

**Sanitation/Environmental Code
of Lyon County, Kansas
Chapter 1**

Administrative Code

1-1.0 AUTHORITY AND POLICY

1-1.1 Legal Authority.

This code is adopted under the authority granted to the Board of County Commissioners by K.S.A. 19-3701 et. seq. as amended.

1-1.2 Declaration of Finding and Policy.

The Board of County Commissioners finds that the provision of adequate and reasonable control over sanitation and environmental conditions in Lyon County is necessary and desirable; and that the adoption of sanitation/environmental codes to (1) eliminate and prevent the development of environmental conditions that are hazardous to health and safety, and (2) promote the economical and orderly development of the land and water resources of the county is in the better public interest. For these reasons and objectives, it will be the policy of the Board of County Commissioners of Lyon County to adopt, and amend from time to time, sanitation/environmental codes regulating various practices and procedures affecting the environment, sanitation, and safety.

1-1.3 Purpose and Intent.

The purpose and intent of this chapter is to prescribe the administrative procedures that must be followed in administering **all** sanitation/ environmental codes that may now or hereafter be adopted.

1-1.4 Title.

This chapter shall be known and referred to as the Administrative Code.

1-2.0 APPLICABILITY

The procedures prescribed in this chapter must be followed in administering this code and any amendments thereto. Provisions **shall apply to all lands located in unincorporated areas of Lyon County, Kansas** which contain 10 acres or less, or a residential site, or land not used for agricultural purposes under the ownership of one person as defined in Section 1-4.12. Such wide application of this code is necessary to protect the health of the inhabitants of Lyon County and the waters of the State of Kansas.

1-3.0 EFFECTIVE DATE

This code shall become effective on the _____ day of _____, 200__.

1-4.0 DEFINITIONS

The following words, terms and phrases appear in one or more chapters of this code and thus have general application and usage. Words, terms, and phrases appropriate or applicable to specific chapters within this code may be found in that particular chapter.

1-4.1 Administrative Agency means the agency duly appointed by the Lyon County Board of Health or its successor in interest which shall be responsible for administering and implementing all sanitation/environmental codes.

1-4.2 Administrative Code means those rules and regulations contained in the provisions of Sections 1-1.0 through 1-5.10, both sections inclusive, of Administrative Code, Chapter 1 of the Lyon County Sanitation/ Environmental Code which prescribe general procedure for the administration of sanitation/environmental codes adopted by the county.

- 1-4.3 **Agricultural purposes** means a purpose related to the production of livestock or crops as defined in K.S.A. 19-3706.
- 1-4.4 **Authorized representative** means any employee who is designated by the Administrative Agency to administer this and any other sanitation/ environmental codes that may be adopted. Such assignment of responsibility must be given in writing.
- 1-4.5 **Board of Health** means the Lyon County Board of County Commissioners or their appointed designees.
- 1-4.6 **County Counselor** means the County Attorney or, when applicable, the attorney appointed to the position of Lyon County Counselor by the Lyon County Board of County Commissioners to represent the county in any civil actions or business.
- 1-4.7 **Director of Environmental Health** means the individual employed by the county or its designee to administer the Department of Environmental Health, including this Sanitation/Environmental Code.
- 1-4.8 **Hearing Officer** means any person designated by the Board of Health to hear appeals from decisions of the Administrative Agency relating to the enforcement and administration of this code and other sanitation/ environmental codes. Such individual must have a background in public health and be from outside the Administrative Agency.
- 1-4.9 **License** means a document granted by the Administrative Agency giving the authority to provide a service or services to any qualified person for which such authority is required by any chapter of the Lyon County Environmental/Sanitation Code.
- 1-4.10 **Nuisance** means sources of filth and causes of sickness that may in the professional judgment of the Administrative Agency be injurious to the health of the inhabitants within the unincorporated areas of Lyon County (K.S.A. 65-159). Agricultural activities are exempt from this definition of Nuisance as pertaining to K.S.A. 2-3201 and K.S.A. 2-3202. See Appendix A.

- 1-4.11 Permit** means the authority granted by the Administrative Agency to allow specific acts or occurrences by a person on property owned by that person as delineated by any chapter of the Lyon County Environmental/Sanitation Code.
- 1-4.12 Person** means any individual, institution, corporation, partnership, joint ownership, limited liability partnership, association, state, or political subdivision thereof, federal agency, state agency, municipality, commission, or interstate body or other legal entity recognized by law as the subject of rights and duties.
- 1-4.13 Premise** means any lot or tract of land and all buildings, structures or facilities located thereon.
- 1-4.14 Public health** (for the purpose of this code) refers to the control of human disease and/or harm, injury or death that may be related to environmental causes.
- 1-4.15 Sanitation/Environmental Code** means rules and regulations adopted by the county designed to minimize or control those environments and environmental conditions that may adversely affect the health and well being of the public.

