

Johnson County Board of Health Regulation of Health Nuisances

Section 1: Purpose

The Johnson County Board of Health has adopted these regulations in accordance with Iowa Code Chapter 137.103. These regulations are intended to prevent the conditions which are conducive to the spreading of disease and the occurrence of injuries to the public and to prevent substantial degradation of the environment.

Section 2: Definitions

“Abate” or **“Abatement”** means the removal, discontinuance or correction of a health nuisance or the making of improvements needed to effect a rehabilitation of property to bring it into compliance with existing health regulations and to maintain safe and habitable conditions over the remaining useful life of the property.

“Board” means the Johnson County Board of Health.

“Building” means any structure designed or intended to be used for the enclosure, shelter or protection of persons, animals or property of any kind.

“Building, Abandoned” means any building designed for human habitation which is: a) vacant and unsecured; or b) vacant and unfit for human occupancy.

“Building, Enclosed” means a structure or portion thereof containing a roof and having exterior walls constructed in a manner that obstructs the contents of the building from view from any street or adjacent real estate.

“Building, Unsafe” means a building that is found to be dangerous to the life, health or safety of the public or the occupants of the building because such building contains unsafe equipment or is so damaged, decayed, structurally unsound, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

“Building, Unsanitary” means a building used for human habitation without adequate or sanitary wastewater facilities or where fecal matter and other filth has been allowed to accumulate or which harbors rats, mice, snakes, insects or other vermin, or where garbage has been allowed to accumulate outside approved containers.

“Communicable Disease” means any disease spread from person to person, or animal to person.

“Compost Pile” means a collection of yard waste, such as grass, leaves, trees, brush and garden residue, and/or uncooked kitchen food wastes but specifically excluding animal-based waste that is intended for reuse as a soil amendment. Compost piles may not be located in a natural drainage way.

“Department” means Johnson County Public Health.

“Emergency” means unforeseen circumstances requiring prompt action to prevent, avoid or minimize, any significant possibility of loss of life, serious injury, transmission of infectious disease, substantial imminent contamination of the environment, or significant damage to real estate.

“Garbage” means all solid and semisolid putrescible and nonputrescible animal and vegetable wastes resulting from the handling, preparing, cooking, storing and serving of food or of material intended for use as food.

“Health Officer” means the Johnson County Public Health Director as appointed by the Johnson County Board of Health, or his/her designee(s), authorized to carry out the provisions of these Regulations.

“Habitual Violator” means any person or business that is found to be in violation of this Regulation three (3) times in an eighteen (18) month period, at any one or more locations in the County.

"Hazardous Material" means any chemical and/or biological material that is, or has the potential, to create a health hazard.

“Health Nuisance” means whatever is injurious or dangerous to public health or safety, or substantially degrades the natural environment, including but not limited to those things or actions which are unreasonably offensive to the senses. “Health Nuisance” includes, but is not limited to, any action or condition described in Section 3 of this Regulation.

“Junk” means old and dilapidated vehicles and wagons and parts thereof, scrap, used building materials, scrap contractor's equipment, tanks, casks, cans, barrels, boxes, drums, piping, bottles, glass, old iron, rags, papers, mattresses, beds, or bedding, machinery and appliances, or parts thereof; including but not limited to discarded, abandoned, unattended or used refrigerators, freezers and similar containers; or any other kind of scrap or waste materials.

“Motor Vehicle” means a device in, upon, or by which a person or property is or may be transported or drawn upon a highway or street, except devices moved by human or animal power or used exclusively on rails or tracks, farm implements used for farming purposes, or devices used for construction and not licensed for highway use.

“Motor Vehicle, Inoperable” means any motor vehicle which lacks an engine, wheel or other operable part, which renders the motor vehicle incapable of immediate movement or locomotion, immediate legal operation on public highways of this state, or if a trailer, incapable of being legally towed.

“Motor Vehicle, Unlicensed” means any motor vehicle which is not displaying a current registration plate as required by state law.

