MCDONALD COUNTY, MISSOURI, ORDINANCE FOR: CLANDESTINE DRUG LABORATORY REPORTING AND REMEDIATION

Bill No: 2012-2

Ordinance No: 2012-2

BE IT ORDAINED BY THE COUNTY COMMISSIONERS OF THE COUNTY OF MCDONALD, STATE OF MISSOURI, AS FOLLOWS:

Section 1: General Provisions

1.1: The purpose of this Ordinance is to promote and enhance the public health, safety, comfort, and the general welfare of McDonald County, Missouri. Contamination from the operation of clandestine drug laboratories is a serious health and environmental threat. Reporting and remediation of the residually contaminated portions of clandestine drug laboratory properties is essential to the health, safety, and welfare of the people of McDonald County, Missouri.

1.2: In the interpretation and application of this Ordinance, all provisions shall be liberally construed in favor of the governing body and deemed neither to limit, supersede, or contravene any other Missouri state statute or regulation regarding the regulation of the delivery of methamphetamine precursors within McDonald County, Missouri.

1.3: The title of this Ordinance shall be "Clandestine Drug Laboratory Reporting and Remediation Ordinance for McDonald County, Missouri" for all purposes.

Section 2: Definitions

2.1: Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application.

2.2: Certified Industrial Hygienist. A person certified in the comprehensive practice of industrial hygiene by the American Board of Industrial Hygiene.

2.3: Chemicals and Equipment. The bulk or containerized chemicals, illegal drugs and their precursor drugs, equipment, and other items found in a clandestine drug laboratory that were used in the manufacture of a controlled substance.

2.4: Clandestine Drug Laboratory. Property on which any controlled substance is being unlawfully manufactured or on which there is an attempt to unlawfully manufacture, or where a person is arrested for having on any property any chemicals or equipment used in manufacturing any controlled substance. In the case of a space-rental mobile home or recreational vehicle park, clandestine drug laboratory means the mobile home or recreational vehicle in which any

controlled substance is being manufactured or where a person is arrested for having in the mobile home or recreational vehicle any chemicals or equipment used in manufacturing any controlled substance. Clandestine drug laboratory shall include any place or area where chemicals or other waste materials used in clandestine drug laboratories have been located.

2.5: Controlled Substance. Any drug or substance or counterfeit substance listed under any Missouri state law.

2.6: Law Enforcement Officer. Any employee of a police or public safety department administered by the state or any political subdivision of the state where the employee is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of this state.

2.7: Owner. Any person, firm, corporation, or other entity that owns, in whole or part, the property subject to this Ordinance.

2.8: Owner's Agent. Any person designated by the owner to act on behalf of the owner.

2.9: Person. Any individual, corporation, partnership, trust, limited liability company, firm, association, or other entity.

2.10: Property. Real or personal property, which includes, but is not limited to, the following:

A. The area within a structure and the area that surrounds the structure and that is within the land boundary or property lines of any property that can be used for residential or commercial purposes or is occupied by people for any length of time for any purpose, and

B. A vehicle as defined in Section 300.010, Revised Statutes of Missouri, 2000, as amended.

2.11: Remediation. The cleanup, removal, or destruction of chemicals and equipment or residual contamination at a clandestine drug laboratory to conform with the remediation standards of this Ordinance and any action, including the destruction of property, necessary to investigate, prevent, minimize, or mitigate potential damages or injury to human health, the environment, or property that may result from the chemicals or residual contamination.

2.12: Remediation Firm. A person or firm that:

A. Performs remediation of residual contamination from the manufacture of any controlled substance or the storage of chemicals or equipment used in the manufacturing of any controlled substance, or

B. Conducts preliminary assessments or post-remediation assessments, including testing, for the presence of residual contamination from the manufacturing of any controlled substance or the storage of chemicals or equipment used in manufacturing any controlled substance.

2.13: Residual Contamination. Any contaminants associated with manufacturing any controlled substance that are left at a property after the initial removal of chemicals and equipment.

2.14: Residually Contaminated Portion of the Property. The structure or unit where chemicals and equipment were removed and the area of any adjacent structure, unit, or land where evidence of residual contamination is observed by a law enforcement agency.

