

PUBLIC HEALTH NUISANCE ORDINANCE

Brown-Nicollet Community Health Board

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BROWN COUNTY

OFFICE OF THE RECORDER
BROWN CO, MINNESOTA

COUNTY OF BROWN
BROWN COUNTY COURTHOUSE
NEW ULM, MN 56073

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BETTI KAMOLZ, RECORDER

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Section 1: Purpose and Authority

1.1 The purpose of the Public Health Nuisance Ordinance (hereinafter “the Ordinance”) is to establish standards and authority to protect the public health, safety and general welfare of the people of Brown and Nicollet Counties pursuant to powers granted under Chapters 145A, 375 and 152.0275 of the Minnesota Statutes and subsequent revisions and/or amendments, and other applicable legislation as may be adopted from time to time. Whenever, and if, this Ordinance conflicts with other applicable laws, regulations and ordinances, the most restrictive requirement shall prevail.

1.2 This Ordinance establishes minimum standards for the health, safety and protection of parties who may be exposed to public health nuisances by:

- a. Preventing injury and illness to occupants of the property and the public, especially children and vulnerable adults;
- b. Establishing responsibility for involved parties to assure that people are not unnecessarily exposed to the dangers of public health nuisances;
- c. Establishing standards for abatement of public health nuisances, including but not limited to clandestine drug lab sites; and
- d. Ensuring proper actions are taken to remediate or abate public health nuisances.

Section 2: Scope

2.1 This Ordinance shall be applicable in all incorporated and unincorporated municipalities (city or township) within the boundaries of Brown and Nicollet Counties under the jurisdiction of the Brown-Nicollet Community Health Board.

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

2.3 Where a local community has a housing ordinance or public nuisance ordinance, this Ordinance shall apply in addition to that local ordinance and may serve to supplement the local community’s enforcement of its ordinance(s).

Section 3: Definitions

3.1 For the purpose of this Ordinance, words, phrases, and terms shall be defined in accordance with Chapters 145A, 375 and 152.0275 of the Minnesota Statutes, and the definitions provided in this section.

- a. **Abate(ment)** means the proper removal and/or containment of substances or materials hazardous to humans and/or the environment. Abatement is part of Remediation, as defined in this Section.
- b. **Chemical Investigation Site** means a Clandestine Drug Lab Site that is under Order to Abate a Public Health Nuisance, as authorized by Minnesota Statutes Chapter 145A, and this Ordinance.
- c. **Child** means any person less than 18 years of age.
- d. **Clandestine Drug Lab Operation** means the unlawful manufacture, or attempted manufacture, of a Controlled Substance, as defined in this Section.
- e. **Clandestine Drug Lab Site** means any portion of real property and improvements thereon and any personal property located therein where the unlawful manufacture or attempted manufacture of a Controlled Substance, as defined in this section, occurs.
- f. **Controlled Substance** means a drug, substance or immediate precursor scheduled in Schedules I through V of Minn. Stat. § 152.02 and as subsequently amended in the future. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors, or tobacco.
- g. **County Protection Unit** means the department and/or section of a department assigned the responsibilities for child and/or adult protection.
- h. **Health Authority** means the Brown-Nicollet Environmental Health Department Director or designated employees, agents, or contractors.
- i. **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.
- j. **Owner** means any person, firm, partnership or corporation who owns, in whole or in part, the real property and/or fixtures or personal property such as buildings, motor vehicle, trailer, boat or other appliance.
- k. **Personal Property** means all property other than real estate or structures.
- l. **Professional Remediation Firm** means a firm that has provided written assurance to the State of Minnesota or the Health Authority that they have appropriate equipment, procedures, and personnel to accomplish clean-up and that they are an experienced HAZMAT contractor.
- m. **Property Agent** means a person authorized by a property owner to act in transacting business matters or in managing the affairs of the property.

n. **Public Health Nuisance** shall have the meaning provided in Minn. Stat. § 145A.02, subd. 17. A Public Health Nuisance is activity or failure to act that adversely affects the public health and includes, 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.

o. **Remediation** means methods employed in dealing with and removing Public Health Nuisances. Remediation includes, but is not limited to, assessment, evaluation, testing, venting, detergent scrubbing, enclosure, encapsulation, demolition, and/or removal of materials.

p. **Structure** means a dwelling, building or other fixtures upon real property.

q. **Vulnerable Adult** shall have the meaning provided in Minn. Stat. § 626.5572, subd. 21.

