

Proposed by:
Special Committee of Council

ORDINANCE NO. _____

AN ORDINANCE CREATING CHAPTER 1312 OF THE CODIFIED ORDINANCES OF THE CITY OF CHILLCOTHE, TITLED “CLANDESTINE DRUG LABS.”

WHEREAS, Council desires to reduce public exposure to health risks relating to the presence of hazardous chemicals from suspected clandestine drug lab sites or associated dumpsites; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHILLCOTHE, STATE OF OHIO:

SECTION 1. There is hereby created Chapter 1312 of the Codified Ordinances of the City of Chillicothe which shall be titled “Clandestine Drug Labs.” This Chapter shall read as follows:

**CHAPTER 1312
Clandestine Drug Labs**

- 1312.01 General provisions.
- 1312.02 Administration.
- 1312.03 Disclosure to buyers and occupants.
- 1312.04 Miscellaneous provisions.
- 1312.05 Appeals.
- 1312.99 Violations and penalties.

1312.01 GENERAL PROVISIONS.

(a) Purpose and Intent. The purpose of this chapter is to reduce public exposure to health risks where trained law enforcement officers have determined that hazardous chemicals from a suspected clandestine drug lab site or associated dumpsite may exist. The City Council finds that 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, now and in the future.

(b) Interpretation and Application. The provisions of this chapter shall be construed to protect the public health, safety and welfare.

Where the conditions imposed by any provision of this chapter are either more or less restrictive 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 shall prevail.

Should any court of competent jurisdiction declare any section or subpart of this chapter to be invalid, such decision shall not affect the validity of the chapter as a whole or any part thereof, other than the provision declared invalid.

(c) Fees. Fees for the administration of this Chapter may be established and amended periodically by the City Administration.

(d) Definitions. As used in this chapter:

- (1) “Box Lab” shall mean any illegal methamphetamine and/or drug manufacturing laboratory that is portable, including but not limited to motor vehicles used as an illegal methamphetamine manufacturing laboratory.

- (2) "Certified/licensed environmental testing/cleaning firm" means any testing and or cleaning firm that performs testing/cleaning in compliance with established EPA standards and procedures.
- (3) "Chemical dumpsite" means any place or area where chemicals or other waste materials used or produced in a clandestine drug lab have been located.
- (4) "Child" means any person less than 18 years of age.
- (5) "Clandestine drug lab" means the unlawful manufacture or attempt to manufacture controlled substances
- (6) "Clandestine drug lab site" means any place or area where law enforcement has determined that conditions associated with the operation of a clandestine drug lab exist. A clandestine drug lab site may include residential, commercial, industrial or institutional structures, accessory buildings, accessory structures, motor vehicles, a chemical dumpsite, land or any box lab.
- (7) "Controlled substance" means a drug, substance or precursor in Schedules I through V of Ohio R.C. 3719.41. The term does not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.
- (8) "Emergency dismantling" shall include dismantling or disposal of drug processing apparatus and/or chemicals once the site has been declared a public health hazard.
- (9) "Hazardous wastes" means waste generated from a clandestine drug lab.
- (10) "Illegal methamphetamine or drug manufacturing laboratory" has the same meaning as in Section 3745.13 of the Ohio Revised Code.
- (11) "Illegal methamphetamine or drug manufacturing laboratory site" shall mean any place or area where law enforcement has determined that the conditions associated with the operation of an illegal methamphetamine manufacturing laboratory exist. Conditions associated with the operation of an illegal methamphetamine manufacturing laboratory include, but are not limited to, the existence of an illegal methamphetamine manufacturing laboratory, a box lab, or chemical dumpsite or the storage of chemicals used in the production of methamphetamine. An illegal methamphetamine manufacturing laboratory site may include, but is not limited to dwellings, accessory buildings, accessory structures, motor vehicles, or any land.
- (12) "Manufacture", in places other than a pharmacy or a licensed pharmaceutical manufacturing facility, includes the production, cultivation, quality control, and standardization, by mechanical, physical, chemical or pharmaceutical means, packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or by other process, of controlled substances.
- (13) "Methamphetamine" has the same meaning as in Ohio R.C. 3745.13.
- (14) "Motor vehicles" shall have the same meaning as in Ohio R.C. 4501.01.
- (15) "Owner" means any person, firm or corporation who owns, in whole or in part, the land, buildings, structures, vehicle or property associated with a clandestine drug lab site, box lab or chemical dumpsite.
- (16) "Precursor" means any chemical reactant which takes place at any stage in the production by whatever method of a hazardous waste.
- (17) "Public health hazard" includes all residential, commercial, industrial or institutional structures, accessory structures, buildings, vehicles and property associated with a clandestine drug lab site that are potentially unsafe due to health hazards.
- (18) "Real property" shall include any buildings or structures located on property.

