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PART 24. LOCAL HEALTH DEPARTMENTS > § 333.2455. **Building or condition constituting nuisance, unsanitary condition or cause of illness, order to avoid, correct or remove; basis; expense; failure to comply; warrant; assessment; liability of occupant or person causing; court order; removal, abatement, destruction of violation or nuisance; warrant variation; effect.**

Citation: **MCLS § 333.2455**

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CHAPTER 333 HEALTH
PUBLIC HEALTH CODE
ARTICLE 2. ADMINISTRATION
PART 24. LOCAL HEALTH DEPARTMENTS

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MCLS § 333.2455 (2004)

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§ 333.2455. Building or condition constituting nuisance, unsanitary condition or cause of illness, order to avoid, correct or remove; basis; expense; failure to comply; warrant; assessment; liability of occupant or person causing; court order; removal, abatement, destruction of violation or nuisance; warrant variation; effect.

Sec. 2455. (1) A local health department or the department may issue an order to avoid, correct, or remove, at the owner's expense, a building or condition which violates health laws or which the local health officer or director reasonably believes to be a nuisance, unsanitary condition, or cause of illness.

(2) If the owner or occupant does not comply with the order, the local health department or department may cause the violation, nuisance, unsanitary condition, or cause of illness to be removed and may seek a warrant for this purpose. The owner of the premises shall pay the expenses incurred.

(3) If the owner of the premises refuses on demand to pay expenses incurred, the sums paid shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the general laws of this state. An occupant or other person who caused or permitted the violation, nuisance, unsanitary condition, or cause of illness to exist is liable to the owner of the premises for the amount paid by the owner or assessed against the property which amount shall be recoverable in an action.

(4) A court, upon a finding that a violation or nuisance may be injurious to the public health, may order the removal, abatement, or destruction of the violation or nuisance at the expense of the defendant, under the direction of the local health department where the violation or nuisance is found. The form of the warrant to the sheriff or other law enforcement officer may be varied accordingly.

(5) This section does not affect powers otherwise granted to local governments.

HISTORY: Act 368, 1978, p 865; eff September 30, 1978.

Pub Acts 1978, No. 368, § 2455, eff September 30, 1978.

Former Acts.

This section contains subject matter substantially similar to former §§ 67.48-67.51 , 94.2-94.5 , 125.474 , 125.485-125.486 , 125.534 , 125.538-125.541 , 289.201 , 327.151 , 329.1-329.7 .

NOTES:

Cross References:

Prevention and control of diseases and disabilities, §§ 333.5101 et seq.

Hazardous communicable diseases, §§ 333.5201 et seq.

LEXIS Publishing Michigan analytical references:

Michigan Law and Practice, Public Health and Welfare §§ 5, 7, 8

ALR notes:

Prohibiting or regulating removal or exploitation of oil and gas, minerals, soil, or other natural products within municipal limits, 10 ALR3d 1226.

Validity and construction of statute or ordinance providing for repair or destruction of residential building by public authorities at owner's expense, 43 ALR3d 916.

CASE NOTES

1. In general.
2. Authority of township.
3. Abatement of nuisances.
4. Demolition.
5. Liability.
6. Evidence.
7. Notice.

1. In general.

No one is entitled, in every location and circumstance, to absolute quiet, or to air utterly uncontaminated by any odor whatsoever, in use and enjoyment of his property; but when noises are unreasonable in degree, considering neighborhood in which they occur and all attending circumstances, or when stenches contaminate atmosphere to such an extent as to substantially impair comfort or enjoyment of adjacent premises, an actionable nuisance may be said to exist; and in applying these tests the question presented is one of fact rather than law. De Longpre v Carroll (1951) 331 Mich 474, 50 NW2d 132.

In action for damages for injury to dwelling by alleged noise, vibration, smoke and fumes caused by operation of defendant's crankshaft plant, instruction that plaintiffs could not recover for ordinary annoyance incident to manufacturing district and that recovery was dependent on such things occurring in unreasonable amounts was held to be reasonably fair to plaintiffs. Grzelka v Chevrolet Motor Car Co. (1938) 286 Mich 141, 281 NW 568.

This section and the one next preceding make it an exercise of governmental power ascribable to the state rather than a corporate function for a village council to raise the level of an adjoining lake upon the recommendation of the local board of health and excuses the municipality from liability for misfeasance or nonfeasance. Murray v Grass Lake (1900) 125 Mich 2, 83 NW 995.

A court is not obliged to order the destruction of property which it has decreed to be a nuisance. Shepard v People (1879) 40 Mich 487.

