

Chapter 7

HEALTH*

* **Cross References:** Administration, Ch. 2; board of health created, § 2-41; composition of the board of health and their powers and duties, § 2-56 et seq.; health department, § 2-311 et seq.; animals, Ch. 3; rabies control procedures, § 3-56 et seq.; buildings and building regulations, Ch. 4; fire prevention and protection, Ch. 6; housing, Ch. 8; restaurants, § 9-176 et seq.; license and regulation of occupations and businesses, Ch. 9; mobile homes and manufactured housing and mobile home parks, Ch. 10; solid waste, Ch. 12; streets, sidewalks and other public places, Ch. 13; utilities, Ch. 16; zoning and land use, Ch. 17.

Case Law References: *United States v. Ottati & Goss, Inc.*, 630 F. Supp. 1361 (DNH, 1985).

State Law References: Nuisances, rubbish and waste, RSA 147; litter control, RSA 163-B; milk and milk products, RSA 184-30-h; communicable diseases, RSA 141-C; quarantine, RSA 142.

[Art. I. In General](#), §§ 7-1--7-15

[Art. II. Nuisances](#), §§ 7-16--7-24

[Art. III. Vector Control](#) §§ 7-25--7-32

[Art. IV. Prohibition Of The Possession Or Sale Of Synthetic Cannabinoids](#) §§ 7-51

ARTICLE I.

IN GENERAL

Secs. 7-1--7-15. Reserved.

ARTICLE II.

NUISANCES*

* **Cross References:** Housing, Ch. 8; license and regulation of occupations and businesses, Ch. 9; mobile homes and manufactured housing and mobile home parks, Ch. 10; solid waste, Ch. 12; streets, sidewalks and other public places, Ch. 13; certain uses prohibited in Jericho Lake Park, § 13-115; zoning and land use, Ch. 17.

Sec. 7-16. General authority of health officer.

The health administrator who is the community services division manager shall make such house-to-house inspections as are necessary to protect the public health and shall require the abatement within a reasonable time of all nuisances found and shall give such advice and make such recommendations to householders and others as he may deem necessary to secure good sanitary conditions.

(Code 1977, § 11.101; Ord. of 5-6-96(1))

Sec. 7-17. Putrid, offensive conditions prohibited.

No person shall place or leave, or cause to be placed or left, in or near any highway, street, alley, or public place, or in any pond or other body of water where the current will not remove the same, any rubbish, dirt, soot, ashes, hay, shreds, manure, swill, tin cans, decaying fruit or vegetables, waste water, or any refuse animal or vegetable matter whatsoever, nor keep in or about any vacant lot, dwelling house, barn, shed, store, shop or cellar, any of the aforesaid substances after the same have become putrid or offensive, or a menace to the public health.

(Code 1977, § 11:102)

Sec. 7-18. Maintenance of offensive, injurious conditions on private premises--Generally.

No person shall suffer or permit any cellar, vault, private drain, pool, sink, privy, sewer, or other place, upon any premises or grounds belonging to or occupied by him or them, to become offensive or injurious to the public health.

(Code 1977, § 11:103)

Sec. 7-19. Same--Lots, buildings, adjoining public property.

No person or occupant, or any person having control or charge of any lot, tenement, premises, building, or other place, shall cause or permit any nuisance to be or remain in or upon said lot, tenement building, or other place, or between the same, and the center of the street, lane or alley adjoining.

(Code 1977, § 11:104)

Sec. 7-20. Rendering facilities prohibited.

No person shall erect, maintain or use within the compact part of any ward in the city, any swill-house or building for rendering any offal, tainted or damaged lard, tallow, or any putrid animal substance, or for the deposit of green pelts or skins.

(Code 1977, § 11:105)

Sec. 7-21. Keeping livestock, fowl--Permit required.

No person shall maintain or keep any hogs, goats, hens, chickens, roosters or cows within the compact part of the city. No person shall maintain or keep any hog pen, goat pen, hen yard, hen coop, barn yard or stable within the limits of the city without a permit from the board of health.

(Code 1977, § 11:106)

Cross References: Animals, Ch. 3.

Sec. 7-22. Same--Maintenance of premises.

The owner, agent, occupant or other person having the care of any stable, barn, premises or any other place where manure, swill, garbage or any other animal or vegetable substances accumulate shall cause the same to be removed at such stated periods as the health officer may designate.

(Code 1977, § 11:107)

Sec. 7-23. Petitions for abatement.

