

HOUSE BILL 462

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO MUNICIPALITIES; AMENDING PROCEDURES AND PENALTIES
FOR NUISANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 3-18-17 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-17-14, as amended) is amended to read:

"3-18-17. NUISANCES AND OFFENSES--REGULATION OR
PROHIBITION.--A municipality, including a home rule
municipality that has adopted a charter pursuant to Article 10,

.224839.3AIC February 24, 2023 (2:35pm)

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Section 6 of the constitution of New Mexico, may by ordinance:

A. define a nuisance, abate a nuisance and impose penalties upon a person who creates or allows a nuisance to exist; provided that:

(1) the total amount of assessed penalties and fines [~~fees and costs~~] imposed by an ordinance for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall not exceed one hundred dollars (\$100), provided that the total for unlawful parking in a space or for blocking an access intended for persons with significant mobility limitation shall not be less than or exceed the fines provided in Section 66-7-352.5 NMSA 1978;

(2) no fees or costs shall be imposed pursuant to this HJC→~~section~~←HJC HJC→subsection←HJC ;

[~~(2)~~] (3) in a municipality with a population of two hundred thousand or greater as of the last federal decennial census, the penalties, fines [~~fees, costs~~] and [~~procedure~~] procedures imposed for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall be subject to the following:

(a) each month, or other period set by contract, the municipality shall retain from the gross total amount of penalties and fines [~~fees and costs~~] assessed and

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collected that month or period an amount subject to audit that is equal to the sum of the setup, maintenance, support and processing services fees charged to the municipality for that month or period pursuant to contractual terms by a vendor providing systems and services that assist the municipality in imposing penalties or fines [~~and costs or fees~~] as provided in Paragraph (1) of this subsection;

(b) less the retention authorized in Subparagraph (a) of this paragraph: 1) one-half of the net total amount assessed [~~in penalties, fines, fees and costs~~] and collected by the municipality pursuant to this section shall be remitted to the state treasurer and distributed to the [~~administrative office of the courts, of which ten percent shall be credited to DWI drug court programs and ninety percent shall be transferred to the New Mexico finance authority for deposit into the metropolitan court bond guarantee fund~~] general fund; and 2) one-half shall be retained by the municipality for municipal traffic safety programs and to offset the municipality's reasonable costs directly related to administering a program [~~imposing penalties or fines and costs or fees~~] as provided in Paragraph (1) of this subsection;

(c) [~~in fiscal year 2009, and annually thereafter~~] the municipality shall cause an audit of the program and contract described in Subparagraph (a) of this paragraph to be conducted by the state auditor or an

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independent auditor selected by the state auditor;

(d) if in the audit conducted pursuant to Subparagraph (c) of this paragraph it is determined that any amount retained by the municipality pursuant to this paragraph is in excess of the amount the municipality is authorized to retain, the municipality shall remit, when the audit is finalized, the amount in excess to the state treasurer to be distributed and transferred as provided in Item 1) of Subparagraph (b) of this paragraph; and

(e) a respondent may select a hearing ~~[provided for a contested]~~ to contest a nuisance ordinance offense or violation that shall either be ~~[held]~~ conducted by a hearing officer appointed by the presiding judge of the civil division of the district court with jurisdiction over the municipality and ~~[the hearing itself shall be conducted following]~~ in accordance with the rules of evidence and rules of civil procedure for the district courts or that shall be conducted by a mail-in form alternative. The notice of violation shall clearly explain the process for requesting a hearing, the hearing options, the deadline to request a hearing and where the request shall be submitted. The burden of proof for violations is on the municipality and [defenses] is a preponderance of the evidence. A determination by the hearing officer shall not impose a total amount of penalties or fines [fees and costs] in excess of that provided in the nuisance

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ordinance; and

[~~(3)~~] (4) in a municipality other than a municipality with a population of two hundred thousand or greater as of the last federal decennial census, the penalties, fines [~~fees, costs~~] and procedure imposed for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall be subject to the following:

(a) each month, or other period set by contract, the municipality shall retain from the gross total amount of penalties and fines [~~fees and costs~~] assessed and collected that month or period an amount subject to audit that is equal to the sum of the setup, maintenance, support and processing services fees charged to the municipality for that month or period pursuant to contractual terms by a vendor providing systems and services that assist the municipality in imposing penalties or fines [~~and costs or fees~~] as provided in Paragraph (1) of this subsection;

(b) less the retention authorized in Subparagraph (a) of this paragraph: 1) one-half of the net total amount assessed [~~in penalties, fines, fees and costs~~] and collected by the municipality pursuant to this section shall be remitted to the state treasurer [~~of which sixty-five percent shall be credited to the court automation fund, twenty percent to the traffic safety education and enforcement fund and~~

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~~fifteen percent to the judicial education fund]~~ and distributed to the general fund; and 2) one-half ~~[of the net total amount assessed in penalties, fines, fees and costs]~~ shall be retained by the municipality for municipal traffic safety programs and to offset the municipality's reasonable costs directly related to administering a program ~~[imposing penalties or fines and costs or fees]~~ as provided in Paragraph (1) of this subsection;

(c) ~~[in fiscal year 2009, and annually thereafter]~~ the municipality shall cause an audit of the program and contract described in Subparagraph (a) of this paragraph ~~[and the money collected and distributed pursuant to this paragraph]~~ to be conducted by the state auditor or an independent auditor selected by the state auditor;

(d) if in the audit conducted pursuant to Subparagraph (c) of this paragraph it is determined that any amount retained by the municipality pursuant to this paragraph is in excess of the amount the municipality is authorized to retain, the municipality shall remit, when the audit is finalized, the amount in excess to the state treasurer to be distributed and transferred as provided in Item 1) of Subparagraph (b) of this paragraph; and

(e) a hearing provided for a contested nuisance ordinance offense or violation shall be ~~[held]~~ conducted by a hearing officer appointed by the presiding judge of the civil division of the district court with jurisdiction

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over the municipality and [~~the hearing itself shall be conducted following~~] in accordance with the rules of evidence and rules of civil procedure for the district courts. HGEIC→If offered by the municipality, a respondent may select a hearing conducted by a mail-in form alternative.←HGEIC

The notice of violation shall clearly explain the process for requesting a hearing, the hearing options, the deadline to request a hearing and where the request shall be submitted.

The burden of proof for [~~offenses or violations and defenses~~] violations is on the municipality and is a preponderance of the evidence. A determination by the hearing officer shall not impose a total amount of penalties or fines [~~fees and costs~~] in excess of that provided in the nuisance ordinance;

B. regulate or prohibit any amusement or practice that tends to annoy persons on a street or public ground; and

C. prohibit and suppress:

(1) gambling and the use of fraudulent devices or practices for the purpose of obtaining money or property;

(2) the sale, possession or exhibition of obscene or immoral publications, prints, pictures or illustrations;

(3) public intoxication;

(4) disorderly conduct; and

(5) riots, noises, disturbances or disorderly

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assemblies in any public or private place."

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