1-5.0 ADMINISTRATIVE POWERS AND PROCEDURES

1-5.1 Right of Entry.

It is the policy of Lyon County in the enforcement of its Sanitation/ Environmental Code to protect the health of the people of Lyon County. To provide for protection of the public, the Administrative Agency has the right to enter, examine, and/or survey at any reasonable time such premises, establishments, and buildings as they deem necessary for the enforcement of sanitation/environmental codes. It is also the policy of Lyon County in the enforcement of its Sanitation/Environmental Code to protect the property of its citizens from unlawful search and seizure. In accordance with this policy, in the investigation of an alleged violation of this code, prior to searching a person's property, permission shall be obtained from the owner, their designee or

custodian of the property to allow inspection of the premises. If the owner, their designee or the custodian of the property denies access to the property, it shall be required that procedural due process be followed and judicial authorization, in the form of a search warrant, be obtained prior to entrance upon the owner's property.

1-5.2 Obstruction of Administrative Agency.

No person shall willfully and unlawfully impede or obstruct representatives of the Administrative Agency in their discharge of official duties under the provision of this Administrative Code or any other sanitation/environmental code adopted by the county.

1-5.3 Permits and Licenses

1-5.3.1 Applications.

Application for any permit or license required by this code or any other sanitation/environmental code must be made to the Administrative Agency by the property owners or their duly authorized agents on standard forms provided for that purpose.

1-5.3.2 Issuance of Permit or License.

After receipt of an application and application fee for any permit or license required by this code, or any other sanitation/environmental code, the Administrative Agency must conduct such investigations and inspections or testing and training as deemed necessary to determine whether the permit or license should be issued or denied. If the application is approved, the approval letter and permit or license must be issued, within thirty (30) days. If the permit or license is denied, the Administrative Agency must send the applicant a written statement of why it is being denied.

1-5.3.3 Permit or License Non-transferable.

No permit or license required by any sanitation/environmental code shall be transferable to person or place, nor shall any fees paid therefore be refundable, except as noted in subsequent chapters.

1-5.3.4 Permit or License Revocation.

All permits and licenses are subject to revocation for reasons of noncompliance or misrepresentation.

1-5.3.5 Fees.

The Lyon County Board of Commissioners may establish a schedule of fees for all permits and licenses required by any such code. Such fees, if established, shall be paid to the Administrative Agency for the purpose of defraying all or part of the cost of administration of codes. The Administrative Agency shall not process any application for a permit or license until any required fee has been paid. A resolution approving and adopting any fee structure shall be made by the Lyon County Board of Commissioners. (See the Administrative Agency for current fee schedule.)

1-5.3.6 Receipts for Fees.

The Administrative Agency must issue receipts for all fees required by any sanitation/environmental code and deposit the money received therefrom in the operating budget for the Division of Environmental Health.

1-5.4 Notices, Orders, Appeals.

1-5.4.1 Notices of Violations.

Whenever the Administrative Agency determines that there has been a violation of any provision of any sanitation/environmental code, notice of such alleged violation must be given to the person responsible therefore.

The notice must be:

- 1) in writing;

- 2) include a statement of why the notice is being issued;
- 3) allow a reasonable period of time for performance of any work required by the notice; and,
- 4) be properly served upon the owner or the owner's agent.

Such notice shall be deemed properly served when a copy thereof has been sent by Certificate of Mailing to the last known address of the owner or the owner's agent.

1-5.4.2 Appeal for Hearing of Notice, Order, Permit Denial or License Denial.

Any person aggrieved by any notice, order, permit denial or license denial issued in writing by the Administrative Agency under the provisions of this Administrative Code or any other sanitation/environmental code may request, and must be granted, a hearing on the matter before a Hearing Officer (see Section 1-4.8) appointed by the Lyon County Board of County Commissioners or the Lyon County Board of Health, if existing as a separate governmental agency. The Lyon County Commissioners shall approve the appointment of any Hearing Officer. A written petition requesting a hearing and setting forth the grounds upon which the appeal for hearing is made must be filed with the Administrative Agency within ten (10) workdays after the date of issuance of the notice, order, permit denial or license denial. The filing of the request for a hearing shall operate as a stay of the notice or order. Upon receipt of such petition, the Administrative Agency shall confer with the Hearing Officer and set a time and place for such hearing, and must give the petitioner written notice thereof. At such hearing, the petitioner must be given an opportunity to show why such notice or order should be modified or withdrawn. The hearing must be commenced not later than ten (10) workdays after the date on which the petition was filed; provided, that

upon request of the petitioner the Administrative Agency may postpone the day of the hearing for a reasonable time beyond such ten (10) workday period, when in the judgment of the Administrative Agency the petitioner has submitted good and sufficient reasons for such postponement. If either party desires to be represented at the hearing by an attorney, the other party must be notified in writing at least five (5) workdays prior to the hearing.

