

ASSEMBLY BILL NO. 360—ASSEMBLYMAN BOBZIEN

MARCH 21, 2011

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the imposition of civil penalties for violations of city ordinances regarding the abatement of certain conditions and nuisances on property within the city. (BDR 21-266)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to cities; authorizing a city to collect civil penalties imposed for failure to abate certain conditions and nuisances on property within the city as a special assessment against the property under certain circumstances; revising provisions relating to the maximum amount of a civil penalty that may be imposed for failure to abate certain nuisances on property within the city under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, if an owner of property within a city fails to abate a dangerous or noxious condition, a chronic nuisance or, in larger counties, an abandoned nuisance on the property after being directed to do so, the owner may be required to pay civil penalties as well as any costs incurred by the city to abate the condition or nuisance. In addition to any other reasonable means of recovering its abatement costs, the city is authorized to make those costs a special assessment against the property and collect the special assessment in the same manner as ordinary county taxes are collected. (NRS 268.4122-268.4126) This bill authorizes the city to also collect any civil penalties imposed against the owner of the property as a special assessment against the property if the amount of the uncollected civil penalties after 12 months is more than \$5,000.

Under existing law, the maximum civil penalty that is authorized to be imposed on an owner of property in the city for failure to abate a chronic nuisance on the property is \$500 per day. (NRS 268.4124) **Section 2** of this bill increases that maximum authorized civil penalty to \$1,000 per day if the relevant property is nonresidential property. **Section 3** of the bill provides a maximum civil penalty that may be imposed for the failure to abate an abandoned nuisance of \$1,000 per day



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18 against an owner of nonresidential property and \$500 per day against an owner of
19 residential property.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 268.4122 is hereby amended to read as
2 follows:
3 268.4122 1. The governing body of a city may adopt by
4 ordinance procedures pursuant to which the governing body or its
5 designee may order an owner of property within the city to:
6 (a) Repair, safeguard or eliminate a dangerous structure or
7 condition;
8 (b) Clear debris, rubbish, refuse, litter, garbage, abandoned or
9 junk vehicles or junk appliances which are not subject to the
10 provisions of chapter 459 of NRS; or
11 (c) Clear weeds and noxious plant growth,
12 ↳ to protect the public health, safety and welfare of the residents of
13 the city.
14 2. An ordinance adopted pursuant to subsection 1 must:
15 (a) Contain procedures pursuant to which the owner of the
16 property is:
17 (1) Sent a notice, by certified mail, return receipt requested,
18 of the existence on the property of a condition set forth in subsection
19 1 and the date by which the owner must abate the condition; and
20 (2) Afforded an opportunity for a hearing before the designee
21 of the governing body and an appeal of that decision. The ordinance
22 must specify whether all such appeals are to be made to the
23 governing body or to a court of competent jurisdiction.
24 (b) Provide that the date specified in the notice by which the
25 owner must abate the condition is tolled for the period during which
26 the owner requests a hearing and receives a decision.
27 (c) Provide the manner in which the city will recover money
28 expended for labor and materials used to abate the condition on the
29 property if the owner fails to abate the condition.
30 (d) Provide for civil penalties for each day that the owner did
31 not abate the condition after the date specified in the notice by
32 which the owner was requested to abate the condition.
33 (e) If the county board of health, city board of health or district
34 board of health in whose jurisdiction the incorporated city is located
35 has adopted a definition of garbage, use the definition of garbage
36 adopted by the county board of health, city board of health or
37 district board of health, as applicable.
38 3. The governing body or its designee may direct the city to
39 abate the condition on the property and may recover the amount



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1 expended by the city for labor and materials used to abate the
2 condition if:

3 (a) The owner has not requested a hearing within the time
4 prescribed in the ordinance adopted pursuant to subsection 1 and has
5 failed to abate the condition on the property within the period
6 specified in the notice;

7 (b) After a hearing in which the owner did not prevail, the owner
8 has not filed an appeal within the time prescribed in the ordinance
9 adopted pursuant to subsection 1 and has failed to abate the
10 condition within the period specified in the order; or

11 (c) The governing body or a court of competent jurisdiction has
12 denied the appeal of the owner and the owner has failed to abate the
13 condition within the period specified in the order.

