

**BOARD OF COUNTY COMMISSIONERS  
WRIGHT COUNTY, MINNESOTA**

**ORDINANCE NO. 11-06**

**WRIGHT COUNTY  
PUBLIC HEALTH NUISANCE  
ORDINANCE**

(See Attached)

STATE OF MINNESOTA)

ss.

County of Wright )

I, Richard Norman, duly appointed, qualified, and acting Clerk to the County Board for the County of Wright, State of Minnesota, do certify that the attached amendments were adopted by the Board of Commissioners, Wright County, Minnesota, at their session held on the 29th day of November, 2011, now on file in my office, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal at Buffalo, Minnesota, this 29th day of November, 2011.



  
County Coordinator

## WRIGHT COUNTY PUBLIC HEALTH NUISANCE ORDINANCE

THE WRIGHT COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

### **SECTION 1: PURPOSE.**

**1.01 Purpose.** This Ordinance is enacted to protect the health, safety, and general welfare of the people of Wright County pursuant to powers granted under Minnesota Statutes Chapters 145A, 375 and 152.0275 and subsequent recodifications and/or amendments, and other applicable legislation, as may be adopted from time to time.

**1.02 Objectives.** The principal objectives of this Ordinance are:

- A. To prevent injury and illness to occupants of the property and the public, especially children and vulnerable adults.
- B. To provide countywide standards for the abatement of public health nuisances including, but not limited to, clandestine lab sites.
- C. To establish responsibility of involved parties and assure that people are not unnecessarily exposed to dangers of public health nuisances.
- D. To ensure proper actions are taken to remediate or abate public health nuisances.

**SECTION 2: DEFINITIONS.** Definitions of words, phrases, and terms used in this Ordinance shall be those set forth in Minnesota Statutes, Chapters 145A.02, 152.0275, and this section.

**2.01 Abatement** means the proper removal and/or containment of substances or materials hazardous to humans and/or the environment. Abatement is part of remediation.

**2.02 Child** means any person less than 18 years of age.

**2.03 Clandestine lab site** means any structure or conveyance or outdoor location occupied or affected by the conditions or chemicals typically associated with the manufacturing of methamphetamine or other unlawful manufacture of a controlled substance.

**2.04 Controlled substance** means a drug, substance or immediate precursor as defined in Minnesota Statutes, Chapter 152.01, Subd. 4. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors, or tobacco.

**2.05 County** means Wright County.

**2.06 Emergency response** includes, but is not limited to, removing and collecting evidence; securing the site; and removal, remediation, and hazardous chemical assessment or inspection of

the site where the relevant offense or offenses took place, regardless of whether these actions are performed by the public entities themselves or by private contractors paid by the public entities, or the property owner.

**2.07 Garbage** means any discarded material resulting from the handling, processing, storage, preparation, serving and consumption of food.

**2.08 Health Authority** means the Wright County Human Services Board and its designated employees, agents, or contractors, as the Wright County Board may designate.

**2.09 Occupant** means any person who occupies real property, whether with or without any right, title or interest in the property, and any person in possession or charge of such property, in the event the owner resides or is located elsewhere.

**2.10 Owner** means any person, persons, organization, or corporation that owns, in whole or in part, the land, structure, or other property or is the purchaser of the property under contract for deed.

**2.11 Personal property** means all property other than that defined in 2.12 and 2.17 of this Ordinance that is subject to ownership.

**2.12 Property** means publicly or privately owned real property including buildings and other structures, motor vehicles as defined in Minnesota Statutes 609.487, subd. 2a, public waters, and public right-of-ways.

**2.12 Property agent** means a person authorized by a property owner to act in transacting business matters or in managing the affairs of the property.

**2.13 Professional remediation firm** means a firm that has provided written assurance to the Health Authority that they have appropriate equipment, procedures, and personnel to accomplish remediation and that they are an experienced HAZMAT contractor.

