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City of Las Cruces®

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Council Action and Executive Summary

Item # 20 **Ordinance #** 2548 **Council District:** ___

For Meeting of December 7, 2009
(Adoption Date)

AN ORDINANCE AMENDING LAS CRUCES MUNICIPAL CODE, SECTIONS 27-12-6-12.18, *PROHIBITED ACTIVITIES WHILE DRIVING*, TO ADD AS A FURTHER PROHIBITED ACTIVITY THE USE OF A MOBILE TELEPHONE TO ENGAGE IN A CALL OR TO CREATE, SEND OR READ TEXT MESSAGES, WITH CERTAIN EXCEPTIONS THAT INCLUDE THE USE OF HANDS-FREE DEVICES.

PURPOSE(S) OF ACTION: The ordinance amendment is presented to add another prohibited activity while driving: the use of a mobile telephone to send or receive calls, and to create, send, or read a text message. Exceptions are listed and include the use of hands-free devices.

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

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

It has come to the attention of the City Council that there may be risks related to cell phone use while driving. The amendment to the Las Cruces Municipal Code is contemplated to address the possible hazards produced by a distracted driver as a result of making a call, answering a call, or creating, sending, or reading a text message.

Exceptions are described in the ordinance amendment, and include the use of a hands-free mobile telephone, communication in an emergency situation, and communication by law enforcement, emergency and safety personnel while responding to an emergency.

SUPPORT INFORMATION:

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

1. Ordinance with Exhibit "A" attached.

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

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. Adopt the ordinance. Adoption means that using a mobile phone to engage in a call, or to create, send, or read text messages, with certain exceptions allowed, will be a prohibited activity.

2. Do not adopt the ordinance. This means that Las Cruces Municipal Code, Section 27-12-6-12.18, *Prohibited activities while driving*, will not be amended and will not include actions related to mobile phone use as a prohibited activity.

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

(Continue on additional sheets as required)

COUNCIL BILL NO. 10-019
ORDINANCE NO. 2548

AN ORDINANCE AMENDING LAS CRUCES MUNICIPAL CODE, SECTIONS 27-12-6-12.18, *PROHIBITED ACTIVITIES WHILE DRIVING*, TO ADD AS A FURTHER PROHIBITED ACTIVITY THE USE OF A MOBILE TELEPHONE TO ENGAGE IN A CALL OR TO CREATE, SEND OR READ TEXT MESSAGES, WITH CERTAIN EXCEPTIONS THAT INCLUDE THE USE OF HANDS-FREE DEVICES.

The City Council is informed that:

WHEREAS, there may be risks related to cell phone use while driving; and

WHEREAS, this amendment to the Las Cruces Municipal Code addresses the possible hazards produced by a distracted driver as a result of making a call, answering a call, or creating, sending or reading a text message; and

WHEREAS, exceptions are described in the amendment and include the use of a hands-free mobile telephone, communication in an emergency situation, and communication by law enforcement, emergency and safety personnel responding to an emergency.

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, *Prohibited activities while driving,* is hereby enacted to read as shown on Exhibit "A" attached hereto and made a part of this Ordinance.

(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 _____, 2009.

_____
Mayor

ATTEST:

_____
City Clerk

{SEAL}

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 engage in a call or create, send or read text messages.

(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.

(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.

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

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

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~~.~~; or

(Ord. No. 2121, § VI, 7-19-04)

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