

Date of Hearing: May 10, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 345 (Ridley-Thomas) – As Amended March 21, 2017

SUBJECT: Municipal code violations.

SUMMARY: Increases the fines that counties and cities may assess for violations of their ordinances and local building and safety codes. 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 \$300 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.
- 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 \$500 for a first violation;
 - b) A fine not exceeding \$750 for a second violation of the same ordinance within one year; and,
 - c) A fine not exceeding \$1,500 for each additional violation of the same ordinance within one year of the first violation.

EXISTING LAW:

- 1) 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.
- 2) 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.
- 3) Provides that violation of a city or county ordinance is a misdemeanor, unless by ordinance it is made an infraction.

- 4) Provides that a violation of a city or county ordinance may be prosecuted by city or county authorities in the name of the people of the State of California, or redressed by civil action.
- 5) Provides that every violation of a city or county 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.
- 6) 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.
- 7) Allows the legislative body of a local agency, by ordinance, to make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty, and requires the local agency to set forth the administrative procedures that govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties.
- 8) Prohibits, for the purposes of administrative fines or penalties where the violation of an ordinance would otherwise be an infraction, the administrative fine or penalty from exceeding the maximum fine or penalty amounts set forth in 5), above.
- 9) Requires the administrative procedures described in 7), above, to provide for a reasonable period of time for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.
- 10) Provides a process for appealing a local agency's decision regarding administrative fines or penalties via civil proceedings, including reimbursement of court filing fees by the local agency if the court finds in favor of the contestant, as specified.
- 11) Allows cities to impose fines, penalties, and forfeitures for violations of ordinances, and to fix the penalty by fine or imprisonment, or both. A fine shall not exceed \$1,000. Imprisonment shall not exceed six months.

- 12) Allows cities and counties to establish by ordinance a procedure to collect nuisance abatement costs and related administrative costs via a nuisance abatement lien or a special assessment.
- 13) 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.
- 14) Requires a state surcharge of 20% to be levied on every base fine collected by the court, to be deposited in the General Fund.
- 15) 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.
- 16) Generally limits the penalty for a misdemeanor to a fine of \$1,000 or six months in county jail, or both, and generally limits the penalty for an infraction to \$250, but allows specified exceptions to these penalties.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill increases the fines that counties and cities may assess for violations of their ordinances and local building and safety codes.

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 \$300	Fine does not exceed \$500
Second violation within one year of first violation	Fine does not exceed \$500	Fine does not exceed \$750

Subsequent violations within one year of first violation	Fine does not exceed \$1,000	Fine does not exceed \$1,500
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This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "Many communities across the state have struggled for decades to rehabilitate blighted communities and often have significant challenges with compliance. Administrative fines and penalties for code and building violations have not been increased since 2003. AB 345's intent is to deter property negligence and encourage compliance with local government regulations to improve care and maintenance of properties."
- 3) **Background.** Local governments have the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of their residents through their police power. The "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 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:

Number of violations within specified time periods	Amount of fine for ordinance violations that are infractions [pursuant to GOV Section 25132 (b); last adjusted in 1983]	Amount of fine for building and safety code violations that are infractions [pursuant to GOV Section 25132 (c); 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, which are contained in Government Code (GOV) section 25132 (b), 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, which are contained in GOV section 25132 (c). These fine amounts have not changed since then.

- 4) **Fines in Today's Dollars.** 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:

Number of violations within specified time periods	Amount of fine for ordinance violations (adjusted from 1983)	Amount of fine for building and safety code violations (adjusted from 2003)
First violation	Fine does not exceed \$248	Fine does not exceed \$134
Second violation within one year of first violation	Fine does not exceed \$497	Fine does not exceed \$668
Third violation within one year of first violation	Fine does not exceed \$1,242	Fine does not exceed \$1,336

- 5) **Administrative Alternative.** As an alternative to the court process, a local agency can make any violation of any of its ordinances subject to an administrative fine or penalty. This provision was enacted in 1995 to relieve the courts of some of these cases and offer local agencies a faster, easier, and less costly means of pursuing remedies for ordinance violations.

In order to make an ordinance violation subject to an administrative fine or penalty, the local agency must adopt an ordinance specifying the administrative procedures that govern the imposition, enforcement, collection, and administrative review of the fines or penalties. When a violation pertains to building, plumbing, electrical, or other similar structural and zoning issues that do not create an immediate danger to health or safety, the administrative procedures must grant a reasonable time to remedy a continuing violation before the imposition of administrative fines or penalties.

Within 20 days after service of a final administrative order or decision regarding administrative fines or penalties, a person contesting that final administrative order or decision may appeal in Superior Court. A local agency must go through a civil court proceeding to collect fines and penalties that are not secured via the administrative process.

