

# TITLE X

## PUBLIC HEALTH

### CHAPTER 128

#### TOWN HEALTH OFFICERS

##### Section 128:1

**128:1 Appointment.** – The commissioner of the department of health and human services shall appoint as health officer for each town such person as the selectmen of the town recommend, and the commissioner of the department of health and human services shall issue to the health officer a certificate of appointment; but, if no recommendation is made within 15 days after notice, the commissioner may appoint a health officer without such recommendation.

**Source.** 1915, 27:1. PL 126:1. RL 148:1. RSA 128:1. 1995, 310:182, 183. 1997, 200:4, eff. Aug. 17, 1997.

##### Section 128:2

**128:2 Residence.** – Said health officer shall be a resident of the state. The commissioner of the department of health and human services may appoint any qualified person to act in unorganized localities.

**Source.** 1915, 27:1. PL 126:2. RL 148:2. 1947, 51:1. RSA 128:2. 1995, 310:182, eff. Nov. 1, 1995.

##### Section 128:3

**128:3 Secretary of Local Board.** – The health officer shall be the secretary and executive officer of, and, with the selectmen, shall constitute the local board of health for the town.

**Source.** 1915, 27:2, 3. PL 126:3. RL 148:3. RSA 128:3. 1997, 200:5, eff. Aug. 17, 1997.

##### Section 128:4

**128:4 Term; Removal.** – The health officer shall hold office for 3 years or until a successor is appointed. The commissioner of the department of health and human services may remove the health officer for cause at any time after notice and hearing, and may fill the vacancy in such office by appointment as provided in RSA 128:1.

**Source.** 1915, 27:3. PL 126:4. RL 148:4. RSA 128:4. 1995, 310:182. 1997, 200:6, eff. Aug. 17, 1997.

## **Section 128:5**

**128:5 Duties; Compensation.** – The town health officer:

I. Shall enforce the public health laws and rules.

II. Shall make such sanitary investigations as may be directed by the local board of health, or as may be required by the department of health and human services.

III. May, upon reasonable information, personal knowledge or belief, in order to safeguard public health or to prevent pollution of any aquifer or body of water, enter upon private property, but not into any living quarters, to investigate and, if necessary, take appropriate action to prevent further pollution.

IV. Shall receive for the health officer's services the compensation fixed by the selectmen or the town, except as otherwise provided.

**Source.** 1915, 27:4. PL 126:5. RL 148:5. RSA 128:5. 1985, 401:38. 1995, 310:181. 1997, 200:7, eff. Aug. 17, 1997.

## **Section 128:5-a**

**128:5-a Entry Authorized for Investigation.** –

I. A health officer of a town or the health officer's agent shall not be guilty of criminal trespass pursuant to RSA 635:2 when conducting an investigation of sanitary conditions on private property without the consent of the owner, regardless of whether or not the property is designated a secured premises.

II. The authority to enter private property without the consent of the owner for investigation of sanitary conditions does not include the right to enter into any living quarters situated on private property.

**Source.** 1985, 401:39. 1997, 200:8, eff. Aug. 17, 1997.

## **Section 128:5-b**

**128:5-b Deputy Health Officer.** – When a health officer has been appointed under the provisions of RSA 128:1, such officer may, subject to the approval of the selectmen and the commissioner of the department of health and human services, appoint a deputy health officer or officers who shall be empowered to enforce public health laws and regulations and make such sanitation investigations as the health officer may direct or as may be required by the department of health and human services. The deputy health officer shall receive such compensation from the town as the selectmen of the town shall fix.

**Source.** 1997, 200:9, eff. Aug. 17, 1997.

## **Section 128:6**

**128:6 Officer for Several Towns.** – Upon recommendation of the selectmen of each of several towns the commissioner of the department of health and human services may, in the commissioner's discretion, appoint any qualified person resident of the state as health officer for

all of said towns, and such health officer shall receive such compensation from each town as the selectmen thereof or the town shall fix.

