

Chapter 10.5

OFFENSES AND MISCELLANEOUS PROVISIONS*

* **Cross References:** Administration, Ch. 2; city clerk, § 2-266 et seq.; nuisances, § 7-16 et seq.; streets, sidewalks and other public places, Ch. 13; traffic and vehicles, Ch. 15; zoning, Ch. 17.

[Art. I. In General, §§ 10.5-1--10.5-15](#)

[Art. II. Noise, §§ 10.5-16--10.5-29](#)

[Art. III. Motor Vehicle Exemptions, § 10.5-30](#)

[Art. IV. Public Nuisance Activity, § 10.5-36 -- § 10.5-39](#)

[Art. V. Opioid Cost Recovery and Public Nuisance Legislation, § 10.5-51-- § 10.5-59](#)

ARTICLE I.

IN GENERAL

Secs. 10.5-1--10.5-15. Reserved.

ARTICLE II.

NOISE*

* **Editors Note:** Sections I--IX of an ordinance adopted September 16, 1996, did not specifically amendatory of this Code. However, such ordinance has been treated as deleting §§ 10.5-16--10.5-20 and adding new §§ 10.5-16--10.5-20, at the editor's discretion. Formerly, such sections derived from Ord. of 6-3-91, §§ 1--5.

Sec. 10.5-16. Disorderly actions.

A person shall be guilty of disorderly actions if:

- (1) Such person creates a condition which is hazardous to such person or another in a public place by any action which serves no legitimate purpose;
- (2) Such person:
 - (a) Engages in fighting or violent, tumultuous or threatening behavior in a public place;
 - (b) Directs at another person in a public place obscene, derisive, or offensive words which are likely to provoke a violent reaction on the part of any ordinary person;
 - (c) Obstructs vehicular or pedestrian traffic on any public street or sidewalk or the entrance to any public building;
 - (d) Engages in conduct in a public place which substantially interferes with a criminal investigation, a firefighting operation to which RSA 154:17 is applicable, the provision of emergency medical treatment, or

the provision of other services when traffic or pedestrian management is required;

- (e) Knowingly refuses to comply with a lawful order of a peace officer to move from any public place; or
- (3) Such person causes a breach of the peace, public inconvenience, annoyance or alarm or creates a risk thereof, by:
- (a) Making loud or unreasonable noises in a public place, or making loud or unreasonable noises in a private place which can be heard in a public place or other private places, which noises would disturb a person of average sensibilities; or continuing, or causing or allowing to be made or continued any of the foregoing noises after having been requested by any person to diminish or terminate such noises; or
 - (b) Using explosives, including explosive fireworks, unless such use is otherwise permitted as may be provided from time to time under the ordinances of the city.
 - (c) Disrupting the orderly conduct of business in any public or governmental facility; or
 - (d) Disrupting any lawful assembly or meeting of persons without lawful authority; or
 - (e) Making loud or unreasonable noises by operating any mechanically powered saw, grinder, drill, lawn mower or garden tool, or similar device used outdoors, and with the exception of snow removal equipment, between the hours of 10:00 p.m. and 6:00 a.m., Monday through Saturday and between the hours of 10:00 p.m. and 8:00 a.m. on Sunday; or
 - (f) Making loud or unreasonable noises by loading, unloading, opening, closing or otherwise handling boxes, crates, containers, building materials, trash cans, dumpsters or similar objects between the hours of 10:00 p.m. and 6:00 a.m.; or
 - (g) Operating any motor vehicle in a public place so as to make excessive noise by any of the following means:
 - 1. Misuse of power, acceleration or traction so as to spin the wheels or lose traction.
 - 2. Misuse of brake and stopping power in the deceleration of a motor vehicle where no legitimate emergency exists.
 - 3. There shall be no use of engine (Jake) brakes in the City of Berlin.
 - 4. Racing of engine by means of the accelerator, carburetor or gear selector, either when the motor vehicle is in motion or stationary.
 - 5. Use of the horn other than as a warning signal or to use the vehicle in any manner to create noise, which is not incidental to the vehicle's use as a mode of transportation.
 - (h) No person who is the owner or occupant or who is otherwise in control of any building or structure or any section thereof or other property in the city shall permit or tolerate on his premises any conduct which violates this article or which, because of the number of persons gathered on his premises, has the effect which this article seeks to prohibit, after having been advised of the same.
 - (1) Such person dumps, discards, deposits, throws or leaves, or causes or permits the dumping, discarding, depositing, throwing or leaving of litter on any public place.
 - (2) Such person carries, transports, possesses or otherwise has under his control any intoxicating

liquor, within the limits of or upon any way, public place, public building or grounds of any public building, except in the original container and with the seal unbroken.

(Ord. of 9-16-96, §§ I--V)

Sec. 10.5-17. Definitions.

As used in this article:

Intoxicating liquor shall have the same meaning as defined in RSA 21:33.