(a) All petitions for the cleansing, removing or abatement of any nuisance shall be made to the health officer stating distinctly the character of such nuisance, the premises where situated and the reason for its removal or abatement. Petitions may be either in writing or verbal, but if it becomes necessary to institute legal proceedings against the party complained of, the complainants shall before such proceedings are instituted file a complaint in writing with the city attorney who shall prosecute the same in his discretion.

(b) A notice shall be served on the owner, agent or occupant of any property or left at the private residence of the owner or agent or occupant or if after due search neither can be found, the notice may be posted on the front door or wall or fence of such property and a notice sent to his last known post office address which shall be considered sufficient and ample notice.

(c) The board of health shall provide themselves and the health officer with such blanks and record books at the expense of the city as are necessary and shall at the close of each financial year make a report to the mayor and city council of all complaints made to them or to the health officer and the cause for the same with such suggestions pertaining to the health of the city as they may deem expedient to present. The board shall report so much of the vital statistics as is necessary, the causes of death so far as possible and such other information as may be called required by the mayor and city council.

(d) Any person who shall violate or cause to be violated by an agent or otherwise, any provision of this article or any order, rule or regulation made by the health officer or the board of health, under the authority of this article shall, upon conviction thereof, be fined not more than ten dollars (\$10.00) for each offense, except in cases where the punishment is provided for by the laws of the state or is herein otherwise provided in which cases the penalty so prescribed shall be imposed.

(Code 1977, §§ 11:125--11:128)

Sec. 7-24. Pesticide application.

Any person who is seeking a permit from the state to apply pesticides under the provisions of RSA 430:28--48 and the administrative rules of the state pesticide control board to apply five (5) gallons of chemical concentrate or greater and/or for profit in the city and must also provide at least three (3) days' notice to the health officer of the city prior to the start of application of such chemicals. This notification must include a description of the chemical(s) to be applied and the area of application, and the material safety data sheets (MSDS). This shall apply to agricultural pest control, forest pest control, ornamental and turf pest control, aquatic pest control, right-of-way and commercial weed and brush control, regulatory pest control, demonstration and research pest control, and aerial pest control. It shall not apply to the application of chemicals for structural and public health pest control or the immediate vicinity of a living unit by the occupant thereof as described in RSA 430:46 I b. The

health officer may reduce said notice based upon sufficiency of the notice and the pending emergency.

Failure to comply with this section shall be deemed prima facie evidence of a violation subject to a fine of one thousand dollars (\$1,000.00) per event. Each day of the violation shall be considered a separate offense.

(Ord. of 8-2-93)

ARTICLE III

VECTOR CONTROL

Sec. 7-25 Intent and Purpose

It is the intent of this section to prevent, control, and/or reduce the spread of vector borne disease in the City of Berlin by eliminating potential breeding areas.

Sec. 7-26 Definitions

1. **Breeding Area.** Any condition, which provides the necessary environment for the birth or hatching of vectors.
2. **Collection of Water.** Water contained in ditches, pools, ponds, streams, excavations, holes, depressions, open cesspools, fountains, cisterns, tanks, shallow wells, barrels, troughs, urns, cans, boxes, bottles, tubs, buckets, roof gutters, reservoirs, vessels, receptacles of any kind or other containers or devices which may hold water.
3. **Extermination.** The control and elimination of vectors by eliminating their harborage places; by removing or making inaccessible material that may serve as their food; by poisoning, spraying, fumigating, fogging, larviciding or trapping, or by any other recognized and legal vector elimination method which is not injurious to human health or the safety of domestic animals.
4. **Garbage.** All waste, animal or vegetable, such as but not limited to waste material and refuse from kitchens, residences, grocery stores, butcher shops, restaurants, cafes, hotels resulting from the handling, preparation, cooking, serving or non-consumption of food, and all other deleterious substances.
5. **Harborage.** Any place where vectors can live, nest or seek shelter.
6. **Infestation.** The presence of vectors within or contiguous to a structure or premises.
7. **Nuisance.** For the purpose of this Part, the term "nuisance" is defined to mean any condition or use of premises or of building exteriors which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which such premises are located, or shall cause or result in annoyance or disturbance to persons beyond the boundaries of such property; interference to the health and/or safety of the person beyond the boundaries of such property; and/or disturbance with the peaceful use of the property of others in the City, in any case taking into consideration the location of the use or condition, and the nature and condition of the surrounding neighborhood.