**Source.** 1931, 90:3. RL 148:6. 1947, 51:2. RSA 128:6. 1995, 310:182. 1997, 200:10, eff. Aug. 17, 1997.

### **Section 128:6-a**

**128:6-a Deputy Health Officer.** – In case where a health officer has been appointed under the provisions of RSA 128:6 for several towns, such officer may, subject to the approval of the selectmen of the several towns and the commissioner of the department of health and human services, appoint a deputy health officer or officers who shall be empowered to enforce public health laws and regulations and make such sanitation investigations as said health officer may direct or as may be required by the department of health and human services. Said deputy health officer shall receive such compensation from each town as the selectmen thereof or the town shall fix.

**Source.** 1959, 184:1. 1995, 310:181, 182, eff. Nov. 1, 1995.

### **Section 128:7**

**128:7 Where Statute Inapplicable.** – This chapter shall not apply to cities.

**Source.** 1915, 27:5. PL 126:6. RL 148:7.

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# **TITLE X PUBLIC HEALTH**

## **CHAPTER 147 NUISANCES; TOILETS; DRAINS; EXPECTORATION; RUBBISH AND WASTE**

### **Section 147:1**

**147:1 Local Regulations.** –

I. The health officers of towns may make regulations for the prevention and removal of nuisances, and such other regulations relating to the public health as in their judgment the health and safety of the people require, which shall take effect when approved by the selectmen,

recorded by the town clerk, and published in some newspaper printed in the town, or when copies thereof have been posted in 2 or more public places in the town.

II. The health officers of towns may make regulations relative to the sanitary and health conditions for issuing a license to restaurants or other food serving establishments operating within the town limits, subject to the approval of the commissioner of the department of health and human services.

(a) Notwithstanding any other law to the contrary or other licensing authority, any restaurant or other food serving establishment found to be in violation of the sanitary and health code adopted may be closed without a hearing for a 10-day period or until the violation is corrected and the sanitary condition is approved by the local health officer.

(b) If the sanitary or health violations are not corrected within the 10-day period, the local health officer may suspend the license to operate the restaurant or other food serving establishment after notice and hearing.

III. Any person wilfully violating such regulations shall be guilty of a violation. Such health officers shall forward, when issued, copies of all regulations made by them to the department of health and human services and furnish it such information concerning their work as may be requested. They shall be paid by the town a reasonable compensation for their services and all expenses incurred by them in the performance of their duty; and the selectmen are required to advance them such sums as may be necessary, of which and of all their receipts and disbursements they shall, before each annual town meeting, render an account to the selectmen, to be laid before the town.

**Source.** RS 119:1. CS 125:1. GS 101:1. GL 111:1. 1887, 62:4. PS 108:1. PL 140:1, 22, 23. RL 165:1. RSA 147:1. 1981, 211:2. 1983, 291:1, I. 1995, 310:181, 182, eff. Nov. 1, 1995.

## **Section 147:2**

**147:2 Rulemaking; Enforcement.** – The commissioner of the department of health and human services shall, in addition to the rules and ordinances of the health officers of towns, adopt other rules pursuant to RSA 541-A, as in the commissioner's judgment the public good requires, and the rules shall be enforced by the department of health and human services and local boards of health. The department of health and human services may also enforce, concurrently with towns, the other provisions of this chapter.

**Source.** 1885, 14:2. PS 108:2. PL 140:2. 1931, 132:1. RL 165:2. RSA 147:2. 1983, 291:1, I. 1985, 190:80. 1991, 355:39. 1995, 310:181, 182. 1998, 318:4, eff. Aug. 25, 1998.

## **Section 147:3**

**147:3 Investigations and Complaints.** – Health officers of towns, and each of them, shall inquire into all nuisances and other causes of danger to the public health, and for the purpose of such investigations, or whenever they shall know or have cause to suspect that any nuisance or other thing injurious to the public health is in any building, vessel, or enclosure they may obtain an administrative inspection warrant under RSA 595-B, including authority to forcibly enter therein and make such search, pursuant to RSA 595-B:5.

