

BENTON COUNTY ORDINANCE NO. 383

AN ORDINANCE PERTAINING TO ILLEGAL DRUG LAB ABATEMENT

WHEREAS, chemicals used in the production of illicit drugs present a health risk to the occupants and neighbors of dwellings and other structures, and to the public in general; and,

WHEREAS, chemicals used in the production of illicit drugs can present severe and long lasting impact on the health of persons exposed therein; and,

WHEREAS, chemicals used in the production of illicit drugs can contaminate structures and their furnishings, where they are stored, used, or discarded; and,

WHEREAS, it is important to inform the public of the current and past existence of such facilities, typically referred to as "clandestine drug labs;" and,

WHEREAS, Minnesota Statutes, Chapter 115B authorizes the Minnesota Pollution Control Agency and the Minnesota Department of Agriculture to address chemical spills, typically associated with outdoor environments such as water resources, geological features and ambient air; and,

WHEREAS, many of the public health risks are indoor drug lab exposures; and,

WHEREAS, Minnesota Statutes, Section 145A.05 authorizes county boards to adopt and enforce ordinances related to control of public health nuisances; and,

WHEREAS, Minnesota Statutes, Section 145A.04 requires a board of health or its agent to assure that public health nuisances are abated and removed; and,

WHEREAS, Minnesota Statutes, Section 145A.08 allows counties to exercise a special assessment on a property to recover county expenses associated with assuring abatement and removal of public health nuisances; and,

WHEREAS, a Notice of Public Hearing and Intent to Enact a "Cleanup of Clandestine Drug Lab Sites Ordinance" that can help address the public health threats existing after discovery and termination of clandestine drug lab operations, was duly published; and,

WHEREAS, after due public notice, a public hearing was held on April 5, 2005 by the Benton County Board of Commissioners, pursuant to Minnesota Statutes, Section 375.51.

Adm office

NOW, THEREFORE, THE COUNTY BOARD OF BENTON COUNTY ORDAINS:

SECTION 1.0 GENERAL PROVISIONS

1.1 Title

This ordinance shall be known and referenced as the "Illegal Drug Lab Abatement Ordinance." When referred to herein, it shall be known as "this Ordinance."

1.2 Statutory Authorization

This Ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 145A, Minnesota Statutes, Chapter 115B and Minnesota Statutes, Chapter 375; or successor statutes.

1.3 Purpose

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 as well as the air, land and water in the vicinity of clandestine drug lab sites.

A. These conditions present health and safety risks to occupants and visitors of structures and surrounding land through fire, explosion, ingestion, skin and respiratory exposure to chemicals.

B. This Ordinance establishes responsibilities for involved parties to assure the following:

- 1) That people are not unnecessarily exposed to the dangers of contaminated structures, air, land or water; and,
- 2) That proper steps are taken to remove contaminants and assure appropriate tests are done to demonstrate that affected structures, air, land and water are sufficiently cleaned for human contact.

C. This Ordinance assists and guides appropriate authorities, property owners and occupants to prevent injury and illness to members of the public, particularly children and vulnerable adults.

D. This Ordinance is intended to help assure the reduction of human exposure to chemicals associated with the site of former clandestine drug lab operations at structures such as dwellings, buildings, motor vehicles, trailers or appliances, as well as the air, land and water surrounding clandestine drug lab operations.

1.4 Jurisdiction

This Ordinance shall apply to all incorporated and unincorporated areas within the boundaries of Benton County, except for those areas within municipalities that (a) have duly enacted an ordinance pertaining to illegal drug lab abatement; and (b) are served by that municipality's own public health agency.

1.5 Interpretation and Application

- A. The provisions of this Ordinance shall be interpreted and applied as the minimum requirements necessary to protect public health, safety and welfare, and shall be liberally construed in accord with the underlying policies of the County and shall not be deemed a limitation or repeal of any other powers granted by State Statute.
- B. Where the conditions imposed by any provision of this Ordinance are either more restrictive or less restrictive than comparable provisions imposed by any other law, ordinance, statute, resolution or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.

