



Olmsted County Code of Ordinances

Chapter 3000

**OLMSTED COUNTY CLEANUP OF CLADESTINE DRUG LAB
SITES ORDINANCE**

Olmsted County, MN

Updated November 21, 2017

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OLMSTED COUNTY, MN

Resolution No. 01-99

WHEREAS, chemicals used in the production of illicit drugs present a health risk to the occupants and neighbors of dwellings and other structures often used for such processes; and

WHEREAS, chemicals used in the production of illicit drugs can present severe and long-lasting impact on the health of children and the reproductive health of adults; 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, chemicals used in the production of illicit drugs may not be readily apparent and may cause harm to occupants and visitors of these structures without their awareness; 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 Statute 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 Statute 145A.05 authorizes county boards to adopt and enforce ordinances related to control of public health nuisances; and

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

WHEREAS, Minnesota Statute 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 Sept 25, 2001, by the Olmsted County Board of Commissioners, pursuant to Minnesota Statute 375.51.

NOW, THEREFORE BE IT RESOLVED, that the Olmsted County Board of Commissioners adopts the "Cleanup of Clandestine Drug Lab Sites Ordinance", as on file in the County Administrator's office, on this 23rd day, of October 2001.

Dated: October 23, 2001

BOARD OF COUNTY COMMISSIONER

OLMSTED COUNTY CLEANUP OF CLADESTINE DRUG LAB SITES ORDINANCE

3001 GENERAL PROVISIONS

3001.01 TITLE. This ordinance shall be known and referenced as the "Cleanup of Clandestine Drug Lab Sites Ordinance."

3001.02 PURPOSE.

3001.02.01 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.

3001.02.02 These conditions present health and safety risks to occupants and visitors of structures through fire, explosion, skin and respiratory exposure to chemicals.

3001.02.03 This ordinance establishes responsibilities and guidelines for involved parties to assure the following:

- a. people are not unnecessarily exposed to the dangers of these contaminated structures; and
- b. proper steps are taken to remove contaminants and assure appropriate tests are done to demonstrate that affected structures are sufficiently cleaned for human contact.

3001.02.04 This ordinance assists and guides appropriate authorities, property owners, and occupants to prevent injury and illness to members of the public, particularly children.

3001.02.05 This ordinance is intended to help assure reduction of people's exposure to chemicals associated with the site of a former clandestine drug lab operation at structures such as a dwelling, building, motor vehicle, trailer, or appliance.

3001.03 JURISDICTION.

3001.03.01 This ordinance shall apply to all incorporated and unincorporated municipalities (city or township) within the boundaries of Olmsted County.

3001.03.02 Where a municipality has lawfully passed an ordinance to regulate and enforce in an equivalent or more restrictive manner, the County's administrator of this ordinance shall coordinate regulation and enforcement with that municipality.

3001.04 INTERPRETATION AND APPLICATION.

3001.04.01 The provisions of this ordinance shall be interpreted and applied as the minimum requirements necessary to protect public health, safety, and welfare.

3001.04.02 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.

3001.05 DISCLAIMER OF LIABILITY. Liability on the part of, or a cause of action against, Olmsted County or any employee thereof for any damages that may result from reliance on this ordinance shall be eliminated or limited as provided by Minnesota law and the Olmsted County Administrative Enforcement and Appeals Procedure Ordinance.

3001.06 FEES. Fees for the administration of this ordinance may be established and amended periodically by resolution at the Olmsted County Board.

3001.07 DEFINITIONS, RULES, AND WORD USAGE. For the purpose of this ordinance, the following terms or words shall be interpreted as follows:

3001.07.01 CHILD means any person less than 18 years of age.

3001.07.02 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 Statute Chapter 145A, and this ordinance.

3001.07.03 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.

3001.07.04 CLANDESTINE DRUG LAB SITE means any parts of a structure such as a dwelling, building, motor vehicle, trailer, or appliance occupied or affected by conditions and/or chemicals, typically associated with a clandestine drug lab operation.

3001.07.05 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.

3001.07.06 CONTROLLED SUBSTANCE means a drug, substance or immediate precursor in Schedules I. through V. of Minnesota Statute 152.02, as amended in the future. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors, or tobacco.