**Source.** RS 119:2. CS 125:2. GS 101:2. GL 111:2. PS 108:3. PL 140:3. RL 165:3. RSA 147:3. 1991, 231:4, eff. Aug. 9, 1991.

#### **Section 147:4**

**147:4 Removal, Notice.** – The health officers may notify the owner or occupant of any building, vessel, premises, or property to remove or destroy any nuisance or other thing therein deemed by them, on examination, to be injurious to the public health, within a time limited; and in case the owner or occupant, after such notice in writing, given to the owner or occupant or left at the owner's or occupant's abode, shall neglect to comply with the order, the health officers may forcibly enter and cause the nuisance or other thing to be removed or destroyed.

**Source.** RS 119:3. CS 125:3. GS 101:3. GL 111:3. PS 108:4. PL 140:4. 1935, 29:1. RL 165:4. 1998, 318:5, eff. Aug. 25, 1998.

#### **Section 147:5**

**147:5 Assistants; Resistance.** – They may employ such assistants and laborers as may be necessary, and if resisted shall have the same powers as sheriffs have to command assistance; and any person wilfully resisting them or their assistants or laborers, in making the search or removing the nuisance or other thing, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

**Source.** RS 119:4. CS 125:4. GS 101:4. GL 111:4. PS 108:5. PL 140:5. RL 165:5. RSA 147:5. 1973, 528:57, eff. Oct. 31, 1973 at 11:59 p.m.

#### **Section 147:6**

**147:6 Removal Without Notice.** – When the owner of a building, vessel or enclosure is unknown to the health officers, or does not reside in town, and the same is unoccupied, or the occupant is, in their opinion, unable to remove the same, they may, without previous notice, immediately cause the nuisance or other thing by them deemed injurious to the public health found therein to be removed or destroyed.

**Source.** RS 119:5. CS 125:5. GS 101:5. GL 111:5. PS 108:6. PL 140:6. RL 165:6.

#### **Section 147:7**

**147:7 Expenses.** – The owner or occupant of a building, vessel or enclosure shall be liable to pay the expense of the removal or destruction of the nuisance or other thing, including the fees of the health officers who order or cause the same to be removed; and the same may be recovered by action brought by the health officers in the name of the town.

**Source.** RS 119:6. CS 125:6. GS 101:6. GL 111:6. PS 108:7. PL 140:7. RL 165:7.

#### **Section 147:7-a**

**147:7-a Notice to Owner.** – As a prerequisite to the use of the alternative abatement cost collection procedure under RSA 147:7-b, any notice or order given pursuant to RSA 147:4, 147:11, 147:17, or 147:17-a, shall be in writing and subject to the following requirements:

I. The notice shall contain:

(a) A description of the nuisance or other danger to the public health, including the date of any inspection.

(b) A statement of what corrective action is required, and a reasonable time, in light of the seriousness of the nuisance or other danger to health, within which that action must be taken.

(c) A statement that failure to take the corrective action within that time may result in corrective action being taken by the municipality, and that if this occurs, the municipality's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including possible loss of the property, if not paid.

II. The notice shall be sent by registered mail, return receipt requested, to the last known post-office address of the current owner, if known, or of the person against whom taxes are assessed for the property, and to any tenant, occupant, owner's agent, or other person known by the health officer to exercise control over the premises.

**Source.** 1991, 208:1, eff. Jan. 1, 1992.

## **Section 147:7-b**

**147:7-b Collection of Nuisance Abatement Costs.** – A municipality which has incurred costs for the removal or destruction of a public health nuisance pursuant to RSA 147:4-6, 147:11, 147:13, 147:17, or 147:17-a, may, as an alternative to a civil action to recover such costs, institute collection of such costs using the following procedure:

I. After obtaining the consent of the municipal governing body, the health officer shall issue an order for costs, bearing the title ""Order for Abatement Costs Pursuant to RSA 147:7-b" containing:

(a) A copy of any notice or order sent pursuant to RSA 147:7-a and a statement that such notice or order was not complied with within the time specified; or, in the case of removal without notice pursuant to RSA 147:6, a statement of what the nuisance or other danger to the public health was, and a statement of the circumstances justifying the removal without notice.

