

3-18-1. General powers; body politic and corporate powers.

A municipality is a body politic and corporate under the name and form of government selected by its qualified electors. A municipality may:

- A. sue or be sued;
- B. enter into contracts or leases;
- C. acquire and hold property, both real and personal;
- D. have a common seal which may be altered at pleasure;
- E. exercise such other privileges that are incident to corporations of like character or degree that are not inconsistent with the laws of New Mexico;
- F. protect generally the property of its municipality and its inhabitants;
- G. preserve peace and order within the municipality; and
- H. establish rates for services provided by municipal utilities and revenue-producing projects, including amounts which the governing body determines to be reasonable and consistent with amounts received by private enterprise in the operation of similar facilities.

History: 1953 Comp., § 14-17-1, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 2; 1972, ch. 81, § 2.

30-8-1. Public nuisance.

A public nuisance consists of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either:

- A. injurious to public health, safety, morals or welfare; or
- B. interferes with the exercise and enjoyment of public rights, including the right to use public property.

Whoever commits a public nuisance for which the act or penalty is not otherwise prescribed by law is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-8-1, enacted by Laws 1963, ch. 303, § 8-1.

30-8-8. Abatement of a public nuisance.

- A. Except as herein provided, an action for the abatement of a public nuisance shall be governed by the general rules of civil procedure.
- B. A civil action to abate a public nuisance may be brought, by verified complaint in the name of the state without cost, by any public officer or private citizen, in the district court of the county where the public nuisance exists, against any person, corporation or association of persons who shall create, perform or maintain a public nuisance.
- C. When judgment is against the defendant in an action to abate a public nuisance, he shall be adjudged to pay all court costs and a reasonable fee for the complainant's attorney, when the suit is not prosecuted exclusively by the attorney general or a district attorney.

History: 1953 Comp., § 40A-8-5, enacted by Laws 1963, ch. 303, § 8-5.

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 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) 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 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, 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 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 by the municipality 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; 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 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 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 the rules of evidence and civil procedure for the district courts. The burden of proof for violations and defenses is a preponderance of the evidence. A determination by the hearing officer shall not impose a total amount of penalties, fines, fees and costs in excess of that provided in the nuisance ordinance; and
- (3) 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, 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 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 by the municipality 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 fifteen percent to the judicial education 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 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 the rules of evidence and civil procedure for the district courts. The burden of proof for offenses or violations and defenses is a preponderance of the evidence. A determination by the hearing officer shall not impose a total amount of penalties, 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 assemblies in any public or private place.

History: 1953 Comp., § 14-17-14, enacted by Laws 1965, ch. 300; 2008, ch. 91, § 1; 2009, ch. 121, § 1.

NM CASE LAW

A public nuisance must affect a considerable number of people or an entire community or neighborhood. *Environmental Improvement Div. v. Bloomfield Irrigation Dist.*, [1989-NMCA-049](#), [108 N.M. 691](#), [778 P.2d 438](#), cert. denied, 108 N.M. 681, 777 P.2d 1325.

This section applies to "anything affecting any number of citizens", which means a considerable number of people or an entire community or neighborhood. *State ex rel. Vill. of Los Ranchos de Albuquerque v. City of Albuquerque*, [1994-NMSC-126](#), [119 N.M. 150](#), [889 P.2d 185](#).

A common law "public nuisance", which is similar to the New Mexico public nuisance statute, is the unreasonable interference with a right common to the general public, belonging to all members of the general public. It is not, however, necessary that the entire community be affected by a public nuisance. If the nuisance will interfere with those who come in contact with it in the exercise of a public right or if the nuisance otherwise affects the interests of the community at large, the public nuisance statute applies to anything affecting any number of citizens. *State, ex rel, Village of Los Ranchos de Albuquerque v. City of Albuquerque*, 889 P.2d 185, 119 NM 150.

"A public nuisance is one that arises by virtue of the unreasonable interference with the rights common to the general public. The public nuisance statute applies to anything affecting 'any number of citizens' meaning a considerable number of people or an entire community or neighborhood." NMSA 1978. 30-8-1 See, *State, ex rel, Village of Los Ranchos de Albuquerque v. City of Albuquerque*, 889 P.2d 185, 119 NM 150.

"'Public nuisance' is one which adversely affects public health, welfare, or safety. A public nuisance affects the rights of citizens as part of the public and must affect a considerable number of people or an entire community or neighborhood." *Town of Clayton v. Mayfield*, [82 N.M. 596](#), [485 P.2d 352](#) (1971).

"A continuing nuisance is one which occurs so often that it can fairly be said to be continuing although it is not constant an unceasing." See *Padilla v. Lawrence*, 101 NM 556, cert. denied 683 P.2d 1341, 101 NM 419.

“The fact that the acts constituting a public nuisance are punishable criminally does not deprive equity of its power to enjoin a public nuisance where there is ample proof of irreparable injury to public health, welfare, or safety.” See, Town of Clayton v. Mayfield, 82 NM 596, (involved operation of a junk yard that was unfenced and contained old cars). See also, State, ex rel. Marron v. Compere, 103 P.2d 273, 44 NM 414.