Existing law governing this administrative process specifically states, "Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in subdivision (b) of Section 25132." This effectively sets maximum fines for infractions that are enforced through a local agency's administrative process. These maximum fines are identical to the maximum fines that may be assessed for ordinance violations that are infractions (with the highest fine capped at \$500). This bill would increase these fine amounts in the provisions that govern the administrative process, allowing a city or a county to pursue these increased fine amounts via its administrative process, rather than having to pursue higher fine amounts through the courts.

- 6) **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 court. 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. To the extent that a city or county chooses to prosecute a violation of its ordinances through the courts, rather than its administrative procedures, these additional penalties would be added to the fines increased by this bill.

- 7) **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 tax collector's power of sale is not affected by the failure of the property owner to receive notice.

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.

- 8) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Inflationary Adjustment Only?** As mentioned above, the fine amounts in existing law have not been adjusted since 1983 and 2003, respectively. The Committee may wish to consider if an inflationary adjustment alone would serve as an appropriate remedy for the problem identified by the author.
 - 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) **Fine Amounts.** Current law caps fines for infraction violations at amounts ranging from \$100 to \$1,000, depending on the number of violations in a year's time and the type of ordinance that is violated. Current law also sets a limit of \$1,000 on fines that a city may impose for ordinance violations. This bill raises these amounts significantly, in some cases more than doubling existing fines. If existing fines were adjusted for inflation, they would range from about \$134 to about \$1,336. The Committee may wish to consider to what extent fines for the types of violations identified in this bill should be increased.
 - d) **Increase of Fine Caps for Administrative Procedures.** As mentioned above, existing law that governs a county's authority to make a violation of any of its ordinances subject to an administrative fine or penalty caps fines for ordinance violations that are infractions. These caps are significantly lower than the fines that this bill would allow. The Committee may wish to consider the potential impacts of allowing counties and cities to pursue higher fine amounts via their administrative procedures, rather than the courts.
 - e) **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.

- f) **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.
- 9) **Committee Amendments.** The Committee may wish to amend the bill as follows to address some of the concerns raised above:
- a) Limit the bill to cities only.
 - b) Allow an increase of fines for building and safety codes only.
 - c) Allow fines for building and safety code violations to be increased for inflation (fine for first violation would not exceed \$134, fine for second violation would not exceed \$668, and fine for third or subsequent violation would not exceed \$1,336).
- 10) **Related Legislation.** AB 556 (Limón), which is pending in this Committee, increases the fine amounts that counties may assess for a violation of an event permit requirement that is an infraction.
- 11) **Previous Legislation.** 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."

AB 683 (Mullin) of 2013 would have authorized counties, cities and special districts, until January 1, 2020, after notice and public hearing, to order unpaid fines or penalties to be specially assessed against a parcel if the fines or penalties were related to ordinance violations on the real property that constitute a threat to public health and safety. AB 683 also would have allowed a lien to be recorded against a property for which fines and penalties were not paid. AB 683 was vetoed with the following message:

"This bill is similar to legislation I vetoed in the previous legislative session. While the state's housing situation has improved, this bill could hamper efforts on the part of distressed homeowners to refinance or sell their property. While the bill requires additional outreach to a homeowner before a lien is recorded, there is no limit on the accrual of fines until that time. Abating the ordinance violation should be the primary goal and there is already an existing process for locals to recover their costs."

AB 129 (Beall) of 2011 would have authorized counties and cities, until January 1, 2020, after notice and public hearing, to order unpaid fines or penalties to be specially assessed against a parcel if the fines or penalties were related to ordinance violations on the real property that constituted a threat to public health and safety. AB 129 was vetoed with the following message:

"At a time when property owners are struggling to pay their mortgages, this bill would weaken the due process requirements for local building departments to obtain property liens. Local governments already have a fair process in place, and I see no reason to change it."

AB 2613 (Beall) of 2010 would have authorized counties and cities, after notice and public hearing, to order unpaid fines or penalties related to ordinance violations on real property to be specially assessed against the parcel. AB 2613 was vetoed with the following message:

"It is important that the due process rights of homeowners are balanced against a local government's right to collect an ordinance violation fine. The current system that requires a local government to seek judicial approval to impose a lien properly balances these opposing interests."

SB 567 (Torlakson), Chapter 60, Statutes of 2003, increased fines for a violation of local building and safety codes determined to be an infraction to \$500 for a second violation of the same ordinance within one year and \$1,000 for each additional violation of the same ordinance within one year.

SB 814 (Alquist), Chapter 898, Statutes of 1995, authorized local agencies to adopt an ordinance to make a violation of any of the local agency's ordinances subject to an administrative fine or penalty.

- 12) **Arguments in Support.** The League of California Cities, in support, 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. In order for such laws to be effective there must be adequate enforcement mechanisms. 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. The March 21st amendments to this measure propose various levels of increases. While the League has no position at this time on those specific amounts, we agree with you that the existing levels should be updated to ensure that local agencies can properly enforce their ordinances and building and safety requirements. We look forward to working with you and other stakeholders in an effort to appropriately update this area of law."

- 13) **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 345 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

Opposition

American Civil Liberties Union of California
Western Center on Law and Poverty

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