1.6 Severability

If any section, clause, provision or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

1.7 Disclaimer of Liability

Benton County shall not be liable for any damages that may result from reliance on this Ordinance except as mandated by Minnesota law.

1.8 Fees

Fees for the administration of this Ordinance may be established and amended periodically by resolution of the Benton County Board.

SECTION 2.0 DEFINITIONS, RULES AND WORD USAGE

For the purpose of this Ordinance, the following terms or words shall have the following meanings:

- A. The word "shall" is mandatory, and not discretionary; the word "may" is permissive.
- B. The word "person" includes any individual, firm, partnership, corporation, company, association, joint stock association or body politic, or any trustee, receiver, assignee or other similar representative thereof.

- C. Words used in the present tense shall include the future; and words used in the singular shall include the plural and the plural the singular.
- D. Words shall be given their common usage, if not defined herein.

- 2.1 **Board** means the Benton County Human Services Board.
- 2.2 **Child** means any person less than 18 years of age.
- 2.3 **Child endangerment**, in addition to the meanings and applications given in Minnesota Statutes, Section 299C.52, Subd. 1(e) and Minnesota Statutes, Section 626.556; or successor statutes, means any child being in a structure or on the land used as a clandestine drug lab site.
- 2.4 **Chemical investigation site** means a clandestine drug lab site that is under notice and order for cleanup and/or remediation as a public health nuisance, as authorized by Minnesota Statutes, Chapter 145A; or successor statutes, and this Ordinance.
- 2.5 **Clandestine drug lab operation** means the unlawful manufacture or attempt to manufacture a controlled substance within any area of a structure such as a dwelling, building, motor vehicle, trailer, boat or other appliance or upon the land or water.
- 2.6 **Clandestine drug lab site** means any land or parts of a structure such as a dwelling, building or trailer, occupied or affected by conditions and/or chemicals typically associated with a clandestine drug lab operation.
- 2.7 **Cleanup** means proper removal and/or containment of substances hazardous to humans and/or the environment at a chemical investigation site. Cleanup is a part of remediation.
- 2.8 **Controlled substances** means a drug, substance or immediate precursor in Schedules I through V of Minnesota Statutes, Section 152.02; or successor statutes. This term shall not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.
- 2.9 **Owner** means any person, firm or corporation who owns, in whole or in part, the land and/or structures such as buildings, motor vehicles, trailers, boats or other appliances at a clandestine drug lab site.

- 2.10 Public health authority** means the Benton County Human Services Board and all departments and staff authorized by the Board to carry out public health activities that are the responsibility of the Board.
- 2.11 Public health nuisance** shall have the meaning given in Minnesota Statutes, Section 145A.02, Subd. 17; or successor statutes.
- 2.12 Remediation** means methods such as assessment, evaluation, testing, venting, detergent scrubbing, enclosure, encapsulation, demolition and/or removal of contaminated materials from a chemical investigation site.
- 2.13 Structure** means a dwelling, building, motor vehicle, trailer, boat, appurtenance thereto or other appliance.
- 2.14 Vulnerable adult** shall have the meanings given in Minnesota Statutes, Section 609.232, Subd. 11 and Minnesota Statutes, Section 626.557; or successor statutes.

SECTION 3.0 ADMINISTRATION

- 3.1 Declaration of Site as a Chemical Investigation Site Public Health Nuisance.**
Clandestine drug lab sites are declared by this Ordinance to be a public health nuisance, when a duly authorized representative of Benton County Human Services, after consultation with law enforcement officers who have observed the site, determines that contamination at the site may adversely affect public health.
- 3.2 Medical Protocol for Assessing Health Status of Exposed Persons.**
A medical protocol for assessing the health status and determining medical care needs of persons, particularly children and vulnerable adults, that are found or known to be frequent visitors at a clandestine drug lab site, may be established by resolution of the Benton County Human Services Board.
- 3.3 Law Enforcement Notice to Affected Public, Public Health, Environmental and Child Protection Authorities.**
- A. Law enforcement authorities who identify a clandestine drug lab site or a clandestine drug lab operation shall notify Benton County Human Services within one working day of identifying the clandestine drug lab site.
 - B. The obligation to notify may be delayed to accomplish appropriate law enforcement objectives, but only to the extent that public health responsibilities are not unnecessarily compromised.
 - C. When law enforcement completes their work and prepares to leave clandestine drug lab sites, they shall leave a warning sign posted on the

