



PARTNERSHIP *for* PUBLIC HEALTH LAW

Advancing Public Health Through Law

Overview of Nuisance Law

Private vs. Public Nuisance

In general, a nuisance is defined as a “condition, activity, or situation (such as a loud noise or foul odor) that interferes with the use or enjoyment of property...”¹ The interference created must be **unreasonable and substantial** to qualify as a nuisance. When this interference affects the use and enjoyment of a single or small group of properties it is considered a **private nuisance**.² A tree from one property that has fallen across the entrance of the neighboring driveway is an example of a private nuisance. However, when an activity unreasonably interferes “with a right common to the general public,” it is considered a **public nuisance**.³ For example, if the tree from the earlier scenario had fallen and blocked access to a public road it would be a public nuisance. At times, conduct may be both a private and a public nuisance if it causes both a particular harm to a specific property and a more generalized harm to the greater community.⁴

A private nuisance is addressed by the affected individual bringing a tort claim against the perpetrator of the nuisance. In contrast, it generally takes a public official to initiate an action over a public nuisance.

Public nuisances are generally investigated by the local government. In some cases, it is the local health department or local law enforcement depending on the type of nuisance activity. However, jurisdictions vary in their enforcement personnel and some rely on building inspectors, civilian code enforcement officers or animal control officers. If legal action is required to abate the nuisance, it is generally the city attorney, county attorney or the attorney general that prosecutes the case. Nonetheless, some states, like Georgia, will allow an individual to bring a public nuisance claim if the government does not bring the claim and the individual has suffered some unique or special damage.⁵

State and Local Law

Public Nuisance is a concept addressed through state and local law; there is variation in the structure and content between jurisdictions. To better understand public nuisance in your jurisdiction, it is critical to familiarize yourself with relevant state and local laws.

STATE LAW

States usually provide a general definition that captures threats to the public health, public safety, and public morality. For example California defines “public nuisance” as

Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.⁶

These broad delegations of authority are meant to give the state the ability to adapt to new challenges. However, some states provide examples of activities that qualify as a nuisance. Listed below are a few examples of specified nuisances grouped in categories.

- **Health nuisance** examples include public health threats such as breeding areas for flies, collection of sewage, water serving as a mosquito breeding areas, rat harborages, bed bugs and other mediums of disease transmission.⁷ Noise pollution may also qualify as a public nuisance. However, there are state laws specific to noise pollution⁸ that may preempt attempts to address it as a public nuisance. Also, if noise pollution is specifically identified as a public nuisance, it is more likely to be addressed at the local ordinance level.⁹
- **Moral nuisance** is a nuisance that is “injurious to public morals.”¹⁰ These statutes often prohibit the public viewing of lewd movies, lewd publications, prostitution, illegal gambling and illegal drug use.¹¹
- **Drug nuisances** prohibit all manner of drug activity. In a neighborhood, illegal drug use can have many of the same impacts as other traditional nuisance activities: decreased quality of life and property values. Nuisance law provides the government with an important tool in combating illegal drug activity, such as the ability to have the courts issue injunctions shutting down buildings or units connected to illegal drug activity.¹²
- **Criminal gang activity** is included in some jurisdictions definition of nuisance.¹³ In Shelby County, Tennessee, a gang was recently declared a public nuisance and an injunction was issued prohibiting gang members from congregating together.¹⁴

Local Law

Local Governments play a critical role in addressing nuisance. Generally, any power local authorities exercise must be delegated from the state. States delegate considerable authority to local governments to address nuisances in their communities. For example, the state of New Hampshire has granted local health officers the ability to draft 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. . .”¹⁵

In defining nuisances, local governments follow the same approach as the state; there is usually a general definition of nuisance and many jurisdictions provide a non-exhaustive list of examples. For example, the Pennington Borough Board of Health, in New Jersey, adopted a nuisance ordinance that covers any “condition or act...deemed to be injurious, detrimental or a menace to the public health or environment...” while providing 20 examples of prohibited activities.¹⁶