The circuit court, not the Tax Tribunal, has jurisdiction to hear cases contesting assessments authorized by the Public Health Code for correcting or removing a public health hazard on private property at the owner's expense. Vande Bunte v Lansing (1985) 140 Mich App 60, 362 NW2d 889.

Municipal Fire Code incorporates into state housing act by reference municipal fire code of community where building subject to act is located. Pecoraro v Michigan Dep't of Corrections (1980) 100 Mich App 802, 300 NW2d 418.

Where defendants' building had been damaged during excavation on adjacent vacant lot by contractor and received additional damage when contractor, who asserted that he had received direct order from city police chief to tear building down, knocked in entire front and portion of one side wall of building, and trial judge found that city, through police chief, "touched off" events which resulted in building becoming a hazard and nuisance for which defendants were blameless, city could not recover from defendants for expenses incurred in razing building. Mason v Buchman (1973) 49 Mich App 98, 211 NW2d 552.

2. Authority of township.

Where township board of health declared piggery detrimental to public health, without having assigned places for conducting piggeries, its power to assign places was not ground for injunction. Kalamazoo v Kalamazoo Garbage Co. (1924) 229 Mich 263, 200 NW 953.

Township boards of health have large discretionary powers, the exercise of which will not be interfered with until a clear case is made out. It must be intended until the contrary is shown that they are acting in good faith and in the line of their duty. Upjohn v Board of Health (1881) 46 Mich 542, 9 NW 845.

3. Abatement of nuisances.

Proceedings of a board of health to abate a ditch as a nuisance are ineffective where the record contains no action upon a petition to the board other than a motion directing that notice to abate the nuisance created by the drain be served, which notice was never served on one of the owners. Chase v Middleton (1900) 123 Mich 647, 82 NW 612.

The defense of contributory negligence is not applicable to nuisances of the intentional variety. Daugherty v State (1984) 133 Mich App 593, 350 NW2d 291, appeal after remand (1987) 163 Mich App 697, 415 NW2d 279, app den (1988) 430 Mich 870, reconsideration den (1988) 431 Mich 860.

Although township board, acting as board of health, had statutory power to abate nuisance and might order private property owner to remove nuisance within specified time at his own expense or remove nuisance on its own at owner's expense, such expense might not be recovered by township in action for damages but was to be assessed against owner's property and collected in same manner as taxes assessed under general laws of state. Brandon Township v Jerome Builders, Inc. (1977) 80 Mich App 180, 263 NW2d 326.

Both township and county boards of health have power to abate nuisance injurious to health and to cause cost of abatement to be assessed against owner of premises, under former §§ 327.8-327.10, 327.206. Op Atty Gen, October 30, 1946, No. 0-5154.

4. Demolition.

Michigan Administrative Code R 299.2933(4) (Rule 33) is arbitrary and capricious because the Michigan Department of Environmental Quality was able to directly enforce laws regarding private sewer systems without the use of Rule 33 by operation of law under MCL § 333.2455; moreover, Rule 33 constituted an unlawful delegation of discretionary power to local municipalities and it sought to impose operational mandates on municipalities, which were ill-adapted to reach those mandates. Lake Isabella Dev., Inc. v Vill. of Lake Isabella (2003) 259 Mich App 393, 675 NW2d 40.

Provision of city charter could not be relied on by city as authorization for demolition of plaintiff's house as nuisance by mere resolution of city council without observing procedural due process as required by state housing code adopted by city. Geftos v Lincoln Park (1972) 39 Mich App 644, 198 NW2d 169.

State housing code adopted by city and providing for demolition of a home as nuisance in accord with "existing practice and procedure" except as provided for otherwise in statute would be held to authorize city to demolish home in accord with statute or "existing practice or procedure" requiring compliance with procedural due process for hearing and notice to include what is going to be decided and when and where hearing is to take place, including what must be done to demand such hearing, and precluding city under any circumstances from adopting lower standards than minimum requirements of statute. Geftos v Lincoln Park (1972) 39 Mich App 644, 198 NW2d 169.

5. Liability.

City building inspector who recommended to city council that plaintiff's premises be demolished as nuisance, and who had no authority to countermand council's subsequent order for demolition, could not be held liable in trespass for illegal act of city council in ordering demolition of plaintiff's premises without observing notice and hearing requirements of procedural due process. Wille Whittbold & Co. v Gregory (1972) 41 Mich App 511, 200 NW2d 351.

Defendant city councilmen in their individual capacity could properly be held personally liable to plaintiff for trespass in illegally ordering demolition of plaintiff's premises without observing notice and hearing requirements of procedural due process. Wille Whittbold & Co. v Gregory (1972) 41 Mich App 511, 200 NW2d 351.

