

ORDINANCE NO. 529

An ordinance of the City of Lovington, New Mexico, amending Title 10, Chapter 10.04 – Uniform Traffic Code.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON THAT TITLE 10, CHAPTER 10.04 BE AND HEREBY IS AMENDED AS FOLLOWS:

10.04.010 Adoption

The 2010 compilation of the New Mexico Uniform Traffic Ordinance, including a new Section 12-6-18, Texting While Driving, and all changes through July 1, 2014, are herewith adopted by reference, pursuant to Section 3-17-6 N.M.S.A, 1978.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON ON THE 25th DAY of August, 2014.



Scotty Gandy
SCOTTY GANDY, Mayor

ATTEST:

Carol Ann Hogue
CAROL ANN HOGUE, City Clerk

2014 Uniform Traffic Ordinance Changes

Underlined = NEW MATERIAL

12-6-18 TEXTING WHILE DRIVING

A. A person shall not read or view a text message or manually type on a handheld mobile communication device for any purpose while driving a motor vehicle, except to summon medical or other emergency help or unless that device is an amateur radio and the driver holds a valid amateur radio operator license issued by the Federal Communications Commission.

B. The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a handheld mobile communications 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.

C. 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 an active roadway and has stopped at a location in which it can remain safely stationary;
- (2) “handheld mobile communication device” means a wireless communications device that is designed to receive and transmit text or image messages, but “handheld mobile communications 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” 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.

D. A violation of provisions of this section is punishable by a fine of \$25 for a first violation and \$50 for a second or subsequent violation. Violations of provisions of this section may be included in a local penalty assessment ordinance.



P.O. Box 846 • Santa Fe, New Mexico 87504-0846
Phone (505) 982-5573 • 1-800-432-2036
FAX No. 1-505-984-1392
www.nmml.org

Date: July 14, 2014
To: Municipal Clerks
From: Randy Van Vleck, General Counsel
Roger Makin, Director of Communications & Publications
Subject: 2014 Amendment to the Uniform Traffic Ordinance (UTO)

There is one addition to one section of the UTO this year: a new Section 12-6-18, Texting While Driving. The new section is shown in legislative style on the page enclosed entitled "2014 Uniform Traffic Ordinance Changes." Also enclosed are the replacement pages for this year that contain the changes:

Remove pages:

2013 Cover Page and Table of Contents
Article VI – pages 3-4
Article VI – pages 63 and 64

Remove Index Pages beginning
with the letter -T- through the end

Replace with new pages:

2014 Cover Page and Table of Contents
Article VI – pages 3-4
Replace with new pages 63 through 65 containing
new Section 12-6-18.

Replace with new pages beginning with letter
-T- through the end

We are sending this change to the Municipal Clerk in order for you to put the adoption procedure in process. **Please remember: these amendments must be adopted by ordinance since the UTO has been adopted as an ordinance. This means your municipal governing body will have to adopt the changes as it would adopt any other ordinance. This requires publishing or posting at least two weeks prior to adoption of the proposed changes to your UTO.**

Also note that the new Section 12-6-18, Texting While Driving, allows violations of that section to be a Penalty Assessment Violation. If you decide to include the violation in your existing ordinance, you must also adopt the new Penalty Assessment Ordinance containing the violation by ordinance.

If you have any questions, please do not hesitate to contact us here at the League. Thanks for your cooperation. Please disregard this memo if your municipality has not adopted the UTO.

2014 Uniform Traffic Ordinance Changes

Underlined = NEW MATERIAL

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**New Mexico
Uniform Traffic Ordinance
2010 Compilation**

**THIS DOCUMENT CONTAINS ALL REVISIONS
THROUGH JULY, 2014**

New Mexico Municipal League
P.O. Box 846
Santa Fe, New Mexico 87504
(505) 982-5573 or 1-800-432-2036
www.nmml.org

PREFACE TO 2010 COMPILATION

NEW MEXICO UNIFORM TRAFFIC ORDINANCE

This Uniform Traffic Ordinance consists of the 2010 Compilation, which replaces the 2004 Compilation, and amendments through July, 2014. The citations in parentheses are to the 1978 New Mexico Statutes Annotated (or as amended since 1979). These citations at the end of a paragraph indicate comparable provisions in the State law. The exact language in the State Motor Vehicle Code has been used in the Ordinance wherever possible. An asterisk (*) at the end of a paragraph indicates that there are no comparable provisions in the State Code. A reference includes any unreferenced paragraphs that precede it.

