

**ORDINANCE NO. 1529**  
**AN ORDINANCE AMENDING CHAPTER 24**  
**OF THE CODE OF ORDINANCES**

**WHEREAS**, the New Mexico Legislature amended the Off-Highway Motor Vehicle Act ("Act") (Sections 66-3-1001, NMSA 1978) during the 2016 Legislative Session permitting the operation of off-highway motor vehicles on paved roads; and

**WHEREAS**, the Act, as amended, authorizes a municipality to establish separate speed limits and operating restrictions for off-highway vehicles where they are authorized to operate on paved streets or highways; and

**BE IT ORDAINED** by the City Commission of the City of Alamogordo New Mexico that Chapter Twenty Four of the *Code of Ordinances* be amended to include the following:

**CHAPTER TWENTY FOUR**  
**TRAFFIC**

**24-01-030. – Same – Amendments.**

The following amendments to the 2010 New Mexico Uniform Traffic Ordinance are adopted:

- A. *12-1-2.1 Access Aisle.* "Access Aisle" means a space designed to allow a person with a significant mobility limitation to safely exit and enter a motor vehicle that is immediately adjacent to a designated parking space for persons with significant mobility limitations and that may be common to two such parking spaces of at least sixty inches in width or, if the parking space is designed for van accessibility, ninety-six inches in width, and clearly marked and maintained with blue striping, and after January 1, 2011 the words "NO PARKING" in capital letters, each of which shall be at least one foot high and at least two inches wide, placed at the rear of the access aisle so as to be close to where an adjacent vehicle's rear tires would be placed (66-1-4.1 NMSA 1978).
- B. *12-6-5.5 Limitations on Turning Around.* The driver of any vehicle may turn the vehicle so as to proceed in the opposite direction provided that the movement can be made safely and without interfering with other traffic and further provided that authorized signs disallowing U-turns have not been erected in the area; such turn shall not be made if to do so would violate any other traffic ordinance or statute.
- C. *12-6-12.6 Unlawful Use of License; Driving When Privilege To Do So Has Been Suspended or Revoked*
  - a. No person shall:

1. display or cause or permit to be displayed or have in his possession any canceled, revoked or suspended driver's license or permit;
2. lend his driver's license or permit to any other person or knowingly permit the use thereof by another;
3. display or represent as one's own any driver's license or permit not issued to him;
4. fail or refuse to surrender to the court upon its lawful demand any driver's license or permit which has been suspended, revoked, or canceled;
5. permit any unlawful use of driver's license or permit issued to him; (66-5-37)
6. drive a motor vehicle on any public street or highway at a time when his privilege to do so is suspended and who knows or should have known that his license was suspended. Upon conviction, the person shall be punished by imprisonment for not less than four days nor more than ninety days or participation for an equivalent period of time in a certified alternative sentencing program, and there may be imposed in addition a fine of not more than five hundred dollars (\$500.00). When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court;
7. drive a motor vehicle on a highway of this state at a time when the person's privilege to do so is revoked and who knows or should have known that the person's license was revoked is guilty of a misdemeanor and shall be charged with a violation of this section. Upon conviction, the person shall be punished, notwithstanding the provisions of Sec. 31-18-13 NMSA 1978, by imprisonment for not less than four days or more than ninety days or by participation for an equivalent period of time in a certified alternative sentencing program, and there may be imposed in addition a fine of not more than \$500. When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court; and
8. notwithstanding any other provision of law for suspension or deferment of execution of a sentence, if the person's privilege to drive was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act, upon conviction shall be

punished by imprisonment for not less than seven consecutive days and shall be fined not less than three hundred dollars (\$300.00) and not more than five hundred dollars (\$500.00) and the fine and imprisonment shall not be suspended, deferred or taken under advisement. No other disposition by plea of guilty to any other charge in satisfaction of a charge under this section shall be authorized if the person's privilege to drive was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act. (66-5-39.1 NMSA 1978)

- b. In addition to any other penalties imposed pursuant to the provisions of this section, when a person is convicted pursuant to the provisions of this section, the motor vehicle the person was driving shall be immobilized by an immobilization device for thirty days, unless immobilization of the motor vehicle poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle. The convicted person shall bear the cost of immobilizing the motor vehicle. (66-5-39 NMSA 1978)

D. *Section 12-8-5(C)*, which reads as follows:

(C) Wherever a usable path for bicycles has been provided adjacent to a street, bicycle riders shall use such path and shall not use the street.

is hereby deleted. The remaining language of section 12-8-5 (C) shall continue in full force and effect.

