

**RESOLUTION 06-05-2018**

**DIGEST**

Municipal Codes: Making Local Code and Ordinance Violations Infractions

Amends Penal Code section 17 to include violations of city, county, or municipal codes as offenses which may be prosecuted as infractions, rather than misdemeanors.

**STATEMENT OF REASONS**

The Problem: Under current law, municipalities are allowed to create their own criminal laws, as long as those laws do not directly conflict with laws passed by the state of California. Some of these laws are common-sense approaches to local issues (like laws regulating billboards, or street vendors). Some are absurd (like laws imposing six months in jail for riding a skateboard on the sidewalk). Under current law, many state-created misdemeanors can be reduced by a judge to an infraction, after a review of the facts and the criminal history of the defendant. However, no such provision exists for even the most obscure of the municipal code violations. The result is increased court congestion with low-grade municipal code violations, and its attendant costs, as well as saddling non-violent Californians with permanent criminal records.

The Solution: This resolution would permit (but not require) judges to reduce non-violent, low level municipal code violations to infractions, after consideration of the facts of the case and the defendant’s criminal history.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 17 to read as follows:

- 1 § 17
- 2 (a) A felony is a crime that is punishable with death, by imprisonment in the state prison,
- 3 or notwithstanding any other provision of law, by imprisonment in a county jail under the
- 4 provisions of subdivision (h) of Section 1170. Every other crime or public offense is a
- 5 misdemeanor except those offenses that are classified as infractions.
- 6 (b) When a crime is punishable, in the discretion of the court, either by imprisonment in
- 7 the state prison or imprisonment in a county jail under the provisions of subdivision (h) of
- 8 Section 1170, or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes
- 9 under the following circumstances:
- 10 (1) After a judgment imposing a punishment other than imprisonment in the state prison
- 11 or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170.
- 12 (2) When the court, upon committing the defendant to the Division of Juvenile Justice,
- 13 designates the offense to be a misdemeanor.
- 14 (3) When the court grants probation to a defendant without imposition of sentence and at
- 15 the time of granting probation, or on application of the defendant or probation officer thereafter,
- 16 the court declares the offense to be a misdemeanor.
- 17 (4) When the prosecuting attorney files in a court having jurisdiction over misdemeanor
- 18 offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the
- 19 time of his or her arraignment or plea objects to the offense being made a misdemeanor, in which

20 event the complaint shall be amended to charge the felony and the case shall proceed on the  
21 felony complaint.

22 (5) When, at or before the preliminary examination or prior to filing an order pursuant to  
23 Section 872, the magistrate determines that the offense is a misdemeanor, in which event the  
24 case shall proceed as if the defendant had been arraigned on a misdemeanor complaint.

25 (c) When a defendant is committed to the Division of Juvenile Justice for a crime  
26 punishable, in the discretion of the court, either by imprisonment in the state prison or  
27 imprisonment in a county jail under the provisions of subdivision (h) of Section 1170, or by fine  
28 or imprisonment in the county jail not exceeding one year, the offense shall, upon the discharge  
29 of the defendant from the Division of Juvenile Justice, thereafter be deemed a misdemeanor for  
30 all purposes.

31 (d) A violation of any code section listed in Section 19.8, or enacted by a city, county, or  
32 municipality, is an infraction subject to the procedures described in Sections 19.6 and 19.7 when:

33 (1) The prosecutor files a complaint charging the offense as an infraction unless the  
34 defendant, at the time he or she is arraigned, after being informed of his or her rights, elects to  
35 have the case proceed as a misdemeanor, or;

36 (2) The court, with the consent of the defendant, determines that the offense is an  
37 infraction in which event the case shall proceed as if the defendant had been arraigned on an  
38 infraction complaint.

39 (e) Nothing in this section authorizes a judge to relieve a defendant of the duty to register  
40 as a sex offender pursuant to Section 290 if the defendant is charged with an offense for which  
41 registration as a sex offender is required pursuant to Section 290, and for which the trier of fact  
42 has found the defendant guilty.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Los Angeles County Bar Association

**IMPACT STATEMENT**

Reduced court congestion, cost savings, decrease in lifelong criminalization of extremely low level, non-violent offenders.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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