This includes, but is not limited to the retention on any premises of any of the following: Junk, trash or debris; abandoned, discarded or unused objects or equipment such as but not limited to automobiles, furniture, paper, cardboard, plastic, glass, crockery, scrap metal, tires, stoves, refrigerators, freezers, cans or containers.

8. **Occupant.** Any person who, alone or joint/severally with others;
 - a. Shall have legal title to any premises, dwelling or dwelling unit, with or without accompanying actual possession thereof.
 - b. Shall have charge, care or control of any premises, dwelling or dwelling unit, as owner, lessee, or agent of the owner, or an executor, administrator, trustee, assignee of rents or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this chapter to the same extent as if he were the owner.
9. **Owner.** The actual owner, agent or custodian of the property whether an individual, partnership, association or corporation.
10. **Person.** Any natural person, firm, partnership, association, corporation, company or organization of any kind.
11. **Premises.** All areas of a property, including all interior, exterior, grounds and yard spaces.
12. **Refuse.** Waste, rubbish, garbage, trash or any material of any kind that has been discarded, rejected, cast aside or thrown away as worthless, except body waste.
13. **Structure.** Any man-made construction or building, which is located on any part of the premises.
14. **Vector.** A rodent, insect or vermin species capable of transmitting a disease or infection.
15. **Vectors.** Includes but shall not be limited to rats, mosquitoes, cockroaches, flies, ticks, ect.
16. **Vector Harborage or Vector Source.** Any area, interior or exterior, where vectors can live, nest, breed or seek any form of shelter.
17. **Vector Proofing.** A form of construction to prevent the ingress or egress of vectors to or from a given space or building or from gaining access to food, water or harborage. This term shall include but not be limited to rat proofing, fly proffing, mosquito proofing, etc.

Sec. 7-27. Prohibited Acts.

1. No person shall deposit any refuse, dead animals, decaying matter or organic substance of any kind in or upon any private lot, street, avenue, alley, ravine, ditch or gutter or into any of the runs, creeks or bodies of water within or bounding the City of Berlin that the same shall or may afford food, harborage or breeding areas for rats, mosquitoes or other vectors.
2. No person shall deposit or permit to accumulate in or upon any premises, or on any open lot or public area any lumber, boxes, barrels, bottles, cans, glass, containers, scrap iron, wire, metal articles, pipe, broken stone or cement, broken crockery, broken plaster or rubbish of any kind, unless the same is kept in approved covered receptacles or placed on open racks that are elevated not less than 18 inches above ground and evenly piled or stacked or disposed of as may be approved by the Town.
3. No person shall have, keep, maintain, cause or permit any collection of standing or flowing water in which mosquitoes bred or are likely to breed, unless such collection of water is treated or maintained effectually so as to prevent such breeding.

Sec. 7-28 Proper Pool Maintenance

Pools located within the City of Berlin shall be properly maintained to prevent the existence or presence of any water in which mosquito larvae may mature and grow or exist.

Sec. 7-29 Pool Covers

Any pool cover must be maintained in a way so as to prevent the collection of stagnant rainwater.

Sec. 7-30 Proper Storage of Tires

Tires shall be stored in a totally enclosed structure or must be covered to prevent the existence or presence of any water in which mosquito larvae may mature and grow to exist. If stored outside, tires must be stored off the ground and covered in a manner to prevent standing water.

Sec. 7-31 Unusable Tires

Any tire that cannot be used shall be considered waste material and must be disposed of in a proper and lawful manner to prevent the collection of stagnant rainwater in said tires.

Sec. 7-32 Enforcement; Violation and Penalties

1. Any person who violates provision of this regulation shall be subject to a fine of \$100.00 per day for each the violation is found to exist.
2. Each day that a violation continues or exist shall constitute a separate offense. Each section of this chapter that is violated shall also constitute a separate offence.
3. In case of extended noncompliance or in cases of a clear and present danger to the health, safety or general welfare of the citizenry, the Health Officer of the City of Berlin shall be empowered to exercise any of the following actions, in accordance with, and pursuant to the authority granted by RSA 147:4 and RSA 147:6 or their statutory successors:
 - a. Order the correction of the violation by the municipal staff;
 - b. Engage a qualified contractor to correct the violation;
4. Reimbursement for municipal cost incurred in the correction of violations shall be recouped from the owner and/or occupant in any of the following actions in accordance with, and pursuant to the authority granted by RSA 147:7-b or its statutory successor:
 - a. Attaching a municipal lien on the cited property;
 - b. Civil action against the owner
(Ord. 10/2/2006)

Art. IV.

