CITY of ALBUQUERQUE
SIXTEENTH COUNCIL

COUNCIL BILL NO. C-04-29 ENACTMENT NO. _____

SPONSORED BY: Craig Loy

ORDINANCE

AMENDING CHAPTER 11, ARTICLE 1, ROA 1994, PROVIDING FOR CLEANUP OF CLANDESTINE DRUG LABORATORIES, NOTICE TO BUYERS AND OCCUPANTS, RESTITUTION AND PENALTIES.

BE IT ORDAINED BY THE COUNCIL THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

"SUBPART D: DRUG LABORATORY SITE REMEDIATION OF CONTAMINATION

Section 1. TITLE. This Ordinance shall be known and may be cited as the "Cleanup of Clandestine Drug Laboratory Sites Ordinance."

Section 2. FINDINGS AND INTENT. The City Council finds and states its intent as follows. Clandestine drug laboratory sites are increasing in number in Albuquerque and are a serious health threat to the community. Remediation of the residually contaminated portions of clandestine drug laboratory sites is essential to assure the health, safety and welfare of the community. Property owners must share the responsibility for the clandestine drug laboratory sites on their property by bearing the initial costs of remediation of such sites, subject to restitution as provided in this ordinance. This ordinance is timely and appropriate because current laws and city regulations are insufficient to address the above-mentioned problems. The restrictions contained herein are neither over broad nor vague and are narrowly tailored to serve a substantial government interest.

Section 3. [redacted]. In this Ordinance, unless the context otherwise requires:

(A) "Clandestine drug laboratory" means property on which methamphetamine, ecstasy, LSD or any other controlled substance is being

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1 manufactured or on which there is an attempt to manufacture when a person is
2 arrested for having on any property any chemicals or equipment used in
3 manufacturing methamphetamine, ecstasy, LSD or any other controlled substance. In
4 the case of a space rental mobile home or recreational vehicle park, clandestine drug
5 laboratory means the mobile home or recreational vehicle in which methamphetamine,
6 ecstasy, LSD or any other controlled substance is being manufactured or where a
7 person is arrested for having in the mobile home or recreational vehicle any chemicals
8 or equipment used in manufacturing methamphetamine, ecstasy, LSD or any other
9 controlled substance. Clandestine drug laboratory shall include any place or area
10 where chemicals or other waste materials used in clandestine drug laboratories have
11 been located.

12 (B) "Controlled Substance" means any drug or substance or counterfeit
13 substance listed in the Controlled Substances Act, NMSA 1978 Chapter 30, Article 31
14 or regulations adopted thereunder.

15 (C) "Drug Laboratory Site Remediation Firm" means a firm that is certified by
16 the Albuquerque Police Department and the City Environmental Health Department
17 and that performs remediation of residual contamination from the manufacture of
18 methamphetamine, ecstasy, LSD or any other controlled substance or the storage of
19 chemicals or equipment used in manufacturing methamphetamine, ecstasy, LSD or
20 any other controlled substance.

21 (D) "Ecstasy" (3,4-methylenedioxy amphetamine) has the same meaning
22 prescribed in NMSA 1978 Section 30-31-6 and includes any of the precursor chemicals,
23 regulated chemicals, other substances or equipment used in the unlawful manufacture
24 of Ecstasy and any derivatives thereof.

25 (E) "Gross contamination" means the chemicals, equipment and other items
26 that are found in a clandestine drug laboratory and that are removed by a law
27 enforcement officer or law enforcement agency.

28 (F) "Industrial or Environmental Hygiene Firm" means a firm that is
29 certified by the Albuquerque Police Department and the City Environmental Health
30 Department to conduct pre-remediation testing and post-remediation testing for the
31 remediation of residual contamination from the manufacture of methamphetamine,
32 ecstasy, LSD, or any other controlled substance or the storage of chemicals or

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equipment used in manufacturing methamphetamine, ecstasy, LSD or any other controlled substance.

(G) "Law Enforcement Officer" means 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 as defined in NMSA 1978 30-20A-3D, and specifically includes Albuquerque Police Department animal chemical inspectors.