“Noxious Substances” means substances, solid or fluid, which are detrimental to health, hurtful or dangerous. “Noxious Substances” shall include, but not be limited to, any dead animal or portion thereof, together with human or animal excrement.

“Open Burning” means any burning of combustible materials where the products of combustion are emitted into the open air without passing through a permanently constructed chimney or stack.

“Owner” means the person or persons holding the fee simple title to the property, having a present possessory interest and/or having an equitable interest in the property acquired by a purchase contract or the like. This definition shall apply leasehold interest or easement only to such extent that the lease or easement provides the holder thereof with the authority to control the condition which is subject to a nuisance determination.

“Person” means any individual, firm, corporation or other legal entity and authorized agents and/or officers thereof.

“Property” means both real property, such as land or buildings, as well as personal property such as vehicles and appliances.

“Refuse” means any waste that is putrescible, nonputrescible, combustible or noncombustible, including, but not limited to, paper, garbage, vegetable or animal matter, offal, rubbish, yard waste such as tree trimmings or grass cuttings, ashes, incinerator residue, street cleanings, construction debris and solid industrial waste.

“Residential waste” means any refuse generated on the premises as a result of residential activities. The term includes landscape waste grown on the premises or deposited thereon by the elements, but excludes garbage, non-wood furniture, tires, trade wastes, and any locally-recyclable goods or plastics.

“Salvage Material” means materials that have some value in excess of their basic material content and are being retained for reuse, re-fabrication, or scrapping.

“Solid Waste” means garbage, refuse and other discarded materials including, but not limited to, solid, semisolid, sludges, liquid and contained gaseous waste materials resulting from industrial, commercial, agricultural and domestic activities. Solid waste does not include hazardous materials.

“Unsecured” shall include but is not limited to buildings with broken or missing windows or window panes; broken or missing doors, broken or missing roof, broken

or missing floor, broken or missing wall sheathing or other related materials so as to expose the interior to weather.

“Unfit for Human Occupancy” means a building designed for human habitation that based on inadequate maintenance, neglect or dilapidation is unsanitary, or vermin infested, or contains filth and contamination, or which has inadequate or unsanitary wastewater disposal facilities.

“Unsafe Equipment” means any boiler, heating equipment, electrical wiring or device, flammable liquid containers, or other equipment associated with the operation of the building (i.e. heating, lighting, cooling, electrical or other power), which is in such disrepair or condition that such equipment is a hazard to life health, or safety of the public or current occupants of the building.

“Vermin” means various animals or insects that are destructive, potential vectors of diseases to humans, or otherwise injurious to health and are often difficult to control, including but not limited to cockroaches, lice, fleas, mosquitoes, mice, rats, skunks, raccoons and pigeons.

“Wastewater” means the water-carried waste products from residences, public buildings, institutions, or other buildings, including bodily discharges from human beings together with groundwater infiltration and surface water as may be present.

Section 3: Causing, Permitting or Failing to Abate a Health Nuisance

No person shall cause or permit the occurrence or the continuation of a health nuisance, on property owned, controlled or occupied by the person, or fails to abate a health nuisance caused by the person or existing on property owned, controlled or occupied by the person when ordered to do so by the Health Officer. Health Nuisance includes, but shall not be limited to:

A. Presence of Garbage, Refuse and Junk Prohibited. The owner, manager, agent, occupant or lessee of any property, shall not allow the accumulation on such property of garbage, refuse or junk as to constitute a public health threat.

B. Presence of Inoperable or Unlicensed Motor Vehicles Prohibited. The owner, manager, agent, occupant or lessee of any property shall not allow more than a total of three (3) motor vehicles, trailers, boats, snowmobiles, campers, etc., and any and all other vehicles required to be registered or titled by the State of Iowa for respective use within the State, which are unlicensed or are otherwise inoperable, or in a dilapidated condition to be stored or to remain on the property for more than thirty (30) continuous days. Mere licensing of such vehicle shall not constitute a defense to the finding that the vehicle is inoperable. This paragraph does not apply to:

1. Operable race cars currently being raced in sanctioned events.
2. Antique or classic vehicles actively involved in the process of restoration, not to include parts.