(19) “The City” means the City of Chillicothe, Ohio.

(20) “Transfers of property” shall mean the transfer or conveyance of any interest in real property by sale, lease, and gift or land contract.

1312.02 ADMINISTRATION.

(a) Law Enforcement Notice to Other Authorities. Law enforcement authorities that identify conditions associated with a clandestine drug lab site or chemical dumpsite that present a risk of human exposure to harmful contaminants and other associated conditions shall promptly notify the appropriate municipal, child protection, and public health authorities of the site location, property owner if known, and conditions found. Where the Director of Public Safety determines that a threat of human exposure or injury exists, the City may conduct emergency dismantling and disposal of drug processing apparatus and/or chemicals. To the extent permitted by law, the individual or entity responsible, and/or the owner of the property where the site is found, shall be liable to the City for its costs incurred in conducting the emergency dismantling and disposal. Such costs may be recovered pursuant to subsection (f) (4) of this Section, without regard to whether a nuisance is declared or an abatement order is issued.

(b) Declaration of Property as a Public Health Hazard. Any clandestine drug lab site or chemical dumpsite identified by law enforcement authorities through currently accepted procedures is hereby declared to be a public health hazard. Upon identification of such a hazard, the law enforcement authorities shall notify the Chief Building Official.

(c) Notice of Public Health Hazard to Concerned Parties. Upon receipt of the notification by law enforcement authorities, the Chief Building Official shall promptly issue a Declaration of Public Health Hazard for the affected property and post a copy of the Declaration at the probable entrance to the dwelling or property. The Chief Building Official shall also notify the owner of the property by certified mail and notify the following parties in writing:

- (1) Occupants of the property;
- (2) All adjacent property owners and any other neighbors at probable risk;
- (3) The City of Chillicothe Police Department;
- (4) The City of Chillicothe Fire Department;
- (5) The mortgage holder;
- (6) South Central Ohio Job and Family Services (if it appears that children are living on the property); and
- (7) Any federal, state and local authorities, and City Council members with public and environmental protection responsibilities that are applicable to the situation.

(d) Property Owner's Responsibility to Act. The Chief Building Official shall also issue an order to abate the public health hazard, which shall comply with the rules and regulations attached as **Exhibit A** to original Ordinance ___-2014, or as subsequently amended, and order the owner of the property to do the following:

- (1) In an emergency cause the immediate vacation by all occupants of those portions of the property, including building or structure interiors, which may place the occupants or visitors at risk.
- (2) Contaminated areas of the property shall be secured to prevent unauthorized access.

(3) Contract with certified/licensed environmental testing and cleaning firms to conduct an on-site assessment, complete clean-up and remediation testing and follow-up testing, and determine that the property risks are sufficiently reduced to allow safe human occupancy of the dwelling. The City shall promulgate criteria for the assessment and remediation process. The property owner shall provide a copy of contract to the City of Chillicothe Chief Building Official within fourteen (14) days from the date of the Declaration of Public Health Hazard. The property owner shall notify the City of Chillicothe Chief Building Official of actions taken and reach an agreement with the City on the clean-up schedule. The City shall consider practical limitations and the availability of contractors in approving the schedule for clean-up not to exceed 120 days.

(4) Provide the Chief Building Official with written documentation of the clean-up process, including a signed, written statement from the environmental testing and cleaning firm that the property is safe for human occupancy and that the clean-up was conducted.

(5) The owner shall complete the remediation and post-remediation assessment upon release of the property by law enforcement and/or no more than ninety days from the date of the Declaration of Public Health Hazard.

(6) In the case where the property owner is performing the cleanup, the cleanup including the disposal of rags shall be performed to currently accepted EPA standard practices. A narrative describing the remediation method used shall be provided to the Chief Building Official. Final testing shall be performed by a certified/licensed environmental testing firm and a copy of a signed, written statement from the environmental testing and cleaning firm that the property is safe for human occupancy shall be given to the Chief Building Official.

(e) Responsibility for Costs. Upon declaration of the property as a “public health hazard”, the person or entity responsible and/or the property owner shall be responsible for all documented costs of vacation, clean-up of and securing the site, including any contractor's fees and public costs for services that were performed in association with a clandestine drug lab site or chemical dumpsite clean-up.

(1) Costs expended by the law enforcement department identifying that the clandestine drug lab or chemical dumpsite is present at the site, including the collection and testing of evidence at the site, and use of specialized equipment;

(2) Costs expended by the fire department neutralizing and/or containing, transporting and disposing of the clandestine drug lab or chemical dumpsite, including the use of specialized equipment;

(3) Costs expended by the building department posting the property and notifying all entities identified in 1312.02 (c) (1) through (7);

(4) Costs expended by the service department securing the property;

(5) Expenses related to the recovery of costs, including the assessment process;

(6) Laboratory fees;

(7) Clean-up services;

(8) Administrative fees; and other associated costs.

