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AN ACT

RELATING TO NUISANCE ORDINANCES; RAISING CERTAIN NUISANCE VIOLATION PENALTIES AND FEES; ESTABLISHING PROCEDURE FOR CHALLENGES TO THE IMPOSITION OF PENALTIES FOR THE VIOLATION OF CERTAIN NUISANCE ORDINANCES; PROVIDING FOR DISTRIBUTION OF PENALTIES AND FEES; REQUIRING AN AUDIT; MAKING AN APPROPRIATION.

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, 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

1 total for unlawful parking in a space or for blocking an
2 access intended for persons with significant mobility
3 limitation shall not be less than or exceed the fines
4 provided in Section 66-7-352.5 NMSA 1978;

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

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

22 (b) less the retention authorized in
23 Subparagraph (a) of this paragraph: 1) one-half of the net
24 total amount assessed in penalties, fines, fees and costs by
25 the municipality shall be remitted to the state treasurer and

1 distributed to the administrative office of the courts, of
2 which ten percent shall be credited to DWI drug court
3 programs and ninety percent shall be transferred to the New
4 Mexico finance authority for deposit into the metropolitan
5 court bond guarantee fund; and 2) one-half shall be retained
6 by the municipality for municipal traffic safety programs and
7 to offset the municipality's reasonable costs directly
8 related to administering a program imposing penalties or
9 fines and costs or fees as provided in Paragraph (1) of this
10 subsection;

11 (c) in fiscal year 2009, and annually
12 thereafter, the municipality shall cause an audit of the
13 program and contract described in Subparagraph (a) of this
14 paragraph to be conducted by the state auditor or an
15 independent auditor selected by the state auditor;

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

24 (e) a hearing provided for a contested
25 nuisance ordinance offense or violation shall be held by a

1 hearing officer appointed by the presiding judge of the civil
2 division of the district court with jurisdiction over the
3 municipality, and the hearing itself shall be conducted
4 following the rules of evidence and civil procedure for the
5 district courts. The burden of proof for violations and
6 defenses is a preponderance of the evidence. A determination
7 by the hearing officer shall not impose a total amount of
8 penalties, fines, fees and costs in excess of that provided
9 in the nuisance ordinance; and

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

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

1 (1) of this subsection;

2 (b) less the retention authorized in
3 Subparagraph (a) of this paragraph: 1) one-half of the net
4 total amount assessed in penalties, fines, fees and costs by
5 the municipality shall be remitted to the state treasurer, of
6 which sixty-five percent shall be credited to the court
7 automation fund, twenty percent to the traffic safety
8 education and enforcement fund and fifteen percent to the
9 judicial education fund; and 2) one-half of the net total
10 amount assessed in penalties, fines, fees and costs shall be
11 retained by the municipality for municipal traffic safety
12 programs and to offset the municipality's reasonable costs
13 directly related to administering a program imposing
14 penalties or fines and costs or fees as provided in Paragraph
15 (1) of this subsection;

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

22 (d) if in the audit conducted pursuant
23 to Subparagraph (c) of this paragraph it is determined that
24 any amount retained by the municipality pursuant to this
25 paragraph is in excess of the amount the municipality is

1 authorized to retain, the municipality shall remit, when the
2 audit is finalized, the amount in excess to the state
3 treasurer to be distributed and transferred as provided in
4 Item 1) of Subparagraph (b) of this paragraph; and

5 (e) a hearing provided for a contested
6 nuisance ordinance offense or violation shall be held by a
7 hearing officer appointed by the presiding judge of the civil
8 division of the district court with jurisdiction over the
9 municipality, and the hearing itself shall be conducted
10 following the rules of evidence and civil procedure for the
11 district courts. The burden of proof for offenses or
12 violations and defenses is a preponderance of the evidence.
13 A determination by the hearing officer shall not impose a
14 total amount of penalties, fines, fees and costs in excess of
15 that provided in the nuisance ordinance;

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

18 C. prohibit and suppress:

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

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

25 (3) public intoxication;

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(4) disorderly conduct; and
(5) riots, noises, disturbances or
disorderly assemblies in any public or private place."=====