Section 4: Prohibitions

4.1 The creation or maintenance of a Public Health Nuisance is prohibited.

4.2 The following are hereby expressly declared to be Public Health Nuisances, without limitation by reason of such enumeration:

a. 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;

b. Accumulation of carcasses of animals, birds, or fish by failing to bury or otherwise dispose of a carcass in a sanitary manner within twenty-four (24) hours after death. This provision shall not apply if the animals, birds or fish are intended for human consumption;

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

d. Any Structure which has become dangerous for further occupancy because of sanitary defects which may include, but are not limited to: accumulation of human or animal feces, evidence of garbage and rotting food, infestation by rodents or insects, environmental conditions that affect children and vulnerable adults and lack of approved potable water supply or sewage disposal;

- e. Infestations of flies, fleas, cockroaches, lice, ticks, rats, mice, fly larvae, and hookworm larvae;
- f. Unnatural breeding grounds which support mosquito larvae and mosquitoes carrying West Nile Virus, La Crosse Encephalitis, Zika Virus or any other disease causing microorganisms;
- g. Accumulations of animal feces or solid waste remaining in any place so as to become injurious and dangerous to the health and safety of any individual or to the public in general;
- h. Causing or allowing improper sewage disposal facilities to be operated, or causing or allowing the effluent from any cesspool, septic tank, drain field or sewage disposal system to discharge upon the surface of the ground or into any body of water;
- i. Maintaining a hole or opening caused by an improperly abandoned cistern, septic system, unused or non-maintained private swimming pool, foundation, mine shaft or tunnel, including an improperly abandoned, sealed, barricaded or backfilled excavation; and
- j. A Clandestine Drug Lab Operation and/or Clandestine Drug Lab Site.

Section 5: Administration

5.1 For the purposes of this section of the Ordinance, “County” means the county in which the Public Health Nuisance is located (either Brown or Nicollet County) and Remediation and Abatement efforts are undertaken.

5.2 This Ordinance shall be administered by the Health Authority.

5.3 It shall be the duty of the Health Authority to determine if a Public Health Nuisance exists.

5.4 In accordance with Minn. Stat. § 145A.04, subd. 7, the Health Authority has right of entry for inspection of property where a Public Health Nuisance is known or reasonably suspected.

5.5 This Ordinance shall be construed to incorporate and be consistent with the relevant portions of County Ordinances (and subsequent amendments) applicable to the following: individual sewage treatment system regulations; hazardous waste management; and solid waste management ordinances in the enforcement of and Remediation of Public Health Nuisances.

5.6 Waste generated through Abatement or Remediation of a site that is considered a Public Health Nuisance shall be treated, stored, transported, and disposed in accordance with applicable Minnesota Department of Health, Minnesota Pollution Control Agency, and County guidelines,

rules and regulations for solid and/or hazardous waste disposal, and the Minnesota Department of Health's Clandestine Drug Lab Site General Cleanup Guidelines.

5.7 Fees for the administration of this Ordinance may be established and amended periodically by action of the Brown-Nicollet Community Health Board.

Section 6: Investigation and Response to a Public Health Nuisance which is not a Clandestine Drug Lab Site

6.1 In the event the Health Authority determines that a Public Health Nuisance exists, it shall promptly issue an Order to Abate a Public Health Nuisance (hereinafter "Order") requiring the Owner, Occupant, or Property Agent to Abate the Public Health Nuisance as provided in Minn. Stat. § 145A.04, subd. 8, and this Ordinance.

6.2 The Order shall require that the Owner and Occupant Abate such Public Health Nuisance within the time specified in the Order. The time specified in the Order shall not be more than ten (10) days after receipt of the Order, but a shorter time for compliance may be provided if the Health Authority determines that immediate Abatement is necessary to preserve the public health and safety. In such case, the time for Abatement shall be specified in the Order and the reasons for a shortened abatement period shall be specified.

