

Public Health Role in Addressing Uninhabitable Housing Conditions

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University of Michigan School of Public Health
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Scenario 1a

A LHD receives a call from a community member who has noticed that residents of a nearby apartment complex are drawing tubs of water from the adjacent river, apparently for use in their homes. The community member learned from a resident that the water in their building had been turned off.

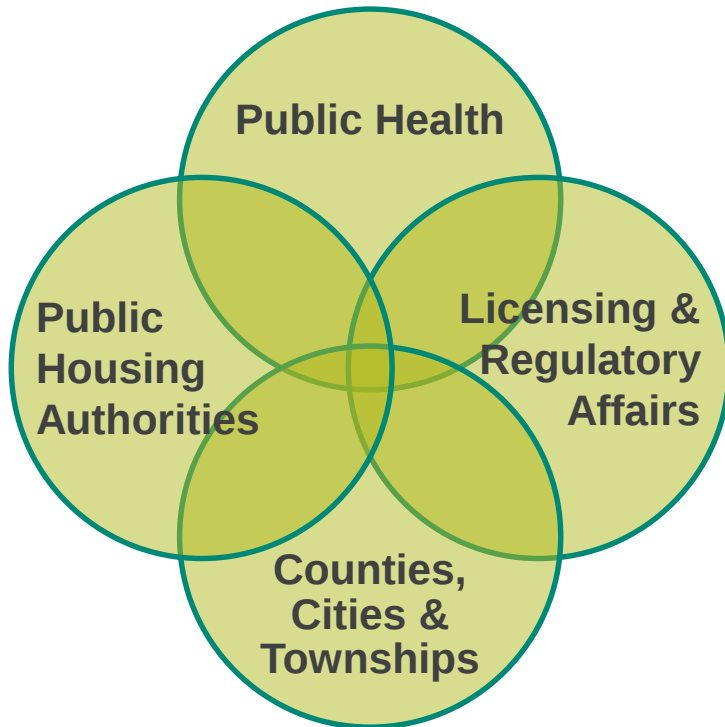
Who has authority to respond to this situation?



Who has authority to respond?

- » **City housing code enforcement agency?**
- » **Local health department?**
- » **MDHHS?**
- » **Federal Department of Housing & Urban Development?**
- » **Other?**

Overlapping Powers: Housing



Considerations:

- Specific vs general powers
- Tradition
- Best able / suited to address
- Agreement among agencies
- Non-legal actions

Housing Law of Michigan

- » **MCL 125.401 et seq.** (Act 167 of 1917)
- » AN ACT to promote the health, safety and welfare of the people by regulating the maintenance, alteration, health, safety, and improvement of dwellings...

Applicability:

- » Applies to all dwellings in cities, villages, and townships with population $\geq 100,000$
- » Unless specifically adopted by local legislative body, applies only to “multiple dwellings” in cities, villages, and townships with population $\geq 10,000$ but $< 100,000$
- » Dwelling: building/structure/vehicle occupied in whole or in part as a living or sleeping place for 1+ human beings, either permanently or transiently

Historical Context

- » **Enacted before the Public Health Code, when cities and villages handled public health functions**
 - » Housing Law frequently references actions to be taken by “the health officer or such other appropriate public official as the mayor may designate”
- » **In 1978, PH Code reorganized public health to counties + the city of Detroit**
 - » Part 122 (Housing) of PHC envisioned LHDs taking over housing enforcement + state HD setting standards
 - » State HD never set standards; Part 122 repealed in 1981
- » **Housing Law of 1917 remains in effect.**

Heritage Hill Ass’n v. Kinsey, 146 Mich. App. 803 (1985)

Who is responsible for enforcing the Housing Law?

- » **Designated official / agency of the city, township, or village in which the dwelling is situated. See MCL 125.402(19), 125.523.**
- » **Municipalities may provide for joint administration and enforcement where practicable. MCL 125.523.**

Who is responsible for complying with the Housing Law?