E. *Section 12-12-1.3* is amended:

- a. There is imposed upon any person convicted of violating any municipal ordinance the penalty for which carries a potential jail term of any ordinance relating to the operation of a motor vehicle the following mandatory fees:
  - 1. a corrections fee of twenty dollars (\$20.00);
  - 2. a judicial education fee of three dollars (\$3.00);
  - 3. a court automation fee of six dollars (\$6.00).

F. *12-12-3 Conduct of Arresting Officer – Notices by Citation.*

- a. Except as provided in Section 12-12-5, unless a penalty assessment or warning notice is given, whenever a person is arrested for any violation of this ordinance or other law relating to motor vehicles punishable as a misdemeanor, the arresting officer, using the uniform traffic citation in paper

or electronic form, shall complete the information section and prepare a notice to appear in court, specifying the time and place to appear, have the arrested person sign the agreement to appear as specified, give a copy of the citation to the arrested person and release him from custody.

- b. Whenever a person is arrested for violation of a penalty assessment misdemeanor and elects to pay the penalty assessment, the arresting officer, using the uniform traffic citation in paper or electronic form, shall complete the information section and prepare the penalty assessment notice indicating the amount of the penalty assessment, have the arrested person sign the agreement to pay the amount prescribed, give a copy of the citation along with a business reply envelope addressed to the municipal court with jurisdiction and release him from custody. No officer shall accept custody or payment of any penalty assessment notice, the officer shall issue a notice to appear. (66-8-123 B NMSA 1978)
- c. The arresting officer may issue a warning notice, but shall fill in the information section of the uniform traffic citation in paper or electronic form and give a copy to the arrested person after requiring his signature on the warning notice as an acknowledgment of receipt. No warning notice issues under this section shall be used as evidence of conviction for purposes of suspension or revocation of license under Section 66-5-30 NMSA 1978.
- d. In order to secure his release, the arrested person must give his written promise to appear in court, or to pay the penalty assessment prescribed or acknowledge receipt of a warning notice.
- e. Any officer violating this section is guilty of misconduct in office and is subject to removal. (66-8-123 NMSA 1978)
- f. An electronic traffic citation, prescribed by Section 12-12-3.1, is an electronic version of the uniform traffic citation. For the purposes of this section, an electronic citation may be completed instead of a uniform traffic citation; provided, however, that where this section requires a copy of a citation to be given to an arrested person, a physical copy of the citation shall be provided whether a uniform traffic citation or an electronic form of the uniform traffic citation was used. An electronic form of the uniform traffic citation may be signed electronically.

G. *12-12-3.1 Electronic Uniform Traffic Citation.*

- a. An electronic version of the uniform traffic citation shall include the same information required to be included in a uniform traffic citation. An electric version of a uniform traffic citation may be signed electronically and a law

enforcement officer may submit or file with a court an electronic version of a uniform traffic citation if prior permission of the department has been secured. There the law requires a law enforcement officer to provide a copy of a citation to the person cited or arrested, a physical copy of the citation shall be provided regardless of whether a paper uniform traffic citation or an electronic version of a uniform traffic citation was used. (66-8-128 NMSA 1978)

H. *12-12-11 Abstract of Traffic Cases – Report on Convictions.*

- a. Every municipal judge shall keep a record of every traffic complaint, uniform traffic citation and other form of traffic charge filed in the judge's court or its traffic violations bureau and every official action and disposition of the charge by that court. The court shall notify the Department if a defendant fails to appear on a charge of violating the Motor Vehicle Code or other law or ordinance relating to motor vehicles.
- b. Within ten days of the later of entry of a final disposition of a conviction for violation of this ordinance or other law or ordinance relating to motor vehicles or the final decision of any higher court that reviews the matter and from which no appeal or review is successfully taken, every municipal judge, including the children's court judges, or the clerk of the court in which the entry of the final disposition occurred shall prepare and forward to the department an abstract of the record containing the name and address of the defendant; the specific section number and common name of the provision of the local law, ordinance or regulation under which the defendant was tried; the plea, finding of the court and disposition of the charge, including fine or jail sentence or both; total costs assessed to the defendant; the date of the hearing; the court's name and address; whether defendant was a first or subsequent offender; and whether the defendant was represented by counsel or waived his right to counsel and, if represented, the name and address of counsel.
- c. The abstract of record prepared and forwarded under Subsection B of this section shall be certified as correct by the person required to prepare it. With the prior approval of the department, the information required in Subsection B of this Section may be transmitted electronically to the department. Report need not be made of any disposition of a charge of illegal parking or standing of a vehicle except when the uniform traffic citation is used.
- d. When the uniform traffic citation is used, the court shall provide the information required in Subsection B of this Section in the manner prescribed by the director. A copy of each penalty assessment processed shall be forwarded to the division within ten (10) days of completion of local processing for posting to the driver's record. With the prior approval of the

director, the required information may be submitted to the division by electronic means in lieu of forwarding copies of the penalty assessments.