PROHIBITION OF THE POSSESSION OR SALE OF SYNTHETIC CANNABINOIDS

Sec. 7-51 PURPOSE AND INTENT: PROHIBITION OF THE POSSESSION OR SALE OF SYNTHETIC CANNABINOIDS

It has been determined that certain businesses and/or individuals within the city of Berlin are possessing and selling certain substances which when ingested produce intoxicating effects similar to Tetrahydrocannabinol (THC) or Marijuana. These substances, which are described herein, are often used as an alternative synthetic to Marijuana and are potentially dangerous to users and society, and the long term effects are not yet known. The effects of these substances are a health concern to the citizens of Berlin. Not all of the substances are categorized as illegal controlled substances under State or Federal law. By selling these "legal" substances for smoking and ingestion of the guise of incense, the manufacturers avoid the United States Food and Drug Administration process for study and approval of such prior to distribution for consumption. In addition, by marketing such "incense" products directed at the controlled drug subculture, the manufacturers and sellers avoid the Schedule Implications of the Controlled Substances Act. The Berlin City Council recognizes there is no legitimate purpose of such synthetic chemicals contained therein.

Sec. 7-52 PROHIBITED ACTIVITIES

It shall be unlawful for any person to sell, barter, give, publicly display for sale, or attempt to sell, possess, or transport, any material, compound, mixture or preparation which contains any quantity of synthetic cannabinoids or their optical, positional, and geometric isomers, salts and salts of isomers whenever the existence of such isomers, salts and salts of isomers is possible within the specific chemical designation as defined below within the corporate limits of the city of Berlin.

Sec. 7-53 DEFINITIONS:

For the purpose of this section, the following shall be defined as follows:

Person: An individual, corporation, limited liability company, partnership, wholesaler, retailer, and any license or unlicensed business, including clerk, manager, or owner of business.

Synthetic cannabinoid: Any substance within the following structural classes that displays binding activity at the CB 1 and/or CB2 cannabinoid receptor sites. Binding activity may be documented in the following ways, including but not limited to:

- i. A patent or patent application or copy thereof that attests to the binding activity of the substance in question; and/or
 - ii. An article or document or copy thereof from a peer-reviewed scientific journal or equivalent publication that attests to the binding activity of the substance in question.
1. Any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with a substituent at the 5-position of the phenolic ring: whether or not substituted on the cyclohexyl ring to any extent.

2. Any compound containing a 1-(naphthylmethyl) indene ring system with a substituent at the 3-position or the indene ring system: whether or not further substituent on the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.
3. Any compound containing an indole ring system with a substituent of the nitrogen atom and bearing an additional substituent at the 3-position of the indole ring system, with a linkage connecting the ring system to the substituent:

i. Where the linkage connecting the indole ring system to the substituent at its 3 position is any of the following:

- Alkyl
- Carbonyl
- Ester
- Thione
- Thioester
- Amino
- Alkylamino
- Amido
- Alkylamido

ii. Where the substituent at the 3 position of the indole ring system is, disregarding the linkage, any of the following groups:

- Naphthyl
- Quinoliny
- Adamantly
- Phenyl
- Cycloalkyl (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl)
- Alkylamido (limited to ethylamido, propylamido, Butylamido, or pentylamido)

iii. Whether or not the substituent at the 3-position of the indole ring system, disregarding the linkage, is further substituted to any extent

iv. Whether or not further substituted on the indole ring to any extent.

4. Any compound containing an indazole ring system with a substituent at the 1-position nitrogen atom and bearing an additional substituent at the 3-position of the indazole ring system, with a linkage connecting the ring system to the substituent:
 - i. Where the linkage connecting the indazole ring to the substituent at its 3 position is any of the following:
 - Alkyl
 - Carbonyl
 - Ester
 - Thione
 - Thioester
 - Amino