City which demolished plaintiff's home without complying with due process prerequisites and without compensation could not raise doctrine of sovereign immunity in plaintiff's resulting action for damages grounded on direct trespass. Geftos v Lincoln Park (1972) 39 Mich App 644, 198 NW2d 169.

Plaintiff's notice of city's illegal order for demolition of his home as nuisance would be held not to have estopped him from maintaining action in trespass for damages as result of demolition, there being no requirement that plaintiff first seek to enjoin such illegal act or invoke other statutory procedures for redress. Geftos v Lincoln Park (1972) 39 Mich App 644, 198 NW2d 169.

6. Evidence.

In action for damages for injury to dwelling by alleged noise, vibration, smoke and fumes caused by operation of defendant's crankshaft plant, exclusion of testimony of general contractor as to cause of cracks in plaster held not sufficiently prejudicial to justify reversal, though ruling might well have been otherwise under circumstances. Grzelka v Chevrolet Motor Car Co. (1938) 286 Mich 141, 281 NW 568.

In action for damages for injury to dwelling by alleged noise, vibration, smoke and fumes caused by operation of defendant's crankshaft plant, exclusion of testimony of one of plaintiff's experts that there were machines and hammers by which this type of work could be done and resultant vibration practically eliminated was not error, as defendant was not obliged to resort to methods of unknown efficacy and witness, who was inventor of such machine, was unable to show its practicability. Grzelka v Chevrolet Motor Car Co. (1938) 286 Mich 141, 281 NW 568.

In action for damages for injury to dwelling by alleged noise, vibration, smoke and fumes caused by operation of defendant's crankshaft plant, testimony of plaintiff as to reason given him by tenants for moving out of premises was hearsay and properly excluded. Grzelka v Chevrolet Motor Car Co. (1938) 286 Mich 141, 281 NW 568.

In action for damages for injury to dwelling by alleged noise, vibration, smoke and fumes caused by operation of defendant's crankshaft plant, exclusion of testimony of plaintiff and plaintiff's daughter as to cause of damage, before their qualifications were shown, was proper. Grzelka v Chevrolet Motor Car Co. (1938) 286 Mich 141, 281 NW 568.

7. Notice.

City's demolition of plaintiff's premises pursuant to resolution declaring premises to be nuisance constituted taking of property without due process of law where plaintiff was given no notice of resolution prior thereto or notice of right to hearing in regard thereto. Wille Whittbold & Co. v Gregory (1972) 41 Mich App 511, 200 NW2d 351.

City council's resolution declaring home to be nuisance and ordering demolition thereof, which resolution was prior to date plaintiff took title to premises, would not negate plaintiff's due process entitlement to notice and hearing regarding renewal of resolution subsequent to time he took title to home even though he had been apprised of city's original resolution, where plaintiff expended time and money to rehabilitate home pursuant to city's knowledge, encouragement and consent and city in fact held up demolition for time at plaintiff's request prior to proceeding therewith without notice to plaintiff. Geftos v Lincoln Park (1972) 39 Mich App 644, 198 NW2d 169.

Due process requirements for notice and hearing to justify city's demolition of home as nuisance were not satisfied by resolution at city council meeting pursuant to charter, where meeting was not convened expressly for determining whether plaintiff's house was nuisance and if it should be demolished, topic of plaintiff's house was not on agenda for meeting but was heard during time reserved for "citizens request," and resolution for demolition included no notice to plaintiff of right to hearing. Geftos v Lincoln Park (1972) 39 Mich App 644, 198 NW2d 169.

Whether notice sent to owners of vacant and deteriorated house before house was demolished by city for violation of municipal housing ordinance complied with notice requirements of ordinance and procedural due process was question of law for judge to decide and not question of fact for jury. Himes v Flint (1972) 38 Mich App 308, 196 NW2d 321.

Where notice sent to owners of vacant and deteriorated house concerning violations of municipal housing ordinance did not, as mandatorily required by notice provisions of ordinance, list alleged violations with citations to specific ordinance sections violated, did not contain outline of remedial action which would effect compliance with code provisions, and did not advise owners of appeal procedure, notice was constitutionally defective; hence subsequent demolition of house by city constituted a trespass. Himes v Flint (1972) 38 Mich App 308, 196 NW2d 321.

Concept of "substantial compliance" with mandatory notice requirements of a municipal ordinance can only be drawn upon in situations where provisions of notice are ambiguous. Himes v Flint (1972) 38 Mich App 308, 196 NW2d 321.

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