

CITY OF HAYFIELD

CLANDESTINE DRUG LAB SITES

WHEREAS, the city of Hayfield is concerned about clandestine drug lab sites in the community

NOW THEREFORE, BE IT ORDAINED, By the City council of the City of Hayfield that the City establish section 805 Clandestine Drug Lab Sites as follows:

CHAPTER 8 BUILDINGS AND HOUSING

PART 5. CLEANUP OF CLANDESTINE DRUG LAB SITES AND CHEMICAL DUMP SITES

805.01. General provisions.

(a) **Purpose and findings.** The purpose of this article is to reduce public exposure to health risks where law enforcement officers have determined that hazardous chemicals or residue from a suspected clandestine drug lab site or associated dumpsite may exist. Professional reports, based on assessments, testing and investigations, show that chemicals used in the production of illicit drugs can condense, penetrate, and contaminate surfaces, furnishings, and equipment of surrounding structures. The city council finds that such sites, and the personal property within such sites, may contain suspected chemicals and residues that place people, particularly children or adults of child bearing age, at risk when exposed through inhabiting or visiting the site or using or being exposed to contaminated personal property.

(b) **Interpretation and application.** The provisions of this ordinance shall be construed to protect the public health, safety and welfare. Where the conditions imposed by any provision of this article are either more or less restrictive to the public than comparable provisions imposed by any other law, ordinance, statute, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements on the public shall prevail. Should any court of competent jurisdiction declare any section or subpart of this article to be invalid, such decision shall not affect the validity of the article as a whole or any part thereof, other than the provision, declared invalid,

805.02. Definitions.

For the purposes of this article, the following terms, or words shall be interpreted as follows:

(a) **Child** shall mean any person, who is a minor under the laws of the State of Minnesota.

(b) **Chemical dumpsite** shall mean any place or area where chemicals or other waste materials *used in* a clandestine drug lab operation have been located.

(c) **City** shall mean the City of Hayfield

(d) **Clandestine drug lab operation** shall mean the unlawful manufacture or attempt to manufacture a controlled substance.

(e) **Clandestine drug lab site** shall mean any place or area where law enforcement has determined that conditions associated with an unlawful clandestine drug lab operation exist. A clandestine drug lab site may include dwellings, accessory buildings, structures or units, a chemical dump site, a vehicle, boat, trailer or other appliance or any other area or location.

(f) **Controlled substance** shall mean any drug, substance or immediate precursor in Minn. Stat. § 152.02 Schedules 1 through V together with any amendments or modifications thereto. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.

(g) **Household hazardous waste** shall mean waste generated from a clandestine drug lab operation.

(h) **Manufacture**, in places other than a pharmacy, shall mean and include the production, cultivation, quality control, and standardization, by mechanical, physical, chemical or pharmaceutical means, and the packing, repacking, tableting, encapsulating, labeling, relabeling, or filling of drugs.

(i) **Site**, shall mean the property or area declared to be a public health nuisance.

(j) **Site Owner**, shall mean any person(s), firm(s), corporation(s) or other entity who or which owns, in whole or in part, the land, building, structure, vehicle, boat, trailer or other location associated with a clandestine drug lab site or chemical dump site.

805.03. Declaration of site and contents as a public health nuisance.

All dwellings, accessory structures, buildings, vehicles, boats, trailers, personal property, adjacent property or other locations, associated with a clandestine drug lab site or chemical dump site are potentially unsafe due to health hazards and are hereby declared to be a public health nuisance.

805.04. Law enforcement action.

If law enforcement authorities determine the existence of a clandestine drug lab site or chemical dump site, then the site, and all personal property therein, shall be declared a public health nuisance. Law enforcement authorities who identify conditions associated with a clandestine drug lab site or chemical dump site which may place neighbors, the visiting public, or present and future occupants of the site at risk for exposure to harmful contaminants and other associated conditions are authorized to take the following action:

- (1) Promptly notify the city building official, child protection, public health authorities and the appropriate enforcement division of the drug enforcement administration of the U.S. Justice Department of the location of the site, and the site owner if known, of the conditions found;
- (2) Treat, store, transport or dispose of all household hazardous waste found at the site in a manner consistent with state department of health, Minnesota pollution control and county health department rules and regulations;
- (3) Issue a temporary declaration of public health nuisance for the affected site and post a copy of the declaration on all doorway entrances to the site or, in the case of bare land, post the declaration in several conspicuous places on the property. This temporary declaration of public health nuisance issued by law enforcement shall expire after the city building official inspects the site and determines the appropriateness of issuing a permanent declaration of public health nuisance;
- (4) Notify all persons occupying the site that a temporary declaration of public health nuisance has been issued;

- (5) Require all persons occupying the site to immediately vacate the site, remove all pets from the site, and not return without written authorization from the city building official;
- (6) Notify all occupants vacating the site that all personal property at the site may be contaminated with dangerous chemical residue; and
- (7) Put locks on each doorway entrance to the site to prohibit people from entering the site without authorization after all occupants of the site have vacated.

