

Date of Hearing: April 11, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2598 (Quirk) – As Amended March 22, 2018

**SUBJECT:** Cities: ordinances: violations.

**SUMMARY:** Increases the fine amounts that counties and cities may assess for violations of their ordinances and building and safety codes, and creates a new fine for specified violations of building and safety codes on commercial property. Specifically, **this bill:**

- 1) Provides that every violation of a county or city ordinance determined to be an infraction is punishable by the following:
  - a) A fine not exceeding \$130 for a first violation (increased from the current \$100 limit);
  - b) A fine not exceeding \$300 for a second violation of the same ordinance within one year (increased from the current \$200 limit); and,
  - c) A fine not exceeding \$800 for each additional violation of the same ordinance within one year (increased from the current \$500 limit).
- 2) Provides that a violation of local building and safety codes determined to be an infraction is punishable by the following:
  - a) A fine not exceeding \$130 for a first violation (increased from the current \$100 limit);
  - b) A fine not exceeding \$700 for a second violation of the same ordinance within one year (increased from the current \$500 limit);
  - c) A fine not exceeding \$1,300 for each additional violation of the same ordinance within one year of the first violation (increased from the current \$1,000 limit); and,
  - d) A fine not exceeding \$2,500 for each additional violation of the same ordinance within two years of the first violation if the property is a commercial property and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.
- 3) Requires a county or city levying a fine for repeat violations, as specified above, to establish a process for granting a hardship waiver to reduce the amount of the fine upon a showing by the responsible party that the responsible party has made a bona fide effort to comply after the first violation and that payment of the full amount of the fine would impose an undue financial burden on the responsible party.

**EXISTING LAW:**

- 1) Allows a county or city to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

- 2) Allows the legislative body of a city, county, or city and county, to collect any fee, cost, or charge incurred in specified activities, including the abatement of public nuisances, enforcement of specified zoning ordinances, inspections and abatement of violations of the State Housing Law, inspections and abatement of violations of the California Building Standards Code, and inspections and abatement of violations related to local ordinances that implement these laws.
- 3) Limits the amount of a fee, cost, or charge described above to the actual cost incurred performing the inspections and enforcement activity, including permit fees, fines, late charges, and interest.
- 4) Provides that violation of a county or city ordinance is a misdemeanor, unless by ordinance it is made an infraction.
- 5) Provides that a violation of a county or city ordinance may be prosecuted by county or city authorities in the name of the people of the State of California, or redressed by civil action.
- 6) Provides that every violation of a county or city ordinance determined to be an infraction is punishable by the following:
  - a) A fine not exceeding \$100 for a first violation;
  - b) A fine not exceeding \$200 for a second violation of the same ordinance within one year; and,
  - c) A fine not exceeding \$500 for each additional violation of the same ordinance within one year.
- 7) Provides that a violation of local building and safety codes determined to be an infraction is punishable by the following:
  - a) A fine not exceeding \$100 for a first violation;
  - b) A fine not exceeding \$500 for a second violation of the same ordinance within one year; and,
  - c) A fine not exceeding \$1,000 for each additional violation of the same ordinance within one year of the first violation.
- 8) Provides that a violation of a county event permit requirement that is an infraction is punishable by the following:
  - a) A fine not exceeding \$150 for the first violation;
  - b) A fine not exceeding \$700 for a second occurrence of the same violation by the same owner or operator within three years of the first violation; and,
  - c) A fine not exceeding \$2,500 for each additional occurrence of the same violation by the same owner or operator within three years of the first violation.

- 9) Provides for an additional state penalty of \$10 for every \$10 or fraction thereof levied upon every fine, penalty or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses, except parking offenses, involving the Vehicle Code. The money collected from the penalty is distributed in specified percentages among the Fish and Game Preservation Fund, the Restitution Fund, the Peace Officers Training Fund, the Driver Training Penalty Assessment Fund, the Corrections Training Fund, the Local Public Prosecutors and Public Defenders Training Fund, the Victim-Witness Assistance Fund, and the Traumatic Brain Injury Fund.
- 10) Requires a state surcharge of 20% to be levied on every base fine collected by the court, to be deposited in the General Fund.
- 11) Provides that, in each county, there shall be levied an additional penalty of \$7 for every \$10 or fraction thereof upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except parking offenses. The money collected shall be placed in any of the following funds if established by a County Board of Supervisors: a Courthouse Construction Fund; a Criminal Justice Facilities Construction Fund; an Automated Fingerprint Identification Fund; an Emergency Medical Services Fund; and, a DNA Identification Fund.