entrance of the affected part of the structure or land. The warning sign shall be those that have been prepared in advance for such situations through the collaboration of the Central Minnesota Drug Task Force. The warning sign shall be of a size and contain information sufficient to alert visitors or returning occupants to the site that the area is a chemical investigation site, may be dangerous to enter, and must not be entered except by authorization of the agency identified on the sign. Removal of a warning sign by anyone not authorized by the Board to do so is a violation of this Ordinance.

- D. The notices, referenced in Section 3.3A of this Ordinance, shall include sufficient information to inform the recipients of the following:
- 1) Property location by street address and other identifiable location;
 - 2) Property owner's and occupant's identities, including the identities of any vulnerable adults, children and women of child-bearing age found or known to be associated with the site;
 - 3) Chemicals found and indications of chemical residues;
 - 4) Presumed duration of the lab;
 - 5) Equipment in a dwelling, structure or on the land that is typically associated with the manufacture of a controlled substance; and,
 - 6) Conditions typically associated with a clandestine drug lab site or operation including weapons, illicit drugs, filth, fire, electrical shock, hazardous materials and other harmful conditions as determined by Minnesota law.
- E. Upon identification of the clandestine drug lab site or operation, law enforcement agencies may treat, store, transport or dispose of all hazardous waste found at the site in a manner consistent with Minnesota Department of Health and Minnesota Pollution Control Agency rules and regulations.

3.4 Notice of Chemical Investigation Site Public Health Nuisance to Owner and Occupant.

- A. After the public health authority receives adequate information from law enforcement that they have identified a clandestine drug lab site and posted the appropriate Chemical Investigation Site Public Health Nuisance sign, Benton County Human Services shall act to contact the lawful occupants and owners of the site to also inform them of their responsibilities relative to the chemical investigation site public health nuisance.

B. Benton County Human Services shall notify and order the property owner and occupant to have the public health nuisance removed or abated as provided in Minnesota Statutes, Section 145A.04; or successor statutes, and this Ordinance. The following shall be included as part of the notice and order:

- 1) A replica of the Chemical Investigation Site Public Health Nuisance declaration that is posted at the site's entrance(s).
- 2) Information about the potentially hazardous condition of the dwelling.
- 3) A summary of the property owner's and occupant's responsibilities under this Ordinance.
- 4) Information that can help them locate appropriate services necessary to remove and resolve the chemical investigation site public health nuisance status as provided in this Ordinance and Minnesota Statutes, Section 145A.04; or successor statutes.

C. The public health authority shall also provide information about the Public Health Nuisance declaration and potential hazard to the following concerned parties:

- 1) Occupants of the affected structure;
- 2) Neighbors in proximity that can be reasonably affected by the conditions found;
- 3) Other state and local authorities, such as the Minnesota Pollution Control Agency and Minnesota Department of Health, which may have public and environmental protection responsibilities applicable to the situation.
- 4) The clerk of the municipality in which the chemical investigation site is located.

3.5 Notice Filed with Property Record and/or Motor Vehicle Record.

A. If, after ten (10) business days notice and order, Benton County Human Services is unable to obtain any reasonable assurance or acceptable plan from the property owner or occupant that the property, dwelling or structure is being properly vacated, cleaned, remediated and tested, Benton County Human Services is authorized to provide a copy of the

Chemical Investigation Site Public Health Nuisance notice and order to the County Recorder and to the lien and mortgage holders of the affected personal property, structure and/or real properties. The County Recorder is authorized to record that information with the deed of the affected property to help assure that persons with interest in the property have access to information about the property's chemical investigation site public health nuisance status.

