

**NOTICE OF INTENT TO ADOPT AN ORDINANCE  
AMENDING SECTION 12-6-18 (PROHIBITED ACTIVITIES WHILE DRIVING) OF  
THE NEW MEXICO UNIFORM TRAFFIC CODE ADOPTED AS THE SILVER CITY  
TRAFFIC ORDINANCE IN CHAPTER 50, SECTION 50-1 OF THE MUNICIPAL CODE  
OF THE TOWN OF SILVER CITY, NEW MEXICO AND AMENDING THE PENALTY  
ASSESSMENT SCHEDULE FOUND IN CHAPTER 50, SECTION 50-2 OF THE  
TOWN OF SILVER CITY MUNICIPAL CODE.**

**The Council of the Town of Silver City, Grant County, New Mexico hereby gives notice of its intention to adopt an amendment to the Town of Silver City Code of Ordinances. This notice is given the title as follows:**

**ORDINANCE NO. 1246**

**AN ORDINANCE AMENDING SECTION 12-6-18 (PROHIBITED ACTIVITIES WHILE DRIVING) OF THE NEW MEXICO UNIFORM TRAFFIC CODE ADOPTED AS THE SILVER CITY TRAFFIC ORDINANCE IN CHAPTER 50, SECTION 50-1 OF THE MUNICIPAL CODE OF THE TOWN OF SILVER CITY, NEW MEXICO AND AMENDING THE PENALTY ASSESSMENT SCHEDULE FOUND IN CHAPTER 50, SECTION 50-2 OF THE TOWN OF SILVER CITY MUNICIPAL CODE.**

**Sponsored by: Councilor José Ray**

**WHEREAS**, the Town Council recognizes that operation of motor vehicles on Town streets and roadways poses inherent risks to the safety and welfare of drivers and their passengers, pedestrians, and bicyclists in the Town, as well as to property; and

**WHEREAS**, the Town Council has studied and considered measures necessary to promote safety of persons and property within the Town, and concludes that inattention by motor vehicle drivers and bicyclists caused by the use of hand- held cellular and radio-telephone devices while driving is likely to increase the risk of danger to persons and property; and

**WHEREAS**, the Town Council finds that regulating the use of hand-held cellular and radio-telephone devices by persons driving motor vehicles and bicycles on the streets and roadways of the Town is in the public interest;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF**

**SILVER CTY, GRANT COUNTY, NEW MEXICO THAT :**

Section 12-6-18 of the New Mexico Uniform Traffic Code (2010 Compilation as amended up through July, 2015) and as adopted by the Town of Silver City Municipal Code in Chapter 50, Section 50-1) is hereby amended by deleting that current subsection and replacing it with the following:

12-6-18

(A) No person shall, except as otherwise provided below, operate a motor vehicle upon a street or highway while using a mobile telephone, or other electronic device, to engage in a call, create, send, or read a text or instant 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.

(B) This section shall not apply to:

(1) The use of a mobile or telephone for the sole purpose of communicating with any of the following regarding an immediate emergency situation:

- (a) An emergency response operator;
- (b) An ambulance company or corps;
- (c) A fire department, district or company;
- (d) A police department or sheriff's office;
- (e) A hospital; or

(2) The use of a hands-free mobile telephone when it is being used in a hands-free manner.

(C) 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 engaged in using the device within the meaning of this section. "Immediate proximity" shall mean the distance as permits the operator of an electronic device to hear the communication transmitted, but shall not require physical contact with the operator's ear.

(D) 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.

(E) 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" and "electronic device" mean a wireless communication device that is designed to receive and transmit text or image messages and data, 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

(3) "Text message, instant message, data, photographs, electronic images and snapshots" means a digital communication transmitted or intended to be transmitted between communication devices and includes electronic mail, an instant message, a text or image communication and a command or request to an Internet site; but "text message" excludes communications through the use of a computer-aided dispatch service by law enforcement or rescue personnel.

**FURTHER:**

Section 50-2 (Penalty assessments) is amended by deleting the Common Name of Offense "Texting while driving" listed as last in the penalty assessment schedule and replacing that offense with "Use of mobile telephone or other electronic communication device while driving". The "Ordinance Violated" shall remain 12-6-18 and the "Penalty Assessment" for that offense shall be increased to \$200.

**PASSED, ADOPTED AND APPROVED** by vote of the Council of the Town of Silver City, Grant County, New Mexico, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

TOWN OF SILVER CITY

(Seal)

\_\_\_\_\_  
Ken Ladner, Mayor

ATTEST:

\_\_\_\_\_  
Ann L. Mackie, Town Clerk

Consideration of the final adoption of such proposed ordinance will not take place until at least two (2) weeks subsequent to the date of this notice and only at a public meeting called and held in

accordance with Section 3-17-3, N.M.S.A. 1978. Consideration of adoption of said ordinance is currently scheduled for and will not take place prior to \_\_\_\_\_, 2016.

\_\_\_\_\_  
Ann L. Mackie, Town Clerk

\_\_\_\_\_  
Date