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Endnotes

- ¹ Black's Law Dictionary, Ninth Edition (2009). It is also important to note that most states define nuisance by statute and allow further development through local ordinances.
- ² *Dunlap v. Daigle*, 122 N.H. 295, 298 (1982).
- ³ *Robie v. Lillis*, 112 N.H. 492, 495 (1972).
- ⁴ *Urie v. Franconia Paper Co.*, 107 N.H. 131, 133(1966).
- ⁵ Ga. Code Ann., § 41-1-3 (2013).
- ⁶ Cal. Civ. Code § 3479 (2013).
- ⁷ See, e.g., Tex. Health & Safety Code Ann. § 341.011 (2013)
- ⁸ See, e.g., Mass. Regs. Code tit. 310, § 7.10 (2013)
- ⁹ See, e.g., LaConner, Washington Municipal Code § 7.05.010 (available at <http://www.codepublishing.com/wa/laconner/html/LaConner07/LaConner0705.html#7.05.010>) see, also, San Diego, California Municipal Code Art. 9.5 § 59.5.0501 (available at <http://docs.sandiego.gov/municode/MuniCodeChapter05/Ch05Art9.5Division05.pdf>), see also Stockton, California Municipal Code 8.20.030 (available at http://qcode.us/codes/stockton/view.php?topic=8-8_20-8_20_030&frames=on).
- ¹⁰ See, e.g., Idaho Code Ann. § 52-103 (2013)
- ¹¹ See, e.g., Idaho Code Ann. § 52-104(2013); Wash. Rev. Code § 7.48.052 (2013); Haw. Rev. Stat. § 712-1270 (2013).
- ¹² See, e.g., Wash. Rev. Code RCW § 7.43.10(2013).
- ¹³ See, e.g., N.C. Gen Stat. §§ 14-50.42, 43 (2013).
- ¹⁴ See *Gang Declared a Public Nuisance*, <http://wreg.com/2013/09/23/gang-declared-a-public-nuisance/>.
- ¹⁵ N.H. Rev. Stat. § 147:1 (2013).
- ¹⁶ Pennington Borough, New Jersey, § 136-2 (available at <http://www.penningtonboro.org/BOH%20Ordinance%202008-1%20-%20Nuisance%20Code.pdf>)