A. Where chemicals and equipment are removed from a house, mobile home, or vehicle, then the entire property, not just the room or rooms in which the chemicals and equipment are found, shall be deemed the residually contaminated portion of the property.

B. Where chemicals and equipment are removed from a detached shed, garage, or other structure and other property on the land is not affected, then the detached structure shall be deemed the residually contaminated portion of the property.

C. Where chemicals and equipment are removed from a hotel or motel room, apartment unit, storage locker, or other similar property with controlled-access units and the adjacent rooms or units are not affected, then the contaminated room or unit shall be deemed the residually contaminated portion of the property.

Section 3: Compliance With Other Law

3.1: Compliance with this Ordinance does not relieve a person from the obligation to comply with other applicable federal, state, and local laws and regulations.

Section 4: Declaration of Hazardous Substance Incident and Public Nuisance

4.1: Upon identification of a clandestine drug laboratory by a law enforcement agency where chemicals and equipment were removed or residual contamination was observed, the property is presumed to constitute a site of a hazardous substance incident and a public nuisance until such time as the remediation required by this Ordinance is completed.

Section 5: Notice of Contamination

5.1: Upon identification of a clandestine drug laboratory by a law enforcement agency where chemicals and equipment were removed or residual contamination was observed, the law enforcement agency shall take the following actions:

A. Post a notice of contamination in a conspicuous place at the clandestine drug laboratory property.

B. Deliver a copy of the notice of contamination to:

1. The owner of the real property if the owner is present at the time of the discovery or arrest;

2. The on-site manager of the real property if the on-site manager is present at the time of the discovery or arrest;

3. An on-site drop box, if available;

4. In the case of a tenant owned unit in a space-rental mobile home or a recreational vehicle park to:

a. the occupant if the occupant is present at the time of discovery or arrest.

b. the on-site park landlord if the on-site park landlord is present at the time of discovery or arrest.

C. Document proof of posting of the notice of contamination.

D. Deliver a copy of the notice of contamination to the McDonald County Health Department within five days after identification of the clandestine drug laboratory. The law enforcement agency shall inform the McDonald County Health Department whether or not the agency was able to personally deliver notice of contamination to the owner or on-site manager of the property.

5.2: Upon receiving a copy of the notice of contamination from a law enforcement agency, the McDonald County Health Department shall, within five days, send a copy of the notice of contamination by certified mail, return receipt requested, to the owner of the property, at the owner's last known address contained in the records of the county assessor where the clandestine drug laboratory is located. Proof of mailing shall be considered notice to the owner of the property. The owner of the property is presumed to have received notice of contamination five days after the notice is mailed.

5.3: If the owner or on-site manager of the clandestine drug laboratory property was personally provided a copy of the notice of contamination pursuant to Section 5.1 of this Ordinance, then the McDonald County Health Department shall not be required to mail a copy of the notice of contamination to the owner of the clandestine drug laboratory property pursuant to Section 5.2 of this ordinance.

5.4: If the tenant of the unit or on-site park landlord of the space-rental mobile home or a recreational vehicle park where the clandestine drug laboratory was located was personally provided a copy of the notice of contamination pursuant to Section 5.1 of this Ordinance, then the McDonald County Health Department shall not be required to mail a copy of the notice of contamination to the tenant of the unit or on-site park landlord of the space-rental mobile home or a recreational vehicle park where the clandestine drug laboratory was located pursuant to Section 5.2 of this ordinance.

Section 6: Contents of Notice of Contamination

6.1: The notice of contamination required by this Ordinance shall contain the following:

A. The word "WARNING" in large bold type at the top and bottom of the notice.

B. A statement that a clandestine drug laboratory was identified at the property.

C. The date of discovery, seizure, and/or removal.

D. The address or location of the property where the clandestine drug laboratory was discovered, seized, and/or removed, including the identification of any dwelling unit, room number, apartment number, vehicle number, vehicle registration number, or vehicle identification number.

E. A description of the contaminated portion of the property.

F. The name of the law enforcement agency that discovered, seized, or removed the clandestine drug laboratory along with the law enforcement agency's contact information.

