

CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-23-78 ENACTMENT NO. D-2023-017

SPONSORED BY: Brook Bassan, Isaac Benton, and Klarissa Peña by request

1 ORDINANCE

2 AMENDING CHAPTER 7, ARTICLE 15, SECTION 4, ENABLING THE CITY TO
3 CREATE PARKING OFFENSE FOR VEHICLES WITH MULTIPLE ASE FINES
4 CONCURRENTLY IN DEFAULT; AMENDING CHAPTER 8, ARTICLE 5, SECTION
5 1 CREATING A CITY CODE PETTY MISDEMEANOR OFFENSE FOR PARKING A
6 VEHICLE ON CITY STREETS WITH MULTIPLE ASE FINES CONCURRENTLY IN
7 DEFAULT; AND AMENDING CHAPTER 8, ARTICLE 1, SECTION 3,
8 SUBSECTION 12 ENABLING THE CITY TO IMMOBILIZE VEHICLES AFTER ONE
9 OUTSTANDING PARKING VIOLATION ISSUED PURSUANT TO § 8-5-1-43
10 REPEATED NONPAYMENT OF AUTOMATED SPEED ENFORCEMENT SYSTEM
11 FINES.

12 WHEREAS, traffic safety is an important piece of the City’s overall effort to
13 improve public safety, and Automated Speed Enforcement (“ASE”) supports
14 that effort; and

15 WHEREAS, although a majority of individuals who receive an ASE system
16 fine notice pay their fines or complete community service pursuant to the ASE
17 Ordinance, a small percentage receive two or more system fines and default
18 upon those system fines; and

19 WHEREAS, the City seeks an additional enforcement mechanism to
20 discourage scofflaws from chronic nonpayment of fines issued pursuant to
21 the ASE Ordinance; and

22 WHEREAS, the parking function of the City is an enterprise function; and

23 WHEREAS, parking is an integral component of economic activity in the
24 City; and

25 WHEREAS, enforcement of existing laws and regulations, as well as
26 meaningful enforcement of said laws and regulations, are a key component of

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 the City's police power to protect and preserve the health and safety of those
2 in the City; and

3 WHEREAS, it shall be improper for vehicles associated with multiple ASE
4 system fine notices which are in default to park on City-owned property, on or
5 in city-owned facilities; or on or in City-managed facilities; and

6 WHEREAS, the City should seek to accomplish the objectives set forth in
7 the ASE Ordinance in a manner that preserves the safety of all residents and
8 exhausts alternative avenues to promote compliance.

9 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
10 ALBUQUERQUE:

11 SECTION 1. CHAPTER 7, ARTICLE 15, Part 4, Subsection B is amended as
12 follows:

13 (B) ASE fine notice.

14 (1) The ASE fine notice shall state and contain the name of the registered
15 owner or nominee, the effective date of the ASE fine notice, the type of
16 violation, the date, time, and location of the violation, a picture of the violation,
17 the license plate number of the vehicle, the name and identification of the
18 issuing Albuquerque Police Department official, the amount of the fine, the
19 response due date and the return address. The ASE fine notice shall inform
20 the registered owner or the nominee of the option to complete community
21 service in lieu of payment of the ASE fine, and the right to request a hearing.
22 The ASE fine notice shall clearly explain the process for requesting a hearing,
23 explain the hearing options, provide the deadline to request a hearing, and
24 identify where the request shall be submitted.

25 (2) Delivery. The ASE fine notice shall be delivered to the address of the
26 registered owner according to the address registered with the Department of
27 Motor Vehicles, from information obtained from the Metropolitan Court, from
28 Department Records, or from any other documentation or records reasonably
29 relied upon by police officers, or it shall be delivered to the address of the
30 nominee according to the owner's affidavit.

31 (C) Response to an ASE fine notice. The registered owner shall pay the fine,
32 elect to complete community service, file an owner's affidavit making a

1 nomination, or request a hearing by the response due date as indicated by the
2 ASE fine notice.

3 (D) Nomination. A registered owner not driving the car at the time of the
4 violation may either accept the responsibility and pay the ASE fine, or identify
5 the driver so an ASE fine notice can be sent to the driver.

6 (1) If the registered owner claims that another person was driving the
7 vehicle at the time of the violation, the registered owner shall so indicate on
8 the owner's affidavit and identify the person who was driving the vehicle. Any
9 registered owner who submits an owner's affidavit does so under penalty of
10 perjury.

11 (2) A new ASE fine notice will be delivered to the nominee. If the
12 nominee successfully appeals the allegation that they were the driver, the City
13 may proceed against the registered owner. The registered owner is also
14 responsible for payment of the ASE fine if the City cannot assert jurisdiction
15 over the nominee, subject to the remaining defenses available in this article.

