

ORDINANCE NO. 101-2013

**TITLE: AMENDING BARBERTON CODIFIED ORDINANCES
“CLANDESTINE DRUG LABS”**

AN ORDINANCE AMENDING EXHIBIT A AS REFERENCED IN ORDINANCE 149-2011 CHAPTER 660, “SAFETY, SANITATION AND HEALTH,” OF THE BARBERTON CODIFIED ORDINANCES, BY CHANGING LANGUAGE WITHIN EXHIBIT A CRITERIA FOR THE DECLARATION AND RE-OCCUPANCY OF CLANDESTINE DRUG LABORATORIES, AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Barberton, State of Ohio:

SECTION 1. That Ordinance 149-2011 Exhibit A be amended by showing said amendments with ~~striketrough~~ for any deletions and **bold print** for any additions.

Chapter 660. SAFETY, SANITATION, HEALTH.

Section 660.XX. Clandestine Drug Labs.

General Provisions.

- (a) Purpose and Intent. The purpose of this Section 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. Such sites also can incur cleanup costs and expenses that expend public dollars on private property. This Section seeks to minimize and mitigate those costs to public monies.
- (b) Interpretation and Application. The provisions of this Section shall be construed to protect the public health, safety and welfare.

Where the conditions imposed by any provision of this Section 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 Section to be invalid, such decision shall not affect the validity of the Section as a whole or any part thereof, other than the provision declared invalid.

- (c) Definitions. As used in this Section:
1. Child means any person less than 18 years of age.
 2. Chemical dumpsite means any place or area where chemicals or other waste materials used or produced in a clandestine drug lab have been located.
 3. Clandestine drug lab means the unlawful manufacture or attempt to manufacture controlled substances. Only those labs which law enforcement determine may contain residual contamination that could be harmful to the occupants are subject to this ordinance.
 4. 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 dwellings, accessory buildings, accessory structures, motor vehicles, a chemical dumpsite or any land.
 5. Controlled substance means a drug, substance or immediate precursor in Schedules I through V of the Ohio Revised Code Section 3719.41. The term does not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.

6. Household hazardous wastes mean waste generated from a clandestine drug lab. Such wastes shall be treated, stored, transported or disposed of in a manner consistent with all federal, state and local regulations.
7. Manufacture, in places other than a pharmacy or a licensed pharmaceutical manufacturing facility, means and 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.
8. Motor Vehicles shall have the same meaning as Revised Code 4501.01.
9. Owner means any person, firm or corporation who owns, in whole or in part, the land, buildings or structures associated with a clandestine drug lab site or chemical dumpsite.
10. Public health nuisance includes all dwellings, accessory structures and buildings associated with a clandestine drug lab site that are potentially unsafe due to health hazards.

Administration.

- (a) Law Enforcement Notice to Other Authorities. Law enforcement authorities that identify conditions associated with a clandestine drug lab site or chemical dump site that place neighbors, visiting public, or present or future occupants of the dwelling at risk for exposure to harmful contaminants and other associated conditions shall promptly notify the appropriate municipal, child protection, and public health authorities of the property location, property owner if known, and conditions found.
- (b) Declaration of Property as a Public Health Nuisance. Any clandestine drug lab site or chemical dumpsite identified by law enforcement authorities is hereby declared to be a public health nuisance. Upon identification of such a nuisance, the law enforcement authorities shall notify the Building Commissioner or his designee.
- (c) Notice of Public Health Nuisance to Concerned Parties. Upon receipt of the notification by law enforcement authorities, the Building Commissioner or his designee shall promptly issue a Declaration of Public Health Nuisance for the affected property and post a copy of the Declaration at the probable entrance to the dwelling or property. The Building Commissioner or his designee shall also notify the owner of the property by mail and notify the following parties:
 1. Occupants of the property;
 2. All adjacent property owners and any other neighbors at probable risk;
 3. The City of Barberton Police Department;
 4. The primary mortgage holder; and
 5. Other federal, state and local authorities, and city council members which are known to have public and environmental protection responsibilities that are applicable to the situation.
- (d) Property Owner's Responsibility to Act. The Building Commissioner or his designee shall also issue an order to abate the public health nuisance, which shall comply with the rules and regulations attached as Exhibit A and order the owner of the property to do the following:
 1. 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. Contract with appropriate 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.
 3. Provide the Building Commissioner or his designee 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. The owner shall complete the remediation and post remediation assessment within ninety (90) days from the date of the Declaration of Public Health Nuisance.
- (e) Property Owner's Responsibility for Costs. The property owner shall be responsible for all costs of clean-up of the site, including any contractor's fees and law