- e. The willful failure or refusal of any judicial officer to comply with this section is misconduct in office and grounds for removal. (66-8-135 NMSA 1978)

I. *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 communications 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 communications 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 expect 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.

J. *12-6-12.3 Reckless Driving.*

- a. Any person who drives any vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property is guilty of reckless driving.
- b. Every person convicted of reckless driving shall be punished by imprisonment for not less than five days, or by a fine not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or both.

K. *12-7-9 Off-Highway Motor Vehicles*

As used in this Article, the following definitions shall apply:

A. "*Off-highway motor vehicle*" means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:

1. "*all-terrain vehicle*", which means a motor vehicle fifty inches or less in width, having an unladen dry weight of one thousand pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control;
2. "*off-highway motorcycle*", which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and that has handlebar-type steering control;
3. "*recreational off-highway vehicle*", which means a motor vehicle designed for travel on four or more non-highway tires, for recreational use by one or more persons, and having:
  - (a) a steering wheel for steering control;
  - (b) non-straddle seating;

- (c) maximum speed capability greater than thirty-five miles per hour;
  - (d) gross vehicle weight rating no greater than one thousand seven hundred fifty pounds;
  - (e) less than eighty inches in overall width, exclusive of accessories;
  - (f) engine displacement of less than one thousand cubic centimeters; and
  - (g) identification by means of a seventeen-character vehicle identification number; or
4. By rule of the New Mexico Department of Game and Fish, any other vehicles that may enter the market and fit the general profile of vehicles operated off the highway for recreational purposes.

*I. 12-7-9.2 Operation of off-highway motor vehicles on streets or highways – prohibited areas.*

- A. A person shall not operate an off-highway motor vehicle on any:
- 1. limited access highway or freeway at any time;
  - 2. paved street or highway except as provided in Subsections B. or C. of this section;
  - 3. walking trails; or
  - 4. city parks.
- B. Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the roadway. Off-highway motor vehicles shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then cross in the most direct manner as close to a perpendicular as possible.
- C. An off-highway vehicle may be operated on a paved street or highway owned and controlled by the City of Alamogordo if:



1. the vehicle has one or more headlights and one or more taillights that comply with the Off-Highway Motor Vehicle Act;
2. the vehicle has brakes, mirrors, and mufflers;
3. the operator has a valid driver's license, instruction permit, or provisional license and an off-highway motor vehicle safety permit;
4. the operator is insured in compliance with the provisions of the Mandatory Financial Responsibility Act, Sec. 66-5-201 through 66-5-248, NMSA 1978; and
5. the operator of the vehicle is wearing eye protection and a safety helmet that comply with the Off-Highway Motor Vehicle Act.

D. Any person operating an off-highway motor vehicle within the city limits shall obey all traffic laws, rules, and regulations, including the speed limit as posted and vehicle equipment requirements under Section 12-7-9.9 of the New Mexico Uniform Traffic Ordinance.

DONE this 3<sup>rd</sup> day of November, 2016.

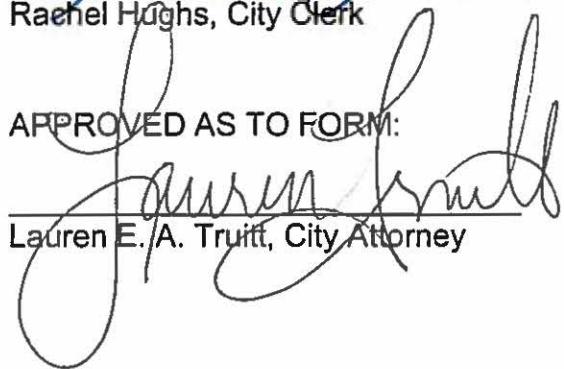
CITY OF ALAMOGORDO, NEW MEXICO  
a New Mexico municipal corporation

By:   
Richard Boss, Mayor



ATTEST:

  
Rachel Hughs, City Clerk

APPROVED AS TO FORM:  
  
Lauren E. A. Truitt, City Attorney