**2.14 Public health nuisance** means any activity or failure to act that adversely affects the public health and shall include, but is not 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 and includes but is not limited to a clandestine lab site and other public health hazards.

**2.15 Remediation** means proper cleanup, treatment, or containment of hazardous substances or methamphetamine, in accordance with local, state, or federal regulations, at or in a clandestine lab site or public health nuisance, and may include demolition or disposal of structures or other property when an assessment so indicates.

**2.16 Rubbish** means any non-putrescible solid wastes including, but not limited to, ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, furniture, appliances, concrete, asphalt, tires, plastic, metal or fiberglass.

**2.17 Structure** means a dwelling, building, motor vehicle, trailer, boat, appliance or any other area or location, either fixed or temporary.

**2.18 Vulnerable Adult** shall have the meaning as defined in Minnesota Statutes Chapter 609.232, Subd. 11.

**2.19 Waste** means material that, in the opinion of the Health Authority, is no longer of any value for its original purpose and has been or should be discarded.

### **SECTION 3: GENERAL PROVISIONS**

**3.01 Prohibitions.** The creation or maintenance of a public health nuisance is prohibited. The following are hereby expressly declared to be public health nuisances without limitation by reason of such enumeration:

**A.** A clandestine lab site.

**B.** Improper sewage disposal to such degree that sewage or effluent is discharging onto the surface of the ground, backing up into a structure, or discharging into a body of water.

**C.** An unsecured hole or opening caused by improperly abandoned cistern, well pit, sewage treatment system, unused or non-maintained swimming pool, mine shaft or tunnel.

**D.** Failure to keep waste, refuse, or garbage in an enclosed building or properly contained in a closed, insect and rodent proof, container designed or reasonably adapted for such purpose, except for the immediate time preceding pick-up by a refuse hauler.

**E.** Accumulation of carcasses of animals, birds, or fish by failing to bury or otherwise dispose of in a sanitary manner within 24 hours after death. This provision shall not apply if the animals, birds, or fish are intended for human consumption.

**F.** Accumulation of decaying animal or vegetable matter, animal or human feces, trash, rubbish, garbage, rotting lumber, packing material, scrap metal, tires or any other substances which can harbor flies, mosquitoes, other disease carrying insects, rodents or other vermin; this definition does not include compost bins or compost sites which are being managed in accordance with acceptable standards.

**G.** Accumulations of waste, refuse, garbage, rubbish or junk as to become dangerous or injurious to the health and safety of any individual or to the public.

**H.** Any structure that has become dangerous for further occupancy because of sanitary defects.

**I.** Infestations of flies, fleas, cockroaches, lice, rats, mice, fly larvae, or hookworm larvae.

**J.** Unnatural breeding grounds which support mosquito larvae and mosquitoes capable of carrying West Nile Virus, La Crosse Encephalitis Virus, or any other disease causing microorganism.

**3.02 Jurisdiction.** This Ordinance shall be applicable in all incorporated and unincorporated municipalities (city or township) within the boundaries of Wright County under the jurisdiction of the Wright County Human Services Board. This ordinance does not preempt any ordinances adopted by a city or township related to clandestine lab sites or related to buildings and housing.

#### **SECTION 4: ADMINISTRATION.**

**4.01 Standards adopted.** This Ordinance incorporates by reference the provisions of Minnesota Statutes 145A, unless clearly inapplicable, and 152.0275 and all subsequent recodifications and amendments.

#### **4.02 Declaration as a public health nuisance.**

- A. It shall be the duty of the Health Authority to determine whether or not a public health nuisance exists.
- B. For purposes of emergency response and notification to applicable authorities and posting for the public, a peace officer may determine that a structure, property, or portion of a property constitutes a public health nuisance, including but not limited to the determination that the site constitutes a clandestine lab site.

