ORDINANCE 13-13

AN ORDINANCE AMENDING THE CODE OF ORDINANCES BY ADDING A CHAPTER 49A RELATING TO CLANDESTINE LABORATORIES AND GROW OPERATIONS, PLACARDS, CLEAN-UP, NUISANCE ABATEMENT, ASSESSMENT OF COSTS AND PROVIDING PENALTIES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARION, IOWA:

Section 1. The Code of Ordinances is amended by adding the following new Chapter:

CHAPTER 49A

Clandestine Laboratories/Grow Operations

49A.01 Definitions
49A.02 Cleanup and nuisance abatement of dangerous buildings and vehicles required
49A.03 Removal of placard and/or release from impound
49A.04 Requirement to notify
49A.05 Police authority

49A.01 Definitions.

As used in this chapter, unless the context clearly requires otherwise:
1. "Clandestine laboratory/grow operation" means a location and operation, past or present, including but not limited to buildings or vehicles equipped with hardware, containers, lighting, heating devices, humidity control devices, and fertilizers, precursors or related reagents and solvents needed to unlawfully prepare or manufacture controlled substances as defined in chapter 124 of the Iowa code. The mere presence of precursor materials in the original sealed containers and absent of additional evidence of illegal use or intentions, is not evidence by itself of a clandestine laboratory/grow operation as defined solely within chapter 49A.
2. "Cleanup" means actions necessary to contain, collect, control, identify, analyze, disassemble, treat, remove, or otherwise disperse all substances and materials, including but not limited to those found to be hazardous waste as defined in section 455B.411 of the Iowa Code and controlled substances defined in chapter 124 of the Iowa code, including contamination caused by or as a by-product of the manufacturing or growing process, or being caused by the chemicals or substances associated with the manufacturing or growing process.
3. "Building or structure" shall include apartments, single-family homes, garages, hotel/motel rooms, mobile homes, rooms for rent, duplex dwellings, or any other building or structure.

4. "Hazardous substance" means any substance or mixture of substances that presents a danger to the public health or safety and includes but is not limited too; chemicals, chemical residues, mold, fungus, and/or other toxins and controlled substances as defined in chapter 124 of the Iowa code.
5. "Dangerous building" means any building or structure which has any or all of the conditions or defects hereinafter described, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered.
6. "Dangerous vehicle" means any vehicle which has any or all of the conditions or defects hereinafter described, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered.

49A.02 Clean up and nuisance abatement of dangerous buildings and vehicles required.

1. Whenever any portion of a building, structure, or vehicle has been used as part of a clandestine laboratory/grow operation as in the making, manufacturing or "cooking" of methamphetamine or any other controlled substance as defined within Iowa code chapter 124, as determined by the Marion Police Department, other law enforcement agency and/or certified peace officer having jurisdiction within the Marion City limits, the building(s), structure(s) or vehicle shall be deemed a nuisance in a state of emergency per section 50.09 "dangerous building" or a "dangerous vehicle" and shall be placard, vacated, and remain abandoned and unsafe until the following conditions are met:

A. Any owner or landlord that has a building or structure meeting the above criteria as defined in section 49A.02(1) shall provide certification, at the owner or landlord's expense, from an American Board of Industrial Hygiene (ABIH) Certified Industrial Hygienist that the known hazardous substance associated with a clandestine laboratory/grow operation process (including but not limited too; chemicals, chemical residues, mold, fungus, and/or other toxins) have been reduce or eliminated to the point that it is again safe to occupy the structure prior to the issuance of a new certificate of occupancy.

B. Any identified "dangerous vehicle" shall be vacated and impounded at the owner's expense, leaving the contents of the vehicle intact except for items collected as evidence, or items identified by law enforcement as being a hazardous substance in need of immediate removal.

C. Any owner of a vehicle meeting the above criteria as defined in section 49A.02(1), shall provide certification, at the owner's expense, from an American Board of Industrial Hygiene (ABIH) Certified Industrial Hygienist that the known hazards associated with a clandestine laboratory/grow operation process (including but not limited too; chemicals, chemical residues, mold, fungus, and/or other toxins) have been reduce or eliminated to the point that it is again safe to occupy the vehicle prior to the release of the vehicle from impound.

2. The amount of methamphetamine residue (for purposes of this code section, methamphetamine residue includes chemicals used in the making of the drug known as meth) present in the vehicle, building or structure shall be no more than 0.1 micrograms per one hundred (100) square centimeters or less prior to the issuance of a new certificate of occupancy.

A. Inspection and testing shall be done in each room of a single dwelling unit and shall include basement, attic areas, attached garage and heat and cooling duct systems.

B. Inspection and testing shall be done in the passenger compartment, enclosed trunk area, and heat and cooling duct system of vehicles.

C. Inspection and testing of structures other than dwelling units and exterior property areas shall be determined case by case based on the locations of hazardous substance storage, use, or disposal.