(b) A statement of what corrective action was taken by the municipality.

(c) An expense account of the municipality's costs in taking the corrective action, including the cost of issuing and serving orders under RSA 147:7-a and this section.

(d) A statement that such costs constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including possible loss of the property for nonpayment, and, if no written objection is filed with the health officer within 30 days, the account will be committed to the tax collector.

(e) The address of the office of the health officer, where any objection must be filed.

(f) A copy of this section.

II. The order shall be served upon the record owner of the property or such owner's agent, and upon the person to whom taxes are assessed for the property, if other than the owner, in the same manner provided for service of a summons in a civil action.

III. Within 30 days after such service, any person served may file a written objection with the health officer, stating with specificity the basis for the objection.

IV. If no such objection is filed, the health officer shall forward a copy of the order, together with proof of service and a certification that no objection was received, to the selectmen or other officers responsible in that municipality for issuing tax warrants under RSA 76:10. The selectmen or other officers shall commit the expense account to the municipal tax collector, together with a warrant requiring the collector to collect the same from the person to whom real estate taxes are assessed for the premises upon which such corrective action was taken, and to pay the amount so collected to the municipal treasurer. Within 30 days after the receipt of such warrant, the collector shall send a bill as provided in RSA 76:11. Interest as provided in RSA 76:13 shall be charged on any amount not paid within 30 days after the bill is mailed. The collector shall have the same rights and remedies as in the collection of taxes, as provided in RSA 80.

V. If an objection is filed, the health officer may file a motion to affirm the order in the district court of the district in which the property is located if the amount does not exceed the limits of the district court's civil damages concurrent jurisdiction as set forth in RSA 502-A:14, or otherwise in the superior court. The filing shall include copies of the order and the objection. The clerk shall schedule a hearing on the motion, and shall give notice of the hearing by registered mail upon the person filing the objection, at least 20 days prior to the hearing. At the hearing, the technical rules of evidence shall not apply, but the court may admit any evidence deemed material and proper. Following the hearing, or upon default, the court shall enter judgment affirming, correcting if necessary, or denying the order for abatement costs. If the order is affirmed, the expense account shall be amended to reflect the municipality's expenses in connection with the motion, including filing fees, service fees, witness fees, attorneys' fees and traveling expenses.

VI. Orders of the health officer under this section shall be deemed prima facie lawful and reasonable. The owner's lack of responsibility for creating the nuisance or danger to health shall not constitute a defense. The court shall not deny the order except upon the following grounds, the burden of proof for which shall lie with the owner:

(a) That the actions taken were clearly outside the authority of the health officer, or constituted a gross abuse of discretion; or

(b) That the owner did not receive any order pursuant to RSA 147:7-a, and that the nuisance or other danger to health was not one for which an owner may be held strictly liable under either state or federal law, and further, that neither the owner nor any agent of the owner knew, had any reason to know, or in the exercise of due care in the ownership and maintenance of property or any other legal duty could have had any reason to know, of the circumstances constituting the nuisance or other danger to health.

VII. If the order is affirmed in whole or in part, the health officer shall forward it for collection in the manner provided by paragraph IV of this section.