(H) "LSD" (lysergic acid diethylamide) has the same meaning prescribed in NMSA 1978 Section 30-31-6 and includes any of the precursor chemicals regulated chemicals, other substances or equipment used in the unlawful manufacture of LSD and any derivatives thereof.

(I) "Methamphetamine" has the same meaning prescribed in NMSA 1978 Section 30-31-7 and includes any of the precursor chemicals, regulated chemicals, other substances or equipment used in the unlawful manufacture of Methamphetamine and any derivatives thereof.

(J) "Owner" means any person, firm, corporation or other entity that owns, in whole or in part, the property subject to this ordinance.

(K) "Property" means real or personal property and includes the area within a structure and the area that surrounds a structure and that is within the land boundary or property lines of any of the following:

(a) Property that can be used for residential purposes or is occupied by people for any length of time for any purpose.

(b) Property that is governed by the Uniform Owner-Resident Relations Act, NMSA 1978 Sections 47-8-1 et seq., or the Mobile Home Park Act, NMSA 1978 Sections 47-10-1 et seq.

(c) A mobile home as defined in NMSA 1978 Section 47-10-2.

(d) A recreational vehicle as defined in NMSA 1978 Section 66-1-4.15 and for purposes of this ordinance, "recreational vehicle" shall also include a recreational travel trailer as defined in NMSA 1978 Section 66-1-4.15.

(e) A vehicle as defined in Section 8-8-2-1 ROA 1994.

(L) "Residually contaminated portion of the property" means the structure or unit where gross contamination was removed and the area of any adjacent structure,

unit or land where visible evidence of residual contamination is observed by a law enforcement officer, including any of the following:

(a) If gross contamination is removed from a house, mobile home or recreational vehicle and the notice of removal is posted for the entire house, mobile home or recreational vehicle, then the entire house, mobile home or recreational vehicle, and just the room or rooms in which the gross contamination is found shall be deemed the residually contaminated portion of the property.

(b) If gross contamination is removed from a detached shed or garage, the other structures or property on the land are not affected and the notice of removal is posted only for the detached shed or garage, then the detached shed or garage shall be deemed the residually contaminated portion of the property.

(c) If gross contamination is removed from a hotel, motel room or apartment unit, the adjacent rooms are not affected and the notice of removal is posted only for the contaminated room or apartment unit, then the contaminated room or apartment unit shall be deemed the residually contaminated portion of the property.

(d) If gross contamination is removed from a vehicle, then the entire vehicle shall be deemed the residually contaminated portion of the property.

Section 4. DECLARATION OF PUBLIC NUISANCE. Upon identification by a law enforcement officer of a clandestine drug laboratory site, the property shall constitute a public nuisance until such time as the remediation required by this Ordinance is completed.

Section 5. CLANDESTINE DRUG LABRATORIES.

(a) PROCEDURES. If a law enforcement officer discovers a clandestine drug laboratory or meets a person for having on any property chemicals or equipment used in manufacturing methamphetamine, ecstasy, or any other controlled substance or a derivative of methamphetamine, ecstasy, LSD or any other controlled substance, the law enforcement officer shall:

(1) At the time of the discovery or arrest, shall deliver a copy of the notice of removal pursuant to subsection (B) of this section to the owner of the property, if the owner is on the site at the time of delivery, the on-site manager if the manager is on the site at the time of delivery or the on-site drop box if available. In the case of a tenant-owned unit in a space rental mobile home or recreational vehicle park, the officer shall deliver a copy of the notice of removal to the occupant of the unit if the occupant is on

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site at the time of delivery and to the on-site park landlord if the park landlord is on site at the time of delivery.

(3) If the owner or the owner of a space rental mobile home or recreational vehicle park or their agent for service is not personally provided a copy of the notice of removal under the procedures of subsection (A)(1) of this section, then within two City business days after the discovery or arrest, the law enforcement officer shall send the notice of removal by certified mail to the owner of the property and the owner's on-site manager or, in the case of a space rental mobile home or recreational vehicle park, to the owner of the mobile home or recreational vehicle, if applicable, and to the park landlord. These persons are [illegible]

(3) If the owner or the owner of a space rental mobile home or recreational vehicle park cannot be identified, the notice of removal may be posted on the property pursuant to subsection (A) (6) of this section.

