

(S. B. 848)
(Conference)

No. 176-2018

(Approved August 5, 2018)

AN ACT

To repeal Section 2.009 of Act No. 81-1991, as amended, known as the “Autonomous Municipalities Act of the Commonwealth of Puerto Rico of 1991,” and add a new Section 2.009 in order to empower the municipalities to adopt Public Order Codes through ordinances; provide all that pertains to their scope and the requirements for their adoption and implementation; authorize and empower the Municipal Police and the Puerto Rico Police to impose penalties for violations of the provisions of the Public Order Codes; amend Section 2.04 of Act No. 20-2017, known as the “Department of Public Safety Act,” in order to empower the Commissioner of the Puerto Rico Police to create the Uniform Basic Guidelines for Public Order Codes and add a new Section 2.21 A to create the Public Order Codes Unit within the Puerto Rico Police Bureau and establish its powers, functions, duties, and responsibilities; and for other related purposes.

STATEMENT OF MOTIVES

Act No 19-2001 added a new Section 2.008 to Act No. 81-1991, as amended, known as the “Autonomous Municipalities Act of the Commonwealth of Puerto Rico of 1991,” in order to authorize the municipalities to draft, adopt, and implement Public Order Codes for certain public areas of specific and limited territorial extension within their jurisdictions.

The purpose of such Codes is to contribute to a better quality of life and a peaceful coexistence, maintain decorum, cleanliness, and order, and promote the health, safety, and peace of residents, business owners, and visitors in certain spaces, by regulations-via ordinance-of matters such as the sale and consumption of

alcoholic beverages, excessive or unnecessary noise, public nuisances, and debris and waste in public areas, among others.

Act No. 19, *supra*, delegated to the former Office of the Commissioner of Municipal Affairs authority to administer and coordinate all matters pertaining to Public Order Codes. However, this Legislative Assembly eliminated the Office of the Commissioner of Municipal Affairs through Act No. 81-2017 in accordance with the public policy to reduce the government structure and promote efficiency. The elimination of the Office of the Commissioner of Municipal Affairs led to the creation of the Municipal Management Office within the Office of Management and Budget of Puerto Rico which focuses on matters related to municipal administration, to wit, budgetary, legal, and management affairs as well as information systems.

As stated above, Public Order Codes are a regulatory framework directed at improving the quality of life of our citizens, which is of the highest priority for this Legislative Assembly. Thus, it is in our interest to ensure the continuity of the Public Order Codes in effect as well as to promote the adoption and implementation of new codes in those jurisdictions in which the circumstances warrant so. At present, sixty-three (63) out of seventy-eight (78) municipalities have successfully implemented Public Order Codes.

In light of the foregoing, current Section 2.009 of Chapter II of Act No. 81-1991, *supra*, which was left partially ineffective by virtue of the provisions of Act No. 19-2001, is hereby repealed and replaced with a new Section 2.009 in order to regulate all that pertains to the adoption of Public Order Codes by the municipalities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 2.009 of Act No. 81-1991, as amended, is hereby repealed and a new Section 2.009 is hereby added to read as follows:

“Section 2.009.- Public Order Codes.

(a) Discretionary Authority to Adopt Public Order Codes

Municipalities shall have the discretionary authority to adopt and implement public order codes in their respective jurisdictions with the advice of the Puerto Rico Police. The 'Public Order Codes' shall be a register of municipal ordinances adopted for the purpose of promoting a better quality of life and peaceful coexistence, maintaining decorum, cleanliness, and order, as well as promoting the health, security, and peace of residents, business owners, and visitors. Such ordinances include those that limit the sale or consumption of alcohol, excessive or unnecessary noise, public nuisances, debris, and waste in public areas, as well as conflicts arising from the use of areas designated for vehicular traffic, such as parking areas, among others. Public Order Codes shall be limited to a specific area within the territorial limits of the municipalities. However, municipalities with resources available may voluntarily extend such codes to the entire municipal jurisdiction.

The implementation of a Public Order Code would entail the participation of the various community sectors and citizen involvement prior to its approval, which requires prior consultations with citizens, to wit, the residents, business owners, and civic groups from the specific zone to which the proposed code would apply.

(b) Scope of Public Order Codes

Public Order Codes shall address those issues that affect the specific sectors of each municipality and which lower the quality of life. The codes may establish provisions, for example, to control the sale and consumption of alcoholic beverages; or related to traffic or parking conflicts; excessive and unnecessary noise, public nuisances, cleaning and waste disposal; stray animals, including such animals whose ownership is prohibited by law; as well as debris and waste in duly identified public places, among others.