enforcement/municipality costs associated with clean up.

(f) City Responsibilities and Recovery of Public Costs.

1. If, after service of notice of the Declaration of Public Health Nuisance, the property owner fails to arrange appropriate assessment and clean-up pursuant to the rules and regulations attached as Exhibit A, the Building Commissioner or his designee 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 (14) days of the Declaration of Public Health Nuisance, the City is authorized to proceed in a prompt manner to initiate the on-site assessment and clean-up.
3. The City may abate the nuisance by removing the hazardous structure or building, or otherwise, according to this Section of the Codified Ordinances.
4. The City shall be entitled to recover all costs of abatement of the public nuisance. The City may recover costs by civil action against the person or persons who own 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. Recovered city costs shall be allocated back into the funds where initially expended.

(g) Authority of Building Commissioner to Modify or Remove Declaration of Public Health Nuisance.

1. The Building Commissioner is authorized to modify the Declaration conditions or remove the Declaration of Public Health Nuisance.
2. Such modifications or removal of the Declaration shall only occur after documentation from a qualified 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. Such modification or removal of the Declaration shall only occur after City costs involved in the cleanup, assessment and abatement have been paid in full. Such monies shall be allocated back into the funds that they were expended from initially.
4. Nothing herein shall prevent the Building Commissioner from pursuing any remedy available pursuant to this Section of the Codified Ordinances, including the demolition of a building or structure.

Disclosure to Buyers and Occupants

No person shall sell or lease real property, which has been the subject of a Declaration of a Public Health Nuisance pursuant to this Section or has been the site of a known clandestine drug lab without disclosing such Declaration or knowledge to the buyer or tenant. Said disclosure shall be made on a form provided by the Building Commissioner or his designee.

Disclosure shall not be required once the Building Commissioner has removed the Declaration of Public Health Nuisance from the Property.

Miscellaneous Provisions.

- (a) The Building Commissioner, with the advice of the Departments of Police and Law, shall have the authority to promulgate any rules and regulations to enforce this Section, which are attached as Exhibit A hereto.
- (b) In the event that the State or Federal government promulgate cleanup guidelines that are more stringent or that pre-empt local regulation, its cleanup guidelines shall prevail.

Appeals.

Any person adversely affected by any order of the Building Commissioner pursuant to this Chapter may request a hearing on the matter by submitting a written request to the Board of

Zoning Appeals within five (5) days of receipt thereof. The Board shall issue an order either affirming, reversing, or modifying the order of the Building Commissioner.

Violations and Penalties.

Any person violating any provision of this Section is guilty of a misdemeanor of the first degree.

SECTION 2. That any ordinances or resolutions or portions of ordinances and resolutions inconsistent herewith be and the same are hereby repealed, but any ordinances and resolutions not inconsistent herewith and which have not previously been repealed are hereby ratified and confirmed.

SECTION 3. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were meetings open to the public in compliance with the law.

SECTION 4. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, convenience and welfare of the City of Barberton and the inhabitants thereof, in order for the amendment to take effect immediately, and provided it receives the necessary votes required by the City Charter, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Passed _____ 2013

Clerk of Council

President of Council

Approved _____ 2013

Mayor