1-5.4.3 Report of Hearing.

As soon as possible, but not more than ten (10) workdays after such a hearing, the Hearing Officer must submit a written report of the findings to the Administrative Agency with a recommendation that the Administrative Agency issue an order sustaining, modifying or withdrawing the notice or order. Upon receipt of the report of the Hearing Officer, the Administrative Agency shall consider the report and issue an order confirming, modifying or withdrawing the notice or order and must notify the appellant within ten (10) workdays in the same manner as is provided for in Section 15.4.1. Upon the Administrative Agency considering the report from the hearing officer and issuing an Order Confirming, Modifying or Withdrawing said Notice or order, such Order for the purpose of appeal shall be considered a Final Order made by political or taxing subdivision or agency thereof exercising judicial or quasi-judicial functions Pursuant to K.S.A. 60-2101. The original copy of the Report of Hearing must be filed with the Register of Deeds.

1-5.4.4 Emergency Orders

Whenever the Administrative Agency finds that an emergency exists which requires immediate action to protect the public health, the

Administrative Agency may, without notice or hearing, issue an order in writing describing the existence of such an emergency and requiring that such action be taken as may be deemed necessary to meet the emergency, including the suspension of the permit. Regardless of any other provisions of this or any other sanitation/environmental code, such order shall be effective immediately. Any person to whom such an order is issued must comply therewith immediately. Upon petition to the Administrative Agency, a hearing shall be provided before the Hearing Officer as soon as possible but not longer than five (5) workdays after the emergency order is issued. A request for hearing does not inactivate any emergency order.

1-5.5 Records

1-5.5.1 Permit or License Applications

Applications for permits or licenses, required by this code, must be filed in the office of the Administrative Agency.

1-5.5.2 Official Actions

A written record must be kept of all official actions taken on applications for permits and licenses required by this code and must be maintained on file in the Administrative Agency.

1-5.5.3 Proceedings of Hearings

The proceeding of all hearings, including findings and decision of the Hearing Officer, together with a copy of every notice and order related thereto, must be filed with the Administrative Agency. Transcripts of the proceedings of hearings need not be transcribed unless a judicial review of the decision is sought.

1-5.6 Enforcement Procedures

The Lyon County Counselor must enforce the provisions of this code and other sanitation/environmental codes adopted by the county and is hereby authorized

and directed to file appropriate actions for such enforcement, upon request of the Administrative Agency. Actions of injunction, mandamus, and quo warranto are appropriate for enforcement of these codes, and must be governed by the provisions of the Kansas Code of Civil Procedure. Should any person refuse to comply with written orders issued by the Administrative Agency and, when in the professional judgment of the Administrative Agency, a threat to public health and/or safety exists, the Administrative Agency has the power to abate such conditions as deemed necessary to protect the health and/or safety of the public. Any and all charges or expenses incurred for such abatement shall be assessed against the property owner. Any money collected for expenses resulting from abatement procedures must be applied to the charges incurred.

1-5.7 Right of Waiver.

In unusual circumstances, the Administrative Agency has the right to waive any requirement of this code when, in the professional judgment of the Administrative Agency or a duly authorized representative, such a change will not adversely affect the environment or public health and sufficient data is provided in writing to uphold such a decision. Such decisions must be approved by the Director of Environmental Health.

1-5.8 Disclaimer of Liability.

This code and other sanitation/environmental codes adopted shall not be construed or interpreted as imposing upon the county or its officials or employees:

- 1) any liability or responsibility for damages to any property, or
- 2) any warranty that any system, installation or portion thereof that is constructed or repaired under permits and inspections required by code will function properly.

Permitees must also agree to hold the county harmless from any liability, including attorney fees.

1-5.9 Severability.

If any section, subsection, paragraph, sentence, clause or phrase of this code should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portion. The remaining portion shall continue in full effect. The remaining provisions of this code are hereby declared to be severable and shall be presumed to have been adopted knowing that the part or section declared invalid would be so declared.

1-5.10 Penalties.

In addition to, and independently of the enforcement procedures provided in Section 1-5.6 herein, and under the authority of K.S.A. 19-3707, any violation of any provision of a sanitation/environmental code is a Class C misdemeanor and punishable by a fine to be determined through a judicial process.

This resolution is adopted by the Board of County Commissioners of Lyon County, Kansas this _____th day of _____, 2004.

Chairperson, Lyon County Commission

Member, Lyon County Commission

Member, Lyon County Commission