(4) The notice of removal shall be sent to the following:

(a) The address of the [illegible] and the owner of the mobile home or recreational vehicle park as shown on file with the county assessor.

(b) The Albuquerque [illegible] Health Department.

(c) The Albuquerque [illegible] Department.

The law enforcement officer shall complete an affidavit of service for personal delivery of the notice of removal or posting notice on the property.

(5) After a law enforcement or other agency removes the gross contamination on the property, a law enforcement officer shall order the removal of all persons from the residentially contaminated portion of the property or dwelling unit, if applicable, or, in the case of a space rental mobile home or recreational vehicle park, from the unit located on the property.

(6) After the law enforcement officer removes all persons pursuant to subsection (A) (5) of this section, the law enforcement officer shall affix the notice of removal in a conspicuous place on the property or, in the case of a space rental mobile home or recreational vehicle park, on the unit located on the property.

(7) The law enforcement officer shall cause a Certificate of Substandard Property to be filed with the Bernalillo County Assessor upon posting the notice of

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removal. Such certificate shall include a legal description of the property and shall be attached to the notice of removal.

(b) NOTICE. The notice of removal shall be in writing and shall contain all of the following:

(1) The following shall be printed in large bold type at the top and bottom of the notice: "Contaminated Building. Do Not Enter. Unsafe to Occupy."

(2) A statement that it is unlawful for any person other than the owner, landlord, manager, law enforcement, an industrial or environmental hygienist firm and/or a drug laboratory site remediation firm to enter the residually contaminated portion of the property until the owner remediates the residually contaminated portion of the property, or in the case of a space rental mobile home or recreational vehicle park, the unit located on the property.

(3) A statement that a clandestine drug laboratory was seized or a person was arrested on the property for having chemicals or equipment used in the manufacturing of methamphetamine, ecstasy, LSD or any other controlled substance on the property.

(4) The date of the seizure or arrest.

(5) The address or location of the property, including the identification of any dwelling unit, room number, apartment number or vehicle identification number.

(6) The name of the law enforcement agency or other agency that seized the clandestine drug laboratory or made the arrest and the agency's contact telephone number.

(7) A statement that hazardous substances, toxic chemicals or other waste products may still be present on the property or, in the case of a space rental mobile home or recreational vehicle park, in the unit located on the property.

(8) A statement that the failure to remediate the residual contamination pursuant to the Cleanup of Clandestine Drug Laboratory Sites Ordinance is punishable by imprisonment up to 90 days and/or a fine up to $500.

(9) A statement that disturbing the notice of removal posted on the property is punishable by imprisonment up to 90 days and/or a fine up to $500.

(10) A statement that the owner of the property shall remediate the residually contaminated portion of the property in compliance with subsection (C) of this section.

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(H) A statement that if an owner fails to provide any notice required by this section, the owner is subject to penalty and a buyer, tenant or customer may void a purchase contract, rental agreement or other agreement related to the property.

(C) REMEDIATION BY OWNER. The owner of the property shall remediate the residually contaminated portion of the property by retaining an industrial or environmental hygienist firm to pre-test the property to determine the extent of the contamination and the nature of the required remediation. When the industrial or environmental hygienist firm determines that remediation is required, the owner shall retain a drug laboratory site remediation firm to conduct the remediation. The industrial or environmental hygienist firm and the drug laboratory site remediation firm shall be separate and unaffiliated business entities. Both firms shall be approved and currently registered with the Albuquerque Police Department and the City Environmental Health Department during the time they participate in the remediation of residually contaminated property. The owner shall retain the industrial or environmental hygienist firm and the drug laboratory site remediation firm within 30 days of the day of delivery of personal service of the notice of removal or within 35 days of the date the notice of removal is mailed by certified mail or posted on the property. Remediation shall be completed in accordance with the standards for remediation of residual contamination adopted by the Albuquerque Police Department and the City Environmental Health Department within 60 days of the day of delivery of personal service of notice to the owner or within 65 days of the date notice is mailed by certified mail to the owner or for such other period of time that is approved in writing by the Albuquerque Police Department.