- B. Similarly, when the affected property is a motor vehicle, boat, recreational vehicle or trailer, Benton County Human Services shall provide notification to the appropriate state and local agency that maintains motor vehicle, boat, recreational vehicle or trailer records and to the lien and mortgage holders of the affected properties.

3.6 Property Owner and Occupant Responsibility to Act.

- A. Property owner(s) and occupant(s) provided with a notice, which may include the posted warning notice informing them about the chemical investigation site public health nuisance, shall promptly act to vacate occupants, including children and vulnerable adults, from those parts of a structure or property that are a chemical investigation site public health nuisance. This includes land, dwellings, structures, motor vehicles, trailers, boats or appliances and any contents thereof.
- B. Within ten (10) business days of receiving the Public Health notice and order to clean up the Chemical Investigation Site Public Health Nuisance, the property owner(s) and/or occupant(s) shall act to accomplish the following:
 - 1) Notify Benton County Human Services that the affected parts of the dwellings, buildings, and/or motor vehicles have been and will remain vacated and secured until Benton County Human Services acts to remove the chemical hazard investigation public health nuisance declaration.
 - 2) Contract with one or more acceptable environmental hazard testing and cleaning firms (acceptable firms are those that have provided the Minnesota Department of Health and Benton County assurance of appropriate equipment, procedures and personnel) to accomplish the following:
 - a) Conduct detailed on-site assessment of the real and personal property affected by the clandestine drug lab;

- b) Determine the extent of contamination, including conducting soil, water, and air testing of any property, soil, water or air in proximity to the site that the environmental hazard testing and cleaning firm determines may have been affected by the conditions found at the site;
 - c) Carry out and/or direct remediation operations, including, but not limited to, clean up or removal of contaminated plumbing, ventilation systems, fixtures, structures, soil or water or a demolition of the site and a complete clean up of the site;
 - d) A complete clean up or disposal at an approved solid waste facility, of all personal property in or on the site;
 - e) A complete clean up of all property, soil and water in proximity to the site that is found to have been affected by the conditions found at the site;
 - f) Perform and/or direct follow-up sampling and testing; and,
 - g) Determine that the risk are sufficiently reduced, according to Minnesota department of Health guidelines, to allow safe human occupancy or use of the dwelling, structure personal property or land.
3. Provide Benton County Human Services with the identity of the testing and cleaning firm the owner has contracted with, for remediation fo the dwelling, structure or land as described above.
4. Provide Benton County Human Services with the contractor's plan and schedule for remediation leading to removal of the chemical investigation site public health nuisance declaration.
5. The property owner or occupant may also seek authorization for an extension of time from Benton County Human Services to allow the owner time to consider options for arranging cleanup or removal of the affected parts of the dwelling, structure or land. The owner or occupant shall show good cause for any such extension. Any such extension shall be dependent on the owner's assurance that the affected parts of the structure, dwelling or land will not be occupied pending appropriate cleanup or demolition.

3.7 Clean Up Standards

The current Minnesota Department of Health guidelines entitled "Clandestine Drug Labs General Cleanup Guidelines," or successor guidelines, are hereby adopted by reference. Those guidelines shall serve as the standard for clean up of clandestine drug lab sites in Benton County.

3.8 Property Owner Responsibility for Costs and Opportunity for Recovery

- A. Consistent with Minnesota Statutes, Chapter, 145A; or successor statutes, the property owner shall be responsible for (1) private contractor's fees, cleanup, remediation and testing of chemical investigation site public health nuisance conditions; and (2) Benton County's fees and costs of administering notices and enforcing, vacating, cleanup, remediation and testing of affected parts of the property.
- B. Nothing in this Ordinance is intended to limit the property owner's, occupant's or the County's right to recover costs or damages referenced in this Section from persons contributing to the public health nuisance, such as the operators of the clandestine drug lab and/or other lawful sources.