(c) Penalties in Public Order Codes; Authority to Enforce Compliance

Public Order Codes may entail the imposition of penalties for violations thereof in order to discourage unwanted behavior and encourage a change of attitude that results in a peaceful and orderly coexistence within the delimited area. In such cases, the provisions of Section 2.003 of this Act shall be observed.

The Municipal Police of each Municipality is hereby authorized and empowered to impose penalties for violations of the provisions of the Public Order Code within its jurisdiction. Likewise, the Puerto Rico Police Bureau is hereby empowered and authorized to enforce Public Order Codes and impose civil penalties for violations of the provisions thereof, whether or not the municipality has a Municipal Police force.

The amount to be paid on account of civil penalties shall be paid to and deposited in the treasury of the corresponding municipality in a separate account and such funds shall be used solely for the operations of the Public Order Code program.

(d) Public Order Codes Adoption Requirements

In drafting, adopting, and implementing Public Order Codes, the municipalities shall comply with the following requirements:

1. To ensure citizen participation, that is, residents, business owners, neighborhood associations, law enforcement authorities, and other community stakeholders, through public consultations or hearings when identifying those areas and situations that warrant the creation of a code.

2. To develop public education campaigns to inform citizens of the proposed codes including penalties, if any, hearing or consultation schedules, as well as any codes approved and the duties and responsibilities they impose.

3. To coordinate trainings, talks, and seminars with the Puerto Rico Police and the Municipal Police on the adoption and implementation of Public Order Codes and the authority to impose the civil penalties provided therein.

4. To ensure that the delimited territorial area to be governed by the Code is defined and has clear and accurate signage.

5. To establish mechanisms to evaluate the effectiveness and results of the implementation of the Codes and such process shall also encourage and include broad citizen participation.

6. To comply with the provisions of Section 2.003 of this Act when the Codes adopted provide for civil penalties for violations thereof.

(e) Every Municipality that adopts a Public Order Code shall deliver a digital copy of the adopted code together with its amendments to the Public Order Codes Unit.

(f) Any review process for a civil penalty imposed under this Act shall be conducted before the Court of First Instance of the judicial region in which the penalty was imposed. At their discretion, Municipalities that have a Municipal Administrative Court may use such a court to review any civil penalties imposed under this Act. Said Municipal Administrative Court shall observe the procedures established under Act No. 38-2017, as amended, known as the “Government of Puerto Rico Uniform Administrative Procedure Act.”

Any person to whom a penalty was imposed under this Act shall have thirty (30) days to request review before the Municipal Administrative Court or the Court of First Instance of the judicial region in which the civil penalty was imposed, as applicable. In the event that a civil penalty is imposed on a *bona fide* business owner and such person does not request review or fails to pay the same, the municipality may place a lien on the business owner’s municipal license in the amount of the penalty. In accordance with the foregoing, the penalty shall be paid together with the municipal license fee of the following year.

(g) Every month, the official in charge of the Public Order Code in each Municipality shall deliver a copy of the statistics on the penalties imposed and interventions carried out in accordance with the Code to the Public Order Codes Unit.

(h) Municipal Autonomy

The adoption of Public Order Codes shall in no way be construed as to diminish the powers and authorities conferred by this Act to the municipalities, and this Section shall always be construed in accordance with the public policy set forth in Sections 1.002, 1.004, and 1.006 of this Act.”

Section 2.- Section 2.04 of Act No. 20-2017, known as the “Department of Public Safety Act,” is hereby amended to read as follows:

“Section 2.04.- Commissioner of the Bureau; Powers and Duties. The Commissioner of the Puerto Rico Police Bureau shall have the following powers and duties:

(a) ...

(q) The Commissioner shall establish, in consultation with the Municipalities, the Uniform Basic Guidelines for Public Order Codes.

(r) The Commissioner of the Puerto Rico Police is hereby empowered to evaluate those areas with high crime rates in order to make recommendations to the municipality concerning the implementation of a Public Order Code or improving the existing one, as the case may be.”

Section 3.- A new Section 2.21 A is hereby added to Act No. 20-2017, known as the “Department of Public Safety Act,” to read as follows:

“Section 2.21 A.- Public Order Codes Unit; Creation, Powers, Functions, Duties, and Responsibilities.