16 (E) Default. If the City does not receive payment of the ASE fine, an election
17 to complete community service, a nomination, or a request for a hearing by
18 the response due date as indicated by the ASE fine notice, the registered
19 owner is in default. If the default is not cured, the City may pursue all remedies
20 for collection of a debt and is entitled to an award of reasonable attorney's
21 fees incurred.

22 (F) Hearing. Pursuant to Section 3-18-17, NMSA 1978, an individual may
23 select a mail-in hearing or an in-person or remote hearing option to contest an
24 automated speed violation. In the event of a demand for an in-person or
25 remote hearing, the Hearing Officer shall hold a hearing pursuant to the
26 procedures outlined in the Independent Office of Hearings "IHO" Ordinance,
27 ROA 1994, §§ 2-7-8-1 to 2-7-8-9. The hearing shall be conducted following the
28 rules of evidence and rules of civil procedure for the district courts. In either
29 hearing option, a mail-in hearing, or an in-person or remote hearing, the
30 Department has the burden to prove the violation by a preponderance of the
31 evidence. The respondent has the burden to prove any defenses by a
32 preponderance of the evidence. If the Department prevails, the respondent
33 shall pay the fine within 30 consecutive days from the date of the decision.

1 Following a hearing, the respondent may appeal the decision of the Hearing
2 Officer to the District Court within 30 days of the decision and may recover the
3 costs of filing the appeal if successful.

4 SECTION 2. CHAPTER 7, ARTICLE 15 of the Albuquerque Municipal Code
5 is amended to add the following subsection:

6 § 7-15-4 ENFORCEMENT

7 (I) *Effect of Multiple ASE System Fine Notices in Default*

8 (1) *Jurisdiction.* This section of the ASE ordinance shall be enforced on all
9 streets and roadways within the City; on or in any City-owned parking facility;
10 on or in any City-managed parking facility; or on any other City-owned real
11 property within the City limits. When a street is the boundary line between the
12 City and the County, the entire public way shall be deemed within the City.

13 (2) *Notice of Multiple Concurrent ASE System Fine Notices in Default.* If an
14 alleged violator is concurrently in default on one or more ASE system fines, a
15 letter shall be sent to the registered owner of such vehicle setting forth:

- 16 (a) the name of the registered owner;
- 17 (b) the dates of the ASE system fines were incurred;
- 18 (c) the type of violation;
- 19 (d) the dates, times, and locations of the violations;
- 20 (e) the license plate number(s) of the vehicle(s);
- 21 (f) the amount of the respective fines;
- 22 (g) the citation numbers associated with the unpaid fines;
- 23 (h) the response due date;
- 24 (i) and the return address;

25 (j) The notice shall furthermore recite the prescribed “Responses to an
26 ASE fine notice” as set forth in § 7-15-4(C). The notice shall also inform the
27 registered owner that the time to appeal the fine notice or elect to complete
28 community service in lieu of payment has expired; and that if the registered
29 owner fails to resolve a sufficient number of unpaid ASE fines within twenty
30 (20) calendar days, such that the registered owner no longer has more than
31 one (1) unpaid ASE system fine notices concurrently in default for any given
32 vehicle, the registered owner may be subject to a parking citation and
33 immobilization and impoundment of their vehicle, if their vehicle is found to be

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 parked on any street or roadway within the city; on or in any City-owned
2 parking facility; on or in any City-managed parking facility; or on any other
3 City-owned real property within the City limits. All notices must include
4 verbiage describing how to receive additional information in the top five non-
5 English languages spoken in Albuquerque.

6 SECTION 3. CHAPTER 7, ARTICLE 15, Part 5, Subsection A of the
7 Albuquerque Municipal Code is amended as follows:

8 § 7-15-5 ADMINISTRATION

9 (A) The Albuquerque Police Department and the Department of Municipal
10 Development shall be responsible for administration of this article.
11 Reasonable rules and regulations may be promulgated by the Mayor or the
12 Mayor's designee to carry out the intent and purpose of this article.

13 SECTION 4. CHAPTER 8, ARTICLE 5, Part 1 of the Albuquerque Municipal
14 Code is amended to add the following Section 43:

15 § 8-5-1 GENERAL PROVISIONS

16 § 8-5-1-43 Repeated Nonpayment of Automated Speed Enforcement System
17 Fines.

18 (A) Repeated Nonpayment of Automated Speed Enforcement ("ASE")
19 System Fines consists of a vehicle owner who has accrued and defaulted
20 upon two or more ASE system fines, as described in § 7-15-4(I);

21 (B) It shall be unlawful for any vehicle to park on any City streets or
22 roadways, on or in any City-owned parking facility; on or in any City-managed
23 parking facility; or on any other City-owned real property, if the vehicle has
24 two or more accrued and defaulted ASE system fines, as described in § 8-5-1-
25 43(A).

