

1 SENATE BILL 443

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Jacob R. Candelaria

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9  
10 AN ACT

11 RELATING TO ORDINANCES; PROVIDING FOR CIVIL ENFORCEMENT AND  
12 CIVIL PENALTIES.

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 3-17-1 NMSA 1978 (being Laws 1965,  
16 Chapter 300, Section 14-16-1, as amended) is amended to read:

17 "3-17-1. ORDINANCES--PURPOSES--ENFORCEMENT--PENALTIES.--

18 The governing body of a municipality may adopt ordinances or  
19 resolutions not inconsistent with the laws of New Mexico for  
20 the purpose of:

21 A. effecting or discharging the powers and duties  
22 conferred by law upon the municipality;

23 B. providing for the safety, preserving the health,  
24 promoting the prosperity and improving the morals, order,  
25 comfort and convenience of the municipality and its

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1 inhabitants; and

2 C. enforcing obedience to the ordinances by:

3 (1) criminal prosecution in the municipal  
4 court and metropolitan courts and upon conviction the  
5 imposition of:

6 [~~(1)~~] (a) except for those violations of  
7 ordinances described in [~~Paragraphs (2) and (3)~~] Subparagraphs  
8 (b) and (c) of this [~~subsection~~] paragraph, a fine of not more  
9 than five hundred dollars (\$500) or imprisonment for not more  
10 than ninety days or both;

11 [~~(2)~~] (b) for a violation of an  
12 ordinance prohibiting driving a motor vehicle while under the  
13 influence of intoxicating liquor or drugs, a fine of not more  
14 than one thousand dollars (\$1,000) or imprisonment for not more  
15 than three hundred sixty-four days or both; and

16 [~~(3)~~] (c) for violations of an  
17 industrial user wastewater pretreatment ordinance as required  
18 by the United States environmental protection agency, a fine of  
19 not more than one thousand dollars (\$1,000) a day for each  
20 violation; and

21 (2) civil enforcement pursuant to Section  
22 3-17-1.1 NMSA 1978."

23 SECTION 2. A new section of the Municipal Code, Section  
24 3-17-1.1 NMSA 1978, is enacted to read:

25 "3-17-1.1. [NEW MATERIAL] CIVIL ENFORCEMENT--PROCEDURES--  
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1 PENALTIES--APPEAL.--

2 A. When a municipality elects to enforce provisions  
3 of an ordinance through a civil administrative process:

4 (1) the ordinance shall specify which  
5 provisions may be enforced through a civil administrative  
6 process;

7 (2) contested violations shall be adjudicated  
8 by an independent administrative hearing officer using a  
9 hearing procedure established by ordinance promulgated pursuant  
10 to Chapter 3, Article 21 NMSA 1978, which procedure shall meet  
11 all minimal due process requirements of the state and federal  
12 constitutions; and

13 (3) the hearing officer shall issue a decision  
14 on the merits of the appeal not more than thirty days after the  
15 completion of the hearing.

16 B. In addition to the actions authorized pursuant  
17 to Section 3-21-8 NMSA 1978, an administrative hearing officer  
18 may impose civil monetary penalties in accordance with the  
19 provisions of the ordinance.

20 C. The ordinance shall specify the civil monetary  
21 penalties that may be assessed for specific violations, and  
22 such civil penalties shall not exceed fifty dollars (\$50.00)  
23 per day for each violation nor a maximum total penalty of five  
24 hundred dollars (\$500).

25 D. Decisions made pursuant to Subsection A of this

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1 section may be appealed to district court pursuant to the  
2 provisions of Section 39-3-1.1 NMSA 1978."

3 SECTION 3. Section 3-21-8 NMSA 1978 (being Laws 1965,  
4 Chapter 300, Section 14-20-6, as amended) is amended to read:

5 "3-21-8. APPEALS TO ZONING AUTHORITY--GROUNDS--STAY OF  
6 PROCEEDINGS.--

7 A. The zoning authority shall provide by resolution  
8 the procedure to be followed in considering appeals allowed by  
9 this section.