(f) City Responsibilities and Recovery of Public Costs.

(1) If, after service of notice of the Declaration of Public Health Hazard, the property owner fails to arrange appropriate assessment and clean-up pursuant to the rules and regulations attached as **Exhibit A**, to original Ordinance __-2014, or as subsequently amended, the Chief Building Official is authorized to proceed in a prompt manner to initiate the on-site assessment and clean-up.

(2) If the City is unable to locate the property owner within fourteen days of the Declaration of Public Health Hazard, the City is authorized to proceed in a prompt manner to initiate the on-site assessment and to perform or have performed the clean-up.

(3) The City may abate the nuisance by removing the hazardous structure or building, or otherwise, according to Chapter 1701 of the Codified Ordinances.

(4) The City shall be entitled to recover all costs of detection and abatement of the public hazard plus the costs for administration. The City may recover costs by civil action against **the person or entity responsible, and/or** the owner of record of the property, or by assessing such costs as a special tax against the property in the manner as taxes and special assessments are certified and collected pursuant to the Ohio Revised Code. Any costs recovered pursuant to paragraph (e)(1) & (e)(2) of this section shall be deposited in the line item that advanced the costs for the City and all other costs recovered shall be deposited in the City's General Fund.

(g) Authority of Chief Building Official to Modify or Remove Declaration of Public Health Hazard

(1) The Chief Building Official is authorized to modify the Declaration conditions or remove the Declaration of Public Health Hazard.

(2) Such modifications or removal of the Declaration shall only occur after documentation from a certified/licensed environmental or cleaning firm stating that the health and safety risks, including those to neighbors and potential dwelling occupants, are sufficiently abated or corrected to allow safe occupancy of the dwelling.

(3) Nothing herein shall prevent the Chief Building Official from pursuing any remedy available pursuant to Chapter 1701 of the Codified Ordinances, including the demolition of a building or structure.

1312.03 DISCLOSURE TO BUYERS AND OCCUPANTS.

No Owner shall sell or lease real property, which is under a Declaration of a Public Health Hazard pursuant to this chapter or is the site of a known clandestine drug lab without disclosing such declaration or knowledge to the broker, listing agent, seller's agent, buyer's agent, as well as the buyer or tenant living therein. Said disclosure shall be made on a form provided by the Building Official. The disclosure form must be received by the buyer's agent, buyer or tenant at least seven days before the date of transfer.

Disclosure shall not be required but may be recommended once the Chief Building Official has removed the Declaration of Public Health Hazard from the property.

1312.04 MISCELLANEOUS PROVISIONS.

(a) The Chief Building Official, with the advice of the Departments of Police and Law, shall have the authority to promulgate any rules and regulations to enforce this chapter, which are attached as **Exhibit A** to original Ordinance ____ - 2014, or as subsequently amended.

(b) In the event that the State or Federal Government promulgates cleanup guidelines that are more stringent or that pre-empt local regulation, its clean-up guidelines shall prevail.

1312.05 APPEALS.

Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the Board of Zoning Appeals, provided that a written application for appeal is filed within 10 business days of receipt thereof. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

(a) All appeals shall be heard by the Board of Zoning Appeals as created and enacted pursuant to Chapter 1119 of the Codified Ordinances of the City of Chillicothe, Ohio.

(b) The Board of Zoning Appeals shall affirm, reverse, or modify the decision of the code official only by a majority vote of the total members of the Board of Zoning Appeals. Ohio.

(c) The decision of the Board of Zoning Appeals shall be recorded. Copies shall be furnished to the appellant and to the code official.

(d) The code official shall take immediate action in accordance with the decision of the Board of Zoning Appeals.

1312.99 VIOLATIONS AND PENALTIES.

(a) **Whoever violates section 1312.02 (d) hereof twice or more within one year is guilty of a minor misdemeanor upon a second offense and subsequent offenses within that one-year period.** The one-year period shall be measured from the date of declaration of Public Health Hazard to the date of declaration of Public Health Hazard.

(b) Nothing herein contained shall prevent the City of Chillicothe from taking such other lawful action as is necessary to prevent or remedy any violation.

(c) The City of Chillicothe shall prosecute any violation of these regulations in accordance with the penalties stated herein.

SECTION 2. This Ordinance shall be in full force and effect from and immediately following the earliest date provided for by law.

Passed: _____, 2014

PRESIDENT OF COUNCIL

Attest:

CLERK OF COUNCIL

Approved: _____, 2014

FILED WITH THE MAYOR

MAYOR

_____, 2014

Voting "yea" were the following members of Council: _____