Lawful order means:

- (1) A command issued to any person for the purpose of preventing such person from committing any offense when an officer has reasonable grounds to believe that such person is about to commit any such offense, or when such person is engaged in a course of conduct which makes the commission of such an offense imminent; or
- (2) A command issued to such person to stop such person from continuing to commit any offense when an officer has reasonable grounds to believe that such person is presently engaged in conduct which constitutes any such offense.

Litter means any and all waste products, papers, cans, bottles, glass, rubbish, refuse, garbage, trash debris, animal carcasses, organic waste, or other discarded materials of every kind and description, whether solid, liquid or gaseous.

Loud noise means any noise as prior described in section 10.5-16(3)a., herein.

Public building means any local government or school offices, facilities or buildings.

Public place means any place within the city to which the public or a substantial group has access. The term includes, but is not limited to, public ways, sidewalks, parking lots, retaining walls, parks, recreational areas, schools, medical or governmental offices or facilities and the lobbies or hallways of apartment buildings, dormitories, hotels or motels.

Way shall have the same meaning as defined in RSA 259:125.

(Ord. of 9-16-96, §§ VI)

Sec. 10.5-18. Exemptions.

The following uses and activities shall be exempt from regulation under this article:

- (1) Noises of safety signals and warning devices when used for the purpose for which they were intended and emergency pressure relief valves;
- (2) Noises resulting from any authorized vehicles, when responding to an emergency call or acting in time of emergency;
- (3) Noises resulting from emergency and maintenance work as performed by the city and its employees, the state, or other public utility companies; noises resulting from the provision of municipal or utility services; noises resulting from private persons engaged in snow plowing services;
- (4) Any other noise resulting from activities of a temporary duration as permitted by law and for

which a license or permit thereof has been granted or issued by the city;

- (5) Parades and other public gatherings for which the city has issued a permit;
- (6) Bells, chimes or carillons that are installed and in use for any purpose;
- (7) Agricultural operations under RSA 430 c:1, c:2, c:3, c:4;
- (8) Under section 10.5-16, under any of the circumstances excepted in RSA 265:81, (V), or in those specific areas, grounds or buildings authorized to serve liquor pursuant to a license issued by the state liquor commission under RSA 178.

(Ord. of 9-16-96, § VII)

Sec. 10.5-19. Application for special permit.

Prior to the commencement of activity which may violate this article, application for a special permit for relief from this article on the basis of undue hardship or any other reasonable ground may be made by submitting a request in writing to the city council with a copy to the chief of police. Any permit granted by the city council shall be in writing and set forth all conditions pertaining to the specified noise and a reasonable time limit for its abatement.

(Ord. of 9-16-96, § VIII)

Sec. 10.5-20. Penalties.

Any person who violates the provisions of this article shall be guilty of a violation, punishable by a fine of not less than fifty dollars (\$50.00), but not exceeding one thousand dollars (\$1,000.00).

(Ord. of 9-16-96, § IX)

Secs. 10.5-21--10.5-29. Reserved.

ARTICLE III.

MOTOR VEHICLE EXEMPTIONS

Sec. 10.5-30. Prisoners of war exemption.

Any person declared to be a prisoner of war who meets the requirements of RSA 261:157a shall not have to pay the city portion of the motor vehicle registration fee.

(Ord. of 1-6-92)

Secs 10.5-31-10.5-35 Reserved

ARTICLE IV.

PUBLIC NUISANCE ACTIVITY

Sec. 10.5-36 Findings. The Council finds that certain individuals within the City receive and require more than the general, acceptable level of police services. Such individuals place an undue and inappropriate burden on the City of Berlin taxpayers, and constitute a public nuisance. The Council therefore, pursuant to RSA 47:17 and RSA 153-A:23 *et seq.*, adopts this By-Law to authorize the Chief of Police to charge the individuals the costs associated with the nuisance activities that occur and to provide for forfeitures and/or fines for the

individuals who create such nuisance activities or situations, including those that require an emergency response caused by an individual's reckless or intentional behavior, so that such activities will be abated in the City.

Sec. 10.5-37 Definitions. The following terms shall be defined as follows:

1. Chief of Police means the Chief of the City of Berlin Police Department or his or her designee.
2. Nuisance Activity shall mean any of the following activities, behaviors or conduct by an individual more than once in 12 consecutive months:
 - a. Disorderly Conduct as defined in NH RSA 644:2;
 - b. Disorderly Actions as defined in City Ordinance Sec. 10.5;
 - c. Animal violations as defined in C.O. Sec. 3-22, -23;
 - d. Littering as defined in NH RSA 163-B:3 and/or RSA 265:102; but involving a significant amount of materials left within sight of a public highway in the City
 - e. Protective Custodies involving Intoxication as defined in NH RSA 172-B:3;
 - f. False Reports and Unsworn Falsification as defined in NH RSA 641:4 and/or RSA 641:3; single offense
 - g. Recklessly or Intentionally Creates a Situation Requiring an Emergency Response

Sec. 10.5-38 Required Payment and Fines. A person who commits a Nuisance Activity, as determined by the Chief of Police, shall be required to pay to the City:

- (a) All response, investigation, and court expenses incurred by the City concerning such Nuisance Activity; and/or
- (b) A forfeiture and/or fine of not less than two hundred fifty (\$250.00) and not more than one thousand (\$1000.00) for a first offense. For subsequent offenses within a 12 month period, the offender shall be subject to a forfeiture and/or fine of not less than five hundred (\$500.00) and not more than one thousand (\$1000.00) dollars.