G. A statement that:

1. A clandestine drug laboratory was discovered on the property;

2. Chemicals or equipment, or both, that were used in the operation of the clandestine drug laboratory were seized or removed at the property;

3. Hazardous substances, toxic chemicals, or other waste products may still be present on the property or in the case of space-rental mobile home or recreational vehicle park, in the unit located on the property;

4. It is unlawful for any unauthorized person to enter a residually contaminated property, or in the case of a space-rental mobile home or recreational vehicle park, the unit located on the property, until the McDonald County Health Department establishes that the portion of the property identified as residually contaminated has been properly remediated;

5. Failure to comply with the Clandestine Drug Laboratory Reporting and Remediation Ordinance for McDonald County, Missouri, is a violation;

6. Disturbing the notice of contamination posted on the property is a violation of the Clandestine Drug Laboratory Reporting and Remediation Ordinance for McDonald County, Missouri;

7. The owner of the property is responsible for remediating the residually contaminated portion of the property in compliance with the Clandestine Drug

Laboratory Reporting and Remediation Ordinance for McDonald County, Missouri;

8. Violation of the Clandestine Drug Laboratory Reporting and Remediation Ordinance for McDonald County, Missouri, may result in a fine of up to and including $1,000.00 and/or up to and including one year in county jail.

H. Contact information for the McDonald County Health Department.

Section 7: Vacating Notice of Contamination

7.1: The owner of a clandestine drug laboratory property is responsible for providing proof to the McDonald County Health Department that the property has been remediated in compliance with this Ordinance.

7.2 Within seven days of the McDonald County Health Department determining that a clandestine drug laboratory has been remediated in accordance with this Ordinance, or that no remediation is required, the McDonald County Health Department shall notify the owner of the clandestine drug laboratory that the notice of contamination can be removed from the property.

Section 8: Use and Transfer of Property

8.1: An owner of a clandestine drug laboratory property shall not sell, lease, rent, loan, assign, exchange, or otherwise transfer a clandestine drug laboratory property until the owner has been notified by the McDonald County Health Department that the notice of contamination can be removed from the property.

8.2: A person other than the owner or owner's agent may not enter, occupy, or use the clandestine drug laboratory property or otherwise knowingly and intentionally violate the provisions of the notice of contamination until remediation of the residually contaminated portion of the property has taken place in accordance with this Ordinance. Persons performing work for a law enforcement agency, the McDonald County Health Department, or a remediation firm are exempt from this prohibition.

Section 9: Clandestine Drug Laboratory List

9.1: The McDonald County Health Department shall maintain a list of clandestine drug laboratory sites in its office based on the information received from law enforcement agencies.

9.2: Within ten days of the McDonald County Health Department notifying the owner of the clandestine drug laboratory property of its approval pursuant to Section 7 of this Ordinance, the McDonald County Health Department shall indicate on its list whether the property has been remediated in accordance with this Ordinance.

Section 10: Owner Responsibilities for Remediation

10.1: The owner of the clandestine drug laboratory property shall retain a remediation firm to perform a preliminary assessment of the residually contaminated portion of the property to determine the extent of the contamination and the nature of the required remediation within seven days of the day of delivery of the notice of contamination to the owner. The preliminary assessment shall be completed within twenty-one days after delivery of the notice of contamination to the owner.

A. If the preliminary assessment determines that remediation is not required, the owner shall send a copy of the assessment to the McDonald County Health Department within seven days of receipt of the results of the preliminary assessment, which shall be reviewed in accordance with this Ordinance.

B. The owner may choose to forego a preliminary assessment and conduct the remediation in accordance with Section 10.2 of this Ordinance.

10.2: The owner shall retain a remediation firm to conduct the remediation within fourteen days of receipt of the results of the preliminary assessment when this preliminary assessment determines that remediation is required or, in event where a preliminary assessment was not performed pursuant to Section 10.1(A) of this Ordinance, within thirty days of the date of delivery of the notice of contamination to the owner.

10.3: The owner shall complete remediation and the post-remediation assessment in accordance with the requirements of this Ordinance within ninety days of the date of delivery of the notice of contamination to the owner or for such other period of time that is approved in writing by the McDonald County Health Department.

10.4: The owner shall retain a remediation firm to perform a post-remediation assessment of the residually contaminated portion of the property to determine that the requirements for remediation of residual contamination in this Ordinance have been met within seven days of receiving notice from the remediation firm that the residually contaminated portion of the property has been remediated.

