

## ORDINANCE NO. 84

### AN ORDINANCE TO REDUCE THE HEALTH RISK OF EXPOSURE TO HAZARDOUS CHEMICALS AT CLANDESTINE DRUG LAB SITES AND CHEMICAL DUMP SITES; DRUG LAB SITES

The City of Brownton does ordain:

#### CLANDESTINE DRUG LAB SITES

##### **Purpose.**

The City Council finds that the existence of clandestine drug lab sites and chemical dump sites in the City pose a serious health and safety threat to members of the public, particularly minors and persons of child bearing age, through the exposure to hazardous chemicals and chemical residue. The Council has therefore determined that the regulation and proper removal of those sites is necessary for the protection of the public health, safety, and general welfare.

**Definitions.** For the purposes of this ordinance the following definitions will apply:

1. **“Chemical Dump Site”** means any place or location where chemicals and/or other hazardous waste material used in a clandestine drug lab have been deposited.
2. **“Chief Building Official”** means the chief building official for the City of Brownton.
3. **“Clandestine Drug Lab”** means the unlawful manufacture or attempt to manufacture controlled substances.
4. **“Clandestine Drug Lab Site”** means any place or location where conditions associated with the operation of a clandestine drug lab are found to exist and may include dwellings, accessory buildings or structures, mobile homes, motorized or non-motorized vehicles, or any parcels of land.
5. **“Controlled Substance”** means any drug, chemical, substance, or immediate precursor thereto as defined by Minnesota State Statutes Section 152.02, Schedule I through V, as may be amended from time to time, but does not include distilled spirits, mine, malt beverages, intoxicating liquors, or tobacco.
6. **“Hazardous Waste”** means any chemicals or other substances used in the manufacture of controlled substances in a clandestine drug lab and the resulting by-products there from which pose a risk to the health, safety, and welfare of occupants, visitors, or neighbors of the site.
7. **“Manufacture”** means the production, cultivation, quality control, and standardization, in locations other than a pharmacy, of controlled substances by mechanical, physical, chemical, or pharmaceutical means, and the packing, repacking, tablet producing, encapsulating, labeling, re-labeling, filling or other similar process relating to such substances.
8. **“MDH”** means the Minnesota Department of Public Health or any successor thereto.

9. **“Minor”** means any person under the age of eighteen years.
10. **“MPCA”** means the Minnesota Pollution Control Agency or any successor thereto.
11. **“Owner”** means any person, firm, partnership, company, corporation, or other entity that owns or has title to in full or in part, the land, buildings, structures, or other property associated with a clandestine drug lab site or chemical dump site.
12. **“Site”** means any defined location, including buildings, structures, or other property, where appropriate tests have determined that, due to the existence of a clandestine drug lab site or chemical dump site, a risk to the health, safety and welfare exists for any persons who occupy, visit, or neighbor on the location.

### **Public Nuisance.**

Existence and maintenance of a clandestine drug lab site or chemical dump site in the City constitutes a public nuisance subject to the regulations of this ordinance in addition to any and all applicable federal, state, or local laws and ordinances.

### **Notice to Other Authorities.**

Law enforcement agencies that identified conditions associated with a clandestine drug lab site or chemical dump site which place neighbors, visiting public, or present and future occupants of the site at risk for exposure to harmful chemicals or other contaminants must promptly notify the Brownton Chief of Police, the Chief Building Official, appropriate child protection agencies, and the appropriate health authorities. The notice must, at a minimum, identify the location of the site, the site owner, if known, and the conditions found on the site.

### **Notice to Concerned Persons.**

1. Upon receipt of the notice provided for in the section “Notice to Other Authorities”, the Chief Building Official must promptly notify the following persons by registered or certified mail:
  - (a) The owner of the property, if known.
  - (b) Occupants of the property
  - (c) Any neighbors that have been determined to be at risk.
  - (d) Other appropriate state and local authorities including, but not limited to, the MDH and the MCPA, which are known to have applicable public and environmental protection responsibilities.
2. The notice must, at a minimum, include the location of the site, the name of the property owner, if known, the type and nature of the contamination, and the extent of the contamination.
3. The Chief Building Official must also cause a copy of the notice to be posted at each appropriate access point to the site.