#### **4.03 Modifications to or dismissal of the public health nuisance declaration.**

- A. The Health Authority may modify conditions of the declaration or dismiss the declaration of a public health nuisance.
- B. Such modifications or dismissal shall occur only after the Health Authority has confirmed that the levels of contamination are sufficiently reduced through abatement, remediation or other evidence discovered.
- C. The Health Authority will base its criteria for determining levels of contamination on the best health and safety information available at the time of the remediation and cannot be held liable for future discoveries.
- D. For good cause shown, the owner or occupant may request authorization from the Health Authority for an extension of time to complete abatement activities. The Health Authority may grant such extension if the extension does not increase the risk to public health or safety and is deemed appropriate by the Health Authority.

**4.04 Access to premises and records.** The owner or other parties shall, upon the request of the Health Authority and after proper identification, permit access to all parts of the site or structure as often as necessary, and at any reasonable time for the purposes of inspection, remediation and abatement, and shall exhibit and allow copying of any and all records necessary to ascertain compliance with this Ordinance.

**4.05 Interference with the Health Authority.** No person shall in any way interfere with or hinder the Health Authority in the performance of duties, or refuse the Health Authority access to gather information necessary to ascertain compliance with this Ordinance.

**SECTION 5: INVESTIGATION AND RESPONSE TO A PUBLIC HEALTH NUISANCE.**

**5.01 Health Authority owner notification.** Upon declaration of a public health nuisance, the Health Authority shall give written notice of its determination and orders to abate the nuisance to the owner, occupant and property agent, if applicable. This notice shall be served in person, by certified mail, or by an officer authorized to serve a warrant and contain the following:

- A. Property location by street address, property identification number, or other property description.
- B. Information identifying the nature of the public health nuisance at the property.
- C. A summary of the owner's and occupant's responsibilities under this Ordinance.
- D. Specific orders for abatement or remediation of the public health nuisance.
- E. A date for completion of the abatement not to exceed ten County business days following the receipt of the notice unless a shorter time is required due to the Health Authority's further determination that the immediate abatement is necessary to protect the public's health and safety. In such cases, the reason for a shortened abatement period shall be specified.
- F. Information regarding a right of appeal as provided in Section 8 of this Ordinance and that, unless the threat to public health is abated or removed in accordance with the terms of the notice, the Health Authority will have the public health nuisance abated or removed at the expense of the owner under the provisions of Minnesota Statutes 145A.08, this Ordinance, or other applicable state or local law.

**5.02 Unknown or absent property owner.** In the event the owner of the property is unknown or absent and has no known representative upon whom the notice can be served, the Health Authority shall post a written or printed notice on the property stating that, unless the threat to the public health is abated or removed within the ten County business days, the Health Authority will have the public health nuisance abated or removed at the expense of the owner under the provisions of Minnesota Statutes 145A.08, this Ordinance, or other applicable state or local law.

**5.03 Public notification.** The Health Authority shall provide information in writing about the public health nuisance declaration and potential hazard(s) to the following persons as applicable and appropriate:

- A. Child Protection Unit in situations of potential child maltreatment or endangerment;
- B. Adult Protection Unit in situations of potential vulnerable adult maltreatment or endangerment;
- C. Neighbors in close proximity likely to be affected by the conditions found at the site;
- D. The local municipal clerk, city administrator, or other city official;
- E. Local law enforcement officials; or
- F. Other state and local authorities that may have public safety or environmental protection responsibilities.

**5.04 Warning sign.** The Health Authority shall post a warning sign when deemed necessary to further protect the public health and safety. The warning sign shall be posted on the entrance(s) of the structure or property and contain information sufficient to alert visitors or returning occupants to the site that it may be dangerous to enter and that entry is prohibited unless authorized by the Health Authority or the law enforcement department posting the sign. Any person other than the Health Authority or its designated agent that removes a warning sign shall be in violation of this Ordinance.

**5.05 Health Authority abates nuisance.** If the owner, property agent or occupant, fails or neglects to comply with the requirements in the notice provided under Section 5.01 of this Ordinance, then the Health Authority shall abate or remediate the public health nuisance described in the notice. The Health Authority will recoup such costs as necessary to abate the public health nuisance as provided in Section 7 of this Ordinance and Minnesota Statutes, Section 145A.08.