Sec. 10.5-39 Enforcement by Citation; Warning

The City of Berlin hereby elects to use the citation method of enforcement of this Ordinance pursuant to RSA 31:39-d. The Chief of Police is also authorized, in his discretion, to provide a written warning instead of a citation to any person the Chief determines has committed a Nuisance Activity. (Ord. 1-7-2013)

Secs 10.5-40-10.5-50 Reserved

**ARTICLE V
OPIOID COST RECOVERY AND
PUBLIC NUISANCE LEGISLATION**

Sec. 10.5 - 51. Purpose and intent.

The opioid epidemic is sweeping the country. Indeed, addiction to and abuse of opioids is one of the greatest challenges facing the City of Berlin, New Hampshire (hereinafter "City of Berlin"). A cause of this increasing crisis is the overabundance of prescription opioids. Vast amounts of prescription opioids were sold, distributed, and prescribed in the City of Berlin over the past several years, a practice that continues today. The selling, distributing, and prescribing of large amounts of opioids in our community has created a public health and safety hazard affecting the

residents of the City of Berlin. This crisis has devastated families, wreaked havoc on our economy, and produced a generation of narcotic dependence. As a result of the opioid epidemic, costs related to healthcare, family and social services, criminal justice, addiction and rehabilitation, and many other areas have significantly increased. Many of these costs are paid by the City of Berlin.

The purpose and intent of this legislation is to allow the City of Berlin to recover these costs, despite the existence of the common-law municipal cost recovery rule (a.k.a. free public services doctrine) and declare the opioid epidemic and its effects on the City of Berlin a public nuisance. Specifically, the City of Berlin provides services related to the opioid epidemic, which are funded by tax revenues. This statute clarifies that reimbursement may be sought for the costs of providing such services whenever practicable, from the responsible party. To accomplish this, the City of Berlin establishes this cost-recovery procedure and declares the opioid epidemic and its effects on the City of Berlin a public nuisance.

Sec. 10.5 - 52. Definitions.

“Costs” means all expenditures related to the opioid epidemic that directly or indirectly arise from the City of Berlin’s response to a responsible party’s action or inaction.

“Responsible party” means any person or corporation whose negligent, intentional, or otherwise wrongful conduct causes the incident resulting in the City of Berlin incurring costs or who is found liable or made responsible by a court for the costs incurred by the City of Berlin in the form of damages, regardless of the cause of action.

Sec. 10.5 - 53. Governmental function cost recovery.

The City of Berlin may recover the costs of governmental functions related to opioids marketed, sold, manufactured, dispensed, prescribed, and/or distributed by the responsible party. If a responsible party fails to pay the costs demanded, the City of Berlin may initiate and recover costs through administrative, civil, and/or criminal action against the responsible party. In that case, the City of Berlin may also recover attorney’s fees, interest, and any other payment or type of damages the court deems proper.

Sec. 10.5 - 54 Effect of criminal or civil proceedings on governmental function cost recovery.

The initiation of administrative or civil proceedings for governmental function cost recovery does not bar the criminal prosecution of a responsible party for any associated violation. Similarly, criminal prosecution does not bar civil collection of costs for the violation giving rise to the criminal prosecution.

Sec. 10.5 - 55 Public nuisance

The City of Berlin hereby finds and declares the following:

1. That addiction to and abuse of opioids is one of the greatest challenges facing the City of Berlin;
2. A cause of this increasing crisis is the overabundance of prescription opioids. Vast amounts of prescription opioid pain pills were sold, distributed and prescribed in the City of Berlin over the past several years which practice continues today;
3. There is evidence showing that approximately four in five heroin users began their addiction by first using and then misusing prescription pain medications containing opioids;
4. The selling, distributing, and prescribing of large amounts of opioid pain pills in the City of Berlin has created a public health and safety hazard affecting the residents of the City of Berlin, resulting in devastation to families, a negative effect on the City of Berlin’s economy, wasted public resources, and a generation of narcotic dependence;
5. That selling, distributing, and prescribing of prescription opioid pain pills is a hazard to public health and safety, which has created a public nuisance to the citizens of the City of Berlin, and said nuisance remains unabated;

6. That, in addition to all other powers and duties now conferred by law upon the City of Berlin, the City of Berlin is authorized to enact ordinances, issue orders, and take other appropriate and necessary actions for the elimination of hazards to public health and safety and to abate or cause to be abated anything which the commission determines to be a public nuisance;
7. That manufacturers of prescription opioids and those in the chain of distribution have wrongfully abused the privilege of selling and/or providing medication to our residents and must be held accountable; and
8. That it is the duty of the City of Berlin to vindicate the rights of the citizens of the City of Berlin and take action to abate this public nuisance.

Sec. 10.5 – 56 Retroactive Application

This legislation applies retroactively.