

# **TOWN OF PERALTA**

## **ORDINANCE 2015-07**

### **AN ORDINANCE PROHIBITING THE OPERATION OF A HAND-HELD CELLULAR PHONE WHILE DRIVING A VEHICLE, EVEN WHEN THE VEHICLE IS STOPPED IN TRAFFIC**

#### **SECTION 1. AUTHORITY**

This Ordinance is enacted under §3-17-1, NMSA 1978.

#### **SECTION 2. PURPOSE**

It is the intent of the Governing Body that the enactment of this Ordinance will establish procedures that will:

1. Protect residents from the known dangers of operating a motor vehicle while utilizing a handheld mobile device;
2. Establish certain fees and costs related to the Ordinance pursuant to the New Mexico Criminal and Traffic Law Manual and §35-14-11, NMSA 1978;
3. Prescribe penalties for violation of this Ordinance pursuant to the New Mexico Criminal Traffic and Law Manual and §66-8-7, NMSA 1978; and
4. Provide for the safety, preserving the health, promoting order, comfort and convenience of the municipality and its inhabitants.

It is the intent of the Council that Section 2 applies to any driver operating a vehicle on a public highway, whether the vehicle is in motion or stopped on the roadway due to traffic signals, signs or conditions. It is the intent of the Council that a driver wishing to use a hand-held mobile telephone shall pull off of the public highway before manually using the mobile telephone to engage in a call or to create, send or read text messages. It is the intent of the Council to allow the operation of a "hands-free" mobile telephone.

#### **SECTION 3. PROCEDURE**

Except as otherwise provided below, no person shall operate a motor vehicle upon a public highway while using a mobile telephone to engage in a call or create, send or read text messages.

1. For purposes of this subsection the following definitions apply:

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

(b) "Hands-free mobile telephone" shall mean 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 or deactivate such telephone.

(c) "Hand-held mobile telephone" shall mean 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).

(d) "Mobile telephone" shall mean 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" shall mean a device operated using a wireless telecommunications service that provides for data communication other than by voice.

(f) "Wireless telephone service" shall mean two-way real time voice telecommunications service that is interconnected 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 subdivision 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 (E) 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 their employment as such; or

(c) the use of a hands-free mobile telephone when being used in a "hands free manner".

#### **SECTION 4. SEVERABILITY CLAUSE**

If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

#### **SECTION 5. COMPILATION**

This Ordinance shall be incorporated in and made part of the Code of Ordinances of the Town of Peralta, New Mexico.

**SECTION 6. EFFECTIVE DATE**

This Ordinance shall take effect five days after publication by title and general summary.

**PASSED, APPROVED AND ADOPTED THIS 18<sup>th</sup>, Day of November 2015.**

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**Bryan R. Olguin, Mayor**

**(SEAL)**

**ATTEST:**

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**Julie Pluemer, Clerk/Administrator**