**5.06 Vacating the public health nuisance order.** Upon Health Authority verification of proper abatement, remediation or removal at the site, the Health Authority shall issue written notice to those persons served notice under Section 5.01 of this Ordinance that the public health nuisance order is vacated. Notice shall also be provided, as applicable and appropriate, to those persons provided information under Section 5.03 of this Ordinance.

## **SECTION 6: ADDITIONAL REQUIREMENTS FOR CLANDESTINE LAB SITES.**

**6.01 Peace officer notification.** A peace officer who identifies a clandestine lab site shall notify the Health Authority of the location and of any arrests made at the site. If a child, or a vulnerable adult is present, the peace officer shall also notify the Child Protection Unit or the Adult Protection Unit.

**6.02 Handling of hazardous wastes and materials.** A peace officer or designated agent shall attempt to secure, store, transport or dispose of suspected hazardous waste and hazardous materials found at the site in a manner consistent with all applicable laws, ordinances, regulations and rules.

**6.03 Posting of a clandestine lab site.** Upon identification of a clandestine lab site, a peace officer shall post a warning sign at the entrance(s) on the property as a public health nuisance in a form approved by the Health Authority. The sign must state that no person(s) shall enter, occupy, or remove any personal property from the site without authorization of the Health Authority or the law enforcement department that posted the property as a public health nuisance. Persons who enter a property without authorization or remove the sign will be in violation of this Ordinance.

**6.04 Actions to secure a clandestine lab site.** The law enforcement department posting the property as a public health nuisance shall have the authority to secure all structures on the site that may pose a threat to public safety. These methods may include, but are not limited to:

- A. Removing all persons occupying the site;
- B. Overseeing the initial removal of all chemical materials in accordance with Section 6.02;
- C. Boarding up and locking buildings;
- D. Towing any vehicles involved to places of safe storage; and
- E. Removing all domesticated animals from the site.

**6.05 Health Authority notice to owner of clandestine lab site.** Upon receipt of the peace officer's notice of a clandestine lab site, the Health Authority shall give written notice of the determination and orders to remediate the site to the owner, occupant and property agent, if applicable. This notice shall be served in person, by certified mail, or by an officer authorized to serve a warrant. If the owner is unknown, the Health Authority will follow the provisions of Section 5.02 of this Ordinance. The notice will contain the following:

- A. Property location by street address, property identification number, or other property description.
- B. The determination that the property constitutes a clandestine lab site and therefore a public health nuisance requiring a remediation plan.
- C. The requirements of the remediation plan in Section 6.06 of this Ordinance.
- D. The remediation plan must be received by the Health Authority within ten County business days following the receipt of the notice.
- E. The property owner, occupant or property agent must receive Health Authority approval prior to implementing the remediation plan. The notice of the action shall state the right of appeal as provided in Section 8 of this Ordinance and that, unless the threat to public health is abated or removed in accordance with the terms of the notice, the Health Authority will have the public health nuisance abated or removed at the expense of the owner under the provisions of Minnesota Statutes 145A.08 and 152.0275, this Ordinance, or other applicable state or local law.

**6.06 Remediation plan.** The written remediation plan shall be completed by a professional remediation firm on forms approved by the Health Authority. The plan shall provide information on the following activities the professional remediation firm will complete within 30 calendar days following the Health Authority's approval of the remediation plan:

- A. A detailed on-site assessment of the extent of contamination at the site and the contamination of the personal property therein;
- B. A detailed remediation schedule of activities;
- C. A complete abatement of the site, including if appropriate the removal and destruction (to prevent salvaging), of all contaminated personal property on the site;
- D. A complete cleanup of all property in proximity to the site that is found to have been affected by the conditions found at the site; and

E. Remediation testing and follow-up testing to determine that health risks are sufficiently reduced, according to the Minnesota Department of Health's Clandestine Drug Lab General Cleanup Guidelines and best practices at the time of abatement, to allow safe human occupancy and use of the site and/or use of the personal property therein.