3001.07.07 OWNER means any person, firm, or corporation who owns, in whole or in part, the land and/or structures such as buildings, motor vehicle, trailer, boat or other appliance at a clandestine drug lab site.

3001.07.08 PUBLIC HEALTH NUISANCE shall have the meaning attributed to it in Minnesota Statutes 145A.02, Subd. 17.

3001.07.09 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.

3001.07.10 STRUCTURE means a dwelling, building, motor vehicle, trailer, boat or other appliance.

3002 ADMINISTRATION

3002.01 DECLARATION OF SITE AS A CHEMICAL INVESTIGATION SITE PUBLIC HEALTH NUISANCE.

Clandestine drug lab sites as defined above are declared by this ordinance to be "chemical investigation site public health nuisances".

3002.02 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 – that are found or known to be frequent visitors at a clandestine drug lab site, may be established by the Medical Consultant to Public Health, as a Standing Order that may be updated as necessary by the Medical Consultant.

3002.03 LAW ENFORCEMENT NOTICE TO AFFECTED PUBLIC, PUBLIC HEALTH, AND CHILD PROTECTION AUTHORITIES.

3002.03.01 Law enforcement authorities who identify a, clandestine drug lab site, or clandestine drug lab operation shall promptly notify the Olmsted County departments responsible for public health and child protection.

3002.03.02 The obligation to promptly notify may be delayed to accomplish appropriate law enforcement objectives, but only to the extent that public health and child protection responsibilities are not unnecessarily compromised.

3002.03.03 When law enforcement completes their work and is prepared to leave such sites, they shall leave a warning sign posted on the entrance of the affected part of the

structure. The warning sign shall be those that have been prepared in advance for such situations through the collaboration of County Law Enforcement and Public Health. 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 Public Health and/or Law Enforcement agency identified on the sign.

3002.03.04 The notices, referenced in Sec 3002.03.03 above, shall include sufficient information to inform the recipients of the following:

- a. property location by street address and other identifiable location;
- b. property owner's and occupant's identities – especially the identities of any children and women of child-bearing age found or known to be associated with the site;
- c. chemicals found and indications of chemical residues;
- d. presumed duration of the lab;
- e. equipment in a dwelling or structure that is typically associated with the manufacture of a controlled substance; and
- f. conditions typically associated with a clandestine drug lab site or operation including, weapons, illicit drugs, filth, fire, or electrical shock and other harmful conditions as determined by Minnesota law.

3002.04 NOTICE OF CHEMICAL INVESTIGATION SITE PUBLIC HEALTH NUISANCE TO OWNER AND OCCUPANT.

3002.04.01 After Public Health 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, Public Health 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.

3002.04.02 The public health authority shall notify and order the property owner and occupant to have the public health nuisance removed or abated as provided in Minnesota Statute 145A.04 and this ordinance. Public Health shall include the following as part of the notice and order:

- a. A replica of the Chemical Investigation Site Public Health Nuisance declaration that is posted at the site's entrance(s).
- b. Information about the potentially hazardous condition of the dwelling.

- c. A summary of the property owner's and occupant's responsibilities under this ordinance.
- d. 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 Statute 145A.04.

3002.04.03 The public health authority shall also provide information about the Chemical Investigation Site Public Health Nuisance declaration and potential hazard(s) to the following concerned parties:

- a. Occupants of the affected structure;
- b. Neighbors in proximity that can be reasonably affected by the conditions found;
- c. The local municipal clerk;
- d. Local law enforcement;
- e. Other state and local authorities, such as the Minnesota Pollution Control Agency and Minnesota Department of Health, that may have public and environmental protection responsibilities applicable to the situation.

3002.05 NOTICE FILED WITH PROPERTY RECORD AND/OR MOTOR VEHICLE RECORD.

3002.05.01 If after 10 days notice and order, Public Health is unable to obtain any reasonable assurance or plan from the property owner or occupant that the dwelling or structure is being properly vacated, cleaned, remediated, and tested, Public Health 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 structure and/or properties. The County Recorder is authorized to file that information with the property record, 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.

3002.05.02 Similarly when the affected property is a motor vehicle, boat, or trailer, Public Health shall notify the appropriate State and local agency that maintains motor vehicle, boat, or trailer records, and to the lien and mortgage holders of the affected properties.