The Public Order Codes Unit is hereby created within the Puerto Rico Police Bureau whose main purpose shall be to promote the adoption of Public Order Codes

by the municipalities as public safety instrument pursuant to the provisions of this Act.

The Public Order Codes Unit shall work closely with the mayors, as well as with the official designated by the Municipality as the Municipal Police Commissioner and the District Commander in those municipalities that have a Municipal Police force.

Furthermore, it shall work closely with the Department of Justice, the Department of the Family, the Socioeconomic and Community Development Office, the Department of Education, the Department of Housing, the Department of Transportation and Public Works, and any other state or federal agency. Likewise, the other agencies of the Government of Puerto Rico are hereby directed to provide it with the support it needs to achieve the objectives set forth in this Section.

The Public Order Codes Unit shall have the following powers, functions, duties, and responsibilities:

a. To advise and assist when necessary, and at the request of the municipalities, with regard to citizen participation processes when drafting and implementing Public Order Codes. The Public Order Codes Unit of the Puerto Rico Police Bureau shall be responsible for ensuring that citizen participation constitutes an essential element in the drafting and implementation of such Codes. Likewise, it shall ensure that the Codes are consistent with the interests and needs of the communities regulated thereunder.

b. To promote and collaborate in the integration of all government efforts to rescue public spaces through the adoption of Public Order Codes.

c. To assist municipalities in the proposals they wish to submit to use state or federal funds for the adoption and implementation of Public Order Codes.

d. To conduct periodic visits in order to follow-up on the implementation of Public Order Codes thus ensuring that the goals of the program are achieved.

e. To ensure full compliance with laws that provide for the use of funds for the adoption of Public Order Codes, the procurement of equipment, or the recruitment and training of law enforcement officers.

f. To ensure that state and municipal law enforcement officers are duly trained to ensure compliance with the Public Order Codes. The training shall be provided in monthly meetings to be coordinated by the official designated by the municipality, the Municipal Commissioner, and the District Commander in conjunction with the Public Order Codes Unit. The aforementioned monthly meetings shall be held in accordance with Administrative Order OA-2017-2 of the Puerto Rico Police Bureau.

g. To periodically evaluate the implementation, effects, and results of the Public Order Codes in the municipalities and deliver the reports with its conclusions and recommendations to the respective mayors and municipal legislatures.

h. The Public Order Codes Unit, in conjunction with the municipalities, shall adopt a permanent orientation program for the communities.

i. Any other function or task it deems prudent and reasonable to further the purposes and objectives established in this Section.

Section 4.- Transitory Provisions

a. The approval of this Act shall in no way repeal the Public Order Codes duly adopted pursuant to the provisions of former Section 2.009 of Chapter II of Act No. 81-1991, as amended, which shall remain in effect except for those provisions or parts thereof, if any, that are inconsistent with the provisions of this Act.

b. The approval of this Act shall in no way affect or impair the obligations incurred by the municipalities with any state or federal agency or other municipality of the Government of Puerto Rico.

c. Likewise, this Act shall not void any contracts duly executed by the municipalities, if any, that are still in effect on the date of its approval. Such contracts

shall remain in effect until their expiration date, unless the terms thereof are inconsistent with the provisions of this Act or if they are terminated at an earlier date if the contract in question so allows.

d. Any municipality that has adopted a Public Order Code in accordance with the provisions of former Section 2.009 shall be responsible for ensuring the continuity of the program. If the program does not continue, the municipality shall transfer to the Puerto Rico Police Bureau any equipment acquired with funds previously appropriated.

Section 5. Rulemaking Authority.

The Commissioner of the Police Bureau shall create the office, regulations, and orders as are necessary to implement this Act with the existing resources of the Puerto Rico Police Bureau within a period not to exceed sixty (60) days from the approval of this Act.

Section 6.- Severability.

If any provision, word, sentence or subsection of this Act were challenged for any reason before a court and held to be void or unconstitutional, said holding shall not affect, impair or invalidate the remaining provisions of this Act. The effect of said holding shall be limited to the provision, word, sentence, or subsection thereof thus held to be void or unconstitutional. Any provision, word, sentence, or subsection thus held to be void in a specific case shall in no way affect or impair its validity in or application to any other case, unless it is specifically and explicitly held void in all cases.

Section 7.- Effectiveness.

This Act shall take effect upon its approval.