**6.07 Health Authority abates nuisance.** If the owner, occupant, or agent fails or neglects to comply with the requirements of the notice provided under Section 6.05 of this Ordinance, the Health Authority shall remove or abate the nuisance as provided in Section 5.05 of this Ordinance.

**6.08 Vacating the public health nuisance order.** Upon proper removal and remediation of the site, the professional remediation firm shall verify to the property owner and the Health Authority that the work was completed according to the Minnesota Department of Health's Clandestine Drug Lab General Cleanup Guidelines and best practices. The professional remediation firm shall provide written verification to the property owner and the Health Authority within five County business days from the completion of the remediation. Following the Health Authority's review and approval of the contractor's verification, the Health Authority shall vacate the public health nuisance order.

**6.09 Property disclosure.** According to the requirements set forth in Minnesota Statutes, 152.0275, subd. 2, and subsequent amendments, the following steps shall be taken to disclose a property's contamination status associated with a clandestine lab site to interested persons:

- A. The Health Authority shall notify the registrar of motor vehicles of a vehicle's contamination associated with a clandestine lab site following the issuance of orders under Section 6.05 of this Ordinance. The Health Authority will provide a subsequent notice when the motor vehicle remediation is completed according to Section 6.06 of this Ordinance.
- B. The Health Authority shall record an affidavit with the County Recorder of a property's contamination associated with a clandestine lab site following the issuance of orders under Section 6.05 of this Ordinance. The Health Authority will record a subsequent affidavit when the property remediation is completed according to Section 6.06 of this Ordinance.
- C. The County Recorder must record all affidavits presented under Section 6.09 B, in a manner that assures their disclosure in the ordinary course of a title search of the subject property.
- D. The Health Authority shall maintain a list, available to the public upon request, of properties receiving notices under Section 6.05 and their status under Section 6.06 of this Ordinance.
- E. Prior to signing an agreement to sell or transfer real property, the seller or transferor must disclose in writing to the buyer or transferee if, to the seller's or transferor's knowledge, methamphetamine production has occurred on the property.

F. Prior to signing a lease or rental agreement, the owner or owner's representative, must disclose in writing to the renter or tenant if, to the owner or owner's representative's knowledge, methamphetamine production has occurred on the property.

## **SECTION 7: COSTS AND REIMBURSEMENTS.**

### **7.01 Recovery of costs.**

A. If the Health Authority is required to remove, abate or remediate a public health nuisance, the County may recover costs incurred in investigation, removal, abatement or remediation in a civil action or, at the discretion of the County Board. The cost of enforcement action under this Ordinance may be assessed and charged against the real property on which the public health nuisance was located, pursuant to Minnesota Statutes, section 145A.08. The County shall extend the cost as assessed and charged on the tax roll against said real property.

B. When the estimated cost of abatement and remediation exceeds seventy-five percent of the County Assessor's market value of the structure, the County Administrator or designee, is authorized to notify the property owner of the County's intent to remove and dispose of the affected property instead of proceeding with abatement and remediation. For motor vehicles, the County will use the Kelley Blue Book value or equivalent in determining market value.

C. Nothing herein precludes or limits the County from seeking recovery of costs through other methods allowed by federal or state law.

**7.02 Subrogation rights.** Nothing in this Ordinance is intended to limit the subrogation rights of any party and the owner occupants. The County shall maintain the right to recover costs, referenced in this section, from persons contributing to the damage, such as those convicted of manufacturing methamphetamine, or other controlled substances.

## **SECTION 8: APPEALS.**

**8.01 Right of Appeal.** When a public health nuisance is declared, an owner and/or an occupant of the affected property may appeal the declaration, including an order for abatement or remediation from the Health Authority, by filing a written request with the Health Authority for an administrative hearing within ten calendar days of the date of service, exclusive of the day of service, of notice under Sections 5.01 or 6.05 exclusive of the day of service. In the event of an unknown or absent property owner, the appeal must be requested within ten calendar days of the day of posting of the notice under Section 5.02.