- » **Owner of premises is responsible for complying with all applicable provisions.**
- » **Occupant is responsible for complying with provisions specifically applicable to him/her.**

Definitions (MCL 125.402)

» **Classes of dwellings:**

- » Private dwellings: occupied by and designed with kitchen for 1 family
- » 2 family dwellings: occupied by and designed with kitchens for 2 families
- » Multiple dwellings: occupied other than as private or 2 family dwelling

Definitions cont. (MCL 125.402)

» **Classes of multiple dwellings:**

- » Class a: Apartments, flats, etc. Each unit is designed to be occupied permanently as a residence and includes kitchen and bathroom
- » Class b: Hotels, hospitals, jails, etc. Generally occupied transiently; rooms occupied singly and without attempt to provide kitchen for individual occupants
- » Rooming house: Rooms in excess of those required by immediate family are leased or rented to non-family members without providing separate kitchen (treated as multiple dwelling if >3 rooms rented in this way)

Definition: Sub-standard dwelling

- » “[A] dwelling of any class which is not so equipped as to have each of the following items: running water, inside toilets; or a dwelling which has either inadequate cellar drainage, defective plumbing, and inside room having no windows therein, improper exits or defective stairways so as to make such dwelling a fire hazard.”

MCL 125.402(1a)

Housing Law standards

- » Repairs and Drainage (plumbing, heating, ventilation, electrical wiring) (MCL 125.471)
- » Water supply (MCL 125.472)
- » Cleanliness of dwellings, free of vermin – responsibilities for owner & occupants (MCL 125.474)
- » Adequate lighting + exit signs in public halls (MCL 125.465)
- » Receptacles for garbage (MCL 125.478)
- » Prohibited uses – housing farm animals, storing junk (MCL 125.479)
- » Fire prevention (MCL 125.482), alarms (MCL 125.482a)
- » Overcrowding (MCL 125.483)

Certificate of Compliance

- » Units in multiple dwellings or rooming houses **shall not be occupied** unless a certificate of compliance has been issued by the enforcing agency.
 - » Inspections shall be made before first occupancy of multiple dwellings and rooming houses.
 - » Certificate may be suspended and affected areas vacated if hazardous conditions arise while occupied.
- MCL 125.529, 125.530.**

Other Inspections

- » Enforcement agency is not required by Housing Law to inspect a dwelling (multiple or other) unless it receives a complaint from a lessee.
- » Local gov't may adopt an ordinance that provides for inspections for reasons other than a complaint (e.g., based on previous violations, geography, etc.). If it does, must comply with Housing Law requirements.
- » Floor preemption: local gov'ts may adopt housing standards, enforcement mechanisms, remedies, and penalties if they are at least as stringent as Housing Law

Housing Law Enforcement

- » If violation is not corrected after notice, enforcing agency may bring an action to enforce law or to abate or enjoin violation. MCL 125.534
- » Where dwelling is infected with contagious disease, dangerous to life or health of occupants, or unfit for habitation, enforcement agency may order dwelling vacated. MCL 125.485
- » Housing officer may order abatement of a public nuisance dangerous or detrimental to life or health. MCL 125.486

Can I? LHD General Powers

- » Powers necessary and appropriate to perform their duties
- » Promote and safeguard the public health
- » Prolong life
- » Prevent and control environmental health hazards
- » Prevent and control the spread of disease
- » Provide expertise and education regarding health

CAN I?

Legal question: Do I have authority?

LHD (general public health powers)

- » **Inspect or investigate:** To assure compliance with laws enforced by LHD, it may inspect or investigate “any matter, thing, premise, place, person, record, vehicle, incident, or event.” MCL 333.2446
- » **Imminent danger order:** Order an authorized person to immediately take action to avoid, correct, or remove the imminent danger. MCL 333.2451
 - » Order may: (1) specify action to be taken or (2) prohibit the presence of individuals in locations or under conditions where the imminent danger exists.

CAN I?