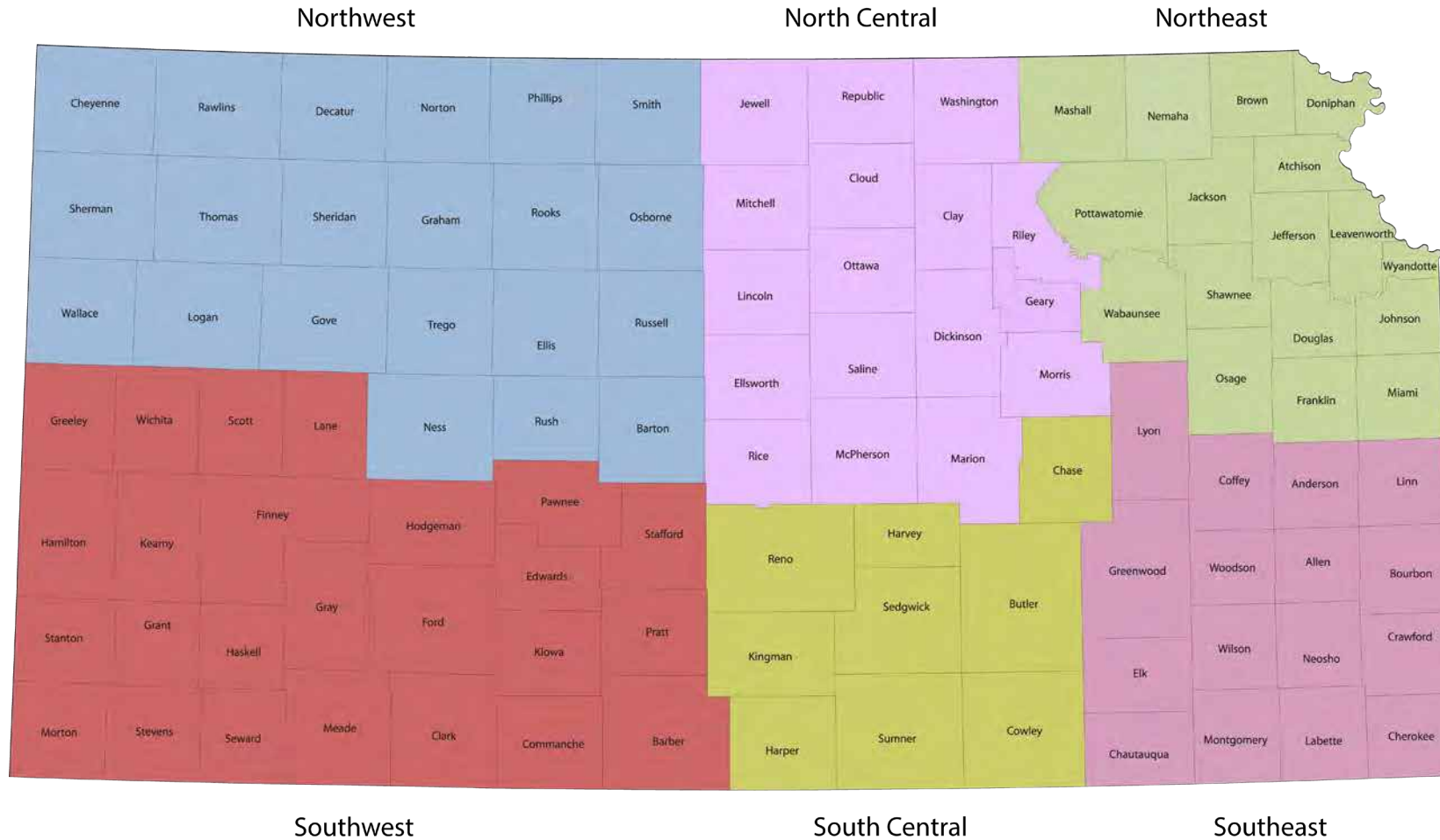


KDHE Division of Environment

Public Health & Nuisances

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Public Health & Nuisances



www.KDHEKS.gov

for link to district
offices

Public Health Nuisance History



Dr. George H.T. Johnson,
Kansas President State
Board of Health, 1885

First Annual Report, State Board of Health, 1886

“...whatever a local board may find it needful to do, whether for the prevention of the disease, or for the enforcement of its own rules made in the interests of the public health...such board has the power to do.”

The term “nuisance” dates to the 13th century

Johnson photo - <http://www.homeoint.org/photo/ij/johnsonght.htm>

Public Health Nuisance History



Kansas Secretary of Health, 1911



Keystone-France via Getty Images

Samuel Crumbine, banned the common cup in Kansas in 1909.

Crumbine image from KS Historical Society - https://www.kshs.org/teachers/read_kansas/pdfs/m30card02.pdf

Nuisance?

- “a condition, activity, or situation (such as a loud noise or foul odor) that interferes with the use or enjoyment of property”
- must be “unreasonable” and “substantial”

(from “Overview of Nuisance Law”, Network for Public Health Law, undated)

Private Nuisance

- condition affects the use and enjoyment of a single or small group of properties
- usually a civil case (tort) brought by affected person against the perpetrator
- can be just about anything
- perpetrator usually pays damages

(from “Overview of Nuisance Law”, Network for Public Health Law, undated)

Public Nuisance

- condition affects the use and enjoyment of a single or small group of properties
- usually a civil case (tort) brought by affected person against the perpetrator
- can be just about anything
- perpetrator usually pays damages

(from “Overview of Nuisance Law”, Network for Public Health Law, undated)

Investigating Nuisance Complaints

1. Collect additional information as needed.
2. Evaluate if it is a *public* health nuisance.
3. Decide who needs to be involved.
4. Identify safety concerns.
5. Confirm your right of entry.
6. Conduct a thorough site investigation.

Information Needed!

- Have staff been trained on what information to collect?
- Does complainant need to be contacted?
- Who, what, where, when, why, how

Public Health Nuisance

- Is one person/property, or a whole community or neighborhood affected?
- What risk to public health is caused by the condition?
- Is it necessary for the local health department to pursue a detailed investigation?

Who Needs to be Involved?

For example,

- County Board of Health/Health officer
 - Sanitarian
 - City officials
 - Other county agencies
 - KDHE district office
-
- Is there an existing regulation or ordinance that applies, or will you need to invoke your general authority?

Confirm your Right of Entry KSA 65-159

- Confer with the County Attorney.
- Make initial contact with the perpetrator and explain the purpose of the investigation and your authority.