**8.02 Administrative Hearing.** If any owner or occupant makes a written request to the Health Authority for an administrative hearing, such hearing shall be held before the Health Authority Division Manager or his/her designee.

**8.03 Schedule.** The hearing shall be held no later than 15 calendar days after the date of service of the request for a hearing was received unless the appellant requests an extension of time. If an extension is requested, the hearing shall be held no later than 30 calendar days after the date of service of the request for a hearing.

**8.04 Notice.** The Health Authority shall mail a notice of the time and place of the hearing at least ten calendar days prior to the hearing.

**8.05 Witnesses and Evidence.** All parties shall have full opportunity to respond to and present evidence and witnesses.

**8.06 Standard of Proof.** The appellant shall have the burden of proving its position by clear and convincing evidence.

**8.07 Rules of Evidence.** Hearings shall be informal and the rules of evidence as applied in the courts shall not apply. Irrelevant, immaterial and repetitious evidence shall be excluded.

**8.08 Record of Hearing.** The hearing shall be taped or videotaped.

**8.09 Notice of Decision.** The decision of the Health Authority Division Manager shall be issued within ten calendar days following the administrative hearing. Unless otherwise provided by law, the decision of the Health Authority shall constitute the final decision unless the County Board modifies or rejects it as provided in Section 8.10.

**8.10 Human Services Board Review.** Each party adversely affected may submit written exceptions and arguments to the Human Services Board within ten calendar days of the service of the decision Health Authority Director. The Human Services Board shall consider the decision of the Health Authority at the next possible board meeting and may adopt or modify the decision, reject the decision, or remand for further hearing.

**8.11 Further Appellate Rights.** Any party aggrieved by a final decision is entitled to judicial review of the decision. A petition for a writ of certiorari by the party must be filed with the Court of Appeals not more than thirty calendar days after the party receives the final decision from the County Board.

**SECTION 9: DISCLAIMER OF LIABILITY.** Liability on the part of, or a cause of action against, Wright County or any officer, employee or agent thereof for any damages that may result from administration and enforcement of this Ordinance shall be limited as provided by Minnesota Statutes 466.02.

**SECTION 10: FEES.** Fees for the Health Authority complaint investigation, verification, administration, and enforcement of violations of this Ordinance shall be those established by resolution, as amended from time to time, of the Wright County Board of Commissioners.

**SECTION 11: PENALTIES.**

**11.01 Misdemeanor.** Any person who violates this Ordinance, or who permits a violation to exist on the premises under his/her control, or fails to take action to abate the existence of the violation(s) within a specified time period, when ordered or notified to do so by the Health Authority, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by law. Each day that a violation continues shall constitutes a separate offense.

**11.02 Civil Remedies.** In the event of a violation or threat of violation of this Ordinance, the County Attorney may take appropriate action to enforce this Ordinance, including application for injunctive relief, action to compel performance, or other appropriate action in court, if necessary, to prevent, restrain, correct, or abate such violations or threatened violations. The County Attorney enforcing provisions of this Ordinance may seek costs and disbursements, including staff time and attorneys' fees.

**SECTION 12: SEPARABILITY.** If any provision of this Ordinance is found unconstitutional or otherwise held invalid, that invalidity shall not affect the validity or enforceability of any other provisions or applications of this Ordinance.

**SECTION 13: CAPTIONS.** The captions printed in boldfaced type before the sections of this Ordinance are mere catch words to indicate the content of the section.

**SECTION 14: EFFECTIVE DATE.** After passage by the Wright County Board of Commissioners, this Ordinance shall take effect on November 29, 2011.

Dated this 29<sup>th</sup> day of November, 2011.

WRIGHT COUNTY BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Chairperson

ATTEST:   
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County Coordinator