D. Test sampling shall be performed in accordance with EPA Standard Operating Procedures 2001 and 2011.

E. Clean up and disposal of properties, items, materials, or chemicals shall be done in compliance with all applicable state and federal standards and procedures, including personnel safety procedures.

3. Any time a garage that is attached to and/or shares a common access point to the living quarters is used for a clandestine laboratory/grow operation, the making, manufacturing, or cooking of methamphetamine or any other controlled substance as defined within Iowa code chapter 124, the garage and living quarters will be deemed abandoned and unsafe until such time as the requirements of 49A.02(1)(A) is met.

4. Anytime a motel/hotel room is used for a clandestine laboratory/grow operation the making, manufacturing, or cooking of methamphetamine or any other controlled substance as defined within Iowa code chapter 124, that room will be considered abandoned and unsafe and will not be allowed to be occupied until such time as the requirements of 49A.02(1)(A) is met.

5. Anytime a clandestine laboratory/grow operation is found in a multi-unit building or structure including a motel/hotel, inspection and testing shall take place in the adjacent unit(s) surrounding the "dangerous building" that share a common wall or floor/ceiling. Additionally, testing will take place in any/all unit(s) sharing a common heating or cooling system with the "dangerous building". Testing shall be completed within 60 days of the posting of the original "dangerous building".

A. Inspection and testing of adjacent units will be confined to rooms sharing the common wall or floor/ceiling unless test results show the presence of a "hazardous substance". Inspection and testing will continue to expand to adjacent rooms,

buildings, or structures until such time that adjacent building(s) and structure(s) are in compliance with 49A.02(1)(A).

B. If the inspection and test results indicate that an adjacent unit(s) meet the definition of a "hazardous building" they too shall be placard for occupancy until they can be brought into compliance.

6. A placard shall contain a nuisance abatement notice directed to the owner of the dangerous building or dangerous vehicle to which it is attached. The notice shall be as required by section 50.06 of the Code of Ordinances. Sections 50.09 through 50.50.13 of the Code of Ordinances are applicable to nuisances under this chapter. The cost of inspection and testing are a part of the costs of abatement and shall be charged to and collected from the owner of the dangerous building or dangerous vehicle that is the subject of a nuisance abatement notice.

49A.03 Removal of placarding and/or release from impound.

1. All "dangerous buildings" as defined shall remain placard for no occupancy until such time that test results are provided to the Marion Police Department showing compliance with the standards as set forth in 49A.02(1)(A) and any applicable subsections and all the costs of nuisance abatement have been paid.

2. All "dangerous vehicles" shall remain placard for no occupancy and shall remain impounded at the owner's expense until such time that test results are provided to the Marion Police Department showing compliance with the standards as set forth in 49A.02(1)(C) and any applicable subsections and all the costs of nuisance abatement have been paid.

3. Placarding and the prohibition of entrance into a "dangerous building" or "dangerous vehicle" does not apply to law enforcement, fire fighters, members of the building department, members of the health department, or those actively involved in the clean-up of the building(s), structure(s), or vehicle.

4. All dangerous vehicles meeting the criteria for disposal as an abandon vehicle as described within Iowa code section 321.89, can and shall be disposed of following the guidelines set forth within the Iowa Code.

49A.04 Requirement to notify.

1. All property owners shall disclose the past presence of a clandestine lab or clandestine growing operation prior to the sale, occupancy, or rental of any building(s), structure(s), and vehicle that was deemed a "dangerous building" or "dangerous vehicle", unless initial testing prior to cleaning shows otherwise, for (3) years after being certified as safe to occupy or in the case of methamphetamine manufacturing, below 0.1 micrograms per one hundred (100) square centimeters.

2. The Police Department shall maintain a list, as a public record available for inspection by the public, of the location of all building(s), structure(s), and vehicle(s) that have been deemed a "dangerous building" or "dangerous vehicle". Properties and vehicles shall remain on this list for not less than (3) years after being certified as safe to occupy or in the case of methamphetamine manufacturing, below 0.1 micrograms per one hundred (100) square centimeters.

49A.05 Police Authority

1. If the circumstances reasonably so require, the law enforcement officer or an authorized representative may:

A. Placard a building(s) and/or structure(s) deemed to be a "dangerous building" as defined.

B. Placard and impound a vehicle deemed to be "dangerous vehicle" as defined

C. Evacuate persons from their homes to areas away from the site of a clandestine laboratory/grow operation.

D. Establish perimeters or other boundaries at or near the site of a clandestine laboratory/grow operation and limit access to cleanup personnel.

2. No person shall disobey an order of any law enforcement officer issued under this section.

Section 2. This Ordinance shall be in full force and effect from and after its final passage approval and publication as provided by law.

Passed and approved this 20th day of June, 2013.

Snooks Bouska, Mayor

ATTEST:

Wesley A. Nelson

Wesley A. Nelson, City Clerk

CERTIFICATE OF SERVICE

The undersigned City Clerk of Marion, Iowa certifies that the Ord + Summary **shown immediately above was published in the** Marion Times **on the** 3rd **day of** July, **20** 13.

Wes Nelson/RCH

City Clerk