6.3 When the Health Authority leaves a Public Health Nuisance site, the Health Authority shall leave a posted warning sign when deemed necessary to protect further public health and safety. The warning sign shall be one which has been prepared in advance for such situations, and shall be posted on the entrance of the affected structure, if applicable. The warning sign shall be of a size and contain information sufficient to alert visitors or returning Occupants to the site that the area may be dangerous to enter, and that entry is prohibited unless authorized by the agency identified on the sign. It shall be unlawful for this sign to be removed except by the Health Authority.

6.4 The Health Authority shall serve the Order on the Owner, Occupant, and/or Property Agent. The Health Authority shall include the following as part of the Order:

- a. Information about the potentially hazardous condition creating the Public Health Nuisance;
- b. A summary of the Owner's and Occupant's responsibilities under State law and this Ordinance;
- c. Ordinance-specific orders for Abatement of the Public Health Nuisance and timeframe for completion of Abatement; and
- d. Information that can help the Owner and Occupant locate appropriate services necessary to Abate the Public Health Nuisance.

6.5 The Order must be served on the Owner, Occupant and Property Agent, if applicable, in one of the following ways:

- a. By registered or certified mail using the last known address of record;
- b. By an officer authorized to serve a warrant; or
- c. By a person aged 18 years or older who is not reasonably believed to be a party to any action arising from the notice.

If the Owner of the property is unknown or absent and has no known representative upon whom 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 specified time period, the Health Authority will have the threat abated or removed at the expense of the Owner under Minn. Stat. § 145A.08, this Ordinance, or other applicable state or local law.

6.6 Following the service of the Order, the Health Authority shall send written notice describing the condition of the property and the action required to the following parties:

- a. The local municipal clerk;
- b. Local law enforcement; and
- c. Other state and local authorities that may have public and environmental protection responsibilities with regards to the situation.

6.7 If, after ten (10) days of issuing the Order, the Health Authority is unable to obtain any reasonable assurance from the Owner, Occupant or Property Agent that the property and/or Structure is being properly Abated or Remediated, the Health Authority is authorized to provide a copy of the Order to the County Recorder and to the lien and mortgage holders of the affected structure and/or property. The County Recorder is authorized to file that information with the property record to help ensure that persons with interest in the property have access to information about the property's Public Health Nuisance status.

6.8 The Provisions of Section 9 of this Ordinance shall apply to Public Health Nuisances that are properly abated after an Order was previously filed with the County Recorder.

6.9 Pursuant to Minn. Stat. § 145A.04, subd. 8, if the Owner or Occupant fails or neglects to comply with the Order, then the Health Authority shall Abate the Public Health Nuisance described in the Order from the property. The Health Authority will recoup such costs as necessary to Abate the Public Health Nuisance as provided in Section 8 of this Ordinance.

6.10 The Health Authority may modify conditions of the Order, including timelines.

Section 7: Investigation and Response to a Clandestine Drug Lab Site

7.1 Law enforcement authorities who identify a Clandestine Drug Lab Site or Clandestine Drug Lab Operation shall notify the Health Authority and the County Protection Unit when a child, pregnant woman or Vulnerable Adult is present. The obligation to notify may be delayed to accomplish appropriate law enforcement objectives, but only to the extent that public health and Child/Vulnerable Adult protection responsibilities are not unnecessarily compromised.

7.2 The initial removal and inventory of all chemicals found at a Clandestine Drug Lab Site shall be the responsibility of the responding law enforcement agency in accordance with their procedures. The Health Authority shall be notified of the arrangements made as soon as the peace officer or designated agent makes arrangements.

7.3 The notice provided by law enforcement to the Health Authority, as referenced in Section 7.1 above, shall include the following:

- a. Property location by street address and other identifiable locators;
- b. Owner and Occupant identities including the identities of any child, pregnant woman or Vulnerable Adult found or known to be associated with the site;
- c. A copy of the search warrant affidavit and police report;
- d. A copy of the chemical manifest as provided by the HAZMAT responder (in accordance with 7.2 above) when that report is provided to law enforcement.