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) **Background.** A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. This "police power" provides the right to adopt and enforce zoning regulations, as long as they do not conflict with state laws.

Current law allows counties and cities to establish ordinances, and makes violations of ordinances misdemeanors, unless by ordinance the county or city makes them infractions. The violation of an ordinance may be prosecuted by county or city authorities in the name of the people of the State of California, or redressed by civil action. Current law outlines the following fine structure for ordinance violations, and for building and safety code violations, that are determined to be infractions:

<b>Number of violations within specified time periods</b>	<b>Amount of fine for ordinance violations that are infractions</b> (last adjusted in 1983)	<b>Amount of fine for building and safety code violations that are infractions</b> (established in 2003)
First violation	Fine does not exceed \$100	Fine does not exceed \$100
Second violation within one year of first violation	Fine does not exceed \$200	Fine does not exceed \$500
Third violation within one year of first violation	Fine does not exceed \$500	Fine does not exceed \$1,000

The fine amounts for ordinance violations have not been adjusted since 1983. An attempt to do so was made in 2003, but the Legislature chose instead to establish the increased fine amounts for building and safety code violations. These fine amounts have not changed since then.

In addition to the fines outlined above, counties (not cities) may assess fines specifically for a violation of an event permit requirement that is an infraction. These fines are capped at \$150 for a first violation, \$700 for a second occurrence of the same violation by the same owner or operator within three years of the first violation, and \$2,500 for each additional occurrence of the same violation by the same owner or operator within three years of the first violation. These special fines were enacted just last year, via AB 556 (Limón), Chapter 405, Statutes of 2017.

- 2) **Fines in Today's Dollars.** As noted above, the fine amounts for ordinance violations have not been increased since 1983. The fine amounts for building and safety code violations were established in 2003 and have not been adjusted since then. In today's dollars, these amounts would be approximately as follows:

<b>Number of violations within specified time periods</b>	<b>Amount of fine for ordinance violations (adjusted from 1983)</b>	<b>Amount of fine for building and safety code violations (adjusted from 2003)</b>
First violation	Fine does not exceed \$254	Fine does not exceed \$136
Second violation within one year of first violation	Fine does not exceed \$509	Fine does not exceed \$680
Third violation within one year of first violation	Fine does not exceed \$1,272	Fine does not exceed \$1,360

- 3) **Additional Penalties Levied by the Courts.** Pursuant to the Penal Code and the Government Code, additional penalties are levied on every fine, penalty or forfeiture imposed by and collected by the courts for criminal offenses. Penal Code Section 1464 levies a penalty of \$10 for every \$10 or fraction thereof on every fine, penalty or forfeiture imposed by and collected by the courts for criminal offenses. Penal Code Section 1465.7 requires a state surcharge of 20% to be levied on every base fine collected by the courts. Government Code Section 76000 levies an additional penalty of \$7 for every \$10 or fraction thereof upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses.
- 4) **Nuisance Abatement.** Both cities and counties are allowed, via ordinance, to establish administrative procedures for abating nuisances that include the ability to recover abatement costs via special assessments and abatement liens. A public nuisance is generally defined as "Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or

highway." In addition, a city's legislative body may declare what constitutes a nuisance via ordinance.

A city ordinance establishing a procedure for nuisance abatement and making the cost of abatement of a nuisance upon a parcel of land a special assessment against that parcel must include notice, by certified mail, to the property owner. The notice must be given at the time of imposing the assessment and must specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments.

The assessment can be collected on the property tax bill, subject to the same penalties, procedures, and sale in case of delinquency as provided for ordinary municipal taxes. All laws regarding the levy, collection, and enforcement of municipal taxes apply to the special assessment. However, if the real property is sold, or becomes foreclosed, before the first installment of the taxes becomes delinquent, then the cost of abatement transfers to the unsecured tax roll for collection.

Alternatively, a city can, by ordinance, establish a procedure to collect abatement costs, including administrative costs, by a nuisance abatement lien. The ordinance must require that the owner of the parcel on which the nuisance is maintained receive notice before recording the abatement lien. If the owner cannot be served with the notice, it can be posted on the property and published in a newspaper. A nuisance abatement lien must be recorded with the county recorder and has the force, effect, and priority of a judgment lien. The lien may be foreclosed by an action brought by the city for a money judgment.

