

ORDINANCE NO. 2019-2

**AN ORDINANCE CONCERNING
METHAMPHETAMINE-AFFECTED PROPERTIES**

WHEREAS, the Colorado Department of Public Health and Environment (“CDPHE”), Hazardous Materials and Waste Management Division, issued a July 2003 report titled “Cleanup of Clandestine Methamphetamine Labs Guidance Document,” that sets forth a list of chemicals commonly associated with methamphetamine laboratories in Colorado and their damaging health effects on humans, including: vapor irritation to eyes and respiratory system; caustic burns and frostbite; death due to inflammation of larynx and other causes; dizziness; headache; chest constriction; nausea; coma; hyperkeratosis; pharyngeal edema; chronic bronchitis; liver damage; teratogen effects, seizures; vomiting; diarrhea; dermatitis; pulmonary edema; chemical pneumonitis; breathing difficulty; muscle pain; stupor or syncope; abdominal pain; jaundice; anemia; severe damage to eyes; and conjunctivitis;

WHEREAS, § 25-18.5-104, C.R.S. requires a property owner who receives notice that chemicals or supplies indicative of methamphetamine manufacturing, processing, cooking, disposal, use or storage or notice of other evidence indicating the same are or have been located on his or her property, to prohibit any person from entering the property other than those who are properly trained or certified by the CDPHE;

WHEREAS, § 25-18.5-103(1)(a), C.R.S, requires that a property owner who receives notice that chemicals or supplies indicative of methamphetamine manufacturing, processing, cooking, disposal, use or storage or notice of other evidence indicating the same are located on his or her property shall meet the cleanup standards adopted by the State Board of Health or elect to demolish the property;

WHEREAS, pursuant to §§ 25-18.5-101 et seq., C.R.S., the State Board of Health has promulgated rules establishing the acceptable standards of cleanup of illegal methamphetamine laboratories, which rules can be found at 6 Colorado Code of Regulations § 1014-3;

WHEREAS, § 25-18.5-105(2), C.R.S. authorizes governing bodies to enact ordinances or resolutions to enforce Article 18.5 of Title 25 of Colorado Revised Statutes, including, but not limited to: preventing unauthorized entry into contaminated property; requiring contaminated property to meet cleanup standards before it is occupied; notifying the public of contaminated property; coordinating services and sharing information between law enforcement, building, public health, and social services agencies and officials; and charging reasonable inspection and testing fees;

WHEREAS, Boulder County Public Health (“BCPH”) constitutes a governing body under § 25-18.5-102(7), C.R.S.; and

WHEREAS, the Board of County Commissioners of Boulder County is authorized by § 30-15-401(q), C.R.S. to provide for and compel the removal of any building or structure, the condition of which poses a substantial danger or hazard to public health, safety, or welfare;

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Boulder County:

Purpose

The Board of County Commissioners of Boulder County finds and declares that the purpose of this ordinance is to ensure that people are not unnecessarily exposed to the dangers of methamphetamine and the chemicals used in the production, use and storage of methamphetamine, and that proper steps are taken to test for the presence of, and to thoroughly remove, contaminants in affected structures and vehicles. The Board finds that such sites may contain hazardous chemicals, substances, or residues that place people, particularly members of vulnerable populations, at risk of exposure should they inhabit or visit the site.

Definitions

Building Official means either the Chief Building Official in the Building Safety & Inspections Division of the Boulder County Land Use Department or the person so designated by the municipality in which the subject property is located.

Certified Industrial Hygienist means an individual who is certified by the American Board of Industrial Hygiene or its successor and is in good standing with that board.

Consultant means a Certified Industrial Hygienist or independent Industrial Hygienist as defined in § 25-18.5-101, C.R.S. who has been certified under § 25-18.5-106, C.R.S. and 6 C.C.R. § 1014-3:1.

Contractor means a person hired to decontaminate a MAP in accordance with state regulations and who is certified under § 25-18.5-106, C.R.S. and 6 C.C.R. § 1014-3:1.

Methamphetamine-affected Property or MAP means the areas on a subject property where methamphetamine has been manufactured, processed, cooked, disposed of, used, or stored and all proximate areas that are likely to be contaminated as a result of the manufacturing, processing, cooking, disposal, use, or storage of methamphetamine or the chemicals used to manufacture methamphetamine. Each separately owned unit in a multi-unit building (such as an apartment complex, condominium, or commercial building) may be a separate MAP.