7.4 When law enforcement completes their investigative work and prepares to leave a Clandestine Drug Lab Site, they shall leave a warning sign posted on the entrance of the affected part of the Structure, if applicable. The warning sign shall be one that has been prepared in advance for such situations. 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 may not be entered except by authorization of the Health Authority or law enforcement agency identified on the sign. Once this sign is posted, it shall be unlawful for any person to enter the site except by permission of the Health Authority or Law Enforcement. This restriction on entry shall not apply to law enforcement officers, health officials, or their agents. It shall be unlawful for any person, other than the Health Authority, to remove this sign.

7.5 The Health Authority shall issue an Order to Abate a Public Health Nuisance (hereinafter "Order") requiring the Owner, Occupant or Property Agent to Abate the Chemical Investigation Site, as provided in Minn. Stat. § 145A.04, subd. 8, and this Ordinance.

The Health Authority shall include the following in the Order:

- a. Information about the Public Health Nuisance;

b. A summary of the Owner, Occupant or Property Agent's responsibilities under this Ordinance; and

c. Information that can help the owner and occupant locate appropriate services necessary to Abate the Chemical Investigation Site.

7.6 The Order must be served on the Owner, Occupant and Property Agent, if applicable, in one of the following ways:

a. By registered or certified mail using the last known address of record;

b. By an officer authorized to serve a warrant; or

c. By a person aged 18 years or older who is not reasonably believed to be a party to any action arising from the notice.

If the Owner of the property is unknown or absent and has no known representative upon whom 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 within a period of ten (10) days or other specified time period, the Health Authority will have the threat abated at the expense of the Owner under Minn. Stat. § 145A.08, this Ordinance, or other applicable state or local law.

7.7 Within three (3) business days of service of the Order upon the Chemical Investigation Site's Owner, Occupant and/or Property Agent, The Health Authority shall send written notice about the Chemical Investigation Site to the following parties:

a. Neighbors in proximity that can be reasonably affected by the conditions found;

b. The local municipal clerk;

c. Local law enforcement; and

d. 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 with regard to the situation.

This notice shall describe the condition of the property and the action required to Abate the Public Health Nuisance on the property.

7.8 Owners and Occupants provided with the Order and posted notice informing them about the Clandestine Drug Lab Site, shall vacate the Clandestine Drug Lab Site within twenty-four (24) hours.

7.9 Within ten (10) days of receipt of the Order, the Owner, Occupant and/or Property Agent shall accomplish the following:

a. Notify the Health Authority that the affected parts of the Structures have been and will remain vacated and secured until the Health Authority acts to rescind the Public Health Nuisance declaration.

b. Submit a written remediation plan to the Health Authority. 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 activities the Professional Remediation Firm will complete within thirty (30) days following the Health Authority's approval of the Remediation plan:

1. A detailed on-site assessment of the extent of contamination at the site and the contamination of the Personal Property therein;
2. A detailed schedule of Remediation activities;
3. A complete Abatement of the Clandestine Drug Lab Site;
4. 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
5. 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 to allow safe human occupancy and use of the site and/or use of the Personal Property therein.

c. Contract with one or more Professional Remediation Firms to implement the Remediation plan and provide the Health Authority with the identity of the Professional Remediation Firm the Owner, Occupant, or Property Agent has contracted with for remediation/cleanup of the Structure(s) or Personal Property as described above.

7.10 In accordance with Minn. Stat. § 152.0275, subd. 2(h), the Health Authority shall file with the County Recorder an affidavit containing the following information: (1) The name of the Owner; (2) A legal description of the property; (3) That the property or a portion of the property was the site of a Clandestine Drug Lab Site; (4) The condition and circumstances of the Clandestine Drug Lab Site; and (5) That the use of the property or portion containing the Clandestine Drug Lab Site is restricted, pursuant to Minn. Stat. § 152.0275, subd. 2(c) and Section 7.4 of this Ordinance. The affidavit of the Health Authority shall include a map drawn from available information showing the boundary of the property and the location of the contaminated area. The County Recorder shall file this affidavit with the property record to ensure that persons with interest in the property have access to information about the property's Public Health Nuisance status.

7.11 If the affected property is Personal Property such as a motor vehicle, boat, or trailer, the Health Authority shall notify the appropriate State and local agency maintaining Personal Property records and to the lien and mortgage holders of the affected properties of the property's status as a Clandestine Drug Lab Site.

