

**Fahey Schultz
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EXPERT COUNSEL  REAL SOLUTIONS

“Self-Help” What it is and Should you use it

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Disclaimer

- This presentation, and the materials associated with it, are comprised of general information and not intended as legal advice related to specific questions of attorney-client privilege.
- Please contact an attorney if you need assistance related to a specific legal issue.
- All pictures are for educational purposes.





WHAT'S A TOWNSHIP OFFICIAL TO DO?



What is a Self-Help Ordinance Provision?

- An Ordinance stating that a township will correct violations of its ordinances itself, without court interference
- Township is prosecutor, judge, and jury



Self-Help Requirements

- Notice and a hearing
- The “essence of due process is the requirement that a person in jeopardy of serious loss [receive] notice of the case against him and opportunity to meet it” so that “those who are to be heard [are] given a meaningful opportunity to present their case” before they are assessed a fine or permanently deprived of their property. *Bonner v City of Brighton*, 495 Mich 209, 238–39 (2014).



Self-Help & Risk

- In the “self-help” context, the local government is declaring something as a nuisance themselves, whereas in a typical case a nuisance is determined by a court.
- By the township taking authority to declare a building or land use a “nuisance,” the township is also taking the *risk* of that determination.



Self-Help and Blighted and Dangerous Buildings

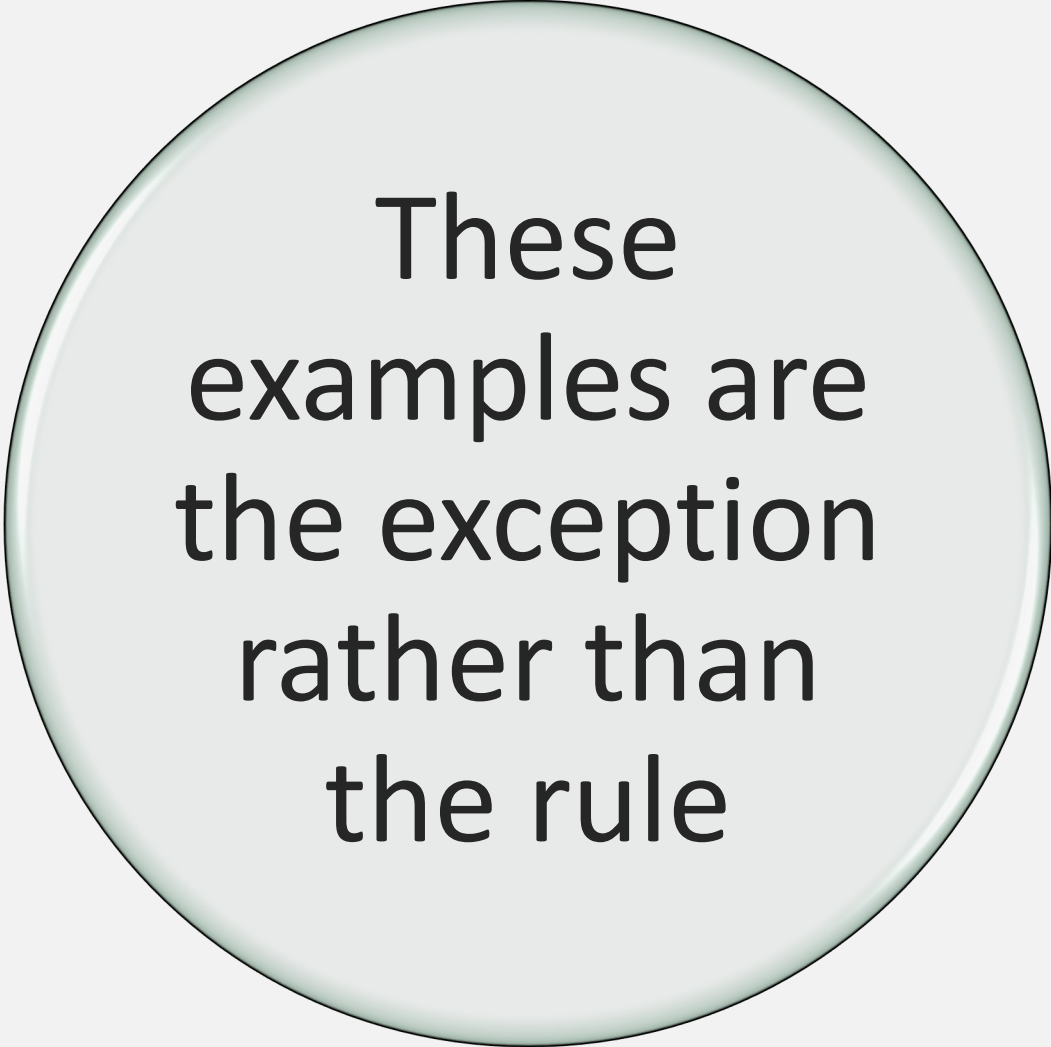


- The State Housing Code permits an appropriate public official to order a building that is detrimental to life or health to be removed or abated. MCL 125.486. (This can be done without needing court involvement—*in exceptional circumstances*.)
- The City of Saginaw acted under an ordinance authorizing the emergency demolition of a dangerous building when they demolished a vacant home whose basement wall had given way. *Hescott v City of Saginaw*, 757 F3d 518, 521 (2014)
- The City of Akron demolished a two-story building that the chief building inspector “believed was dangerously close to falling” on the street and an adjacent home. *Harris v City of Akron*, 20 F3d 1396, 1398 (1994)


Self-Help and Tall Grass and Noxious Weeds

- State law specifically defines noxious weeds. MCL 247.62.
- Townships and other municipalities may appoint a qualified individual to inspect and investigate their boundaries for noxious weeds and prevent their spread. MCL 247.61, MCL 247.63.
- If an owner of subdivided land fails to destroy weeds found on their property, then the municipality “may enter upon the lot and destroy noxious weeds by cutting.” MCL 247.64(2).