Legal question: Do I have authority?

LHD (general public health powers)

- » **Order to abate a nuisance:** Order the property owner to avoid, correct, or remove the harmful condition. MCL 333.2455
 - » Person who caused the violation is liable to the owner of the premises for expenses incurred to remove the condition.
- » **Injunctive action:** Health officer may maintain injunctive action to correct a violation of a law/rule/order which the officer has the duty to enforce, or to correct a condition which adversely affects the public health. MCL 333.2465
- » **Local health regulations**

MUST I?

Legal question: Does law leave me no choice?

MCL 333.2433(1) requires a LHD to continually and diligently endeavor to prevent disease and promote the public's health, including through prevention and control of environmental health hazards and health problems of particularly vulnerable population groups.

For mandatory duties, often an agency has a great deal of discretion in determining *how* to fulfill its obligation.

Housing Law**Public Health Code**

Order to vacate infected and uninhabitable dwellings (MCL 125.485)

Order to correct imminent danger (may prohibit presence of individuals) (MCL 333.2451)

Order to abate a nuisance (MCL 125.486)

Order to abate a nuisance (MCL 333.2455)

Illegal drug manufacturing site (MCL 125.485a)

Illegal drug manufacturing site (MCL 333.12103)

Action to enforce act / enjoin violation; may seek preliminary injunction for imminent danger to occupants or public (MCL 125.534(1), (3))

Injunctive action to correct condition that adversely affects public health (MCL 333.2465)

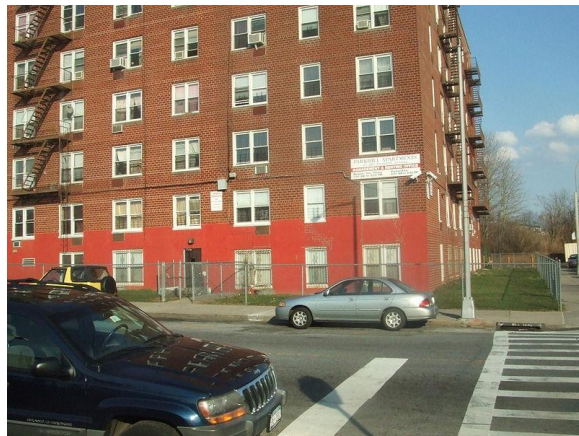
Scenario 1a cont.

The city housing code enforcement agency is not taking action.

OR

The apt. complex is located in a small city or township that is not subject to the housing code and does not have its own housing code.

What options does the LHD have?



Involve / support other Agencies

HUD
MSHDA
Local PHA

- Funding generally tied to habitability
- Search for housing supported by federal, state, local funding:

<http://housing.state.mi.us/>

LARA

- Is the facility licensed?
- E.g., Mobile Home Park, Nursing Home



Affordable Rental Housing Directory (ARHD)

ARHD is a data sharing agreement between HUD, MSHDA, and USDA-RD to provide a listing of each agency's rental rental housing data within the State of Michigan.

Type the text to your search in the inputs below:
(you can type in multiple input boxes)

Property Name		Search
Management Name		
Owner Name		
Property City		
Property County		
Property Zip		
Program		
Source of Data		

Welcome to the Affordable Rental Housing Directory (ARHD) Web site. This web site provides access to a comprehensive listing of rental housing within the State of Michigan that has received financing from federal, state, or local housing agencies. Site functions include the ability to search, query, and export data.



Other Housing web sites:

[Michigan Housing Locator](#)
[Quality Apartment Search](#)
[Multi-Family Housing Rentals](#)

Other Resources:

[Michigan School Districts](#)
[Michigan Cities and Villages Information](#)
[Census Bureau](#)

Tenant actions (under the Housing Law)

- » The owner or occupant of the premises on which a violation exists may bring an action to enforce the Housing Law. MCL 125.534
- » If needed, the court may appoint a receiver to repair & rehabilitate the premises. MCL 125.535.
- » A tenant can sue an owner for damages caused by an unsafe, unsanitary, or unhealthful housing condition (if they provided notice and condition was not corrected) and may request injunctive and other appropriate relief. MCL 125.536.
- » + many others in common law and other statutes



https://www.michbar.org/public_resources/legalaid

Legal & Law Related Programs by County

If you cannot afford a lawyer . . . you may still be able to get help.