(D) REMEDIATION PROCEDURES. The industrial or environmental hygienist firm and the drug laboratory site remediation firm retained to remediate the residually contaminated portion of any property pursuant to this section shall comply with the best practices and standards for remediation of residual contamination adopted by the Albuquerque Police Department and the City Environmental Health Department. The industrial or environmental hygienist firm shall notify the owner whenever the firm determines that any structure requires remediation of contamination as required in this section. The owner shall send such notification of required remediation of contamination to Albuquerque Police Department, the City Environmental Health Department and the City's Chief Building Official. Within one

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City working day after the remediation is completed, the drug laboratory site remediation firm shall notify the Albuquerque Police Department, the City Environmental Health Department and the industrial or environmental hygienist firm that the property is ready for final inspection. After inspection by the industrial or environmental hygienist firm and approval by the Albuquerque Police Department and the City Environmental Health Department, the industrial or environmental hygienist firm shall issue a final clearance document certifying that remediation of the residually contaminated portion of the property was completed pursuant to the standards for remediation of residual contamination and shall deliver the certification document or send the document by certified mail to the owner. The owner shall provide a copy of the certification of completed remediation to each person and entity listed in subsection (A)(4) of this section, the City's Chief Building Official and the law enforcement agency that issued the notice under that subsection. After the final clearance document has been issued, both of the following apply:

(1) The owner, landlord, lien holder or manager of the property is not required to comply with subsection (E) of this section.

(2) Any person may use, enter, occupy, rent or sell the property.

It shall be the responsibility of the owner of the property to file with the County Assessor the document stating that the residually contaminated portion of the property has been remediated and neither the City, the industrial or environmental hygienist firm nor the drug laboratory site remediation firm shall be responsible for such filing or the costs associated with filing. The issuance of the document certifying that remediation of the residually contaminated portion of the property has been completed pursuant to the standards for remediation of residual contamination shall be a prerequisite for a certificate of occupancy or any City required building inspection and shall not be in lieu of a certificate of occupancy or any City required building inspection.

(E) CONTAMINATED VEHICLES. If gross contamination is removed from a vehicle, the notice of removal required in subsection (B) of this section shall be sent by certified mail to the owner of record and lien holder of record. If any extra impounded vehicles containing residual contamination shall not be released to the owner or lien holder until the remediation has been completed and paid for by the owner or lien holder. Remediation shall be accomplished by following the same

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procedures as set forth in subsection (D) of this section. Remediation costs as defined in subsection (J) of this section shall be in addition to any other towing, storage, or other impoundment fees.

(F) RECORD RETENTION. The City Environmental Health Department shall maintain and make available on request all notices of removal and any document that are created pursuant to subsection (D) of this section. A retention schedule for such documents shall be established by the City Clerk.

(G) NOTICE TO BUYERS AND OCCUPANTS. The following notice requirements apply until the remediation is complete as provided in subsection (D) of this section:

(1) Within five days after a buyer signs a contract to purchase property, the owner shall notify the buyer in writing that methamphetamine, ecstasy, or any other controlled substance was manufactured on such property or that an arrest, as described in subsection (A) of this section, was made. The buyer shall acknowledge receipt of the notice. A buyer may cancel the purchase contract within five days after receiving the notice without liability. If the owner does not comply with this paragraph, the buyer may void the purchase contract.

(2) Landlords and their agents shall provide written notice to all prospective tenants for dwelling units that the dwelling unit was the subject of a notice of removal, as described in subsections (A) and (E) of this section, that methamphetamine, ecstasy, or any other controlled substance was manufactured on the property or that an arrest, as described in subsection (A) of this section, was made. The tenant shall acknowledge receipt of the notice before taking possession of the property or before signing a rental agreement for the property. The notice shall be attached to the rental agreement. If the landlord or their agent does not comply with this paragraph, the tenant may void the rental agreement. For purposes of this paragraph, dwelling unit shall include but not be limited to mobile homes and recreational vehicles.

(3) Before a customer occupies a room that was the subject of the notice of removal, as described in subsection (A) of this section, the owner or manager shall notify the customer in writing the room was the subject of a notice of removal as described in subsection (A) and (E) of this section, that methamphetamine, ecstasy, LSD or any other controlled substance was manufactured in the room or that an arrest, as described in subsection (A) of this section, was made. The customer shall acknowledge

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receipt of the notice before taking possession of the room and before signing a room rental agreement. If the owner or manager does not comply with this paragraph, the customer may void the agreement.

