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Title: A Local Law to amend the administrative code of the city of New York, in relation to prohibiting the use of mobile telephones while operating a motor vehicle.

Sponsors: Peter F. Vallone, Noach Dear, Pedro G. Espada, Kathryn E. Freed, Lloyd Henry, Stanley E. Michels, Eva S. Moskowitz, Philip Reed, Victor L. Robles, Mark Green, Michael J. Abel, Stephen J. Fiala, Martin J. Golden, Wendell Foster, Karen Koslowitz, Sheldon S. Leffler, Guillermo Linares, Walter L. McCaffrey, Michael C. Nelson, Jerome X. O'Donovan, Madeline T. Provenzano, Jose Rivera, John D. Sabini, Priscilla A. Wooten, Archie W. Spigner

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Int. No. 852

By: The Speaker (Council Member Vallone) and Council Members Dear, Espada, Freed, Henry, Michels, Moskowitz, Reed, Robles, The Public Advocate (Mr.Green), Abel, Fiala and Golden; also Council Members Foster, Koslowitz, Leffler, Linares, McCaffrey, Nelson, O'Donovan, Provenzano, Rivera, Sabini, Wooten and Spigner

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting the use of mobile telephones while operating a motor vehicle.

Be it enacted by the Council as follows:

Section 1. Declaration of Legislative Intent and Findings. The use of mobile telephones has dramatically increased in recent years, including the use of such telephones by drivers while operating a motor vehicle. A 1997 report in the New England Journal of Medicine found that the use of mobile telephones while

driving a motor vehicle quadrupled the risk of a collision, creating the same risk as exists when a driver has a blood alcohol level of .10 percent, the legal limit. The National Highway Traffic Safety Administration concluded in a 1997 report that the use of a mobile telephone while driving increased the risk of a crash and that such risks will increase with the greater number of mobile telephones in use. In light of the inherent risks of using mobile telephones while operating a motor vehicle and an increased risk of accidents due to the distraction caused by the use of mobile telephones while driving, the Council believes that action is necessary to restrict the use of mobile telephones while operating a motor vehicle. This public safety concern endangers pedestrians and vehicle occupants, thus requiring legislative action.

§ 2. Title 19 of the administrative code of the city of New York is amended by adding thereto a new section 19-180 to read as follows:

§19-180 Use of mobile telephones while operating a motor vehicle prohibited. a. Definitions. For purposes of this section: (1) The term "authorized emergency vehicle" shall mean every police vehicle, fire vehicle, emergency ambulance service vehicle and every other emergency vehicle as defined in section one hundred one of the vehicle and traffic law.

(2) The term "mobile telephone" shall mean a telephone which can be used without an access line for service, including, but not limited to, cellular, analog, wireless, and digital telephones and communications devices.

(3) The term "motor vehicle" shall mean every vehicle operated or driven upon a street which is propelled by any power other than muscular power, except as otherwise provided in section one hundred twenty-five of the vehicle and traffic law.

(4) The term "park" shall mean for a motor vehicle equipped with an automatic transmission that the motor vehicle is in the "park" gear and out of the stream of traffic, and for a motor vehicle equipped with a manual transmission that the vehicle is in the "neutral" gear, the brake is engaged and the motor vehicle is out of the stream of traffic.

(5) The term "use" shall mean to talk or listen on a mobile telephone.

(6) "Hands-free device" shall mean an attachment, add-on, addition to a mobile telephone, or other piece of equipment, whether or not permanently installed in a motor vehicle, that when operative allows the operator of a motor vehicle to maintain both hands (or prosthetic device or aid in the case of a physically disabled person) on the motor vehicle's steering device.

b. No person shall use a mobile telephone while operating a motor vehicle on any street in the City of New York.

c. Exceptions. The provisions of this section shall not apply to:

(1) The operator of an authorized emergency vehicle acting in his or her official capacity.

(2) The operator of a motor vehicle when such motor vehicle is in the "park" position.

(3) The use of a mobile telephone with a hands-free device in a manner that permits the operator of the motor vehicle to maintain both hands on the applicable steering device.

d. A violation of subdivision b of this section shall be an offense and shall be punishable by a fine of not less than one hundred fifty dollars nor more than three hundred dollars. Any person found liable for a second or subsequent violation of subdivision b of this section after having been convicted of such a violation within the preceding six months shall be guilty of an offense punishable by a fine of not less than three hundred dollars nor more than five hundred dollars or no more than ten days imprisonment.

e. It shall be an affirmative defense for an individual to produce documentary evidence that the telephone call which serves as the foundation for the alleged violation is for the sole purpose of communicating with any of the following in an emergency situation:

- (1) an emergency response operator, such as 911 or any successor emergency number thereto;
- (2) a hospital, physician's office or health clinic;
- (3) an ambulance company or corps;
- (4) a fire department, fire district, or fire company;
- (5) a first aid squad; or
- (6) a police department.

f. Nothing herein shall preclude any city agency, which by permit, license or registration regulates the business or professional activities of individuals, from imposing stricter restrictions than provided in this section for the use of mobile telephones upon such individuals during the course of engaging in the business or professional activity which is the subject of the city agency's permit, license or registration.

g. Nothing herein shall preclude the head of any city agency, the head of any entity a majority of whose members are elected or appointed by any city official, any elected official, or the speaker of the council from imposing upon their respective employees stricter restrictions on the use of mobile telephones in the course of their employment.

h. Nothing herein shall preclude stricter restrictions on the use of mobile telephones as a result of collective bargaining or contractual obligations.

§ 3. If any provision of this section, or the local law creating this section, or of any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate the remainder of this section or local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§ 4. This local law shall take effect 60 days after it is enacted.