3. Junk or salvage materials properly stored in a junk or salvage yard permitted under Section 8:1.14 of the Johnson County Zoning Ordinance.
4. Vehicles stored within an enclosed building.
5. Motor vehicles, trailers, boats, snowmobiles, campers etc. which are kept on the premises of a commercial operation which is operating in compliance with applicable zoning regulations and the presence of the motor vehicles, trailers, boats, snowmobiles, campers etc., is directly related to the ongoing business activities of the commercial operation.

The allowance of three (3) vehicles in this subsection notwithstanding, any vehicle found to harbor vermin or contaminate the environment so as to threaten the public's health shall be deemed a public health nuisance and shall be subject to abatement as provided herein.

C. Presence of Vermin Prohibited. The owner, manager, agent, occupant, or lessee of any property where the presence of vermin or the conditions that allow for the harborage of vermin exists and presents a threat to the public's health, as determined by the Health Officer, shall abate or cause the abatement of the presence of such vermin and the conditions that allow for the harborage of vermin. Abatement shall be sufficient in order that the threat to public health is effectively controlled. Conditions that allow for the harborage of vermin include, but are not limited to: stagnant water, dense growth of weeds, and unsanitary conditions.

D. Disposal of Dead Animals. No person shall allow or cause the disposal of animal carcasses or of animal parts in such a manner that is not in compliance with applicable State law or otherwise creates a threat to public health. This section shall not be used to regulate activities that the county is preempted from regulating pursuant to Iowa Code Section 331.304A.

E. Communicable Disease. No person shall expose any other person to any communicable disease by any unlawful act or practice.

F. Fire Hazard. No person shall collect store, deposit or discharge flammable refuse, liquid or other material in any building or on any place in such a manner as to constitute a hazard of fire injury to individuals or the public.

G. Habitation Without Adequate Sanitary Facilities. No person shall own, operate or use, for human habitation, any building or place with inadequate or unsanitary wastewater disposal facilities, or which otherwise fails to meet applicable state and local sanitary standards or any abandoned well not properly plugged as provided in Iowa Code 455B.190 and 567 Iowa Administrative Code Chapter 39.

H. Abandoned, Unsanitary, or Unsafe Building. No person shall own, operate, use or continue to allow an unsafe, unsanitary, or abandoned building as defined in

Section 2 of these Regulations to remain on their property that is a threat to public health or safety.

I. Deposit of Materials Prohibited. No person shall deposit or permit to be deposited, refuse, solid waste, garbage, noxious substances or hazardous wastes, junk, salvage materials or other material onto public or private property or a public right-of-way, or into a public or private storm sewer or drainage way. This excludes:

1. Solid waste or other materials deposited and/or stored in accordance with applicable law.
2. Any compost pile located or maintained in compliance with these regulations.
3. Junk or salvage materials properly stored in a junk or salvage yard permitted under Section 8:1.14 of the Johnson County Zoning Ordinance.

J. Pollution of Land, Water or Air. No person shall emit or allow the emission of toxic, noxious, poisonous, injurious, unsanitary or offensive substances or materials to the air, land, ground water or surface water in a way that is a danger to the public's health or safety or the environment including, but not limited to, wastewater, garbage, hazardous wastes, animal waste, oil or gas. Notwithstanding Section 11 of these regulations, emissions of substances or materials that are released or emitted in compliance with existing state or federal laws governing the specified substances or materials shall not be considered to be a public health nuisance as defined by this regulation.

K. Swimming Pools. Swimming pools which have not been maintained, so as to prevent the growth of plant organisms or the development of insect eggs or larvae for thirty (30) consecutive days or more shall be completely drained and kept free of standing water and debris. Failure to drain a swimming pool that has not been maintained for over thirty (30) days shall constitute a public health nuisance. Pools which are not kept free of standing water or debris for thirty (30) days or more shall be considered abandoned. Abandoned pools shall be removed or filled to the grade of adjacent land. Failure to remove or fill an abandoned pool shall constitute a public health nuisance.