(4) Owners are required to notify all agents selling, leasing or renting property that is the subject of a notice of removal that such property is the subject of a notice of removal. When a sales, leasing or rental agent is notified that the property is the subject of a notice of removal, such agent shall notify in writing all prospective buyers, tenants or other occupants about the notice of removal and manufacture of methamphetamine, ecstasy, LSD or any other controlled substance on the property or that an arrest, as described in subsection (A) of this section, was made on the property. Notice shall be made in the same manner as required of the owner in this subsection (G).

(5) When a law enforcement officer has ordered the removal of all persons from property pursuant to section 5(A) (5), owners, landlords and their agents shall continue to be subject to the requirement to not permit people from occupying such property. Compliance with this subsection shall not eliminate the requirement that the property not be occupied.

(H) MOBILE HOME OR RECREATIONAL VEHICLE SPACE RENTAL PARKS: If a mobile home or recreational vehicle in a space rental park contains a clandestine drug laboratory, the landlord of the park, on receipt of a notice pursuant to subsection (A) this section, shall notify the owner and leaseholder of record of the unit to remove the unit from the park within thirty days. This provision shall not apply when the owner of the contaminated mobile home or recreational vehicle is also the owner of the mobile home or recreational vehicle space rental park on which such contaminated mobile home or recreational vehicle is located. If the unit is not removed within thirty days, the landlord of the park shall remediate the contamination following the requirements set forth in subsections (C) and (D) of this section.

(I) RESTITUTION TO OWNER. A person who operates a clandestine drug laboratory and who is not the owner of the property shall pay restitution to the owner of the property for all costs that the owner incurred to remediate the property and in the instance of a mobile home or recreational vehicle, the cost incurred by the owner of a space rental park for moving and/or remediating such property.

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(J) REMEDIATION BY CITY. If an owner of property, a vehicle owner, a vehicle lien holder or an owner of a mobile home or recreational vehicle space park, as described under subsection (H) of this section, fails to comply with the remediation of the residually contaminated property or portion of the property as required in this section, the City may remediate of the residually contaminated portion of the property or seek a court order requiring the owner to remediate in the manner required in this Section. If the City is unable to locate the owner within ten days after the issuance of the Certificate of Substandard Property, the City may proceed with remediation. If the City remediates the contamination, the owner shall pay to the City all costs related to such remediation. If the owner fails to pay the City for its costs of remediation, the City shall be entitled to file a lien against such property for the cost related to the remediation and bring legal action against the owner for such remediation costs. Remediation costs shall include, but are not limited to the expense for posting, physical security of the contaminated site, notification of affected people, businesses or any other entity, expenses related to the recovery of cost, laboratory fees, cleanup services costs for testing for residual contamination, removal costs, and cost incurred for a industrial or environmental hygienist firm and a drug laboratory site remediation firm. If/when a contaminated vehicle is impounded, the vehicle shall not be released to the owner or a lien holder until remediation is completed and paid by the owner or lien holder and impoundment fees are paid by the owner or lien holder. Remediation costs for vehicles in which gross contamination is found shall include the costs for testing for residual contamination regardless of whether residual contamination is actually required to be remediated. Impoundment fees shall include those fees defined as impoundment charges in Section 8-5-2-1 ROA 1994. The City or its contractors may remove property as part of its remediation effort.

Section 6. PENALTIES.

(A) If an owner fails to provide any notice required by this section, the owner shall be subject to imprisonment up to 90 days and/or a fine of up to $500 and is liable for any harm resulting from the owner's failure to comply with the requirements of this section.

(B) A person who knowingly violates a notice of removal that is issued by a law enforcement officer under this ordinance is subject to imprisonment up to 90 days

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and/or a fine of up to $500 for each day such person fails to comply with the notice of removal.

(C) All other violations of this ordinance shall be subject to the penalty provisions of Section 1-1-99 ROA 1994."

Section 7. Severability Clause. If any section, paragraph, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 8. Compilation. Section 1 of this ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico.

Section 9. Effective Date: This ordinance shall take effect five days after publication by title and general summary

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