Contact information for legal aid, law-related organizations, community services, and dispute resolution programs that offer services in your area can be found using the search below.

To search for an organization that might be able to help you, select the type of "Service" that you need help with and the "County" where you live. Special note: If the issue you need help with is a court matter, make sure you select the county where the courthouse is located that is listed on your court papers.

For example, if you need help with a landlord/tenant issue and you live in Macomb County, you would select Landlord/Tenant in the Service menu, and Macomb in the County menu, then click Submit.

Michigan Law Related Organizations Search

[Update Your Program Information](#)

Service

All

County

All

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<https://michiganlegalhelp.org/>



Housing

Displaying 1 - 10 of 45



Guide to Housing

Can't find what you're looking for? Try our Guide to Legal Help for housing questions.



Security Deposit Help for Tenants

This toolkit tells tenants what they need to know about security deposits. It can also help you if your landlord has not returned your security deposit after you moved.



I Am Being Evicted for Non-Payment of Rent (Non-Subsidized Housing)

This toolkit tells you what you need to know if you are being evicted for not paying your rent. Use a different toolkit if you live in subsidized housing or in a mobile home park.

Filter by Content Type



Toolkits (11)



Forms (4)



Articles (30)

Filter by Legal Issue



Evictions (29)



Tenant Rights (12)



Subsidized Housing (9)



Leases (8)



Security Deposit (7)



Discrimination (6)



Lockouts (6)



Foreclosure (4)



Mobile Home (4)

Need Help?

X

CAN I?

Legal question: Do I have authority?

LHD (general public health powers)

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For mandatory duties, often an agency has a great deal of discretion in determining *how* to fulfill its obligation.

Must I? All or nothing?

Youngberg v. Romeo

"[I]t is conceded by petitioners that a duty to provide certain services and care does exist, although even then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities.... Nor must a State choose between attacking every aspect of a problem or not attacking the problem at all."

457 U. S. 317 (1982)

Based on discretionary power

Should I?

Must be used reasonably, impartially.

Policy considerations:

» **Resources** » **Impact** » **Population health**
» **Feasibility** » **Priorities** **vs. private disputes**

Uniformity, consistency, and proportionality

Strength of evidence, strength of legal authority

Public opinion

Politics – relevant?

Doing “nothing” is doing “something” (risk
assessment)

Should I? Ethical Considerations

Autonomy

Respect for individual's right to make own choices

Non-Maleficence

First, do no harm

Beneficence

Do good

Justice

Treat all people equally and equitably

Law defines what an agency can do.
Ethics define what an agency should do.

Scenario 1b

The LHD receives complaints from a mobile home park resident about sewage backups, resulting in the discharge of sewage onto the ground.

What options does the LHD have?



- » **Prohibits operation of a mobile home park without a license. Requires department to establish a Mobile Home Code including process and minimum standards for obtaining and maintaining a license.** MCL 125.2316, 125.2305, Mich. Admin. Code R. 125.1101.
- » **Licensing requirements enforced by Department of Licensing & Regulatory Affairs.** MCL 125.2302(d), 125.2336-2348.

