

## **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 Mr. Higgins:

BE IT ENACTED by the Albany County Legislature as follows:

#### Section 1. 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 2. 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 3. Enforcement and Penalties.

1. A violation of any provisions of this local law shall constitute an offense and be punishable by a fine not exceeding \$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 4. 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 5. 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 6. Effective Date.

This local law shall take effect December 1, 2008.

*Referred to Law Committee. 8/11/08*