

Determination of a Public Health Nuisance in an unoccupied home

The protection of the public health is a duty of the government and the abatement of a health nuisance is legislated to the state and local health boards. The question asked by your environmental inspectors is when is the proper time to designate an unoccupied home as an immediate public health nuisance.

One of the inspectors' two opinions is that if no one is living in the home there is no immediate or direct hazard to the public's health. The other opinion is that if there is garbage in the home allowing for harborage of rodents /insects this infestation will lead to a public health problem.

Answer: Each complaint requires a case by case analysis.

Unfortunately, there is no bright line rule that states an unoccupied home is or is not a public health nuisance. The decision must be made on a case by case basis focusing on the underlying facts of each situation. In other words, whether the unoccupied home is a health nuisance requires a professional judgment call. I will review the law and attempt to focus on the factors that lead to a determination of whether a vacant house would be deemed a public health nuisance.

As stated in a policy/guidebook written for the Minnesota Department of Health in 1991, the issue is really one of defining the problem of the "nuisance" complaint. The guidebook recommends first determining whether the problem affects the public and if it does, whether the problem is one of health. Controlling Public Health Nuisances Guide for Community Health Boards A Report by the Public Health Nuisance Control Work Group of the State Community Health Services Advisory Committee December 06, 1991, at. 6,7.

The guidebook from MDH states that "[I]f the problem affects even only one individual, it is reasonable to expect that other public will also be affected. It is the rare exception that a condition is so isolated as to not affect anyone other than one individual." Id. One must be sensible here in that some complaints received by the Department are issues between two parties and not one of public concern. Therefore, the inspector makes a professional determination of whether the public is affected by the condition.

If it is determined that the condition affects at least one person does the condition affect health? To answer that question I have provided some statutory and ordinance references.

Minn. Stat. § 145A.02 (17) defines a health nuisance "as any activity or failure to act that adversely affects the public health." The powers granted to the local board of health allows for the investigation of communicable diseases, to prevent and control epidemic diseases, to enforce the public health law, ordinances and

rules. Inspectors are authorized to enter a place where contagion, infection, filth or other source of cause of preventable disease exist or is reasonably suspected. Minn. Stat. §145A.04 subds. 6 and 7.

The Washington County Public Health Ordinance #165 provides that a public health nuisance” [h]as the meaning given to it by Minn. Stat. § 145A.02 subd. 17 and shall include but not be limited to, any condition which poses an immediate and direct hazard to human health if left unremedied due to the existence of the condition itself or due to the immediate threat of transmission of disease through insects, animals or other means of transmission or infections.”

So, in response to the question, once an inspector determines that the condition affects the public the inspector can use the following questions to assist in the determination of whether the public health is affected:

- Does the condition have an immediate threat or expectation to cause a threat of the transmission of disease, through insects, animals or other means of transmission or infections?
- Does the condition cause or is there a potential for the condition to cause trauma or injury to the public?
- Does the condition constitute or is there a potential for the exposure to hazardous substances that could adversely affect the health of the public?
- Does the condition pose an immediate or direct hazard to human health if left unremedied? Id. at 7.

If the condition could pose a future problem but has not progressed to an immediate or direct hazard then other avenues would be used to address the problem such as education or consultation etc.

Sometimes the condition is not a health issue, but a building code issue; i.e., a structural problem. In that case a referral is made to the building inspector stating that the public health department will not issue an order to abate the condition. This decision is not always popular with the local governmental unit.

Unfortunately there were no cases that directly addressed your quandary. I hope that this review stresses that each case must be reviewed on the facts at the time it is presented. Below is a case scenario of last year:

Complaint made to Community Services Vulnerable Adult Unit and Public Health. The allegation concerned the living conditions of an elderly person’s home, stating that the home is smelly and has no heat or water. An appointment was made to meet with the owner. Owner did not respond when social worker and PH inspector came to home. Eventually entry was made after many attempts and refusal by the homeowner and over threat of administrative search warrant. The investigation revealed food, putrescible garbage, human and animal feces throughout the home and on the bedding and kitchen surfaces. Toilets were not in operating order. This occupied home was declared a public health nuisance.

A Notice of public health nuisance was given and an Order to abate the condition was made.

Immediately thereafter the owner was out of the home and unable to return. The case then turns into an unoccupied home with the above issues. At that point Public Health had to determine if the abandoned home was a public health nuisance. Upon further inquiry it was determined that the owner had contacted a real-estate agent and a local contractor bought the property. A public health determination was made even though no one was living there because individuals would be going in and out of the home. The Department posted a no entry order on the home with request that the Department had to be notified if any one entered the home. Eventually the purchaser/contractor complied with the original abatement order.