## **Issuance of Order.**

1. In addition to the required notices, the Chief Building Official will issue and Order to the property owner to abate the public nuisance. The order must include at a minimum the following:
  - (a) A description of the site and all portions thereof that are determined to be contaminated. The description may be in any form that readily identifies the contaminated portion of the site.
  - (b) That all portions of the site that are determined to be contaminated and a risk to occupants or visitors are immediately vacated.
  - (c) That the owner commence and complete all testing and clean up procedures and other required remedial actions on the site by dates specified in the order or such other dates agreed to by the City.
  - (d) That the site may not be re-occupied or used in any matter until it has been completely cleaned in accordance with the guidelines established by the MPG.
  - (e) That if the owner does not commence testing and complete the clean up procedures by the dates established in the order, the City, its officials, employees, or agents, will enter the property and provide for the testing and clean up services at the owner's expense.
  - (f) That the owner is responsible for all costs associated with the clean up of the site including all costs incurred by the City and other public agencies, and that if the owner does not promptly pay those costs, they will be assessed against the property and collected in the manner of a special tax.
2. The order must be served upon the owner by personal service or by registered or certified mail and posted at appropriate access points to the site. If, after due diligence, the owner cannot be located, the order in addition to being posted, must be published once in the official newspaper of the City.

## **Responsibility of the Owner.**

1. Upon receipt of the notice and order, the owner will be responsible for the following:
  - (a) Insure that the site and all surrounding areas determined to be at risk are properly vacated.
  - (b) Engage an appropriate environmental testing firm to assess the extent of the contamination, monitor the clean up process, provide follow up testing after the completion of the clean up process, and certify that the risks of contamination have been sufficiently reduced to allow safe occupancy of the site.
  - (c) Engage an appropriate contractor to properly clean the site in accordance with guidelines of the MDH.

- (d) Provide the City with copies of all testing results and the clean up plan.
  - (e) Keep the City regularly advised through the process of the testing and clean up.
  - (f) Upon completion of the clean up process, provide the City with a copy of the final certification from the testing firm that the site is fit for human habitation, and a written, signed statement that the clean up met all MDH guidelines.
2. If the owner, after due diligence, cannot be located or has not commenced appropriate action toward the clean up of the site on or before the commencement date established by the order, or has not completed the process by the completion date established by the order, the City, its officials, employees, and agents, are hereby authorized to enter the property for the purpose of abating the public nuisance through vacating, testing and cleaning the site, or completing that process, in accordance with the requirements of this Ordinance. When appropriate, the abatement process may include the demolition and removal of any hazardous building or structure.

#### **Responsibility for Costs.**

1. The owner of the site is responsible for any and all costs incurred in the clean up of that site including, but not limited to, the costs of vacating the site and surrounding areas, testing, clean up, and public expenses.
2. Public expense will include all costs that may be incurred by the City and other public agencies such as:
  - (a) laboratory fees;
  - (b) preparing and serving notices;
  - (c) preparing and serving the order;
  - (d) posting at the site;
  - (e) vacating the site and other necessary properties;
  - (f) testing services;
  - (g) clean up services;
  - (h) expenses incurred in recovering costs including all special assessment expenses;
  - (i) administrative fees; and
  - (j) all other costs associated with the clean up of the site.

#### **Recovery of City Costs.**

1. Within 30 days after receipt of an invoice from the City, the owner will submit payment in full of all City costs associated with the clean up project.
2. If the City has been unable to locate the owner, or the owner fails to submit timely payment to the City, the City is authorized to collect its costs by assessing those costs against the property in the same manner as a special

assessment which will be certified and collected in the manner of a special tax in accordance with the applicable law.

**Removal of Public Nuisance Designation.**

Upon receipt of the appropriate certification that the site has been clean in accordance with MDH guidelines and is no longer a risk to occupants of the site or others, the Chief Building Official will remove the public nuisance designation of the site and will so notify in writing the owner and all parties previously notified. The Chief Building Official will also promptly cause all postings on the site to be removed.

**Violations.**

Any person who violates the provisions of this ordinance, including, but not limited to, the unauthorized removal of any official postings at the site, is guilty of a misdemeanor in addition to any other sanctions and obligations imposed herein.

**Relationship to Other Laws and Regulations.**

If any regulation, standard, condition, or requirement imposed by this chapter is determined to be either more or less restrictive than comparable provisions of any other law, statute, ordinance, rule or regulations, whether Federal, State or local, the more restrictive provision, or the one providing for the higher standards or requirements will prevail.

**Effective Date.**

This ordinance shall take effect and be in force from and after its passage and publication.

Adopted and approved the City Council this 1<sup>st</sup> day of March, 2005.

---

Curtis Carrigan, Mayor

ATTEST:

---

Cindy Lindeman, City Clerk