- » **MDEQ rules govern mobile home parks' water supply and sewage collection and disposal systems.** MDEQ may investigate to determine compliance with rules and may contract w/ LHDs to perform services. MCL 125.2302(d)(ii); 125.2306. See Mich. Admin. Code R. 325.3311 et seq., 325.3313-3314.
- » **Act explicitly recognizes that a LHD may issue an imminent danger order under the Public Health Code if a condition of the park is an imminent threat to the public's health. This includes requiring the mobile home park “to **cease operation or prohibiting the presence of individuals at all or part of the park.**”** MCL 125.2348b

Bay County Example

- » LHD conducted investigations to confirm complaint; contacted park manager
- » DEQ contacted LHD after receiving complaints; also investigated and sent a letter to park ordering correction of violations
- » LHD contacted LARA re mobile home park's license; recommended suspending or revoking license [learned that license was also revoked]
- » LHD learned that mobile home park was under receivership; sent order to receiver citing violations of county sanitary code and ordering correction

Dear [REDACTED]



The Bay County Health Department (BCHD) has received numerous complaints regarding the discharge of sewage to the surface of the ground at the above referenced address.

An investigation was originally done in 2018 due to the sewage system having blockages near units [REDACTED] which were discharging large quantities of sewage to the surface of the ground and into the storm drain. That particular situation was resolved however more problems are ongoing in regards to the surfacing of sewage and other public health problems in the park. During the summer of 2018 this department received phone calls regarding a backup of sewage at [REDACTED]. Two site visits were made to determine the validity of the complaint. Remnants of a sewage discharge were discovered. During that time complaints were also made to the Department of Environmental Quality (DEQ) regarding the same violation. The DEQ responded to the complaint and observed an ongoing discharge during the date of their site visit July 30, 2018. A letter was sent to the park on October 23, 2018 by the DEQ outlining the violation along with several requirements to correct the violation. Since then no efforts to correct the cause of the backups have been made.

Complaints continued to be called into this department regarding the backup of sewage outside [REDACTED]. Phone calls were made by this department to [REDACTED] Park Manager, several times informing her of the requirement to continue with pumping of any sections of the sewage system experiencing back-ups. On April 10, 2019 another site visit was made. During that visit a large amount of sewage was discovered adjacent to [REDACTED] in the area of the sewer clean outs. Also discovered during the visit included a sump pump inside of a sewer manhole, pumping sewage a few hundred feet into another sewer manhole. This is located along [REDACTED] and running south behind several mobile homes then discharging into another sewer manhole.

Discharge of sewage to the ground is a public health hazard and a violation of the Bay County Sanitary Code. Also having open sewer manholes and the pumping of sewage from one to another is a Public Health Hazard and also poses some physical hazards of falling into an open sewer manhole.

[The Bay County Sanitary Code states:

4-2 OVERFLOW AND IMPROPER DISPOSAL OF SEWAGE

Under no condition may the overflow from a septic tank or the sewage form a Premises (existing or hereafter constructed) be discharged or deposited upon the surface of the ground or into any lake, river, stream, county drain, ditch, storm sewer, or farm field tile.

6-13 PENALTY

Except as otherwise expressly provided by these regulations, any person who fails to comply with any provision of these regulations, shall be in violation of this code and charged with a misdemeanor. Upon conviction thereof, the person shall be punished by a fine not exceeding the sum of \$200.00 or by imprisonment in the county jail not exceeding 90 days, or by both such fine and imprisonment in the discretion of the court. Each day compliance is not met constitutes a separate violation of this Code.

Upon receipt of this letter if not already completed you are ordered to complete the following:

1. Clean up the sewage and contaminated soil next to [REDACTED].
2. Remove the sump pump from the sewer manhole along with the discharge hose and install the manhole covers back into place.
3. In the future, problems such as plugged lines shall be immediately addressed to prevent sewage from surfacing.
4. Problems within the sewage system within the park need to be completed. This will need to be coordinated with the DEQ in which a plan should already be in place based on the requirements in the DEQ letter sent on October 23, 2018.

Failure to comply with the requirements set forth in this order may result in penalties and closure of the mobile home park.

This department will continue to monitor the park to determine compliance in the future.

If you have any questions regarding this letter please do not hesitate to contact me at (989) 895-4107.

Note: Thanks to
Bay County Health
Department. Letter
reformatted &
redacted for use in
this presentation.