The obligation to promptly notify the persons and organizations mentioned above maybe delayed to accomplish appropriate law enforcement objectives, but only to the extent that public health and child protection responsibilities are not unnecessarily compromised.

805.05. Seizure of property.

When the clandestine drug lab site or chemical dump site is inside a vehicle, boat, trailer or other form of moveable personal property, law enforcement authorities shall immediately seize it and not allow it to be transported except to a more secure location. In such circumstances, all other requirements of this article shall be followed as closely as possible given the specific type of property in which the site is discovered. Law enforcement authorities may delay immediate seizure to accomplish appropriate law enforcement objectives.

805.06. Action by city building official.

(a) **Inspection and declaration of nuisance.** Within a reasonable time after receiving notification that law enforcement authorities have determined the existence of a clandestine drug lab site or chemical dump site, the city building official shall inspect the site to determine the appropriate scope of a permanent declaration of public health nuisance. Based on the results of the inspection, the city building official may then issue a permanent declaration of public health nuisance and a Do Not Enter--Unsafe to Occupy Order for the Site to replace the temporary declaration issued and posted by law enforcement. A copy of the permanent declaration and order shall be posted on all doorway entrances to the Site or, in the case of bare land, shall be posted in several conspicuous places on the property.

(b) **Abatement order.** After the permanent declaration of public health nuisance has been issued and posted, the city building official shall send written notice to the Site Owner ordering abatement of the public health nuisance. The abatement order shall include the following information:

- (1) A copy of the declaration of public health nuisance and Do Not Enter--Unsafe to Occupy Order;
- (2) Information about the potentially hazardous condition of the site;
- (3) Notification of suspension of the site's rental license if applicable;
- (4) A summary of the Site Owner's and occupant's responsibilities under this article; and
- (5) Information that may help the Site Owner locate appropriate services necessary to abate the public health nuisance.

(c) **Notice to concerned parties.** The building official shall also mail a copy of the permanent declaration of public health nuisance, a copy of this article, and a notification of the suspension of the Site's rental licensees, if applicable, to the following concerned parties at their last known

address:

- (1) Occupants or residents of the Site if the identities of such persons are known;
- (2) Neighbors in proximity to the Site who may be reasonably affected by the conditions found;
- (3) The city administrator;
- (4) The community development director;
- (5) The city police department;
- (6) The appropriate enforcement division of the drug enforcement administration of the U.S. Justice Department; and
- (7) Other city, state and local authorities, such as the city water department, the state pollution control agency, the state department of health, and the department of natural resources which are known to have public and protection responsibilities that are applicable to the situation.

(d.) Modification or removal of declaration. The city building official is authorized to modify or remove the declaration of public health nuisance after the building official receives documentation from a city approved environmental hazard testing and cleaning firm stating that the suspected health and safety risks, including those to neighbors and potential dwelling occupants, either do not exist or have been sufficiently abated or corrected to justify amendment or removal of the declaration.

805.07. Site owner's responsibility to act. Within ten business days of the date the abatement order is mailed to the Site Owner of the Site, the owner shall accomplish the following:

- (1) Provide the city building official with written notification:
 - a. That the Site Owner has confirmed that all persons and their pets have vacated the site;
 - b. Of the name(s) of all children who the Site Owner believes were residing at the site during the time period the clandestine drug lab or chemical dump site is suspected to have been at the Site; and
 - c. That the Site will remain vacated and secured until the public health nuisance is completely abated as required by this article.
- (2) Contract with one or more city approved environmental hazard testing and cleaning firms to conduct the following work in accordance with the most current state department of health guidelines:
 - a. A detailed on-site assessment of the extent of contamination at the Site and the contamination of the personal property therein;
 - b. Soil testing of the Site and testing of all property and soil in proximity to the Site, which the environmental hazard testing and cleaning firm determines may have been affected by the conditions found at the Site;
 - c. A complete clean up of the site (including but not limited to the clean up or removal of plumbing, ventilation systems, fixtures and contaminated soil) or a demolition of the site and a complete clean up of the demolished Site;
 - d. A complete clean up, or disposal at an approved dump site, of all personal property in the Site;
 - e. A complete clean up of all property and soil in proximity to the Site which is

found to have been affected by the conditions found at the Site;

- f. Remediation testing and follow-up testing, including but not limited to testing of the ventilation system and plumbing, to determine that all health risks are sufficiently reduced, according to state department of health guidelines, to allow safe human occupancy and use of the Site and use of the personal property therein and of all property and soil in proximity to the Site.
- (3) Provide the city building official with the identity of the testing and cleaning firm with which the Site Owner has contracted for abatement of the public health nuisance as required above; and
- (4) Sign an agreement with the city building official establishing a cleanup schedule. The schedule shall establish reasonable deadlines for completing all actions required by this article for abatement of the public health nuisance. In determining appropriate deadlines, the city building official shall consider practical limitations and the availability of contractors in approving the schedule for clean up,

The Site Owner must meet all deadlines established on the clean up schedule. Also, pursuant to the deadlines established by the clean up schedule, the Site Owner is required to provide the city building official with written documentation of the clean up process, including a signed statement from a city approved environmental hazard testing and cleaning firm that the Site, all personal property therein and all property and soil in proximity to the Site, is safe for human occupancy and use and that the clean up was conducted in accordance with the most current state department of health guidelines.