**Source.** 1991, 208:1. 1998, 318:6, eff. Aug. 25, 1998.

## **Section 147:8**

**147:8 Toilets; Drains.** – No person shall occupy, lease to any other person, or permit any other person to occupy, a building or any part of a building as a dwelling house, office, store, shop, theater, public hall, sleeping apartment or tourist cabin, unless such building shall have readily accessible adequate toilet and lavatory facilities, properly ventilated and constructed, and

kept in proper sanitary condition; and unless said building shall be provided with suitable drains or sewers for conveying waste water and sewage away from the premises into some public sewer, if there be one within 100 feet thereof, and if not, for conveying it away underground or in some other manner that will not be offensive. The phrase "public sewer", as used in this chapter, shall be understood to mean any sewer constructed and maintained by taxation, or any sewer which is open for general use upon the payment of a rental, license or other fee. Notwithstanding the provisions of this section, privies (outhouses not conveying sewage by water) may be allowed if such facilities are first approved by the local municipal health officials as to location and construction of the facilities. At the option of the local municipal health officials, further approval may be required by the department of environmental services, prior to the construction of such facilities. Nothing in this section shall prohibit cities, towns, or village districts, by ordinance or by regulation under RSA 147:1, from increasing the 100-foot distance contained in this section, or from granting waivers to the requirement of connection to the public sewer for properties with adequate alternative sewage disposal systems which comply with applicable state and local regulations, designed by a designer licensed in New Hampshire and approved for construction by the New Hampshire department of environmental services after January 1, 1985.

**Source.** 1869, 8:1. GL 111:7. 1881, 89:1. PS 108:8. 1907, 106:1. PL 140:8. RL 165:8. 1947, 49:1. RSA 147:8. 1973, 93:1. 1985, 198:1. 1992, 17:1. 1996, 228:111, eff. July 1, 1996.

### **Section 147:9**

**147:9 Penalty.** – Any person neglecting or refusing to comply with the provisions of RSA 147:8 shall be guilty of a violation for each day of neglect or refusal, after notice as provided in RSA 147:4.

**Source.** 1869, 8:2. GL 111:8. 1881, 89:2. 1887, 62:4. PS 108:9. PL 140:9. RL 165:9. RSA 147:9. 1973, 531:26, eff. Oct. 31, 1973 at 11:59 p.m.

### **Section 147:10**

**147:10 Nuisances; When; Regulations.** – No privy, toilet, sink, drain, cesspool, septic tank, or the discharges from such facilities, and no pen or sty for swine, shall be erected or continued in such place or condition as, in the judgment of the health officers, to be a nuisance or injurious to the public health. The health officer may make, in the manner provided in RSA 147:1, such regulations as necessary to ensure the safety and adequacy of subsurface sanitary disposal systems within the municipality. Nothing in this section shall be construed to limit the authority conferred upon the department of environmental services under RSA 485-A.

**Source.** RS 119:9. CS 125:9. GS 101:9. GL 111:11. 1887, 62:2. 1889, 8:1. PS 108:10. PL 140:10. 1935, 29:2. RL 165:10. RSA 147:10. 1985, 212:1. 1989, 339:17. 1996, 228:108, eff. July 1, 1996.

### **Section 147:11**



**147:11 Discontinuance; Penalty.** – The health officers may, in writing, order the discontinuance of any nuisance or that a privy located within 100 feet of a public sewer shall be connected to the sewer. In cities or towns having a water and sewerage system, the health officers may, in writing, order the discontinuance of any privy or vault located on premises within 100 feet of a public sewer, and the establishment of a flushing closet connected with such sewer. If any person continues the nuisance after an order from the health officers, or neglects to comply with an order made under this section or RSA 147:4, such person shall be guilty of a violation for each day of the continuance or neglect. Nothing in this section shall prohibit cities, towns, or village districts, by ordinance or by regulation adoption under this chapter, from increasing the 100-foot distance contained in this section.

**Source.** RS 119:9. CS 125:9. GS 101:9. GL 111:11. 1887, 62:2. 1889, 8:1. PS 108:11. 1907, 106:2. 1909, 113:1. PL 140:11. 1935, 29:3. RL 165:11. RSA 147:11. 1973, 531:27. 1985, 198:2. 1998, 318:7, eff. Aug. 25, 1998.