MELEHA, 9-19-2019



Ingham County Example

Life O'Riley Mobile Home Park Condemned

By Alyssa Fenske | Posted: Tue 10:52 AM, Feb 25, 2014 | Updated: Tue 4:46 PM, Feb 25, 2014



LANSING, Mich. – Ingham County Health Department has issued a condemnation order for the Life O' Riley Mobile Home Park and Campground, 6726 Washington Avenue, Lansing, MI 48911, due to an imminent public health threat. The leading issue for the condemnation order is the history of the failing sewage disposal system, including numerous illicit discharges of sewage and other public health issues as they relate to water supply and solid waste disposal.

The owner of the Life O'Riley Mobile Home Park and Campground has 10 days from the posting of this order to cease all operations and close down the mobile home park and campground. All residents of the mobile home park and campground will have to relocate within those 10 days. If a resident owns their mobile home unit and it can be moved, the owner of the mobile home unit can move it to another mobile home park. ICHD is condemning the mobile home park/campground, not individual mobile home units.

The City of Lansing and other community partner agencies have put together resources to assist residents with emergency housing and to find alternative long-term housing. The Life O'Riley Mobile Home Park and Campground can be reopened when the facility owner/manager can demonstrate to ICHD that all issues identified in the order have been corrected.

There will be a community meeting today, Tuesday, February 25, 2014, from 2:00-5:00 PM for residents at Cristo Rey Catholic Church, located at 201 West Miller Road, to voice their concerns, ask questions, and to assist in the relocation of individuals and families. Please see the attached flyer for additional information.

If you have any questions regarding the condemnation order, please contact ICHD at 517-887-4312. If you have questions regarding relocation or housing, please contact the City of Lansing at 517-483-4477.

Scenario 1c

A LHD receives a complaint from a community member about a rundown house in their neighborhood.

Who has authority to respond to this complaint?



Dangerous Buildings (MCL 125.538-39)

» **Unlawful for an owner or agent to maintain a “dangerous building,” defined as having 1 or more of the following defects/conditions:**

- » Exit does not conform to local fire code
- » Structural integrity is damaged such that it does not comply with building or housing code and/or may cause injury to person/property and/or is unsafe for use
- » Attractive nuisance
- » Building intended for dwelling is unfit for human habitation
- » Vacant, dilapidated, open at door or window
- » Remains unoccupied for 180+ days and not listed for sale/lease with licensed real estate broker (exceptions apply)

Dangerous Buildings (MCL 125.540)

- » **Enforcing agency shall issue a notice that the building or structure is a dangerous building.**
- » Person to whom notice is directed has opportunity to show cause why hearing officer should not order that building be demolished / made safe / properly maintained.
- » Hearing officer shall enter order specifying appropriate actions; owner may appeal to local legislative body / board of appeals, then to circuit court.
- » Local body may perform required actions and assess cost to owner, including by placing a lien on the property (MCL 125.541, 541a)

CAN I?

Legal question: Do I have authority?

» **Is there a public health threat?**

- » Public health threat vs. aesthetics / blight / zoning violation
- » Neighbor dispute vs. public health threat

Can I? LHD General Powers

- » Powers necessary and appropriate to perform their duties
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MUST I?

Legal question: Does law leave me no choice?

SHOULD I?

Policy question: How should I exercise my discretion?

» **Is there another agency that is better suited to deal with this issue?**

» Is the municipality in which the home is located subject to the Housing Law and/or does it have applicable housing, zoning, or blight ordinances?

Public health & housing resource

See, **Michigan Manual for the Prevention and Control of Bed Bugs** for discussion of public health threats and regulation of housing, residences, and facilities available at

https://www.michigan.gov/documents/emergingdiseases/Bed_Bug_Manual_v1_full_reduce_326605_7.pdf

Page 15-20 and 85-88 (Appendix A)

Thank you!

Jennifer Bernstein, JD, MPH jbernstein@networkforphl.org