3.9 Special Assessment to Recover Public Costs

- A. Benton County Human Services is authorized under Minnesota Statutes, Section 145A.04, Subd. 8(c); or successor statutes, to proceed within ten (10) business days of service of a notice for abatement or removal of the public health nuisance, to initiate the assessment and cleanup when (a) the property owner is not located, or (b) Benton County Human Services determines that the owner refuses to, or cannot pay the costs, or arrange timely assessment and cleanup that is acceptable to the designated public health authority.
- B. The County Administrator (or the Administrator's formally identified designee) shall be fully authorized to act, consistent with Minnesota law, on behalf of the County to direct funds to assure prompt remediation of chemical investigation sites.
- C. When the estimated cost of testing, cleanup and remediation exceeds seventy-five per cent (75%) of the County Assessor's market value of the structure, the County Administrator (or the Administrator's formally identified designee) is authorized to notify the property owner of the County's intent to remove and dispose of the affected real or personal property instead of proceeding with cleaning and remediation.

- D. The property owner shall be responsible for all costs, including those of the County, incurred to abate the public health nuisance, including contractor's fees and public costs for services that were performed in association with a clandestine drug lab site or chemical dump site cleanup. Fees and costs specified above that are not paid for in any other way may be collected through a special assessment on the property as allowed by Minnesota Statutes, Section 145A.08; or successor statutes, or by any other applicable Federal, State or County Laws, Rules, Ordinances and/or applicable County Board Resolution.
- E. Payment, on the special assessment, shall be at the annual rate of at least one thousand dollars (\$1000) or more as needed to assure full payment to the County within ten (10) years. This amount shall be collected at the time real estate taxes are due. The amount due and/or payment rate may be adjusted by action of the Benton County Board of Commissioners.

3.10 Authority to Modify or Remove Declaration of Chemical Investigation Site Public Health Nuisance

- A. Benton County Human Services may modify conditions of the declaration and order removal of the declaration of Chemical Investigation Site Public Health Nuisance.
- B. Such modification or removal shall be only after Benton County Human Services has determined levels of contamination are sufficiently reduced through remediation to warrant modification or removal of the declaration. Benton County Human Services may rely on information from competent sources, including those supplied by the property owner and/or others such as state and local health, safety and pollution control authorities to reach such decisions.
- C. When the declaration is modified or removed, Benton County Human Services shall forward that information to the County Recorder for addition to the property record if the Recorder has been notified as described above. Similarly, notice shall be provided to the motor vehicle or other license records agency and lien holders if a notice had previously been provided to them.

3.11 Waste Generated From Cleaning Up a Clandestine Drug Lab

Waste generated from chemical investigation site public health nuisances shall be treated, stored, transported and disposed of in accordance with applicable Minnesota Department of Health, Minnesota Pollution Control Agency and Benton County rules and regulations for solid waste and for household hazardous waste and other hazardous wastes.

SECTION 4.0 ENFORCEMENT

- 4.1 Any person, firm, or corporation who violates any of the provisions of this Ordinance, or who fails, neglects or refuses to comply with the provisions of this Ordinance, or who knowingly makes any false statement in any document required to be submitted under the provisions hereof, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed \$1000 or by imprisonment not to exceed 90 days, or both. Each day that a violation continues shall constitute a separate offense.
- 4.2 In the event of a violation or a threatened violation of this Ordinance, Benton County Human Services, in addition to other remedies, may institute appropriate civil actions or proceedings to prevent, prosecute, restore, restrain, correct or abate such violations or threatened violations, and it shall be the duty of the County Attorney to institute such action.

SECTION 5.0 EFFECTIVE DATE

This Ordinance shall be in full force and effect upon its passage and publication as provided by law.

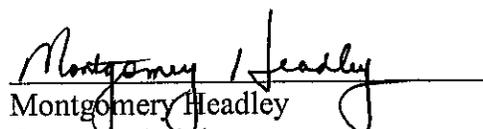
Dated: April 5, 2005

BENTON COUNTY BOARD OF
COMMISSIONERS



Duane J. Walter
Board Chair

ATTEST:



Montgomery Headley
County Administrator