The 2010 Compilation has a new page numbering system. Each Article is numbered individually with the Article number first. Consequently, the previous Compilation will not necessarily match the 2010 Compilation's page numbers. The 2010 Compilation contains all amendments since July, 2004 enacted by the Legislature through July, 2014 with the 2014 changes.

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12-6-1 SPEED REGULATIONS.

12-6-1.1 BASIC RULE. No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding street and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. (*)

12-6-1.2 SPEED LIMITS.

- A. No person shall drive a vehicle on a street or detour at a speed greater than:
 - (1) fifteen (15) miles per hour on all streets when passing a school while children are going to, or leaving school, and when the school zone is properly posted:
 - (2) thirty (30) miles per hour in any business or residence district (66-7-301 NMSA 1978); or
 - (3) the lawfully posted speed limit when signs are erected giving notice of the speed limit. (*)

shall be paid by the agency represented by the law enforcement officer at whose direction a chemical test was administered pursuant to 12-6-17.6.

12-6-17.9 USE OF TESTS IN CRIMINAL OR CIVIL ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING

A. The results of a test performed pursuant to the Boating While Intoxicated Act may be introduced into evidence in a civil action or criminal action arising out of the acts alleged to have been committed by the person tested for operating a motorboat while under the influence of intoxicating liquor or drugs.

B. When the blood or breath of the person tested contains:

(1) an alcohol concentration of five one hundredths or less, it shall be presumed that the person was not under the influence of intoxicating liquor; or

(2) an alcohol concentration of more than five one hundredths but less than eight one hundredths, no presumption shall be made that the person either was or was not under the influence of intoxicating liquor. However, the amount of alcohol in the person's blood or breath may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

C. When the blood or breath of the person tested contains an alcohol concentration of eight one hundredths or more, the arresting officer shall charge him with a violation of 12-7-17.2.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

E. The alcohol concentration in a person's blood or breath shall be determined by a chemical test administered to the person within three hours of the alleged boating while under the influence of intoxicating liquor. In a prosecution pursuant to the provisions of the Boating While Intoxicated Act, it is a rebuttable presumption that a person is in violation of the provisions of that act if he has an alcohol concentration of eight one hundredths or more in his blood or breath as determined by a chemical test administered to the person within three hours of the alleged boating while under the influence of intoxicating liquor. If the chemical test is administered more than three hours after the alleged boating while under the influence of intoxicating liquor, the test result is admissible as evidence of the alcohol concentration in the person's blood or breath at the time of the alleged boating and the trier of fact shall determine what weight to give the test result.

F. The presumptions in Subsection B of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.

G. If a person is convicted of operating a motorboat while under the influence of intoxicating liquor or drugs, the trial judge shall be required to inquire into

past convictions of the person for operating a motorboat while under the influence of intoxicating liquor or drugs before sentence is entered in the matter.

12-6-17.10 **MOTORBOATS--INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--FEE UPON CONVICTION**

A. A person convicted of a violation of the Boating While Intoxicated Act shall be assessed by the court, in addition to any other fee or fine, a fee of sixty-five dollars (\$65.00) to defray the costs of chemical and other tests used to determine the influence of intoxicating liquor or drugs.

B. All fees collected pursuant to the provisions of this section shall be transmitted monthly to the crime laboratory fund. All balances in the crime laboratory fund collected pursuant to this section are appropriated to the administrative office of the courts for payment upon invoice to the scientific laboratory division of the department of health for the costs of chemical and other tests used to determine the influence of intoxicating liquor or drugs.

C. Payment of funds out of the crime laboratory fund of fees collected pursuant to this section shall be made upon vouchers issued and signed by the director of the administrative office of the courts upon warrants drawn by the department of finance and administration.

12-6-18 **TEXTING WHILE DRIVING**

July, 2014

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