10.5: After the McDonald County Health Department has approved the remediation and vacated the notice of contamination, the owner or owner's agent is not required to comply with Section 8 of this Ordinance and may remove the notice of contamination and allow any person to enter, use, occupy, rent, or sell the property.

10.6: All costs of remediation are the responsibility of the owner of the clandestine drug laboratory property.

10.7: It shall be a violation of this Ordinance for an owner of the clandestine drug laboratory property to knowingly fail to report a clandestine drug laboratory on his or her property to local law enforcement officials, providing that the owner of the clandestine drug laboratory knew of the clandestine drug laboratory.

Section 11: Requirements for Remediation of Residual Contamination

11.1: The evaluation and cleanup of residual contamination found at clandestine drug laboratory properties after chemicals and equipment have been removed shall meet the following standards:

A. Remediation Firms.

1. Any preliminary assessment, remediation, and post-remediation assessment of a clandestine drug laboratory for the purpose of complying with this section shall be performed by a remediation firm that meets the requirements of this section. The McDonald County Health Department recommends that the remediation firm performing the preliminary and post-remediation assessments be a different firm than the one that performs the remediation, to ensure independent evaluation of work required and thoroughness of the remediation.

2. The remediation firm shall be under the direction of a certified industrial hygienist or be approved and currently registered to perform such work with a state, county, or municipal agency during the time the firm participates in the assessment or remediation of residual contamination. A firm's approval, certification, or registration with another state to perform assessments of residually contaminated properties will be accepted as meeting this requirement.

3. The McDonald County Health Department may reject or require replacement of a remediation firm if one of the following findings is made:
   a. criminal activity,
   b. disregard for public health or the environment,
   c. failure to comply with this section or local ordinances, or
   d. noncompliance with the health, safety, or environmental rules or standards.

B. Preliminary Assessment of the Property.

1. The preliminary assessment shall include, but not be limited to, the following elements.

   a. A review of available information such as law enforcement reports and hazardous materials team reports that provide information regarding the manufacturing method, chemicals present, cooking areas, chemical storage areas, and observed areas of contamination or waste disposal.

   b. A physical inspection of the property, including but not limited to: living areas, storage areas, plumbing, ventilation systems, septic systems, and outdoor areas, as necessary, based on knowledge of the clandestine drug laboratory operation.

c. Sampling and testing to determine the residual levels of contamination if the preliminary assessment results in a recommendation that no further remediation is required.

2. A proposed work plan for remediating the residually contaminated portion of the property shall be prepared by the remediation firm that includes a description of the areas to be remediated and a description of the recommended cleanup methods.

3. The remediation firm shall provide the owner with a written preliminary assessment report that includes the following elements.

a. Identification of manufacturing methods, chemicals used, and actual and suspected areas of residual contamination or waste disposal based on law enforcement reports, visual observations, and knowledge of manufacturing method(s).

b. The results of testing for residual contamination.

c. A copy of the proposed work plan.

4. In the event the remediation firm determines that remediation is not required, the firm shall provide the owner and the McDonald County Health Department with a written basis for the determination that includes the following statement signed by a certified industrial hygienist or principal in the remediation firm certifying the property meets the requirements in this section and that no remediation is required. ***Remediation firm's certification:*** "I hereby declare that I am a certified industrial hygienist or a principal in an approved remediation firm and that this report fully and accurately describes the preliminary assessment of the clandestine drug laboratory property named in the report. I certify that I have reviewed the results of the assessment, including the sampling and testing results, and find that the property meets the clearance levels in Section 12 of the Clandestine Drug Laboratory Reporting and Remediation Ordinance for McDonald County, Missouri, for remediation of residual contamination and does not require further remediation."

C. Remediation of the Residually Contaminated Portion of the Property. Once chemicals and equipment removal is completed by the law enforcement agency or hazardous materials team, the owner shall have a remediation firm remove and dispose of, or clean, the portions of the property with residual contamination. Both the interior and exterior residually contaminated portions of the property shall be decontaminated in accordance with this section. Cleanup activities must be repeated until testing indicates that contamination levels are below the clearance levels in Section 12 of this Ordinance.