14 4. In addition to any other reasonable means ~~for~~ *for* recovering
15 money expended by the city to abate the condition ~~and~~ *and, except as*
16 *otherwise provided in subsection 5, for collecting civil penalties*
17 *imposed pursuant to the ordinance adopted pursuant to subsection*
18 *1, the governing body may make the expense and civil penalties* a
19 special assessment against the property upon which the condition is
20 or was located. The special assessment may be collected at the same
21 time and in the same manner as ordinary county taxes are collected,
22 and is subject to the same penalties and the same procedure and sale
23 in case of delinquency as provided for ordinary county taxes. All
24 laws applicable to the levy, collection and enforcement of county
25 taxes are applicable to such a special assessment.

26 5. *Any civil penalties that have not been collected from the*
27 *owner of the property may not be made a special assessment*
28 *against the property pursuant to subsection 4 by the governing*
29 *body unless:*

30 (a) *At least 12 months have elapsed after the date specified in*
31 *the notice by which the owner must abate the condition or the date*
32 *specified in the order of the governing body or court by which the*
33 *owner must abate the condition, whichever is later;*

34 (b) *The owner has been billed, served or otherwise notified*
35 *that the civil penalties are due; and*

36 (c) *The amount of the uncollected civil penalties is more than*
37 *\$5,000.*

38 6. As used in this section, "dangerous structure or condition"
39 means a structure or condition that may cause injury to or endanger
40 the health, life, property, safety or welfare of the general public or
41 the occupants, if any, of the real property on which the structure or
42 condition is located. The term includes, without limitation, a
43 structure or condition that:



(a) Does not meet the requirements of a code or regulation adopted pursuant to NRS 268.413 with respect to minimum levels of health, maintenance or safety; or

(b) Violates an ordinance, rule or regulation regulating health and safety enacted, adopted or passed by the governing body of a city, the violation of which is designated as a nuisance in the ordinance, rule or regulation.

Sec. 2. NRS 268.4124 is hereby amended to read as follows:

268.4124 1. The governing body of a city may, by ordinance, to protect the public health, safety and welfare of the residents of the city, adopt procedures pursuant to which the city attorney may file an action in a court of competent jurisdiction to:

(a) Seek the abatement of a chronic nuisance that is located or occurring within the city;

(b) If applicable, seek the closure of the property where the chronic nuisance is located or occurring; and

(c) If applicable, seek penalties against the owner of the property within the city and any other appropriate relief.

2. An ordinance adopted pursuant to subsection 1 must:

(a) Contain procedures pursuant to which the owner of the property is:

(1) Sent notice, by certified mail, return receipt requested, by the city police or other person authorized to issue a citation, of the existence on the property of two or more nuisance activities and the date by which the owner must abate the condition to prevent the matter from being submitted to the city attorney for legal action; and

(2) Afforded an opportunity for a hearing before a court of competent jurisdiction.

(b) Provide that the date specified in the notice by which the owner must abate the condition is tolled for the period during which the owner requests a hearing and receives a decision.

(c) Provide the manner in which the city will recover money expended for labor and materials used to abate the condition on the property if the owner fails to abate the condition.

3. If the court finds that a chronic nuisance exists and emergency action is necessary to avoid immediate threat to the public health, welfare or safety, the court shall order the city to secure and close the property for a period not to exceed 1 year or until the nuisance is abated, whichever occurs first, and may:

(a) Impose a civil penalty :

(1) *If the property is nonresidential property*, of not more than *\$1,000 per day*;

(2) *If the property is residential property, of not more than \$500 per day*,



1 ↳ for each day that the condition was not abated after the date
2 specified in the notice by which the owner was required to abate the
3 condition;

4 (b) Order the owner to pay the city for the cost incurred by the
5 city in abating the condition;

6 (c) If applicable, order the owner to pay reasonable expenses for
7 the relocation of any tenants who are affected by the chronic
8 nuisance; and

9 (d) Order any other appropriate relief.

10 4. In addition to any other reasonable means authorized by the
11 court for the recovery of money expended by the city to abate the
12 chronic nuisance **and, except as otherwise provided in**
13 **subsection 5, for the collection of civil penalties imposed pursuant**
14 **to subsection 3, the governing body may make the expense and civil**
15 **penalties** a special assessment against the property upon which the
16 chronic nuisance is or was located or occurring. The special
17 assessment may be collected at the same time and in the same
18 manner as ordinary county taxes are collected, and is subject to the
19 same penalties and the same procedure and sale in case of
20 delinquency as provided for ordinary county taxes. All laws
21 applicable to the levy, collection and enforcement of county taxes
22 are applicable to such a special assessment.

23 5. *Any civil penalties that have not been collected from the*
24 *owner of the property may not be made a special assessment*
25 *against the property pursuant to subsection 4 by the governing*
26 *body unless:*

27 (a) *At least 12 months have elapsed after the date specified in*
28 *the order of the court by which the owner must abate the chronic*
29 *nuisance or, if the owner appeals that order, the date specified in*
30 *the order of the appellate court by which the owner must abate the*
31 *chronic nuisance, whichever is later;*

32 (b) *The owner has been billed, served or otherwise notified*
33 *that the civil penalties are due; and*

34 (c) *The amount of the uncollected civil penalties is more than*
35 *\$5,000.*

36 6. As used in this section:

37 (a) A “chronic nuisance” exists:

38 (1) When three or more nuisance activities exist or have
39 occurred during any 30-day period on the property.

40 (2) When a person associated with the property has engaged
41 in three or more nuisance activities during any 30-day period on the
42 property or within 100 feet of the property.

43 (3) When the property has been the subject of a search
44 warrant based on probable cause of continuous or repeated
45 violations of chapter 459 of NRS.



(4) When a building or place is used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, using or giving away a controlled substance, immediate precursor or controlled substance analog.

(5) When a building or place was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog and:

(I) The building or place has not been deemed safe for habitation by a governmental entity; or

(II) All materials or substances involving the controlled substance, immediate precursor or controlled substance analog have not been removed from or remediated on the building or place by an entity certified or licensed to do so within 180 days after the building or place is no longer used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog.

(b) "Controlled substance analog" has the meaning ascribed to it in NRS 453.043.

(c) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

(d) "Nuisance activity" means:

(1) Criminal activity;

(2) The presence of debris, litter, garbage, rubble, abandoned or junk vehicles or junk appliances;

(3) Excessive noise and violations of curfew; or

(4) Any other activity, behavior or conduct defined by the governing body to constitute a public nuisance.

(e) "Person associated with the property" means a person who, on the occasion of a nuisance activity, has:

(1) Entered, patronized or visited;

(2) Attempted to enter, patronize or visit; or

(3) Waited to enter, patronize or visit,

↳ a property or a person present on the property.

Sec. 3. NRS 268.4126 is hereby amended to read as follows:

268.4126 1. The governing body of each city which is located in a county whose population is 100,000 or more may, by ordinance, to protect the public health, safety and welfare of the residents of the city, adopt procedures pursuant to which the city attorney may file an action in a court of competent jurisdiction to seek:

(a) The abatement of an abandoned nuisance that is located or occurring within the city;

(b) The repair, safeguarding or demolition of any structure or property where an abandoned nuisance is located or occurring within the city;



(c) Authorization for the city to take the actions described in paragraphs (a) and (b);

(d) Civil penalties against an owner of any structure or property where an abandoned nuisance is located or occurring within the city; and

(e) Any other appropriate relief.

2. An ordinance adopted pursuant to subsection 1 must:

(a) Contain procedures pursuant to which the owner of the property is:

(1) Sent notice, by certified mail, return receipt requested, by a person authorized by the city to issue a citation, of the existence on the property of two or more abandoned nuisance activities and the date by which the owner must abate the abandoned nuisance to prevent the matter from being submitted to the city attorney for legal action; and

(2) Afforded an opportunity for a hearing before a court of competent jurisdiction.

(b) Provide that the date specified in the notice by which the owner must abate the abandoned nuisance is tolled for the period during which the owner requests a hearing and receives a decision.

(c) Provide the manner in which the city will, if the owner fails to abate the abandoned nuisance, recover money expended for labor and materials used to:

(1) Abate the abandoned nuisance on the property; or

(2) If applicable, repair, safeguard or demolish a structure or property where the abandoned nuisance is located or occurring.

3. If the court finds that an abandoned nuisance exists, the court shall order the owner of the property to abate the abandoned nuisance or repair, safeguard or demolish any structure or property where the abandoned nuisance is located or occurring, and may:

(a) ***Impose a civil penalty:***

(1) If the property is nonresidential property, of not more than \$1,000 per day; or

(2) If the property is residential property, of not more than \$500 per day,

↪ for each day that the abandoned nuisance was not abated after the date specified in the notice by which the owner was required to abate the abandoned nuisance;

(b) If applicable, order the owner of the property to pay reasonable expenses for the relocation of any tenants who occupy the property legally and who are affected by the abandoned nuisance;

~~[(b)]~~ (c) If the owner of the property fails to comply with the order:



(1) Direct the city to abate the abandoned nuisance or repair, safeguard or demolish any structure or property where the abandoned nuisance is located or occurring; and

(2) Order the owner of the property to pay the city for the cost incurred by the city in taking the actions described in subparagraph (1); and

~~[(e)]~~ (d) Order any other appropriate relief.

4. In addition to any other reasonable means authorized by the court for the recovery of money expended by the city to abate the abandoned nuisance ~~[(d)]~~ *and, except as otherwise provided in subsection 5, for the collection of civil penalties imposed pursuant to subsection 3*, the governing body of the city may make the expense *and civil penalties* a special assessment against the property upon which the abandoned nuisance is or was located or occurring. The special assessment may be collected at the same time and in the same manner as ordinary county taxes are collected, and is subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection and enforcement of county taxes are applicable to such a special assessment.

5. *Any civil penalties that have not been collected from the owner of the property may not be made a special assessment against the property pursuant to subsection 4 by the governing body unless:*

(a) *At least 12 months have elapsed after the date specified in the order of the court by which the owner must abate the abandoned nuisance or, if the owner appeals that order, the date specified in the order of the appellate court by which the owner must abate the abandoned nuisance, whichever is later;*

(b) *The owner has been billed, served or otherwise notified that the civil penalties are due; and*

(c) *The amount of the uncollected civil penalties is more than \$5,000.*

6. As used in this section:

(a) An “abandoned nuisance” exists on any property where a building or other structure is located on the property, the property is located in a city that is in a county whose population is 100,000 or more, the property has been vacant or substantially vacant for 12 months or more and:

(1) Two or more abandoned nuisance activities exist or have occurred on the property during any 12-month period; or

(2) A person associated with the property has caused or engaged in two or more abandoned nuisance activities during any 12-month period on the property or within 100 feet of the property.

(b) “Abandoned nuisance activity” means:



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- 1 (1) Instances of unlawful breaking and entering or occupancy
- 2 by unauthorized persons;
- 3 (2) The presence of graffiti, debris, litter, garbage, rubble,
- 4 abandoned materials, inoperable vehicles or junk appliances;
- 5 (3) The presence of unsanitary conditions or hazardous
- 6 materials;
- 7 (4) The lack of adequate lighting, fencing or security;
- 8 (5) Indicia of the presence or activities of gangs;
- 9 (6) Environmental hazards;
- 10 (7) Violations of city codes, ordinances or other adopted
- 11 policy; or
- 12 (8) Any other activity, behavior, conduct or condition
- 13 defined by the governing body of the city to constitute a threat to the
- 14 public health, safety or welfare of the residents of or visitors to the
- 15 city.
- 16 (c) "Person associated with the property" means a person who,
- 17 on the occasion of an abandoned nuisance activity, has:
- 18 (1) Entered, patronized or visited;
- 19 (2) Attempted to enter, patronize or visit; or
- 20 (3) Waited to enter, patronize or visit,
- 21 ➔ a property or a person present on the property.
- 22 **Sec. 4.** This act becomes effective upon passage and approval.