### **Section 147:12**

**147:12 Sewer Fees.** – Nothing in the preceding sections shall be construed as permitting a rental, license, or other sewer fee that is unreasonable in the opinion of the local board of health.

**Source.** 1907, 106:3. PL 140:12. RL 165:12.

### **Section 147:13**

**147:13 Offensive Matter.** – If a person shall place, leave, or cause to be placed or left, in or near a highway, street, alley, public place, or wharf or on a private disposal site or shall allow to be exposed unburied, any animal or other substance liable to become putrid or offensive, or injurious to the public health or deposits garbage or refuse on premises not designated for waste disposal in accordance with RSA 149-M or other provisions of law, such person shall be guilty of a violation, and the health officer shall remove or cause to have removed the same. Nothing in this section shall be construed as affecting authorized collections of garbage or refuse for public dumping facilities.

**Source.** RS 119:7, 12. CS 125:7, 12. GS 101:7. 1878, 31:1. GL 111:9. 1879, 57:21. 1883, 53:1. PS 108:12. PL 140:13. RL 165:13. 1949, 133:2. 1953, 102:2. RSA 147:13. 1965, 201:1. 1973, 531:28. 1998, 318:8, eff. Aug. 25, 1998.

### **Section 147:14**

**147:14 Drainage.** – No person shall discharge, leave, or cause to be discharged or left, within the limits of any public highway, any drainage or discharges from any privy, toilet, sink drain, cesspool or septic tank, when such discharges or matter may enter or pass through any open highway ditch or drainage structure constructed and maintained for highway drainage purposes. It shall be the duty of the highway commissioner or selectmen who have control over such highways to report all violations of this section to the local or state health authorities. Any person

neglecting or refusing to comply with the provisions of this section shall be guilty of a violation for each day of neglect or refusal, after notice as provided in RSA 147:4.

**Source.** 1949, 118:1. RSA 147:14. 1973, 531:29, eff. Oct. 31, 1973 at 11:59 p.m.

### **Section 147:14-a**

**147:14-a Investigation and Inspection.** – Any authorized member or agent of the department of health and human services may enter any land for the purpose of collecting information that may be necessary to investigate or inspect drainage systems pursuant to RSA 147:14 or private sewage systems pursuant to RSA 147:17-a. No owner shall refuse to admit any such member or agent.

**Source.** 1983, 167:1; 291:1, I. 1995, 310:181, eff. Nov. 1, 1995.

### **Section 147:15**

**147:15 Slaughterhouses, etc.; Permits.** – If a person shall use or occupy a building or place near a dwelling-house or schoolhouse, or in the compact part of a town, for a slaughterhouse, a place of deposit of green pelts or skins, or for trying tallow, currying leather, or carrying on any other business that is offensive to the public, without the written permission of the health officers of the town, such person shall be guilty of a violation for each month such building or place shall be so used or occupied, to be recovered for the use of the town.

**Source.** RS 119:8. CS 125:8. GS 101:8. GL 111:10. 1887, 62:1. PS 108:15. PL 140:14. RL 165:14. RSA 147:15. 1973, 531:30. 1998, 318:9, eff. Aug. 25, 1998.

### **Section 147:16**

**147:16 Withdrawal of Permits.** – The health officers may withdraw the permission by notice in writing whenever in their opinion such use or occupancy of a building or place becomes a nuisance. In such case they shall order the abatement of the nuisance and the discontinuance of the use or occupancy within a time limited. If the owner or occupant neglects to comply with the order such owner or occupant shall be guilty of a violation for each day the owner or occupant so neglects or refuses after the expiration of the time limited, for the use of the town.