3002.06 PROPERTY OWNER'S AND OCCUPANT'S RESPONSIBILITY TO ACT.

3002.06.01 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 from those parts of a structure that are a chemical investigation site public health nuisance. This includes dwellings, buildings, motor vehicles, trailers, boat, or appliances.

3002.06.02 Within ten business days of receiving the Public Health notice and order to cleanup the Chemical Investigation Site Public Health Nuisance, the property owner(s) and/or occupant(s) shall act to accomplish the following:

- a. Notify Public Health Authority that the affected parts of the dwellings, buildings, and/or motor vehicles have been and will remain vacated and secured until Public Health acts to remove the chemical hazard investigation public health nuisance declaration.
- b. Contract with one or more acceptable environmental hazard testing and cleaning firms (acceptable firms are those that have provided the Minnesota and/or Olmsted County Departments of Health assurance of appropriate equipment, procedures, and personnel) to accomplish the following:
 1. Conduct a detailed on-site assessment,
 2. Determine the extent of contamination
 3. Carry out and/or direct remediation operations,
 4. Perform and/or direct follow-up sampling and testing, and
 5. Determine that the risks are sufficiently reduced, according to Minnesota Department of Health guidelines, to allow renewed occupancy of the dwelling.
- c. Provide the Public Health Authority with the identity of the testing and cleaning firm the owner has contracted with, for remediation of the structure(s) as described above.
- d. Provide the Public Health Authority with the contractor's plan and schedule for remediation leading to removal of the chemical investigation site public health nuisance declaration.
- e. The property owner or occupant may also seek authorization for an extension of time to allow the owner time to consider options for arranging cleanup or removal of the affected parts of the structure. Owner or occupant must 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 will not be occupied pending appropriate cleanup or demolition.

- f. The Public Health Authority may authorize extensions, up to 90 calendar days but will make extensions beyond 90 days only with approval of the Environmental Commission.

3002.07 PROPERTY OWNER'S RESPONSIBILITY FOR COSTS AND OPPORTUNITY FOR RECOVERY.

3002.07.01 Consistent with Minnesota Statutes Chapter 145A, the property owner shall be responsible for a) private contractor's fees, cleanup, remediation, and testing of chemical investigation site public health nuisance conditions; and b) Olmsted County's fees and costs of administering notices and enforcing vacating, cleanup, remediation, and testing of affected parts of the property.

3002.07.02 Nothing in this ordinance is intended to limit the property owners, occupants, or the County's right to recover costs, referenced in this section, from persons contributing to the damage, such as the operators of the clandestine drug lab and/or other lawful sources.

3002.07.03 The County's administrative and enforcement services, referenced in subsection 3002.07.01, include but are not limited to, the following:

- a. Posting the site,
- b. Notification of concerned parties,
- c. Remediation services,
- d. Laboratory fees,
- e. Expenses related to the recovery of costs, including the property assessment process,
- f. Administrative fees, and
- g. Other services associated with assessing, vacating, and remediation of the property.

3002.07.04 The County will pay remediation costs that exceed the following:

- a. Any applicable insurance damage recovery payments;
- b. Any applicable security deposits;
- c. Any applicable court awards, settlements, or payments made for damage recovery from the perpetrator. This includes those recoveries made according to the

authority of Minnesota Statutes Chapters 115B and 611A and Minnesota Statute 561.01; and

- d. The property owner's contribution of \$ 2,000 (two thousand dollars).
- e. An individual property owner's contribution amount may be adjusted down according to current poverty guidelines accepted by the County Board of Commissioners.

3002.07.05 When a property owner transfers remediation costs to the County, the property owner agrees to provide the following to the County: 1) identity of all insurance companies, that have policies regarding the property, and pending court or contract enforcement actions, that may result in recovery of remediation costs; and 2) proceeds from pending recovery actions, including, but not limited to, insurance companies, applicable court actions, and enforcement of contracts. As a precondition to any County obligation to make any payments hereunder, the property owner shall make legally sufficient assignment to the County any of the foregoing which are applicable.

3002.07.06 If there is still an unresolved cost, the County shall apply for applicable state and federal funding to offset the cost of remediation and associated eligible County expenses.