L. Open Burning. No person shall allow, cause, or permit, open burning of combustible materials, unless the burning is specifically described as an exemption to the open burning prohibition in Iowa Administrative Code Chapter 567-23.2. Open burning in violation of the Iowa Administrative Code or the provisions contained in this section shall be deemed a public health nuisance. The exemptions provided for in the Iowa Administrative Code shall be allowed with the following qualifications:

1. Landscape waste. The disposal by open burning of landscape waste originating on the premises shall be an exception to the prohibition on open burning unless otherwise prohibited by local applicable municipal ordinances. However, the burning of landscape waste produced in clearing and construction operations shall be limited to areas located at least one-fourth

mile from any inhabited building. Rubber tires shall not be used to ignite or be burned with landscape waste.

A. Diseased trees. The open burning of diseased trees shall be treated as landscape waste. However, when the specific location of the burning of diseased trees presents a danger to public health or safety, the Health Officer may take appropriate action to secure relocation of the burning operation. Rubber tires shall not be burned with, nor used to ignite diseased trees.

B. Agricultural Burning. Open burning of vegetation such as grass, wildflowers, woody species, crop residue, and other dry plant growth for the purpose of crop, range, pasture, prairie, wildlife, and watershed management, shall be considered landscape waste and will be permitted provided that the following conditions are met:

- i. The person conducting burn shall notify the local fire control authority with jurisdiction over the area before the burning begins, unless the appropriate local governing body has established a policy that notification is not required;
 - ii. A person shall not conduct a burn that creates a traffic safety hazard. If conditions exist that may result in smoke blowing toward a public roadway, the person conducting the burn shall give adequate notification to the highway patrol, sheriff's office or other appropriate state or local traffic control authorities before burning;
 - iii. A person shall not conduct a burn that creates an airport safety hazard. If smoke may affect visibility at an airport, the person conducting the burn shall give adequate notification to the appropriate airport authorities before burning; and
 - iv. The person conducting the burn shall insure that the burning is supervised until the fire is extinguished.
2. Paper pesticide containers, feed and seed bags. Paper pesticide containers (except those formerly containing organic forms of beryllium, selenium, mercury, lead, cadmium or arsenic), feed and seed bags resulting from farming activities occurring on the premises may be burned subject to the following restrictions: Such open burning shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning, livestock area, wildlife area, or water source. The amount of paper pesticide containers, feed and seed bags that can be disposed of by open burning shall not exceed one day's accumulation or 50 pounds, whichever is less. However, when the burning of paper pesticide containers, feed or seed bags causes a nuisance, the Health Officer may take action to secure relocation of the burning operation. Since the concentration levels of pesticide combustion products near the fire may be hazardous, the person conducting the open burning should take precautions to avoid inhalation of the pesticide combustion products. Open burning of plastic

pesticide containers and/or plastic feed or seed bags shall not be allowed and will be considered a nuisance under these regulations.

Section 4: Investigation

A. When conducting an investigation to determine if a condition constitutes a threat to public health or safety as described in these Regulations, the Health Officer shall take in to account the following considerations:

1. The proximity of the condition to neighboring properties and persons;
2. The accessibility of the condition to the public by virtue of its proximity or the likelihood of the public being allowed on the site where the condition exists;
3. The likelihood of the condition to transmit disease or cause injury;
4. The likelihood of human to non-domesticated animal interaction or contact;
5. The likelihood of significant contamination of the environment.

B. The Health Officer shall have the right, upon presentation of proper credentials, to request entry into or upon any property or premises, public or private, within the jurisdiction of the Board of Health at any reasonable hour for the purpose of investigation of any complaint or alleged violation of these Regulations. If permission to enter onto the real estate for the purpose of investigation under these Regulations is not obtained, the Health Officer may obtain an administrative search warrant as provided by law to gain entry onto the real estate for the purpose of inspection. The Health Officer shall have the power to conduct such investigation as may appear reasonably necessary to carry out duties as prescribed in these Regulations, and shall also have the power to require written statements, certificates and certifications or the filing of reports under oath, with respect to pertinent questions relating to complaints or alleged violations of these Regulations.