**Source.** 1887, 62:1. PS 108:16. PL 140:15. RL 165:15. RSA 147:16. 1973, 531:31. 1998, 318:10, eff. Aug. 25, 1998.

### **Section 147:16-a**

**147:16-a Procedure for Ordering Building Vacated.** – The health officer shall have the authority to order occupants to vacate a building, structure, or other premises if the officer determines, based on reasonable information and belief, that the condition of such premises constitutes a clear and imminent danger to the life or health of occupants or other persons, and that protection of life or health requires vacating the premises. For the purposes of this section,

""officer" shall mean any municipal official who orders such vacation, including the health officer acting under the authority of this section, RSA 147:4, or RSA 147:11, the building inspector acting under RSA 674:52-a, or the fire chief acting under RSA 154:21-a. The following procedure shall apply:

I. The officer shall inform the owner and all occupants of the premises of the order, orally or otherwise, as soon, and by such means, as are practicable. The order, if not effective immediately, shall include a reasonable time, in light of the seriousness and immediacy of the danger, within which vacation must occur.

II. A prominent notice shall be posted at each entrance to the building or other premises providing a brief description of the dangerous condition, and informing all persons that the premises has been ordered vacated, and of the officer making the order and the effective date and time of the order. Such notice shall not be removed during the period such order is in effect, and anyone removing such notice shall be guilty of a misdemeanor. The following wording, though not exclusive, shall be deemed sufficient:

""DANGER. THIS BUILDING (or other premises) IS UNSAFE BECAUSE OF THE FOLLOWING DANGEROUS CONDITION: (brief description) \_\_\_\_\_ EFFECTIVE (date and time). OCCUPANCY IS PROHIBITED BY ORDER OF THE (officer's title) OF THE TOWN (City) OF \_\_\_\_\_, UNDER AUTHORITY OF RSA 147:16-a. DETAILS OF THIS VIOLATION ARE ON FILE AT \_\_\_\_\_. ANYONE ENTERING THIS BUILDING (premises) WITHOUT PERMISSION OF THE (officer's title), OR ANYONE REMOVING THIS NOTICE SHALL BE GUILTY OF A MISDEMEANOR. PERSONS AGGRIEVED BY THIS ORDER MAY REQUEST A HEARING IN THE \_\_\_\_\_ DISTRICT COURT, AND MAY ASK THE COURT TO DIRECT THE RESPONSIBLE PARTY TO REMOVE OR ABATE THE DANGEROUS CONDITION."

III. The officer shall cause written notice of the order to vacate to be sent, registered mail, to the owner of the property, if known, and to known lessees or others known to exercise control over the premises. Such written notice shall be mailed within 24 hours of the order to vacate, or upon the next business day thereafter, provided, however that no such mailing shall be necessary in cases where, due to immediate removal or abatement of the source of danger, the order has been countermanded before that time. In the alternative, the officer may cause the written notice to be served personally by a peace officer. The written notice shall contain the address and description of the premises, a statement of the particulars of the danger to life, health, or safety, a statement of the date and time that the order becomes or became effective, and a statement of the right to a hearing in district court to contest the order or to have the court consider whether to direct the responsible party to remove or abate the source of danger. The officer shall also forward a copy of the order to the local law enforcement agency having jurisdiction to enforce the order, and shall file a copy of the order, and a service list of the names and addresses of the people to whom the officer sent notice of the order, in the district court for the district in which the property is located. Any court filing fee shall be paid by the municipality.

IV. Any person specially aggrieved by the order to vacate may file a written request with the clerk of the district court for the district in which the property is located for a hearing to contest the order or to have the court consider whether to direct the responsible party to remove or abate the source of danger. The hearing shall be held no later than 7 days after the request is received by the clerk who shall send a hearing notice to the aggrieved person, the municipality, and any other person whose name appears on the service list filed in court by the municipality. The hearing shall concern whether the order to vacate is justified and/or whether the court shall order

the responsible party to prospectively remove or abate the source of danger. Other issues, including any challenge to outstanding ordinance or code violations, cease and desist orders, or removal or repair orders, shall be contested only under the statutes appertaining to them. The court, upon presentation of such evidence as it may require, shall affirm, modify, or set aside the order to vacate, issue any such other appropriate order as is consistent with this paragraph, and enter judgment accordingly.