- a. Such funding may include that authorized by federal programs such as the Environmental Protection Agency's "Local Government Reimbursement" program referenced in pages 8283 – 8296 of the Federal Register, dated February 18, 1998.
- b. The County shall return amounts that exceed the County's applicable costs to the rightful parties.
- c. Costs that exceed the financial sources, referenced in the above sections, will be recovered from the property owner as a special assessment on the property as provided in Minnesota Law and Section 3002.08 below.

3002.07.07 The County Board of Commissioners can periodically amend the considerations and financial contribution limits, referenced in section 3002.07.04 through 3002.07.06 by resolution.

3002.07.08 Expenses, such as replacement of a structure's damaged furnishings, walls, floors, and ceilings; and equipment, vehicles, boats, and trailers are not eligible for County funding referenced in this ordinance.

3002.08 SPECIAL ASSESSMENT TO RECOVER PUBLIC COSTS.

3002.08.01 The County is authorized to proceed within ten business days after mailing of notification, to initiate the assessment and cleanup when a) the property owner is not

located, or b) is located but fails to respond appropriately, or c) notifies Public Health authority that he or she refuses to, or cannot pay the costs, or arrange timely assessment and cleanup that is acceptable to the designated Public Health authority.

3002.08.02 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.

3002.08.03 When the estimated cost of testing, cleanup, and remediation exceeds seventy five percent 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 property instead of proceeding with cleaning and remediation.

3002.08.04 The property owner will be given up to ten business days to appeal to the County Administrator (or the Administrator's formally identified designee) and if appealed will be given the opportunity to show cause as to why such removal should not occur. The appeal is also the owner's opportunity to assume responsibility and provide acceptable plans and schedule for effectively cleaning, remediation, and testing of the structure. If within ten business days, of the administrator's notice, the owner fails to appropriately appeal or assume responsibility the administrator is authorized to arrange removal and disposition of the hazardous structure.

3002.08.05 The property owner shall reimburse the county, for its fees and costs of vacating, securing, and assuring cleanup and testing of the affected parts of the structure. Fees and costs not paid in any other way, may be collected through a special assessment on the property, as allowed by applicable Federal, State, and County Laws, Ordinances, and/or applicable County Board Resolution.

3002.08.06 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 Olmsted County Board of Commissioners.

3002.08.07 The County may also seek recovery of costs through other methods allowed by Federal or State law.

3002.09 AUTHORITY TO MODIFY OR REMOVE DECLARATION OF CHEMICAL INVESTIGATION SITE PUBLIC HEALTH NUISANCE.

3002.09.01 The designated Public Health authority may modify conditions of the declaration and order removal of the declaration of Chemical Investigation Site Public Health Nuisance.

3002.09.02 Such modification or removal shall be only after the Public Health Authority has determined levels of contamination are sufficiently reduced through remediation to warrant modification or removal of the declaration. The Public Health Authority 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.

3002.09.03 When the declaration is modified or removed the Public Health Authority 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.

3002.10 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 in accordance with applicable Minnesota Department of Health, Minnesota Pollution Control Agency, and Olmsted County rules and regulations for solid waste and for hazardous household and other hazardous wastes.

3003

3003.01 ENFORCEMENT OF CHEMICAL INVESTIGATION SITE PUBLIC HEALTH NUISANCE NOTICES AND APPEALS.

Except as otherwise provided by Minnesota law, the procedures which must be followed in the event an appeal of the issuance of a Chemical Investigation Site Public Health Nuisance Notice is sought shall be governed by the Olmsted County Enforcement and Appeals Procedure Ordinance set forth in Chapter 4000 of the Olmsted County Code of Ordinances

3003.02 SEVERABILITY AND SAVINGS CLAUSE.

If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation of, or affect the validity or enforceability of any other section or provision of this ordinance.

3004 EFFECTIVE DATE

The changes to Sections 3003.01 pertaining to the manner in which appeals of Chemical Investigation Site Public Health Nuisance Notices are directed to a County Hearing Officer or to the Public Health Services Advisory Board for initial review pursuant to the County Administrative Enforcement and Appeals Procedure Ordinance shall take effect January 1, 2018.

Dated this 21st day of November 2017.

OLMSTED COUNTY BOARD OF COMMISSIONERS

/s/ Kenneth Brown

Kenneth Brown, Chair of the County Board

Attest: /s/ Heidi Welsch

Heidi Welsch, County Clerk-Administrator

END OF CHAPTER 3000