

**NOTICE OF INTENT TO ADOPT AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, CHAPTER 50 (NEW MEXICO UNIFORM TRAFFIC CODE ADOPTION), SECTIONS 50-1, 50-2 AND A NEW SECTION 50-3 (SUPERCEDING AMENDMENTS)**

**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. 1275**

**AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, CHAPTER 50 (NEW MEXICO UNIFORM TRAFFIC CODE ADOPTION), SECTIONS 50-1, 50-2 AND A NEW SECTION 50-3 (SUPERCEDING AMENDMENTS)**

**WHEREAS**, the Town Council of the Town of Silver City has adopted the New Mexico Uniform Traffic Code (hereinafter, the “UTC”) and its subsequent amendments in Ordinance 1106, commonly referred to as the “New Mexico Uniform Traffic Code, 2004 Compilation” which the Town found to be an appropriate code for the regulation of traffic in the municipality (hereinafter, the Town’s “UTO”) ; and

**WHEREAS**, there have been a series of annual supplements to the UTC provided to the Town by the New Mexico Municipal League which by the terms of the Town’s initial adoption of the UTC “as amended” have become part of the Town’s traffic code; and

**WHEREAS**, in addition to the annual UTC supplements which amend the Town’s UTO, the Town Council has on several occasions adopted further amendments to the UTO; and

**WHEREAS**, the Town Council finds that the year 2018 UTC supplement contains significant amendments to the prior penalty assessment schedule, to which the Town Council finds not to be in the public interest; and

**WHEREAS**, the Town Council finds that the adoption of the 2018 UTC as the Town’s traffic ordinance should include amendments adopted since the initial adoption of the UTC

compilation and, to maintain the penalty assessment schedule as it existed prior to the 2018 UTC compilation; and

**WHEREAS**, the Town Council finds that adoption of the 2018 UTC compilation, as amended herein, will better inform the public as to the current traffic code and the penalty assessments provided for violations thereof; and

**WHEREAS**, the Town Council finds that this ordinance is in the public interest, and necessary to the health, safety and welfare of the Town and its inhabitants;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO**, that:

**Chapter 50, Section 50-1(a)** is deleted and replaced with:

**Section 50-1. New Mexico Uniform Traffic Code adopted by reference.**

(a) The Town adopts and incorporates by reference pursuant to its Charter and NMSA 1978, §3-17-6, the New Mexico Uniform Traffic Code, (2018 compilation as amended up through July, 2018) as if fully set forth in this Chapter, comprising sections 12-1-1 through 12-13-6, subject to the modifications and amendments thereto contained in this ordinance.

**Chapter 50, Section 50-1** is amended by adding a new subsection (c) which shall read:

(c) The following amendments are made to the UTO 2018 compilation:

**Chapter 50, Section 50-2(b)(1)** is amended by deleting the phrase “as amended from time to time”.

**Chapter 50, Section 50** is amended by adding a new **Section 50-3**, which shall read:

**Section 50-3. Amendments to Uniform Traffic Ordinance.**

The following are amendments to the Uniform Traffic Ordinance 2018 compilation;

**UTO Section 12-6-6.2** (Additional Parking Regulations) is hereby deleted.

**UTO Section 12-6-18** is deleted in its entirety and replaced with:

**12-6-18**

(A) No person shall, except as otherwise provided below, operate a motor vehicle or a bicycle 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, unless said motor vehicle or bicycle 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. The term “bicycle” wherever used herein shall include unicycle and tricycle.

(B) This section shall not apply to:

(1) The use of a mobile cellular device or radio- 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 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 or bicycle 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 or bicycle 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.

(F) Penalties. Whoever is guilty of a violation of any provision of this shall be subject to a penalty assessment of two-hundred dollars (\$200.00).

**Section 12-12-1.3 A.** is amended by adding a new subsection (4), which shall read:

(4) a traffic safety fee of three dollars (\$3.00).

**Section 12-12-1.1 MAXIMUM PENALTY.** is deleted in its entirety.

**Section 12-12-1.2 PENALTY ASSESSMENT PROGRAM.** is deleted in its entirety and replaced with:

**12-12-1.2 PENALTY ASSESSMENT SCHEDULE.** The Town’s Penalty Assessment Schedule shall be that which is found in Chapter 50, Section 50-2(b)(1) of the Town of Silver City Municipal Code. All penalty assessments shall be processed by the municipal court and all fines and fees collected shall be deposited in the treasury of the municipality.

**PASSED, ADOPTED AND APPROVED** by vote of the Council of the Town of Silver City, Grant County, New Mexico, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

(Seal)

TOWN OF SILVER CITY

\_\_\_\_\_  
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 December 11, 2018.

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

11-14-18  
Date