Section 5: Notice

A. Whenever the Health Officer determines that there has been a violation of any provision of these regulations, he/she shall order the person on whose property the nuisance exists, or the person who occupies or controls the property, or the person whose act or omission to act gave or gives rise to the nuisance, to abate the nuisance. An abatement order shall be in writing and include (1) through (6) below as applicable:

1. A description to the extent possible of the condition(s) which constitute the nuisance;
2. A description of the location of the nuisance;
3. A listing of the applicable portion(s) of this Regulation violated;
4. An outline of the remedial action necessary for compliance and a reasonable time for performance of any act required;

5. Notice that the person is liable for the costs of abating the nuisance and any civil and/or criminal penalty and associated court costs;
6. Notice that if not corrected in the time set forth, the Health Officer may issue a civil infraction and/or criminal citation and seek a court judgment and an order allowing the Department to abate the nuisance, and assess damages, the costs of abatement and civil penalties against the real estate, and collect those costs in the same manner as property taxes and/or in the form of a personal judgment.

B. Service. The Abatement Order shall be delivered by personal service or by certified mail, return receipt requested. Failed attempts at personal service and certified mail shall be documented by the Health Officer and placed on file with Johnson County Public Health. If service cannot be obtained by personal service or certified mail, service may be made by publication once in one newspaper of general circulation in the County. The published notice shall contain the information prescribed in Section 5 of this Regulation.

Section 6: Emergency Abatement Order

A. If the Health Officer determines a public health nuisance emergency exists, the Department may require corrective action or initiate corrective action immediately or within a time frame necessary to eliminate said emergency. An emergency abatement order may be issued without formal service of notice or hearing, directing the owner, occupant, or person or agent controlling the property, or the person whose act or omission gave rise to the nuisance, to take immediate action to abate the nuisance. In an emergency, delivery of an abatement order may be by personal service or another method which gives notice in the shortest period of time. If attempts to locate the person responsible for the nuisance or for the property on which the nuisance exists fail, the Health Officer shall document the attempts to locate the person and place this evidence on file with the Department.

B. An emergency abatement order shall include notice that, if not corrected in the time set forth, the Department will abate the nuisance, assess costs of abatement against the real estate, and collect these costs in the same manner as a property tax. The notice shall also include the right of the person to request an administrative hearing with regard to costs of abatement. Nothing in this section nor in these Regulations shall prevent or limit the right of the Department to directly petition the District Court for injunctive relief if protection of the health and safety of the public or an individual so requires.

Section 7: Abatement Order

A. A recipient of an Abatement Order shall abate the conditions constituting the nuisance within the time set forth in the Order. If the person fails to do so, the person shall be deemed in violation of Section 3 of these Regulations and shall be subject to the issuance of a county infraction or criminal complaint.

B. Emergency Abatement. When an Emergency Abatement Order has been issued by the Health Officer and the owner, occupant, or person or agent controlling the property, or the person whose act or omission gave rise to the nuisance, cannot be located, or fails, neglects, or refuses to take action to abate the nuisance within the time prescribed, then:

1. The Health Officer may abate the conditions deemed to be a violation of Section 3 of these Regulations, with costs of abatement, damages sustained on account thereof and any applicable civil penalty recovered as an assessment placed against the real estate and collected in the same manner as a property tax; or;
2. The Health Officer may apply to any court of competent jurisdiction for an Order requiring that the premises be vacated, or that the Department be ordered or permitted to cause abatement of the nuisance, with the costs of abatement, damages sustained on account thereof and any applicable civil penalty recovered as an assessment placed against the real estate and collected in the same manner as a property tax or by collection of any applicable judgment or by utilizing both procedures until such costs have been paid in full.

