

Date of Hearing: May 5, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 959 (Mullin) – As Introduced February 17, 2021

SUBJECT: Park districts: regulations: nuisances: abatement.

SUMMARY: Authorizes specified regional park and open-space districts to adopt regulations relating to nuisances and establish a procedure for the abatement of the nuisance. Specifically, **this bill:**

- 1) Allows the board of directors of a regional park district, regional park and open-space district, or a regional open-space district (District), as defined, to adopt regulations relating to nuisances and establish a procedure for the abatement of the nuisance, including, but not limited to, administrative abatement.
- 2) Specifies that provisions pertaining to the violation of an ordinance, rule, or regulation do not apply to the regulations adopted pursuant to this bill.
- 3) Provides that a District may initiate a civil action to abate a nuisance in the name of the District, and by the judgement in that action, the nuisance may be enjoined or abated as well as damages recovered.
- 4) Specifies that the board of directors of a District may, by regulation, provide for the recovery of costs incurred by the District in abating a nuisance, including any related administrative costs. The regulation adopted may provide for the recovery of attorney's fees in any action, administrative proceeding, or special proceeding to abate a nuisance. If the ordinance provides for the recovery of attorney's fees, it shall provide for recovery of attorney's fees by the prevailing 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 counties and cities to adopt ordinances that establish local procedures for abating nuisances and to recover abatement costs, including administrative costs, by using a special assessment, abatement lien, or both.
- 3) Defines a nuisance as anything that is injurious to health, indecent or offensive to the senses, obstructs the free use of property, or unlawfully obstructs free passage.
- 4) Allows, as an alternative to civil and criminal enforcement mechanisms, a local agency's legislative body to make any violation of any of its ordinances subject to an administrative fine or penalty.
- 5) 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.

- 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.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Background.** The United States and California Constitutions prohibit governments from impairing property rights without due process of law. The California Constitution also allows counties and cities to adopt and enforce ordinances that regulate local health, safety, peace, and welfare.

State law defines a nuisance as anything that is injurious to health, indecent or offensive to the senses, obstructs the free use of property, or unlawfully obstructs free passage. In addition to civil and criminal enforcement mechanisms, counties and cities can adopt ordinances that establish local procedures for abating nuisances (AB 2593, Veysey, 1965). Counties and cities can recover abatement costs, including administrative costs, by using a special assessment, abatement lien, or both.

- 2) **Nuisance Abatement.** 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.

- 3) **Local Penalties for Ordinance Violations.** As an alternative to civil and criminal enforcement mechanisms, a local agency's legislative body can make any violation of any of its ordinances subject to an administrative fine or penalty (SB 814, Alquist, 1995). 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. The administrative procedures must grant a reasonable time to remedy a continuing violation before the imposition of administrative fines or penalties when the violation pertains to building, plumbing, electrical, or other similar structural and zoning issues that do not create an immediate danger to health or safety. 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. Local agencies must go through a civil court proceeding to collect unpaid fines and penalties.

Under state law, a violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. In general, every ordinance violation that is determined to be an infraction is punishable by:

- 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; or,
 - c) A fine not exceeding \$500 for each additional violation of the same ordinance within one year.
- 4) **Regional Park and Open Space Districts.** Authorized by the Public Resources Code, regional park and open space districts are charged with acquiring and preserving regional greenbelts of open space land, protecting and restoring the natural environment, and providing opportunities for ecologically sensitive public enjoyment and education. To provide these services, districts can use special taxes, benefit assessments, and general obligation bonds to acquire property by purchase or eminent domain.

Some regional park and open space districts are classified as independent and have their own directly-elected boards of directors with fixed terms. Independent special districts are a separate, autonomous form of government not controlled by a city or county. Other special districts are defined as dependent and act more comparable to a county or city department. For a dependent regional park and open space district, the relevant board of supervisors serves as the district's board of directors.

- 5) **Bill Summary and Author's Statement.** This bill allows Districts to adopt regulations relating to nuisances and establish a procedure for the abatement of the nuisance. This bill also authorizes a District to initiate a civil action to abate a nuisance and provide for the recovery of costs incurred by the District in abating a nuisance, including the recovery of attorney's fees. This bill is sponsored by the East Bay Regional Park District, Midpeninsula Regional Open Space District, and the Napa County Regional Park and Open Space District.

According to the author, "It is important for Park District staff to be able to efficiently and effectively address illegal encroachments on Park District property. Without a full set of tools at the Park District's disposal, there are instances where public lands are not getting the protection they need. Examples of nuisances on Park District lands include illegal water diversion, extension of yards into park habitat, illegal dumping and grading, unauthorized landscaping, and illegal streambed alteration, all of which may impact sensitive habitat,

wildfire protection zones, and other park-specific uses. Park Districts need to be able to address illegal encroachments in the same comprehensive way that cities, counties, and certain other special districts can. Given that Park Districts are best suited to address land stewardship and management issues on its own lands, providing Park Districts with the appropriate nuisance abatement tools would be the most efficient and effective allocation of public resources.”

- 6) **Policy Consideration.** Special assessments and abatement liens are powerful debt collection mechanisms, which local officials can use to foreclose and sell real property. When local governments use such powerful tools, property owners need substantial due process safeguards. Local proceedings must meet minimum due process standards, including adequate notice to the proper parties, and a reasonable opportunity to be heard. Before allowing District officials to recover abatement costs with special assessments and abatement liens, the Committee may wish to consider whether this bill strikes the right balance between protecting property owners’ due process rights and providing these Districts with a powerful collection tool.
- 7) **Committee Amendments.** In order respond to the above policy consideration, the Committee may to amend the bill as follows:
 - a) Specify that, by ordinance, the board of directors of a District may declare what constitutes a nuisance, and that for purposes of abating a nuisance, a District may exercise the authority granted to a city pursuant to existing law;
 - b) Provide that any ordinances shall, at a minimum, provide that the owner of the parcel, and anyone known to the District to be in possession of the parcel, be given notice of the abatement proceeding and an opportunity to appear and be heard before the abatement of the nuisance by the district; and,
 - c) Make other technical and clarifying changes.
- 8) **Arguments in Support.** According to the East Bay Regional Park District, “For decades park and open space districts have served local communities to protect and care for lands that contain vital habitats, resources, and opportunities for public enjoyment of nature. As a result of park districts creating more access to open space for the public, by managing and acquiring land, parks have gained many new neighbors. AB 959 would enable park and open space district staff to efficiently and effectively address illegal encroachments on the natural and working lands they are charged to protect and manage.

“Without a clear set of guidelines there are instances where publicly accessible shared open spaces are not getting the protection they need...It is essential for park districts to have the jurisdiction to address unlawful encroachments in the same comprehensive way that cities, counties, and certain other special districts can. Under Public Resources Code 5500, ‘dependent’ park and open space districts already have these powers through the powers of the county with which they are affiliated. Providing appropriate nuisance abatement tools to independent park and open space districts would be the most efficient and effective allocation of public resources in this regard.”
- 9) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

East Bay Regional Park District [SPONSOR]
Midpeninsula Regional Open Space District [SPONSOR]
California Special Districts Association
County of San Mateo
East Contra Costa County Habitat Conservancy
Napa County Local Agency Formation Commission
Peninsula Open Space Trust
Together Bay Area

Opposition

None on file.

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