V. Any person who fails to comply with an order under this section, after having received due notice of it, either orally, in writing, or by posted notice, shall be guilty of a misdemeanor unless the district court has set aside the order. A deficiency in the municipal officer's adherence to this section shall not constitute a defense to the misdemeanor charge unless it amounts to failure of notice to the defendant.

VI. A municipality may combine any order to vacate under this section with other lawful orders, including but not limited to orders under RSA 147:7-a, RSA 154:20, RSA 155-B:2, or RSA 676:17-a, as long as the minimum procedures of this section are met. When and if the source of danger is removed or abated following the issuance of any order to vacate under this section or any order under paragraph IV or if the order to vacate is set aside by the district court, the displaced occupants shall have the right to return to occupancy in the building, structure, or other premises.

VII. The provisions of this section shall not apply to a residence which is occupied only by the owner and his or her immediate family, unless the condition of such premises constitutes a clear and imminent danger to the life or health of persons other than the occupant or occupants.

VIII. Nothing in this section shall be deemed to affect a municipality's duty to provide general assistance under RSA 165. No proceeding under this section shall be deemed to affect any legal rights between landlord and tenant.

IX. If the district court finds that a municipality's order to vacate under this section was frivolous, or was commenced in bad faith, or was not based upon reasonable information and belief, then the court may order the municipality to pay the costs and reasonable attorneys' fees of any aggrieved person requesting a hearing on the order to vacate under paragraph IV.

**Source.** 1998, 318:1, eff. Aug. 25, 1998.

### **Section 147:16-b**

**147:16-b Outdoor Wood-Fired Hydronic Heaters.** – If the owner or operator of an outdoor wood-fired hydronic heater (OWHH), as defined under RSA 125-R, operates the OWHH in a manner which causes a nuisance or is injurious to the public health, the health officers may, in writing, order that use of the OWHH be discontinued. The department of environmental services shall provide technical assistance to the department of health and human services for the purposes of enforcement of the nuisance provisions under this section.

**Source.** 2008, 362:3, eff. Aug. 10, 2008.

### **Section 147:17**

**147:17 Cleansing Premises; Penalty.** – Whenever a building, tenement or room occupied as a dwelling or schoolroom, or any cellar or other appurtenance connected therewith, has become

the source of danger to the health of its occupants or others from want of cleanliness the health officers may order the owner, the owner's agents or the occupants, or any of them, to cleanse and put the same in proper sanitary condition, and the occupants to quit the same, within a time limited. If the person so ordered does not cleanse the same as ordered the health officers may do so, and may recover the expense thereof, together with their fees, of the owner; or they may order the same to be closed and to remain so until properly cleansed. Any person who shall fail to comply with an order of the health officers made under the authority of this section, after receiving due notice thereof, shall be guilty of a misdemeanor.

**Source.** 1887, 62:3. PS 108:18. PL 140:16. RL 165:16. RSA 147:17. 1973, 528:58. 1998, 318:11, eff. Aug. 25, 1998.

### **Section 147:17-a**

#### **147:17-a Private Sewage Systems. –**

I. Faulty Private Sewage System. Whenever any private sewage system is in such disrepair as to constitute a source of danger to the health of the public, the health officer may order the owner to put the same in a proper sanitary condition.

II. Failure to Repair. If the person so ordered fails to rectify the problem, the municipal health officer may request the selectmen or mayor and council, if sufficient funds have been appropriated for this purpose, to put the system in a proper sanitary condition.

**Source.** 1971, 310:2, eff. Aug. 24, 1971.

### **Section 147:17-b**

**147:17-b Installments for Repair Cost. –** All expenses to the town or city for repairs made pursuant to the provisions of RSA 147:17-a, II shall constitute an assessment against the owner and shall create a lien upon the lands on account of which such repairs are made. The governing board shall have all the powers in making, assessing, and enforcing such lien as are provided in the applicable provisions of RSA 252.