

(b) The penalty assessment shall be $126.00; and

(c) The violator's signature on the penalty assessment notice constitutes an acknowledgment of guilt of the offense and payment of the prescribed penalty assessment is a complete satisfaction of the violation.

(5) This ordinance will take effect on February 5, 2010.