26 SECTION 5. CHAPTER 8, ARTICLE 5, Part 3, Section 1, Subsection C of the
27 Albuquerque Municipal Code is amended as follows:

28 § 8-5-3-1 FREQUENCY OF PARKING CITATIONS

29 (C) *Parking Citation No More Frequently Than One For Every 24-Hour*
30 *Period.* Whenever a vehicle is parked in violation of §§ 8-5-1-12, 8-5-1-19, 8-5-1-
31 25 and 8-5-1-43 and parking citations shall not be issued more frequently than
32 one for every 24-hour period.

33 SECTION 6.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 SECTION 8, CHAPTER 1, ARTICLE 3, SUBSECTION 12 of the Albuquerque
2 Municipal Code is amended as follows:

3 § 8-1-3-12 IMMOBILIZATION OF VEHICLE

4 An employee of the Police Department or Parking Enforcement Officer may,
5 and they are hereby authorized to temporarily and for a period of 72
6 hours, immobilize subject vehicles by installing on, or attaching to such
7 vehicle, equipment such as a vehicle immobilization device designed to
8 restrict the normal movement of such vehicle, and if such vehicle is
9 so immobilized the officer so installing or attaching such device shall
10 conspicuously affix to such vehicle a notice, in writing, on a form provided by
11 the Chief of Police, advising the owner, driver or person in charge of such
12 vehicle that such vehicle has been immobilized by the City for violation of one
13 or more of the provisions of the Traffic Code and that release from
14 such immobilization may be obtained at a designated place; that unless
15 arrangements are made for the release of such vehicle within 72 hours, the
16 vehicle will be removed from the streets at the direction of the Police
17 Department, and that removing or attempting to remove the device before a
18 release is obtained is unlawful, and containing such information as the Chief
19 of Police shall deem necessary. It shall be unlawful for any person to remove
20 or attempt to remove any such device before a release is obtained as herein
21 provided or to move any such vehicle before the same is released by the
22 Police Department. Where such vehicle has been properly immobilized in such
23 manner, in addition to payment of all traffic or parking citations, a fee of \$100
24 shall be charged before releasing such vehicle, and the parking restrictions, if
25 any, otherwise applicable shall not apply when such vehicle is so immobilized.
26 If the vehicle has remained immobilized for a period of 72 hours and release
27 has not been obtained, the police officer or employee of the City causing
28 such immobilization shall have the vehicle impounded until such time as the
29 release has been obtained. Immobilization of subject vehicles are authorized
30 under the following circumstances:

- 31 A. If the alleged violator does not appear in response to a traffic or
32 parking citation and there are at least three or more outstanding violations

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 and further fails to respond to the notice informing the alleged violator of the
2 violations; or

3 B. If the alleged violator does not appear in response to at least one or
4 more parking citations issued pursuant to § 8-5-1-43 and further fails to
5 respond to the notice informing the alleged violator of the violation.

6 SECTION 7. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
7 clause, word, or phrase of this ordinance is for any reason held to be invalid
8 or unenforceable by any court of competent jurisdiction, such decision shall
9 not affect the validity of the remaining provisions of this ordinance. The
10 Council hereby declares that it would have passed this ordinance and each
11 section, paragraph, sentence, clause, word, or phrase thereof irrespective of
12 any provisions being declared unconstitutional or otherwise invalid.

13 SECTION 8. COMPILATION. Sections 1, 2, 3, and 4 of this ordinance shall
14 amend, be incorporated in, and made part of the Revised Ordinances of
15 Albuquerque, New Mexico.

16 SECTION 9. EFFECTIVE DATE. This ordinance shall take effect five days
17 after publication by title and general summary, except that SECTION 1 shall
18 take effect on June 16, 2023. This ordinance, as amended, shall be applicable
19 to any unpaid ASE fine that is issued on or after the effective date.

20
21
22
23
24
25
26
27
28
29
30
31

1 PASSED AND ADOPTED THIS 1st DAY OF May, 2023
2 BY A VOTE OF: 7 FOR 2 AGAINST.

3

4 For: Bassan, Benton, Fiebelkorn, Grout, Jones, Lewis, Peña
5 Against: Davis, Sanchez

6

7

8



9

10 _____
11 Pat Davis, President
12 City Council

13

14

15 APPROVED THIS 18 DAY OF May, 2023

16

17

18 Bill No. O-23-78

19

20



21

22 _____
23 Timothy M. Keller, Mayor
24 City of Albuquerque

25

26

27 ATTEST:

28

29



30 _____
31 Ethan Watson, City Clerk

32

33

34

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion