

LOCAL GOVERNMENT NUISANCE ORDINANCE REFORM

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson Moss

Senate Sponsor: Lincoln Fillmore

LONG TITLE

General Description:

This bill amends provisions related to municipal and county ordinances.

Highlighted Provisions:

This bill:

▶ ~~H→ [prohibits a municipality or county from imposing a criminal penalty for violation of an ordinance unless the violation is a nuisance; and]~~ limits the circumstances under which a municipality or county may impose a criminal penalty for a violation of an ordinance; and ←H

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-3-703, as last amended by Laws of Utah 2018, Chapter 379

17-53-208, as last amended by Laws of Utah 2009, Chapter 388

17-53-223, as last amended by Laws of Utah 2019, Chapter 326

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **10-3-703** is amended to read:

10-3-703. Criminal penalties for violation of ordinance -- Civil penalties

H.B. 202



28 **prohibited -- Exceptions.**

29 (1) (a) The governing body of [~~each~~] a municipality may impose a criminal penalty ~~on~~
 30 ~~an individual~~ ~~for~~ for the violation of any municipal ordinance by a fine not to exceed the maximum
 31 class B misdemeanor fine under Section 76-3-301 [~~or~~], by a term of imprisonment up to six
 32 months, or by both the fine and term of imprisonment.

33 (b) Notwithstanding Subsection (1)(a), a municipality may ~~impose a criminal penalty~~
 34 ~~for a violation pertaining to an individual's use of the individual's residence only if the violation~~
 35 ~~of the ordinance is a nuisance, as defined in Subsection 78B-6-1101(1), on the surrounding~~
 36 ~~neighbors or adjacent properties of the individual's residence.] not impose a criminal penalty~~
 36a ~~greater than an infraction for a violation pertaining to an individual's~~ ~~pet~~, as defined in
 36aa ~~Section 4-12-102, or an individual's~~ ~~use of the individual's~~
 36b ~~residence unless:~~
 36c ~~(i) the violation:~~
 36d ~~(A) is a nuisance as defined in Subsection 78B-6-1101(1); and~~
 36e ~~(B) threatens the health, safety, or welfare of the individual or an identifiable third party; or~~
 36f ~~(ii) the municipality has imposed a fine on the individual for a violation that involves the same~~
 36g ~~residence or pet on three previous occasions within the~~ ~~past~~ ~~12~~
 36gg ~~months.~~

36h ~~(c) Subsection (1)(b) does not apply to municipal enforcement of a building code or~~
 36i ~~fire code ordinance in accordance with Title 15A, State Construction and Fire Codes Act.~~

37 (2) (a) Except as provided in Subsection (2)(b), the governing body may prescribe a
 38 civil penalty for the violation of any municipal ordinance by a fine not to exceed the maximum
 39 class B misdemeanor fine under Section 76-3-301.

40 (b) A municipality may not impose a civil penalty and adjudication for the violation of
 41 a municipal moving traffic ordinance.

42 (3) (a) Except as provided in Subsection (3)(b) or Section 77-7-18, a municipal officer
 43 or official who is not a law enforcement officer described in Section 53-13-103 or a special
 44 function officer described in Section 53-13-105 may not issue a criminal citation for a violation
 45 that is punished as a misdemeanor.

46 (b) Notwithstanding Subsection (1) or (3)(a), the following may issue a criminal
 47 citation for a violation that is punished as a misdemeanor if the violation threatens the health
 48 and safety of an animal or the public:

49 (i) a fire officer described in Section 53-7-102; or

50 (ii) an animal control officer described in Section 11-46-102. ☹

50a ~~⊕~~→ (4) → ~~For purposes of this section, an ongoing violation constitutes a single violation.~~ A
 50b municipality may not issue more than one infraction within a 14-day time period for a
 50c violation described in Subsection (1)(b) that is ongoing. ← →

51 Section 2. Section 17-53-208 is amended to read:

52 **17-53-208. Ordinances -- Effective dates -- Publication -- Adoption of ordinances**
 53 **printed in book form -- Review of nuisance ordinances.**

54 (1) The enacting clause of ~~[all ordinances of]~~ an ordinance adopted by the county
 55 legislative body shall be as follows: "The County Legislative Body of _____ County
 56 ordains as follows:"

57 ~~[(2) Every ordinance shall be signed by the chair of the county legislative body and~~
 58 ~~attested by the clerk. On the passage of all ordinances the votes of the several members of the~~

59 ~~county legislative body shall be entered on the minutes, and all ordinances shall be entered at~~
60 ~~length in the ordinance book.]~~

61 (2) (a) The chair of the county legislative body shall sign, and the county clerk shall
62 attest to, each ordinance.

63 (b) If the county legislative body votes to adopt an ordinance, county staff shall:

64 (i) record the vote of each county legislative body member in attendance and enter each
65 vote in the minutes of the meeting; and

66 (ii) enter the full text of the adopted ordinance in the county ordinance book.

67 (3) (a) No ordinance passed by the county legislative body may take effect within less
68 than 15 days after its passage.

69 (b) The county legislative body [~~of each county adopting an ordinance~~] shall, before
70 the ordinance may take effect:

71 (i) deposit a copy of the ordinance in the office of the county clerk; and

72 (ii) (A) publish a short summary of the ordinance, together with a statement that a
73 complete copy of the ordinance is available at the county clerk's office and with the name of the
74 members voting for and against the ordinance:

75 (I) for at least one publication in:

76 (Aa) a newspaper published in and having general circulation in the county, if there is
77 one; or

78 (Bb) if there is none published in the county, in a newspaper of general circulation
79 within the county; and

80 (II) as required in Section 45-1-101; or

81 (B) post a complete copy of the ordinance in nine public places within the county.

82 (4) Any ordinance printed by authority of the county legislative body in book form or
83 electronic media, or any general revision of county ordinances printed in book form or
84 electronic media, may be adopted by an ordinance making reference to the printed ordinance or
85 revision if a copy of the ordinance or revision is filed in the office of the county clerk at the
86 time of adoption for use and examination by the public.

87 (5) [~~Ordinances establishing~~] If the county legislative body adopts an ordinance
88 establishing rules and regulations, printed as a code in book form or electronic media, for the
89 construction of buildings, the installation of plumbing, the installation of electric wiring, or

90 other related or similar work ~~[may be adopted]~~, the county legislative body may adopt the
 91 ordinance by reference to the code book if a copy of the code book is filed in the office of the
 92 county clerk at the time of the adoption of the ordinance for use and examination by the public.

93 (6) ~~[Ordinances that]~~ If, in the opinion of the county legislative body ~~[are]~~, an
 94 ordinance is necessary for the immediate preservation of the peace, health, or safety of the
 95 county and the county's inhabitants, the ordinance may, if ~~[so provided]~~ clearly stated in the
 96 ordinance, take effect immediately upon publication in one issue of a newspaper published in
 97 and having general circulation in the county, if there is one, and if there is none published in
 98 the county, then immediately after posting at the courthouse door.

99 (7) An ordinance may take effect at a later date than provided in this section, if the
 100 ordinance ~~[so provides]~~ clearly states the later effective date.

101 (8) An order entered in the minutes of the county legislative body that an ordinance has
 102 been duly published or posted shall be prima facie proof of the publication or posting.

103 Section 3. Section 17-53-223 is amended to read:

104 **17-53-223. Ordinances -- Power to enact -- Penalty for violation.**

105 (1) A county legislative body may:

106 (a) pass all ordinances and rules and make all regulations, not repugnant to law,
 107 necessary for carrying into effect or discharging the powers and duties conferred by this title,
 108 and as are necessary and proper to provide for the safety, and preserve the health, promote the
 109 prosperity, improve the morals, peace, and good order, comfort, and convenience of the county
 110 and its inhabitants, and for the protection of property in the county;

111 (b) enforce obedience to ordinances with fines or penalties as the county legislative
 112 body considers proper; and

113 (c) pass ordinances to control air pollution.

114 (2) (a) Punishment imposed under Subsection (1)(b) shall be by fine, not to exceed the
 115 maximum fine for a class B misdemeanor under Section 76-3-301, imprisonment, or both fine
 116 and imprisonment.

117 (b) Notwithstanding Subsection (2)(a), a county may ~~Ĥ→~~ [impose the criminal penalty for a
 118 violation pertaining to an individual's residence only if the violation of the ordinance is a
 119 nuisance, as defined in Subsection 78B-6-1101(1), on the surrounding neighbors or adjacent
 120 properties of the individual's residence.] not impose a criminal penalty greater than an infraction
 120a for a violation pertaining to an individual's ~~Ĥ→~~ pet, as defined in Section 4-12-102, or an
 120aa individual's ~~←Ĥ~~ use of the individual's residence unless:

120b (i) the violation:

120c (A) is a nuisance as defined in Subsection 78B-6-1101(1); and ~~⊗~~

- 120d **Ⓢ(B) threatens the health, safety, or welfare of the individual or an identifiable third party; or**
- 120e **(ii) the county has imposed a fine on the individual for a violation that involves the same**
- 120f **residence ~~or~~ or pet ~~on three previous occasions within the past 12 months.~~**
- 120g **~~or~~ (c) Subsection (2)(b) does not apply to county enforcement of a building code or**
- 120h **fire code ordinance in accordance with Title 15A, State Construction and Fire Codes Act.**

121 [(b)] ~~Ĥ~~ → ~~(e)~~ (d) ←Ĥ When a penalty for a violation of an ordinance includes any possibility
121a of

122 imprisonment, the county legislative body shall include in the ordinance a statement that the
123 county is required, under Section 78B-22-301, to provide for indigent defense services, as that
124 term is defined in Section 78B-22-102.

124a ~~Ĥ~~ → (e) **Notwithstanding any other provision of law, the following may issue a criminal**
124b **citation for a violation that is punished as a misdemeanor if the violation threatens the health**
124c **and safety of an animal or the public:**

124d **(i) a fire officer described in Section 53-7-102;**

124e **(ii) a law enforcement officer described in Section 53-13-103; or**

124f **(iii) an animal control officer described in Section 11-46-102.** ←Ĥ

125 (3) (a) Except as specifically authorized by statute, the county legislative body may not
126 impose a civil penalty for the violation of a county traffic ordinance.

127 (b) Subsection (3)(a) does not apply to an ordinance regulating the parking of vehicles
128 on a highway.

128a ~~Ĥ~~ → (4) ~~Ĥ~~ → ~~[For purposes of this section, an ongoing violation constitutes a single violation]~~ **A**
128b **county may not issue more than one infraction within a 14-day period for a violation described**
128c **in Subsection (2)(b) that is ongoing** ←Ĥ . ←Ĥ