7.12 Upon the Remediation of a Clandestine Drug Lab Site, the Professional Remediation Firm shall certify to Owner, Occupant, or Property Agent and the Health Authority that the work was completed according to the Minnesota Department of Health's Clandestine Drug Lab Site General Cleanup Guidelines. The contractor shall provide the verification to the Owner and the Health Authority within five days of the completion of the Remediation.

7.13 Pursuant to Minn. Stat. § 145A.04, subd. 8, if the Owner or Occupant fails or neglects to comply with the requirements in the Order, then the Health Authority shall remove or Abate 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 8 of this Ordinance.

7.14 The Provisions of Section 9 of this Ordinance shall apply to Chemical Investigation Sites that are properly Remediated after information is filed with the County Recorder or state and local agencies in accordance with Sections 7.10 and 7.12 of this Ordinance.

7.15 The Health Authority may authorize extensions of time to Abate the Chemical Investigation Site, but by no more than ninety (90) days.

Section 8: Costs and Reimbursements

8.1 For the purposes of this Section of the Ordinance, "County" means the county in which the Public Health Nuisance is located (either Brown or Nicollet County) and remediation and abatement efforts are undertaken.

8.2 If the County is required to remove or abate a Public Health Nuisance, the County may recover the costs incurred in Abatement through a civil action or, at the discretion of the County Board of Commissioners, the cost of an enforcement action under this Ordinance may be assessed and charged against the real property on which the Public Health Nuisance was located. The County Auditor shall extend the cost as assessed and charged on the tax roll against said real property.

8.3 Nothing in this Ordinance is intended to limit the subrogation rights of any party and the Owner or Occupants. The County shall maintain the 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.

8.4 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 Public Health Nuisances.

8.5 Nothing herein precludes or limits the County from seeking recovery of costs through other methods allowed by Federal or State law.

Section 9: Modifications

9.1 The Health Authority may modify the declaration of a Public Health Nuisance and any conditions of the Order to Abate the Public Health Nuisance.

9.2 Modification or removal of a declaration and/or Order to Abate a Public Health Nuisance shall only occur after the Health Authority has determined the level of Public Health Nuisance is sufficiently reduced through Remediation to warrant modification or removal of the declaration or Order. The Health Authority may rely on information from competent sources, including those supplied by the Owner, Occupant and/or others such as state and local health, safety, and pollution control authorities to reach such decisions.

9.3 When an Order relating to a Public Health Nuisance on real property is modified or removed and the Health Authority previously filed an Order or affidavit with the County Recorder in accordance with Sections 6.7 and 7.10 of this Ordinance, the Health Authority shall provide information regarding the modification or removal to the County Recorder for filing in the property record.

9.4 When an Order relating to a Public Health Nuisance contained on Personal Property is modified or removed and the Health Authority previously filed information with a state or local agency in accordance with Section 7.11 of this Ordinance, the Health Authority shall provide information regarding the modification or removal to those who previously received notification.

Section 10: Enforcement

10.1 Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor and upon conviction shall be punished as provided by Minnesota law. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

10.2 In the event of a violation or a 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 any other appropriate action in court, to prevent, restrain, correct or abate such violation or threatened violation.

Section 11: Severability

11.1 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.

Section 12: Effective Date

This Ordinance, adopted April 28, 2017, hereby repeals and replaces the following ordinances:

- a. The Ordinance Providing for Abatement of Public Health Nuisance, in Brown and Nicollet County, by and through Brown-Nicollet Community Health Services, dated January 5, 1993;
- b. The Nicollet County Cleanup of Clandestine Drug Lab Sites Ordinance, by and through the Nicollet County Board of Commissioners, dated May 11, 2004; and
- c. The Brown County Cleanup of Clandestine Drug Lab Sites Ordinance, by and through the Brown County Board of Commissioners, dated May 4, 2004.

Maura Granato
Chairperson, Brown-Nicollet Community Health Board

4/28/2017
Date

Attest
Jane A. [Signature]
Clerk, Brown-Nicollet Community Health Board

5/8/17
Date