- Ordinances and procedures implementing control of weeds and tall grass are a “proper exercise of municipal police power” and due process does not require a “pre-abatement hearing.” *People v McKendrick*, 188 Mich App 128, 138, 141 (1991)





These
examples are
the exception
rather than
the rule



No broad
authorization
provided for
in statute

Self-Help Risks

- Risk of ensuring due process is properly observed
- Risk of incorrect decision
- Risk of initiating litigation



Self-Help Risks

- City demolished a vacant home
- Basement wall had given way
- Jury unanimously found the home needed to be demolished
- BUT: Failed to give value to scrap aluminum siding





What is the Best Way to Accomplish Your Township's Enforcement Goals



Criminal Misdemeanors

- Misdemeanors were the default enforcement method.
- This requires filing a complaint in Circuit Court—which must be prepared and prosecuted by your municipal attorney.
- We do not need to make a violation a crime!



Civil Infractions

- Townships are able to issue municipal civil infractions.
- Municipal civil infractions have a robust authority and procedure in both the law of the judiciary and township statutes.



Civil Infractions

- They combine the efficiency of self-help procedures—a streamlined hearing process—while reducing risk.
- The hearing results in an order issued from the District Court.
- The township may also seek injunctive relief.
- If a case warrants it, the township may also still engage the township attorney to assist with more difficult matters.





Tips for Effective Civil Infraction Enforcement

- Know the Township Ordinances
- Rely on Your Zoning Administrator/Supervisor
- Make and Follow a Code Enforcement Plan
- Create Form Letters and Checklists
- Pursue Violations as Early as Possible
- Do not Arbitrarily Enforce the Ordinance
- Document the Violation with Notice Letters and Photographs

Tips for Effective Civil Infraction Enforcement

- Know the Desired Result When Issuing the Citation
- Issuance of Municipal Civil Infraction Notice
- If Injunctive Relief is Desired, Request It
- Pursue Compliance with the Order (through contempt proceedings or additional tickets)
- Know your Magistrate or Judge
- Report Final Results to Board
- Coordinate with Other Departments





If Legal Counsel is Required, How to Make it Cost-Effective

- Assist with the Process and Forms
- Assist with Gathering Evidence
- Request a Formal Hearing
- Seek a Consent Judgment
- Pursue Compliance with the Order
 - Civil Contempt
 - New Civil Infraction
- Use Statute's Lien Authority





Questions

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