

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

City of Niagara

Town

Village

Local Law No. 3 of the year 20 09

A local law Entitled "Prohibiting the Use of Wireless Handsets to Compose, Read, or Send
(Insert Title)
Text Messages While Operating a Motor Vehicle in Niagara County"

Be it enacted by the Legislature of the
(Name of Legislative Body)

County

City of Niagara

Town

Village

as follows:

Section 1. Name of Local Law

This Local Law shall be known as the "Local Law To Prohibit The Use Of Wireless Handsets To Compose, Read Or Send Text Messages While Operating A Motor Vehicle In Niagara County".

Section 2. Legislative Intent and Purpose

Text messaging while driving is a growing problem on our roads. This activity by its very nature involves the driver taking hands off the wheel and eyes off the road, and is a clear distraction that leads to accidents and fatalities. Often, it is the younger, less experienced driver who texts while underway. Until such time as the New York State legislature passes a similar law, Niagara County needs to address this problem with a local law. Niagara County has urged the New York State legislature to enact such legislation. See Resolution IL-025-08 passed March 4, 2008 as follows:

MEMORIALIZE NEW YORK STATE TO ENACT LEGISLATION RELATING TO TEXT MESSAGING WHILE DRIVING

WHEREAS, Section 1225-c of the Vehicle and Traffic Law of the State of New York provides that no person shall operate a motor vehicle upon a public highway while using a mobile telephone to engage in a call while such vehicle is in motion, and

(If additional space is needed, attach pages the same size as this sheet, and number each.)

WHEREAS, there have been instances throughout the State of New York where operators of motor vehicles are text messaging while driving and cause an accident, and

WHEREAS, the Niagara County Legislature feels that the State Legislature should adopt an amendment to the Vehicle and Traffic Law to prohibit operators of motor vehicles from text messaging while they are driving, and

WHEREAS, bills have been proposed in the State Assembly and Senate to prohibit operators of motor vehicles from using a mobile telephone for writing, sending or reading a text message while such vehicle is in motion, and

WHEREAS, the Niagara County Legislature feels that this proposed legislation is desirable to avoid any further accidents, now, therefore, be it

RESOLVED, that the Niagara County Legislature hereby memorializes the State Senate, Assembly and Governor to enact legislation to prohibit text messaging while operating a motor vehicle, and be it further

RESOLVED, that a copy of this resolution be forwarded to Governor Spitzer, Senator George Maziarz, Senator Antoine Thompson, Assemblyman James Hayes, Assemblyman Robin Schimminger, Assemblyman Michael Cole, Assemblywoman Francine DelMonte, and Assemblyman Steve Hawley, and that a response be requested from each elected official.

Section 3. Definitions

As used in this law, the following terms shall have the meanings indicated:

A. "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 the hands.

B. "Motor vehicle" shall mean any vehicle that is self-propelled by a motor including, but not limited to, automobiles, trucks, vans, buses, construction vehicles, etc.

C. "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.

D. "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.

E. "Stopped" shall mean not in motion.

F. "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 or electronic e-mails, in order to communicate with any person or device.

G. "Use" shall mean to hold a wireless handset in one's hand.

H. "Wireless Handset" shall mean a portable electronic or computing device including cellular telephones and personal digital assistants (PDAs) capable of transmitting data in the form of a text message.

Section 4. Restrictions

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 Niagara County.

Section 5. Exceptions

A. Notwithstanding Section 4., this law shall not be construed to prohibit the use of any wireless handset by:

- i) Any law enforcement, public safety or police officers, peace 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; or
- ii) A person using a wireless handset to contact any individual listed in subsection (i); or
- iii) A person using a wireless handset inside a motor vehicle while such motor vehicles 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; or
- iv) Any person who holds a valid amateur radio operator's license issued by the FCC and who operates a duly licensed portable mobile transmitter and in connection therewith a receiver or receiving set.

B. Notwithstanding Section 4., this law shall not be construed to prohibit a person operating a motor vehicle from utilizing a hands-free wireless handset.

Section 6. Penalties

A violation of Section 4 of this local law shall constitute an offense and be punishable by a fine not to exceed \$150.00 for each single violation. Each such violation shall constitute a separate and distinct offense.

This local law shall be enforced by the Niagara County Sheriff's Office and may be enforced by any other law enforcement agency having jurisdiction.

Section 7. Cessation of Restrictions

This local law shall be null and void on the day that New York statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this local law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by Niagara County. The Niagara County Legislature may determine via resolution whether identical or substantially similar statewide legislation or preempting regulations have been enacted for the purposes of triggering the provision of this section.

Section 8. Severability

If any section, subsection, sentence, clause, phrase or other portion of this local law is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion

shall be deemed severable and such unconstitutionality or invalidation shall not affect the validity of the remaining portions of this law which remaining portions shall remain in full force and effect.

Section 9. Effective date

This local law shall take effect thirty days after filing in the Office of the Secretary of State pursuant to section 27 of the Municipal Home Rule Law.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 20 09 of the (County)(City)(Town)(Village) of Niagara was duly passed by the Niagara County Legislature on September 1 20 09, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 20 _____, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20 _____. *(Elective Chief Executive Officer*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on _____ 20 _____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20 _____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20 _____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20 _____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20 _____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 _____, above.

Mary Jo Tamburlen

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 9/14/2009

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF Niagara

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

[Signature]

Signature
Niagara County Attorney

Title

County _____
City of Niagara
Town _____
Village _____

Date: 9/10/2009