1. Interior Decontamination. The decontamination of the interior of the residually contaminated portion of the property that will be occupied by people

for any length of time for any purpose shall meet the clearance levels listed in Section 12 of this Ordinance. At a minimum, the following steps shall be taken to decontaminate the interior of a clandestine drug laboratory property.

a. Ventilate the property to remove or lower levels of residual volatile organic compounds in indoor air.

b. Decontaminate or discard interior furnishings and household contents, including but not limited to: carpets, drapes, and furniture.

c. Decontaminate structural features and surfaces paying particular attention to heavily contaminated areas such as those locations where the manufacturing occurred, or where chemicals were stored, mixed, or disposed.

d. Decontaminate interior surfaces of heating, ventilation, and air conditioning systems and plumbing drain lines and traps that are impacted by the residual contamination.

e. Remove or seal interior surfaces where residual contamination can not be effectively removed by cleaning.

2. Exterior Decontamination. Waste from clandestine drug laboratories are typically disposed of by dumping into indoor plumbing drains that empty either into a city sewer system or an on-site septic system or dumping on the ground into burn or burial pits. If evidence of exterior contamination is found at a clandestine drug laboratory property, the remediation firm shall respond as follows.

a. Collect and analyze soil samples from areas where there is evidence that clandestine drug laboratory wastes have been directly disposed on the ground.

b. Collect and analyze soil samples from septic tanks and drain fields, if present.

c. Collect and analyze samples from all wells within one hundred feet of impacted septic systems, drain fields, and disposal areas for contaminants of concern.

d. Contact the McDonald County Health Department for information on media-specific cleanup requirements.

3. Vehicle Decontamination. For vehicles, including recreational vehicles, campers, and trailers, the remediation firm shall follow the requirements listed in Section 11.1(C)(1) of this Ordinance. The cost of remediation may not make decontamination cost effective for many vehicles, in which case the entire vehicle

shall be destroyed. All vehicles to be destroyed shall be marked with a permanent notification affixed to the vehicle.

4. After the remediation is complete, the remediation firm shall notify the owner that the property is ready for post-remediation inspection.

D. Post-Remediation Assessment of the Property.

1. The post-remediation assessment shall include, but not be limited to: a visual inspection, review of the scope of remediation work performed, and testing necessary to certify compliance with the requirements for remediation of residual contamination in this Ordinance.

2. Samples must be collected from the property interior and submitted to a laboratory for analysis. If the results show that the clearance levels listed in Section 12 of this Ordinance have not been achieved, further remediation shall be performed as necessary to achieve clearance levels.

3. When the remediation firm determines that the remediation of the residually contaminated portion of the property was completed pursuant to the requirements for remediation of residual contamination in this Ordinance, a final remediation report, with a statement signed by a certified industrial hygienist or principal in the remediation firm certifying the remediation of the residually contaminated portion of the property was completed pursuant to the requirements for remediation of residual contamination, shall be prepared. The remediation firm shall deliver the remediation report or send the report by certified mail to the owner and the McDonald County Health Department within twenty-one days of completion of the remediation pursuant to Section 11.1(C) of this Ordinance. The remediation report certifying that remediation of the residually contaminated portion of the property shall not be in lieu of any certificate of occupancy or any building inspection, if required by the county or municipality.

4. The remediation firm preparing the remediation report shall maintain that document and all supporting materials for a period of three years.

E. Remediation Report. The remediation report shall include the following information and documentation.

1. Information demonstrating the remediation firm's qualifications, the name and qualifications of the certified industrial hygienist or other principal of the remediation firm, and the names and training records of the on-site supervisor and workers that performed the remediation services on the residually contaminated portion of the property.

2. Complete identifying information of the real property such as street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number, if appropriate.

3. A copy of the final remediation work plan.

4. A summary of the remediation services completed on the residually contaminated portion of the real property, and any deviations from the approved work plan.

5. Photographs documenting the remediation services and showing each of the sample locations, and a drawing or sketch of the residually contaminated areas that depict the sample locations.

6. Diagram showing the locations of all wells on the property and all wells on properties within two hundred fifty feet of any septic system, drain field, or waste disposal areas on the subject property.