805.08. Site Owner's responsibility for costs.

The Site Owner shall be responsible for all costs, including those of the city, of dealing with and abating the public health nuisance, including contractor's fees and the city's costs for services performed in association with the clandestine drug lab site or chemical dump site cleanup. The city's costs may also include, but shall not be limited to:

- (1) Posting of the Site;
- (2) Notification of affected parties;
- (3) Securing the Site, providing limited access to the Site, and prosecution of unauthorized persons found at the Site;
- (4) Expenses related to the recovery of costs, including the assessment process;
- (5) Laboratory fees;
- (6) Clean up services;
- (7) Administrative fees;
- (8) Legal fees; and
- (9) Other associated costs.

805.09. City action and recovery of costs.

(a) If the Site Owner fails to comply with any of the requirements of this article, the city building official is authorized to take all reasonable actions necessary to abate the public health nuisance including, but not limited to, contracting with a city approved environmental hazard testing and cleaning firm to conduct the work outlined in section 805.06(2) of this article.

The building official is also authorized to provide a copy of the declaration of public health

nuisance to the lien and/or mortgage holders of the Site to help assure that persons with interest in the Site have access to information about the declaration of public health nuisance.

(b) If the costs to clean the Site or to clean the personal property at the Site are prohibitively high in relation to the value of the Site or the personal property, the city is authorized to remove or demolish the Site, structure or building and/or dispose of the personal property therein. These actions shall be taken in accordance with the provisions of Minn. Stat. chapter 463 together with any amendments or modifications thereto.

(c) If the city abates the public health nuisance, in addition to any other legal remedy, the city shall be entitled to recover all of its out of pocket costs plus an additional 25 percent of such costs for administrative and legal expense. The city may recover costs by civil action against the Site Owner of the Site or by assessing such costs as a special charge against the Site as taxes and special assessments are certified and collected pursuant to Minnesota Statutes, § 429.101 or according to the provisions of Minnesota Statutes chapter 463 together with any amendments or modifications thereto.

Sec. 805.10. Recovery of costs from persons causing damage.

No provisions of this article are intended to limit the Site Owner's, residents' or the city's right to recover costs incurred under this article from persons causing or contributing to the public health nuisance arising from the Clandestine Drug Lab Site or Chemical Dumpsite.

Sec. 805.11. Site owner and address.

When the Site declared a public health nuisance under this ordinance is real property and the Site Owner or the address of the Site Owner of the Site is unknown, then the Site Owner and the Site Owner's address is deemed to be that of the property's taxpayer's name and address as that information is maintained by the county auditor's office. When such Site is a vehicle, boat or trailer and the Site Owner or the address of the Site Owner is unknown, then the Site Owner and the Site Owner's address is deemed to be that of the person identified as the owner in the current or most recent title records for the vehicle, boat or trailer.

Sec. 805.12. Suspension of residential rental license.

Upon issuance of a permanent declaration of public health nuisance, any residential rental license issued by the city for the Site, or any part thereof, is hereby declared to be immediately suspended pending full compliance with this article.

Sec. 805.13. Unauthorized removal of postings.

It is unlawful for any person, except authorized city personnel, to remove a temporary or permanent declaration of public health nuisance and/or "Do Not Enter-Unsafe to Occupy" Order from a chemical dump site or a clandestine drug lab site.

Sec. 805.14. Entry into or onto Site.

During the time that a declaration of public health nuisance under this ordinance is in effect and has been posted at the Site, no persons are permitted to be inside the Site or on the Site property without prior written consent of the city building official or as otherwise authorized by this article. To confirm compliance with this article and to execute their duties under this article, law enforcement officers, the city building official, and any persons designated by the building official, may enter onto the Site or enter into the Site at any time while a declaration of public health nuisance is in effect for the Site.

Sec. 805.15. Removal of personal property from the Site.

While a declaration of public health nuisance for an affected Site is in effect and has been posted at the Site, no personal property may be removed from the Site without prior written consent from the city building official. Consent to remove personal property shall only be granted at the reasonable discretion of the building official, and only in cases of hardship after:

- (1) A city approved environmental hazard testing and cleaning firm has advised the city, in writing, that the item(s) of personal property can be sufficiently cleaned to remove all harmful contamination; and
- (2) The owner of the personal property agrees in writing:
 - a. That the owner is aware of the danger of using the contaminated property;
 - b. That the owner will thoroughly clean the property to remove all contamination before the property is used and
 - c. That the owner releases and agrees to indemnify the city, its staff, and the city council from all liability to the owner and/or third persons for injuries or damages caused, or alleged to have been caused, by the contaminated property.

Section 2. A violation of this ordinance is subject to the penalties and provisions of Section 100.06 of the city code.

Section 3. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Hayfield, Minnesota, on June 21, 2004.