A county ordinance establishing administrative procedures for nuisance abatement must require that the owner of the parcel, and anyone known to be in possession of the parcel, receive notice of the abatement proceeding and have a hearing before the board of supervisors before the county can abate the nuisance. The county supervisors can delegate the hearing to a hearing board or a hearing officer. A county can abate a nuisance that a board of supervisors or county officer determines constitutes an immediate threat to public health or safety.

If the owner fails to pay the county's abatement costs, the board of supervisors can order the abatement costs to be specially assessed against the parcel. The assessment can be collected on the property tax bill, subject to the same penalties, procedures, and sale in case of delinquency as for ordinary county taxes. All laws regarding the levy, collection, and enforcement of county taxes apply to the special assessment.

If a county specially assesses abatement costs against a parcel, it also can record a notice of abatement lien, which has the same effect as recording an abstract of a money judgment and the same priority as a judgment lien. If no abatement lien is recorded and the real property on which an assessment is imposed is sold, or becomes foreclosed, before the first installment of the taxes becomes delinquent, then the assessment transfers to the unsecured tax roll for collection.

- 5) **Bill Summary.** This bill increases the fines that counties and cities may assess for violations of their ordinances and local building and safety codes, and adds a new fine for specified repeat violations of building and safety codes on commercial property.

The proposed fine structure is as follows:

Number of violations within specified time periods	Amount of fine for ordinance violations that are infractions	Amount of fine for building and safety code violations that are infractions
First violation	Fine does not exceed \$130	Fine does not exceed \$130
Second violation within one year of first violation	Fine does not exceed \$300	Fine does not exceed \$700
Subsequent violations within one year of first violation	Fine does not exceed \$800	Fine does not exceed \$1,300
Subsequent violations within two years of first violation, if the property is a commercial property and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property	<i>(Not applicable)</i>	Fine does not exceed \$2,500

A county or city levying a fine for repeat violations, as specified above, must establish a process for granting a hardship waiver to reduce the amount of the fine if the responsible party shows a bona fide effort to comply after the first violation, and demonstrates that payment of the full amount of the fine would impose an undue financial burden on the responsible party.

This bill is sponsored by the League of California Cities and the California Association of Code Enforcement Officers.

- 6) **Author's Statement.** According to the author, "Cities across California are struggling with how to deal with abandoned buildings. Many have expressed frustration at the restrictions they face with respect to fines they can issue owners for failure to properly maintain their properties...In my district, there have been numerous incidences of commercial property owners refusing to properly maintain vacant properties, leading to the accumulation of debris and brake-ins. Such is the case with a building across from my district office that has been abandoned for over 20 years.

"Maximum permitted fines for local building and safety codes have not been updated in over 15 years. Additionally, in some cases, court processes to collect fines have become too onerous for cities and counties to collect. The statutory fines should be updated to at least reflect inflation, in order to enable cities and counties to effectively enforce local ordinances and building and safety codes.

"AB 2598 adjusts the fees that counties and cities may assess and collect for violations of local building and safety codes with inflation. This bill will help cities and counties hold

owners accountable to their communities by maintaining property values and reducing crime and other risks to public health."

- 7) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Appropriate Remedy?** Proponents point to persistently blighted properties and unresponsive property owners as the impetus for this bill. Opponents have raised several concerns with the provisions of this bill that raise fine amounts for general county and city ordinances and their potential impact on disadvantaged populations (see below). The Committee may wish to consider whether increased fines for ordinances generally are likely to provide a remedy for blight, and the detrimental consequences such increases could inflict.
  - b) **Nuisance Abatement Procedures.** As noted above, cities and counties are able to abate nuisances and hold property owners accountable for those costs via special assessments and abatement liens. The Committee may wish to consider whether cities and counties already have the necessary authority to address the conditions that the author has cited as the impetus for this bill.
  - c) **Court Action.** Existing law provides that a violation of an ordinance may be prosecuted by city or county authorities, or redressed by civil action. The Committee may wish to consider whether this bill is needed, given these avenues of redress.
  - d) **Legislative Review.** The Committee may wish to consider adding a sunset date to allow the Legislature to revisit this bill's increased fine amounts to determine if they do, indeed, result in greater compliance with local ordinances.
- 8) **Committee Amendment.** The Committee may wish to amend the bill to only allow an increase of fines for building and safety codes, rather than for ordinances generally, to address some of the concerns raised above.
- 9) **Previous Legislation.** AB 345 (Ridley-Thomas) of 2017, would have allowed cities and counties to recover nuisance abatement fines through nuisance abatement liens and special assessments, and would have increased the maximum allowable fines for violations of city building and safety codes. AB 345 was subsequently amended to address a different subject.