- Alkylamino
 - Amido
 - Alkylamido
- ii. Where the substituent at the 3 position or the indazole ring is, disregarding the linkage, any of the following groups:
- Naphthyl
 - Quinoliny
 - Adamantly
 - Phenyl
 - Cycloalkyl (limited to cyclopropyl, cyclobutyl, Cyclopentyl or cyclohexyl)
 - Biphenyl
 - Alkylamido (limited to ethylamido, propylamido, Butanamido, or pentanamido)
- iii. Whether or not the substituent at the 3 position of the indazole ring system, disregarding the linkage, is further substituted to any extent.
- iv. Whether or not further substituted on the indazole ring to any extent.
5. Any compound containing a pyrrole ring with a substituent on the nitrogen atom and bearing an additional substituent at the 3-position of the pyrrole ring, with a linkage connecting the ring to the substituent:
- i. Where the linkage connecting the pyrrole ring to the substituent at its 3 position is any of the following:
- Alkyl
 - Carbonyl
 - Ester
 - Thione
 - Thoester
 - Amino
 - Alkylamido
- ii. Where the substituent at the 3 position of the pyrrole ring is, disregarding the linkage, any of the following groups:
- Naphthyl
 - Quinoliny
 - Adamantly
 - Phenyl
 - Cycloalkyl (limited to cyclopropyl, cyclobutyl, cyclopentyl, or Cyclohexyl)
 - Biphenyl
 - Alkylamido (limited to ethylamido, propylamido, butanamido, or pentanamido)

- iii. Whether or not the substituent at the 3 position of the pyrrole ring, disregarding the linkage, is further substituted to any extent.
 - iv. Whether or not further substituted on the pyrrole ring to any extent.
 6. Any compound containing a pyrazole ring with a substitute at the 1-position nitrogen atom and bearing an additional substituent at the 3-position of the pyrazole ring with a linkage connecting the ring to the substituent:
 - i. Where the linkage connecting the pyrazole ring to the substituent at its 3 position is any of the following:
 - Alkyl
 - Carbonyl
 - Ester
 - Thione
 - Thioester
 - Amino
 - Alkylamino
 - Amido
 - Alkylamido
 - ii. Where the substituent at the 3 position of the pyrazole ring is, disregarding the linkage, any of the following groups:
 - Naphthyl
 - Quinolinylnyl
 - Adamantly
 - Phenyl
 - Cycloalkyl (limited to cyclopropyl, cyclobutyl, Cyclopentyl, or cyclohexyl)
 - Biphenyl
 - Alkylamido (limited to ethlamido, propylamido, Butanamido, or pentanamido)
 - iii. Whether or not the substituent at the 3 position of the pyrazole ring, disregarding the linkage, is further substituted to any extent.
 - iv. Whether or not further substituted on the pyrazole ring to any extent.
 7. Includes, but is not limited to the following:
 - QUCHIC/BB-22
 - QUPIC/PB-22
 - 4 fluoro PB-22
 - STS-135
 - APICA/SDB-001
 - ADBICA
 - APINACA/AKB48

- AB-FUBINACA
- AB-PINACA
- ADB-FUBINACA
- AM-1248
- AM-2233
- SDB-006
- 5-chloro UR-144

8. This definition shall not include:

- i. Endocannabinoids that are naturally found in the human body; or
- ii. Delta-9 Tetrahydrocannabinol (THC) or other Marijuana- derived cannabinoids, in the form of Marinol, Dronabinol, or another generic pharmaceutical equivalent; so long as the medication has been issued as the result of a valid prescription; or
- iii. Any other drugs that have cannabinoid receptor activity that are currently FDA-approved for medical use; or
- iv. Marijuana and extracts of Marijuana, as these are already controlled per NH RSA 318:B

SEC. 7-54 EXCEPTIONS

- A. It is not an offense under this Chapter if the person was acting at the direction of the Berlin Police Department and its officers, or federal or state law enforcement, to enforce or ensure compliance with this law prohibiting the sale of the aforementioned substances.
- B. If the State of New Hampshire enacts criminal penalties for the possession, sale, transportation, or delivery of any chemical substance listed in this ordinance, then upon the effective date of this control, this ordinance shall no longer be deemed effective for that substance. However, a violation of this ordinance occurring prior to the effective date of such State statute may be prosecuted after the effective date of State control.

SEC. 7-55 VIOLATIONS AND PENALTIES

- A. Any person found to be in violation of this ordinance will be assessed a fine of \$500.00. Each day a violation occurs will constitute a separate offense.
- B. In addition to any penalty provided in the above Section A, if any of the aforementioned substances listed above are found in the possession of any person, the substance will be forfeited by seizure by the Berlin Police Department, or its officers, and may be destroyed by such law enforcement officials in a method consistent with law.

SEC. 7-56 VALIDITY AND APPLICATION

- A. If any provision of this ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance, which shall remain in full force and effect.

- B. All ordinances, resolutions, orders and parts thereof or in conflict with this ordinance are hereby voided.
(Ord. 1-5-2015)