



The Legislature  
of the  
State of New Mexico

49th Legislature, First Session

LAWS 2009

CHAPTER 121

SENATE BILL 519, as amended

Introduced by

SENATOR MICHAEL S. SANCHEZ  
SENATOR GERALD ORTIZ y PINO



# Chapter 121

## AN ACT

1  
2 RELATING TO NUISANCE ORDINANCES; RAISING CERTAIN NUISANCE  
3 VIOLATION PENALTIES AND FEES; ESTABLISHING PROCEDURE FOR  
4 CHALLENGES TO THE IMPOSITION OF PENALTIES FOR THE VIOLATION  
5 OF CERTAIN NUISANCE ORDINANCES; PROVIDING FOR DISTRIBUTION OF  
6 PENALTIES AND FEES; REQUIRING AN AUDIT; MAKING AN  
7 APPROPRIATION.

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

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

13 "3-18-17. NUISANCES AND OFFENSES--REGULATION OR  
14 PROHIBITION.--A municipality, including a home rule  
15 municipality that has adopted a charter pursuant to Article  
16 10, Section 6 of the constitution of New Mexico, may by  
17 ordinance:

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

21 (1) the total amount of assessed penalties,  
22 fines, fees and costs imposed by an ordinance for failure to  
23 obey a traffic sign or signal, including a red light offense  
24 or violation, or for a speeding offense or violation shall  
25 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." \_\_\_\_\_

Diane D. Denish

Diane D. Denish President  
Senate

Lenore M. Naranjo

Lenore M. Naranjo, Chief Clerk  
Senate

Ben Lujan

Ben Lujan, Speaker  
House of Representatives

Stephen R. Arias

Stephen R. Arias, Chief Clerk  
House of Representatives

Approved by me this 6<sup>th</sup> day of April, 2009

Bill Richardson

Governor Bill Richardson  
State of New Mexico