AB 556 (Limón), Chapter 405, Statutes of 2017, allowed counties to assess increased fines for a violation of an event permit requirement that is an infraction as follows: a fine not exceeding \$150 for the first violation; a fine not exceeding \$700 for a second occurrence of the same violation by the same owner or operator within three years of the first violation; and, a fine not exceeding \$2,500 for each additional occurrence of the same violation by the same owner or operator within three years of the first violation.

AB 514 (Williams) of 2015, would have allowed counties to assess larger administrative fines for specified violations of county ordinances determined to be infractions that govern building and safety, brush removal, grading, film permitting, and zoning. AB 514 was vetoed with the following message:

"The public's health and safety is compromised when people willfully violate county ordinances. Deterring such behavior is a worthwhile goal. This bill, however, lacks the balance needed to prevent unintended consequences, especially on those with modest means and those who are unfamiliar with their local ordinances."

- 10) **Arguments in Support.** The League of California Cities, sponsor of this bill, writes, "Local ordinances and building and safety codes reflect policies adopted by communities to establish standards, resolve issues, maintain public and private property, and protect public health and safety. There must be adequate enforcement mechanisms for these laws to be effective. While existing law authorizes various levels of fines, including up to \$100 for the first violation, these statutory amounts have not been updated in many years.

"Inadequate penalties can erode respect for the law. If the consequences for violating a local ordinance or building standard are deemed to be minimal then some community members will ignore the law and create inequities in its application. For instance, if an ordinance requires dry brush to be cleared for fire protection, and a property owner chooses not to do so, they could be placing the homes of their neighboring properties at risk. If one property owner allows trash and junk to build up on their property, it could attract vermin and devalue adjacent properties.

"Obviously, the appropriate level of the fines is a policy question. They need to be high enough to encourage compliance, while avoiding being overly burdensome or disproportionate on the unaware or first offenders, with more severe penalties for those that violate repeatedly. This measure would update for inflation the fine levels for repeated violations, while continuing to keep the initial fine lower...Further, the bill establishes a hardship waiver process for repeated violators who have made a bona fide effort to comply with the first violation and payment of the additional fines would create an undue financial hardship."

- 11) **Arguments in Opposition.** The American Civil Liberties Union of California, in opposition, states, "After extensive publicity about the problems with Ferguson, Missouri, charging its residents high municipal fines to fund its government operations, California has been in the spotlight for similar problems in cities and counties across the state. California counties already impose higher fines and fees than counties in other states. For example, the City and County of San Francisco collects more per capita in municipal fines and fees than other consolidated city-county governments in the United States.

"For the past few decades, municipal fines and fees have been on the rise in California. Since most municipal violations are adjudicated in state traffic courts, they are subject to the state's numerous add-on fees and assessments. In 2006, a \$100 base fine ticket cost \$390 after the imposition of state statutory fees and assessments. Today, that same \$100 base fine ticket increases to almost \$500 after fees and assessments, and jumps to over \$800 if a person misses the initial deadline to pay. Such fines and fees can create insurmountable financial burdens for even middle-class Californians, and further trap low-income Californians in vicious cycles of poverty. A 2016 report from the Federal Reserve system revealed that 46% of American families do not have money available to cover an unexpected expense of even \$400...

"Unequal enforcement of municipal fines and fees also disproportionately impacts communities of color, and regularly occurs in the context of over-policing. Officers from the

San Diego Police Department reported being instructed to enforce public safety laws more leniently in white communities than communities of color, and studies from across California show that black and Latino drivers are disproportionately pulled over more, without good reason, and disproportionately searched.

Municipal code enforcement also often targets homeless people, who can least afford high fines. People that are considered undesirable by local authorities can be cited and arrested under the municipal code for activities such as merely being in public. AB 2598 would draw these individuals into the criminal justice system, and either keep them impoverished on the street or incarcerated, rather than in housing." (citations omitted)

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

League of California Cities [CO-SPONSOR]

California Association of Code Enforcement Officers [CO-SPONSOR]

### **Opposition**

American Civil Liberties Union of California

East Bay Community Law Center

Lawyers' Committee for Civil Rights of the San Francisco Bay Area

Legal Services for Prisoners with Children

Western Center on Law and Poverty

**Analysis Prepared by:** Angela Mapp / L. GOV. / (916) 319-3958