Owner means any person, firm, corporation, or other legal entity holding record title, in whole or in part, to land, buildings, structures, mobile homes, or motor vehicles.

Property means anything that may be the subject of ownership, including, but not limited to, land, buildings, structures, mobile homes and motor vehicles.

Identification of Methamphetamine-affected Properties

A MAP can be identified by: (i) a report from law enforcement that chemicals, equipment or supplies indicative of the manufacture or use of methamphetamine have been observed in a Property; (ii) positive results from a screening level assessment or preliminary assessment as those terms are defined in 6 C.C.R. § 1041-3:1-1.0 through 3.0, or in § 38-35.7-103, C.R.S.; or (iii) another method of discovery with an equivalent level of credibility to (i) and (ii).

Notice to County Officials

To carry out its duties in protecting public health, BCPH needs notice of any newly discovered MAP as soon as reasonably possible. Therefore, the following notifications are required:

1. If methamphetamine is discovered by a law enforcement officer via visual observation or sampling, BCPH must be notified immediately.
2. If methamphetamine contamination is discovered at concentrations ≥ 0.2 ug/100 cm² on a screening level assessment or a non-regulatory screening level assessment performed by a Consultant, BCPH must be notified immediately upon receipt of the results.
3. If methamphetamine contamination is discovered at concentrations ≥ 0.5 ug/100 cm² from a preliminary assessment, BCPH must be notified immediately upon receipt of results.
4. The Consultant shall provide an electronic copy of the screening level assessment report, the preliminary assessment report, or the post-decontamination report to BCPH within 30 days of completion of the associated report.

If the MAP is located within an incorporated town or city, BCPH will coordinate procedures with the municipal governing body as appropriate.

Declaration of Property as a Methamphetamine-Affected Property; Notice to Owner

A Property identified as a MAP shall be publicly identified as such and declared unfit for human habitation or use. At the direction of BCPH, a Declaration of Methamphetamine-Affected Property shall be posted on the entrance of the MAP by the Building Official or his designee, or the official with the same authority within an incorporated town or city (“Declaration”). With respect to a vehicle, the Declaration shall be posted on the front windshield.

BCPH or, by agreement with BCPH, the municipal governing body, will notify the Owner that the Property has been declared a MAP, that the Owner has the right to appeal the declaration to the Director of BCPH (“Director”), and that state law requires the Owner to either (i) conduct cleanup according to state guidelines, which require a Consultant and a Contractor to assess the contamination, conduct the cleanup, and provide a post-cleanup report to BCPH, or (ii) demolish the Property and provide proof of the demolition to BCPH. Unless an appeal is filed as below, the Owner is required to respond to the notice to confirm receipt and provide preliminary plans for managing the MAP within 30 days of receipt of the notice.

Occupation Prohibited

Upon receipt of notice and posting of a Declaration on the Property, the Owner, with the support of law enforcement if necessary, is required to ensure that all occupants of the Property immediately vacate the premises. With the exception of Consultants or Contractors, persons trained or certified to handle contaminated property under CDPHE or federal rules, or first responders to an emergency with appropriate personal protective equipment, no person shall occupy, enter or allow occupancy or entrance to a building or structure which has been declared a MAP, and no person shall occupy or drive a vehicle which has been declared a MAP, until the Declaration is revoked or modified to allow occupancy. Removal of the posted Declaration by anyone other than the Building Official, BCPH, or law enforcement authorities is prohibited.

Any person entering a MAP that has been closed pursuant to this Ordinance does so at his or her own risk. BCPH and Boulder County take no responsibility for any injury incurred by any person entering a property closed pursuant to this Ordinance.

Appeal of MAP Determination

An Owner in receipt of notice that a MAP has been identified may file a notice of intent to appeal the MAP determination to the Director within 10 days of receipt of the notice. The Declaration will remain in place and the prohibition on entry described in this Ordinance and applicable law will remain in full force and effect during the pendency of the appeal. The appeal will follow the MAP Determination Appeal Policy available on the BCPH website.