7. A copy of the sampling and testing results and a copy of the chain-of-custody documents for all samples from the residually contaminated portion of the real property.

8. A summary of the waste characterization work, any waste sampling and testing results, and transportation and disposal documents, including bills of lading or manifest, weight tickets, and waste receipts for all materials removed from the property.

9. The following statement signed by a certified industrial hygienist or principal in the remediation firm certifying that the residually contaminated portion of the property has been remediated in accordance with this Ordinance. ***Remediation firm's certification:*** "I hereby declare that I am a certified industrial hygienist or a principal in an approved remediation firm and that this report fully and accurately describes the remediation of the clandestine drug laboratory property named in the report. I certify that I have reviewed the results of the remediation, including the post-remediation assessment results, and find that the remediation was completed pursuant to the requirements for remediation of residual contamination in the Clandestine Drug Laboratory Reporting and Remediation Ordinance for McDonald County, Missouri."

Section 12: Clearance Levels for Residual Contamination

12.1: At a minimum, the remediation firm shall conduct sampling and testing for all of the constituents listed below unless evidence indicates that such constituents were not used in the operation of the clandestine drug laboratory. All interior areas of the residually contaminated portion of a property that will be occupied by people for any length of time for any purpose and

all furnishings and materials intended for re-use shall meet the following post-remediation clearance levels.

Constituent	Clearance Level
Unlawfully manufactured controlled substance or its precursor drugs	Surface area wipe < 0.5 $\mu g/ft^2$
Volatile organic compounds (total)	Indoor air ≤ 1.0 part per million
Lead (total)	Surface area wipe ≤ 40.0 $\mu g/ft^2$
Mercury (vapor)	Indoor air < 0.3 $\mu g/m^3$
Corrosives	Surface pH of 6.0 to 8.0

Section 13: Approval of Remediation

13.1: Upon receipt of the remediation report, the McDonald County Health Department shall review the report to determine if the remediation of the residually contaminated portion of the property was completed pursuant to the requirements of this Ordinance within thirty days.

13.2: The McDonald County Health Department shall notify the owner or the owner's agent whether or not it approves the remediation report and agrees that the remediation is complete within seven days of completion of the McDonald County Health Department's review.

13.3: If the McDonald County Health Department does not approve the remediation report, it shall inform the owner or the owner's agent and state the reasons for disapproval. The owner shall take the appropriate corrective action within a time period allowed by the McDonald County Health Department.

Section 14: Penalties

14.1: Every act or omission constituting a violation of any of the provisions of this Ordinance by any agent or employee of any person shall be deemed and held to be an act of such person, and said person shall be punishable in the same manner as if said act or omission had been done or omitted by him or it personally, provided such an act or omission was within the scope of employment or the scope of authority of such agent or employee. Each such violation of this Ordinance shall be considered a separate offense. Each day of such violation of this Ordinance shall be considered a separate offense. The first violation of this Ordinance shall be a class B misdemeanor and punishable by a fine of up to three hundred dollars ($300.00). The second violation of this Ordinance shall be a class A misdemeanor and punishable by a fine of up to seven hundred fifty dollars ($750.00). The third and any subsequent violations of this Ordinance shall be a class A misdemeanor and punishable by a fine of up to one thousand dollars ($1,000.00), imprisonment of up to one year in county jail, or a combination of fine and imprisonment.

Section 15: Injunctive Relief

15.1: The McDonald County Prosecuting Attorney's Office may seek and obtain injunctive relief against any person who is in violation of this section

Section 16: Severability Clause

16.1: Should any section, provision, or part of this Ordinance be adjudged invalid or unconstitutional, such adjudication should not affect the validity of the Ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

Section 17: Interpretation

17.1: In this Ordinance, a reference to the singular includes the plural and vice versa, and a reference to gender includes all genders.

READ TWO TIMES AND PASSED THIS _____ DAY OF _____, 2012.

Keith Lindquist, Presiding Commissioner

Sam Gaskill, Eastern Commissioner

Ronnie Walker, Western Commissioner

ATTEST:

Barbara Williams, County Clerk

BE IT REMEMBERED, that on the final passage of this Ordinance the roll call vote for approval was the following persons voting:

"Aye"

"Nay"