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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, 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 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;

1 (2) no fees or costs shall be imposed
2 pursuant to this subsection;

3 (3) in a municipality with a population of
4 two hundred thousand or greater as of the last federal
5 decennial census, the penalties, fines and procedures imposed
6 for failure to obey a traffic sign or signal, including a red
7 light offense or violation, or for a speeding offense or
8 violation shall be subject to the following:

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

19 (b) less the retention authorized in
20 Subparagraph (a) of this paragraph: 1) one-half of the net
21 total amount assessed and collected by the municipality
22 pursuant to this section shall be remitted to the state
23 treasurer and distributed to the general fund; and 2) one-
24 half shall be retained by the municipality for municipal
25 traffic safety programs and to offset the municipality's

1 reasonable costs directly related to administering a program
2 as provided in Paragraph (1) of this subsection;

3 (c) the municipality shall cause an
4 audit of the program and contract described in Subparagraph
5 (a) of this paragraph to be conducted by the state auditor or
6 an independent auditor selected by the state auditor;

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

15 (e) a respondent may select a hearing
16 to contest a nuisance ordinance offense or violation that
17 shall either be conducted by a hearing officer appointed by
18 the presiding judge of the civil division of the district
19 court with jurisdiction over the municipality and in
20 accordance with the rules of evidence and rules of civil
21 procedure for the district courts or that shall be conducted
22 by a mail-in form alternative. The notice of violation shall
23 clearly explain the process for requesting a hearing, the
24 hearing options, the deadline to request a hearing and where
25 the request shall be submitted. The burden of proof for

1 violations is on the municipality and is a preponderance of
2 the evidence. A determination by the hearing officer shall
3 not impose a total amount of penalties or fines in excess of
4 that provided in the nuisance ordinance; and

5 (4) in a municipality other than a
6 municipality with a population of two hundred thousand or
7 greater as of the last federal decennial census, the
8 penalties, fines and procedure imposed for failure to obey a
9 traffic sign or signal, including a red light offense or
10 violation, or for a speeding offense or violation shall be
11 subject to the following:

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

22 (b) less the retention authorized in
23 Subparagraph (a) of this paragraph: 1) one-half of the net
24 total amount assessed and collected by the municipality
25 pursuant to this section shall be remitted to the state

1 treasurer and distributed to the general fund; and 2) one-
2 half shall be retained by the municipality for municipal
3 traffic safety programs and to offset the municipality's
4 reasonable costs directly related to administering a program
5 as provided in Paragraph (1) of this subsection;

6 (c) the municipality shall cause an
7 audit of the program and contract described in Subparagraph
8 (a) of this paragraph to be conducted by the state auditor or
9 an independent auditor selected by the state auditor;

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

18 (e) a hearing provided for a contested
19 nuisance ordinance offense or violation shall be conducted by
20 a hearing officer appointed by the presiding judge of the
21 civil division of the district court with jurisdiction over
22 the municipality and in accordance with the rules of evidence
23 and rules of civil procedure for the district courts. If
24 offered by the municipality, a respondent may select a
25 hearing conducted by a mail-in form alternative. The notice

1 of violation shall clearly explain the process for requesting
2 a hearing, the hearing options, the deadline to request a
3 hearing and where the request shall be submitted. The burden
4 of proof for violations is on the municipality and is a
5 preponderance of the evidence. A determination by the
6 hearing officer shall not impose a total amount of penalties
7 or fines in excess of that provided in the nuisance
8 ordinance;

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

11 C. prohibit and suppress:

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

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

18 (3) public intoxication;

19 (4) disorderly conduct; and

20 (5) riots, noises, disturbances or
21 disorderly assemblies in any public or private place." _____