Section 8: Interference

Willful interference with the lawful abatement of a nuisance is prohibited and shall constitute a violation of these Regulations and shall be punishable as a simple misdemeanor punishable by up to the maximum fines and imprisonment as described in Iowa Code Section 331.302(2).

Section 9: Penalties

A. Violations of these Regulations, if not resolved at the administrative level, may be enforced by the Board in accordance with the provisions of this section.

B. Legal proceedings may be initiated against an alleged violator, when appropriate and if probable cause exists by:

1. Issuing a civil citation for a county infraction as authorized in Iowa Code Section 331.307 punishable by a civil penalty not to exceed seven hundred and fifty dollars (\$750) for a first offense and not to exceed one thousand dollars (\$1000) for repeat offenses.
2. Filing a petition in equity seeking relief, including but not limited to an order for abatement or injunctive relief.
3. Filing a criminal (simple misdemeanor) complaint for a county violation as authorized in Iowa Code Section 331.302(2) and punishable by the maximum fines and term of imprisonment as set out therein.

4. Each day that a violation occurs or is permitted by the defendant to exist constitutes a separate offense.

C. In addition to any civil citation which is initiated by the Health Officer, the aforementioned legal options may be pursued individually or in combination, as determined by the Johnson County Attorney's Office after reviewing the circumstances surrounding each individual case, including but not limited to the nature and seriousness of the violation, corrective action attempted by the Department, and the impact or potential impact of the violation on the health, safety and welfare of the citizens of Johnson County.

D. Habitual Violator. If the Health Officer finds that a person is a Habitual Violator, the Health Officer may file a civil action seeking an order enjoining the person from further violation of this regulation on all real estate owned or controlled by the person, and may request that the Health Officer be allowed to abate all future nuisances found on real estate owned, controlled or occupied by the person without further notice.

E. Withholding Licenses and Permits. The Health Officer may withhold or condition the authorization of any license, permit or certificate upon the abatement of a nuisance.

Section 10: Interpretation

In interpretation and application of these Regulations, all provisions shall be considered to be minimum requirements and deemed neither to limit nor repeal any other powers granted under state statutes.

Section 11: Conflict

If any federal or state law, municipal ordinance, or other existing code or regulation allows lesser regulation, these Regulations shall govern; if any federal or state law, municipal ordinance, or other ordinance requires greater regulation, the regulations imposed by that authority shall govern. Regardless of any provision of these Regulations, a nuisance shall not be created or continued in violation of state or federal law. Nothing herein is intended to regulate that which the County is preempted from regulating pursuant to Iowa Code Section 331.304A.

Section 12: Abrogation

Except as otherwise set out in Section 16, these Regulations are not intended to repeal, abrogate, annul, impair or interfere with any existing public or private agreements, rules, or regulations previously adopted or issued pursuant to law.

Section 13: Severability

Should a court of competent jurisdiction hold any article, provision, sentence, clause, phrase or word of these Regulations invalid, such decision shall not affect, impair, or invalidate the remaining parts of these Regulations which can be given effect without the invalid provision.

Section 14: Saving Provision

Except as expressly provided herein, these Regulations shall not be construed as abating any action now pending under prior existing health regulations; as discontinuing, abating or modifying any penalty pursuant thereto; as affecting the liability or rights between any person, firm or corporation or as waiving or annulling any rights of any Jurisdiction existing at the time of adoption of these Regulations.

Section 15: Regulations Effective Upon Publication

These Regulations, being deemed essential and imperative for the preservation of the public health, shall be in force and effect from and after its approval by the Johnson County Board of Supervisors and publication as provided by law.

Section 16: Repealer

That Regulation titled, Johnson County Board of Health Regulation of Health Nuisances (1974), and all other regulations or portions of regulations in conflict with the provisions of these Regulations are hereby repealed.

Approved by the Johnson County Board of Health: 8-04-2011

Approved by the Johnson County Board of Supervisors: 8-18-2011

Effective on: 9-01-11