The Director will issue a written determination within 30 days of receiving the appeal. The Director’s determination of the appeal is the final determination by BCPH and is reviewable by the relevant District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

If the Director finds that the MAP determination was flawed, the Building Officer will remove the Declaration and the Property will be deemed habitable. If the Director finds that the MAP determination was correct, the Owner will have 30 days after such finding to offer reasonable assurance or a plan to Public Health that the Property is being properly cleaned, remediated and tested.

Authority to Modify or Remove Declaration of Methamphetamine-Affected Property

The Building Official or BCPH may modify the Declaration conditions only upon written approval from a Consultant with knowledge of the MAP. The Building Official or BCPH may remove the Declaration only after BCPH receives and a Consultant's final clearance report and verifies that all cleanup requirements have been met.

After receipt of a final report from a Consultant, BCPH may, in its discretion, require additional inspection, sampling, or decontamination be performed by a Consultant or Contractor of BCPH's selection prior to removal of the Declaration.

Administrative Fee

At any time after discovery of a MAP and notice to the Owner or the resolution of any appeal, BCPH may charge the Owner a reasonable fee for its services as set forth in the MAP Fee Schedule available on the BCPH website.

Owner's Failure to Remediate

If, after 30 days following initial notice or the resolution of an appeal, whichever is later, BCPH is unable to obtain any reasonable assurance or plan from the Owner that the Property is being properly tested, cleaned, and remediated as required by state law, or that the owner chooses to demolish the Property and presents a plan therefor, BCPH may exercise any or all of the following:

- a) a copy of the Declaration may be provided to the lien and mortgage holders of the Property, and may be recorded with the Boulder County Clerk and Recorder;
- b) BCPH or the governing body with jurisdiction may declare the Property a public health nuisance and seek available remedies;
- c) BCPH may seek to abate the nuisance itself, and recover all costs associated with such abatement;
- d) the County may remove the structure or building, and assess the whole cost of such removal, including incidental costs, which assessment shall be a lien against such property until paid, pursuant to § 30-15-401(q), C.R.S.

CDPHE may institute separate enforcement actions, including civil penalties for violations of an Owner's obligation to prevent entry into a MAP and to assess and mitigate the contamination as provided in state law. Nothing in this Ordinance affects the authority or powers of CDPHE.

Application

This Ordinance shall apply throughout unincorporated Boulder County, and to any incorporated town or city which (i) does not maintain its own public health agency; or (ii) has entered an inter-governmental agreement with BCPH defining jurisdiction and authority for implementing this Ordinance.

Severability

If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Effective Date

This Ordinance shall be effective thirty (30) days from and after the date of its adoption and final publication.

INTRODUCED, READ AND ADOPTED ON FIRST READING February 7, 2019, and ordered published in the Longmont Times Call and The Daily Camera.

THE BOARD OF COMMISSIONERS
OF THE COUNTY OF BOULDER, COLORADO

DocuSigned by:
Elise Jones
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Elise Jones, Chair

ATTEST:

DocuSigned by:
Cecilia Lacey
A9048B42B8ED46B...

Cecilia Lacey
Clerk to the Board

ADOPTED ON SECOND AND FINAL READING on March 14, 2019.

THE BOARD OF COMMISSIONERS
OF THE COUNTY OF BOULDER, COLORADO

DocuSigned by:
Elise Jones
193511B0BE6A470...

Elise Jones, Chair

ATTEST:

DocuSigned by:
Cecilia Lacey
A9048B42B8ED46B...

Cecilia Lacey
Clerk to the Board

CERTIFICATION

I, Molly Fitzpatrick, Boulder County Clerk and Recorder, do hereby certify that the foregoing Ordinance No. 2019-2, entitled “**AN ORDINANCE CONCERNING METHAMPHETAMINE-AFFECTED PROPERTIES**” is a true, correct and complete copy from the records in my office, that said ordinance was duly adopted by the Board of County Commissioners of the County of Boulder and is in full force and effect. Further, one (1) copy of the Ordinance adopted herein is now filed in the office of the Clerk and Recorder for the County of Boulder, Colorado, and may be inspected during regular business hours.

Clerk and Recorder

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

Subscribed and sworn to before me by Molly Fitzpatrick this ____ day of _____ 2019.

(S E A L)

Notary Public

My Commission expires: _____