10 B. Any aggrieved person or any officer, department,  
11 board or bureau of the zoning authority affected by a decision  
12 of an administrative officer, commission or committee in the  
13 enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or  
14 ordinance, resolution, rule or regulation adopted pursuant to  
15 these sections may appeal to the zoning authority or an  
16 independent administrative hearing officer. An appeal shall  
17 stay all proceedings in furtherance of the action appealed  
18 unless the officer, commission or committee from whom the  
19 appeal is taken certifies that by reason of facts stated in the  
20 certificate, a stay would cause imminent peril of life or  
21 property. Upon certification, the proceedings shall not be  
22 stayed except by order of district court after notice to the  
23 official, commission or committee from whom the appeal is taken  
24 and on due cause shown.

25 C. When an appeal alleges that there is error in

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1 any order, requirement, decision or determination by an  
2 administrative official, commission or committee in the  
3 enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or any  
4 ordinance, resolution, rule or regulation adopted pursuant to  
5 these sections, the zoning authority by a majority vote of all  
6 its members or the hearing officer may:

7 (1) authorize, in appropriate cases and  
8 subject to appropriate conditions and safeguards, variances or  
9 special exceptions from the terms of the zoning ordinance or  
10 resolution:

11 (a) that are not contrary to the public  
12 interest;

13 (b) where, owing to special conditions,  
14 a literal enforcement of the zoning ordinance will result in  
15 unnecessary hardship;

16 (c) so that the spirit of the zoning  
17 ordinance is observed and substantial justice done; and

18 (d) so that the goals and policies of  
19 the comprehensive plan are implemented; or

20 (2) in conformity with Sections 3-21-1 through  
21 3-21-14 NMSA 1978:

22 (a) affirm or reverse any order,  
23 requirement, decision or determination of an administrative  
24 official, commission or committee;

25 (b) decide in favor of the appellant;

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1 or

2 (c) make any change in any order,  
3 requirement, decision or determination of an administrative  
4 official, commission or committee."

5 SECTION 4. Section 3-21-10 NMSA 1978 (being Laws 1965,  
6 Chapter 300, Section 14-20-8) is amended to read:

7 "3-21-10. ZONING ENFORCEMENT.--

8 A. Sections [~~14-20-1 through 14-20-12 New Mexico~~  
9 ~~Statutes Annotated, 1953 Compilation~~] 3-21-1 through 3-21-14  
10 NMSA 1978 and any ordinance adopted pursuant to these  
11 sections shall be enforced by the zoning authority having  
12 jurisdiction, as municipal and county ordinances are  
13 enforced.

14 B. In addition, if any building or structure is  
15 erected, constructed, reconstructed, altered, repaired,  
16 converted or maintained or any building, structure or land is  
17 used in violation of Sections [~~14-20-1 through 14-20-12 New~~  
18 ~~Mexico Statutes Annotated, 1953 Compilation~~] 3-21-1 through  
19 3-21-14 NMSA 1978 or any ordinance adopted pursuant to these  
20 sections, the zoning authority may institute any appropriate  
21 action or proceedings to:

22 (1) prevent such unlawful erection,  
23 construction, reconstruction, alteration, repair, conversion,  
24 maintenance or use;

25 (2) restrain, correct or abate the

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1 violation;

2 (3) prevent the occupancy of such building,  
3 structure or land; or

4 (4) prevent any illegal act, conduct,  
5 business or use in or about such premises.

6 C. The ordinances, rules and regulations together  
7 with the officially adopted or district zoning map of the  
8 county or municipal zoning authority shall be filed in the  
9 respective offices of the county clerk or municipal clerk and  
10 shall be available for examination by any citizen."

11 SECTION 5. Section 3-21-15 NMSA 1978 (being Laws 1965,  
12 Chapter 206, Section 1) is amended to read:

13 "3-21-15. SHORT TITLE.--~~[This act]~~ Sections 3-21-15  
14 through 3-21-26 NMSA 1978 may be cited as the "Special Zoning  
15 District Act"."

16 SECTION 6. Section 3-21-23 NMSA 1978 (being Laws 1965,  
17 Chapter 206, Section 9) is amended to read:

18 "3-21-23. ORDINANCE--PENALTY--REMEDIES.--The commission  
19 may provide by ordinance for the civil or criminal  
20 enforcement of the Special Zoning District Act. A violation  
21 of the Special Zoning District Act or any ordinance made  
22 thereunder ~~[is]~~ may be a misdemeanor. If the Special Zoning  
23 District Act or any ordinance made thereunder is violated,  
24 the commission, in addition to other remedies, may institute  
25 any appropriate action or proceeding to prevent, abate or

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1       restrain the violation."