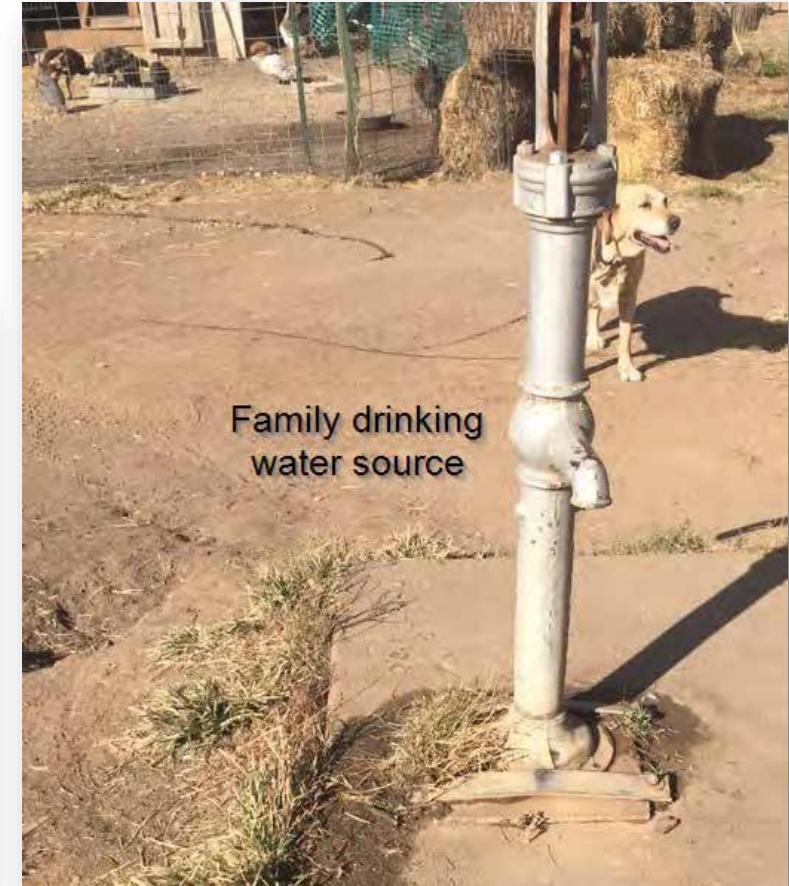
A Few Laws/Regs That May Apply

K.S.A. 65-159

- Gives county boards of health *broad* authority to investigate and order the abatement of:
- “*all nuisances, sources of filth and causes of sickness that in their opinion may be injurious to the health of the inhabitants*” of the county or cities therein
- Establishes “Right of Entry” onto private property, but confer with your county attorney 1st

County Sanitary Code

- Failing on-site wastewater systems
- Private water wells



K.S.A. 65-3409, Open Dumping



This is a violation of 65-3409.



This may not be a violation.



This Old House

- Burial on site with prior KDHE approval
- Disposal at a KDHE permitted landfill



Open Dumping K.S.A. 65-3409

Improper management of used oil

Open Burning K.A.R. 28-19-645 to 648

Open burning is prohibited except for:

- Approved tree and brush open burning
- A person burning their own household trash
- Crop, range, wildlife management
- Other special situations approved by KDHE

Open Burning



A violation
of 28-19-645.



This is not, if it's household trash
and not prohibited by local ordinance

Confined Animal Feeding Operations K.S.A. 65-171d



Does it pose a significant water pollution potential?

If Nuisance Condition Documented

- How you proceed is to some extent determined by your local protocol
- A letter should be sent to the perpetrator that:
 - describes the nuisance condition
 - cites your authority
 - identifies necessary corrective actions
 - specifies a compliance date

If Nuisance Condition Documented

- Follow up inspection on the compliance date
- Document conditions at time of follow up
- Consult with your Board and County Attorney if compliance not achieved

Mold Not Regulated

www.epa.gov/mold

www.cdc.gov/mold



Image from - <https://www.epa.gov/sites/production/files/2016-10/documents/moldguide12.pdf>

Things to Remember



Mold and mold spores are everywhere.

Moisture Control is key.

Bed Bugs Not Regulated



www.epa.gov/bedbugs

www.cdc.gov/parasites/bedbugs

KS lodging complaints

<http://agriculture.ks.gov/divisions-programs/food-safety-lodging/report-a-complaint>

Landlords have an obligation; as do tenants.

K.S.A. 58-2540 Residential landlord and tenant act

Resources:

HCCI – Housing and Credit Counseling Inc.

HUD

Kansas Attorney General's Office

Public Health & Nuisances

