

LOCAL LAW NO. "M" FOR 2008

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK PROHIBITING THE USE OF WIRELESS HANDSETS TO COMPOSE, READ, OR SEND TEXT MESSAGES WHILE OPERATING A MOTOR VEHICLE

Introduced: 8/11/08

By Messrs. Higgins, Clenahan, Hoblock, Horstmyer, Morse, Nichols, Ms. Willingham, Messrs. Aylward, Beston, Bullock, Ms. Chapman, Messrs. Clay, Commisso, Ms. Connolly, Messrs. Cotrofeld, Domalewicz, Ethier, Gordon, Houghtaling, Infante, Joyce, Ms. Maffia-Tobler, Messrs. Mayo, McCoy, Ms. McKnight, Messrs. Rahm, Reilly, Scavo, Steck, Timmins, Ward and Zeilman:

BE IT ENACTED by the Albany County Legislature as follows:

Section 1. Intent.

Because the quantity of in-vehicle communication devices continues to grow and numerous studies and reports point out the relationship and dangerous effects of driver distraction and motor vehicle accidents, this Honorable Body recognizes a need to protect citizens from accidents and serious physical injuries caused by driver distraction from use of in-vehicle communication devices. The purpose of this Local Law is to protect the public interest, welfare, health and safety within the County of Albany by reducing the incidence of distracted driving and improving the safety on our roadways. Specifically, the law would ban motorists from using wireless handsets to compose, read or send text messages or emails while operating a motor vehicle on any public street or public highway within the County of Albany. The Albany County legislature finds that according to studies conducted by the American Automobile Association (AAA), any activity that takes a driver's attention off the road for more than two seconds can double a driver's risk of a crash. The federal government estimates that 30% of all crashes in the United States result from driver distraction. Statistics from the New York State Department of Motor Vehicles, in 2006, also indicate that nearly 30% of accidents in the State involve driver distraction or inattention. Notably, in a 2006 joint report issued by the National Highway Traffic Safety Administration and the Virginia Tech Transportation Institute, nearly 80% of crashes and 65% of near-crashes observed in their study involved a driver distracted in the three seconds prior to an accident. The Albany County legislature further recognizes that in response to the growing danger of distracted driving and the increasing number of accidents involving cell phone usage while driving, the New York State Legislature passed a state-wide ban on the use hand-held cell phones while driving. However, the Albany County legislature also recognizes that when New York banned motorists from talking on hand-held cellular phones in 2001, text messaging was fairly uncommon. However, since that time, text messaging has become an increasingly popular form of communication. Indeed, according to a trade group for the cell phone industry, the

Cellular Telecommunications and Internet Association (“The Wireless Association”), in 2006, U.S. wireless subscribers, of which there are currently 251.45 million, sent 158 billion text messages, an increase of 95% from 2005, translating into approximately 300,000 text messages per minute. The Albany County legislature further notes that text messaging is now one of the latest electronic obsessions and driving dangers. In fact, a January 2007 survey conducted by Nationwide Mutual Insurance Company found that 19% of motorists between the ages of 18 and 60 admitted to text messaging while driving, while 37% of drivers between the ages of 18 and 27 indicated that they do so. However, text messaging and emailing while driving, a new and risky phenomenon, is especially dangerous since these practices require drivers to take their eyes and mind off of the road, as well as their hands off of the steering wheel, while operating a motor vehicle. In response to this threat to public safety it is necessary to provide law enforcement with yet another tool to combat this dangerous practice.

Section 2. Definitions.

Wherever used in this title, the following terms shall be defined as follows unless the context or subject matter otherwise requires:

1. “Hands Free” shall mean the manner in which a wireless handset is operated for the purpose of composing, reading or sending text messages, by using an internal feature or function, or through an attachment or addition, including but not limited to an ear piece, head set, remote microphone or short range wireless connection, thereby allowing the user to operate said device without the use of hands.
2. “Inoperability” shall mean a motor vehicle that is incapable of being operated or being operated in a safe and prudent manner due to mechanical failure, including but not limited to, engine overheating or tire failure.
3. “Motor Vehicle” shall mean any vehicle that is self-propelled by a motor, including but not limited to, automobiles, trucks, vans, construction vehicles, etc.
4. “Person” shall mean any natural person, corporation, unincorporated association, firm, partnership, joint venture, joint stock association or other entity or business organization of any kind.
5. “Stopped” shall mean not in motion.
6. “Text Message”, also referred to as short messaging service (SMS), shall mean the process by which users send, read, or receive messages on a wireless handset, including but not limited to, text messages, instant messages, electronic messages or e-mails, in order to communicate with any person or device.

7. "Use" shall mean to hold a wireless handset in one's hands.
8. "Wireless Handset" shall mean a portable electronic or computing device, including cellular telephones and digital personal assistants (PDAs), capable of transmitting data in the form of a text message.

Section 3. Prohibited Uses of Electronic Devices While Operating A Motor Vehicle.

1. No person shall use a wireless handset to compose, read or send text messages while operating a motor vehicle on any public street or public highway within the County of Albany.
2. Notwithstanding subsection 1., this law shall not be construed to prohibit the use of any wireless handset by:
 - (a) Any law enforcement, public safety or police officers, emergency services officials, first aid, emergency medical technicians and personnel, and fire safety officials in the performance of duties arising out of and in the course of their employment as such;
 - (b) A person using a wireless handset to contact an individual listed in subsection (a); or
 - (c) A person using a wireless handset inside a motor vehicle while such motor vehicle is parked, standing or stopped and is removed from the flow of traffic, in accordance with applicable laws, rules or ordinances, or is stopped due to the inoperability of such motor vehicle.
3. Notwithstanding subsection 1., this law shall not be construed to prohibit a person operating a motor vehicle from utilizing a hands-free wireless handset.

Section 4. Enforcement and Penalties.

1. A violation of any provisions of this local law shall constitute an offense and be punishable by a fine of an amount between \$0 to \$150.00 for each single violation. Each such violation shall constitute a separate and distinct offense.
2. This local law shall be enforced by the Albany County Sheriff's Department and may be enforced by any other law enforcement agency having jurisdiction within the County of Albany.

Section 5. Reverse Preemption.

This law shall be null and void on the day that Statewide or Federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent State or Federal administrative agency issues and promulgates regulations preempting such action by the County of Albany. The Albany County Legislature may determine via resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

Section 6. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this Local Law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 7. Effective Date.

This local law shall take effect August 1, 2009.

Referred to Law Committee. 8/11/08

Favorable Recommendation - Law Committee. 3/23/09

On roll call vote the following voted in favor: Ms. Benedict, Messrs. Beston, Bullock, Ms. Chapman, Messrs. Clenahan, Clouse, Commisso, Ms. Connolly, Messrs. Cotrofeld, Domalewicz, Gordon, Higgins, Hoblock, Horstmyer, Houghtaling, Infante, Joyce, Mss. Lockart, Maffia-Tobler, Mr. Mayo, Ms. McKnight, Messrs. Mendick, Rahm, Scavo, Steck, Ward, Ms. Willingham and Mr. Zeilman – 28

Those opposed: Mr. Dawson – 1.

Local Law was adopted. 4/13/09