2               **SECTION 7.** Section 3-21-24 NMSA 1978 (being Laws 1965,  
3 Chapter 206, Section 10) is amended to read:

4               "3-21-24. **ENFORCEMENT.**--The ordinances enacted under  
5 the authority of the Special Zoning District Act shall be  
6 enforced by the district attorney and the sheriff of the  
7 county or counties in which the district is situate pursuant  
8 to the provisions of Sections 4-37-3 and 4-37-3.1 NMSA 1978."

9               **SECTION 8.** Section 3-21-25 NMSA 1978 (being Laws 1965,  
10 Chapter 206, Section 11) is amended to read:

11              "3-21-25. **JUDICIAL REVIEW.**--Any person aggrieved by any  
12 regulation, restriction or ordinance made by the commission  
13 may file a claim for relief in the district court pursuant to  
14 the provisions of Section 39-3-1.1 NMSA 1978."

15              **SECTION 9.** Section 4-37-3 NMSA 1978 (being Laws 1975,  
16 Chapter 312, Section 3, as amended) is amended to read:

17              "4-37-3. **ENFORCING COUNTY ORDINANCES--JURISDICTION--**  
18 **PENALTIES--ENFORCEMENT.**--

19                      A. County ordinances may be enforced by  
20 prosecution for violations of those ordinances in any court  
21 of competent jurisdiction of the county. Penalties for  
22 violations of any county ordinances shall not exceed a fine  
23 of three hundred dollars (\$300) or imprisonment for ninety  
24 days or both the fine and imprisonment; except that a county  
25 may enact and enforce ordinances that impose the following

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1 penalties in addition to any other penalty provided by law:

2 (1) no more than one thousand dollars  
3 (\$1,000) for discarding or disposing of refuse, litter or  
4 garbage on public or private property in any manner other  
5 than by disposing it in an authorized landfill;

6 (2) no more than five thousand dollars  
7 (\$5,000) for the improper or illegal disposal of hazardous  
8 materials or waste in any manner other than as provided for  
9 in the Hazardous Waste Act; and

10 (3) no more than imprisonment for three  
11 hundred sixty-four days or a fine of one thousand dollars  
12 (\$1,000), or both, for violation of an ordinance regarding  
13 driving while under the influence of intoxicating liquor or  
14 drugs.

15 B. Prosecution of violations under this section  
16 may be commenced by the issuance of a citation charging the  
17 violation. Citations may be issued by the code enforcement  
18 officer of the county or an employee [~~or employees~~] of the  
19 county authorized by the board of county commissioners to  
20 issue such citations.

21 C. Violations may also be enforced through civil  
22 procedures pursuant to Section 4-37-3.1 NMSA 1978."

23 SECTION 10. A new Section 4-37-3.1 NMSA 1978 is enacted  
24 to read:

25 "4-37-3.1. [NEW MATERIAL] CIVIL ENFORCEMENT--

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1 PROCEDURES--PENALTIES--APPEAL.--

2 A. When a county elects to enforce provisions of  
3 an ordinance through a civil administrative process:

4 (1) the ordinance shall specify which  
5 provisions may be enforced through a civil administrative  
6 process;

7 (2) contested violations shall be  
8 adjudicated by an independent administrative hearing officer  
9 using a hearing procedure established by ordinance  
10 promulgated pursuant to Chapter 3, Article 21 NMSA 1978,  
11 which procedure shall meet all minimal due process  
12 requirements of the state and federal constitutions; and

13 (3) the hearing officer shall issue a  
14 decision on the merits of the appeal not more than thirty  
15 days after the completion of the hearing.

16 B. In addition to the actions authorized pursuant  
17 to Section 3-21-8 NMSA 1978, an administrative hearing  
18 officer may impose civil monetary penalties in accordance  
19 with the provisions of the ordinance.

20 C. The ordinance shall specify the civil monetary  
21 penalties that may be assessed for specific violations, and  
22 such civil penalties shall not exceed fifty dollars (\$50.00)  
23 per day for each violation nor a maximum total penalty of  
24 five hundred dollars (\$500).

25 D. Decisions made pursuant to Subsection A of

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1 this section may be appealed to district court pursuant to  
2 the provisions of Section 39-3-1.1 NMSA 1978."

3 SECTION 11. EFFECTIVE DATE.--The effective date of the  
4 provisions of this act is July 1, 2017.

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