

**EDINBURGH TOWN COUNCIL**

**ORDINANCE NO. 2013-7**

**AN ORDINANCE FOR THE CLEANUP OF PROPERTY  
CONTAMINATED WITH CHEMICALS USED IN THE ILLEGAL  
MANUFACTURE OF A CONTROLLED SUBSTANCE**

WHEREAS, the illegal manufacture of controlled substances, as defined by IC

35-48-1-9 (“illegal drugs”), has become a growing problem in Indiana and in the Town of Edinburgh; and

WHEREAS, a methamphetamine laboratory is defined by I.C. 5-2-15-2 as a location or facility that is being used; was intended to be used; or has been used to produce methamphetamine; and

WHEREAS, illegal drug labs are extremely hazardous to occupants and neighbors, in part, because the wide variety of hazardous materials and chemicals used by persons who manufacture illegal drugs can cause a variety of health problems; and

WHEREAS, pursuant to I.C. 13-14-1-15, the Indiana Department of Environmental Management (“IDEM”) adopted regulations that are found at 318 IAC, Article 1, to address the inspection and remediation of property contaminated with chemicals used in the illegal manufacture of illegal drugs; and

WHEREAS, Indiana Code 5-2-15-3 requires a law enforcement agency that terminates the operation of a methamphetamine laboratory to report the existence and location of the methamphetamine laboratory to the state police department, the local fire department, the County Health Department of the county where the methamphetamine laboratory is located, and the Indiana criminal justice institute; and

WHEREAS, under 318 IAC 1-2-8, real property and mobile homes that have been used for the illegal manufacture of illegal drugs and any areas outside a structure that were used for the disposal of chemicals used in the illegal manufacture of illegal drugs are “contaminated property” unless the law enforcement agency that identifies the property as having been used for the illegal manufacture of an illegal drug determines that:

- a) The process used to manufacture the illegal drug has not been started;

b) All chemicals to be used in the illegal manufacture of the illegal drug have been removed; and

c) No contamination related to the illegal manufacture of an illegal drug is present. WHEREAS, for an apartment building, multifamily dwelling, condominium, hotel, or motel, the term "contaminated property" is limited to the unit that was identified by the law enforcement agency as having been used for the illegal manufacture of an illegal drug if all of the following are true:

- a) The entry to the unit is located on the (1) outside of the structure; or (2) interior of the structure and is closed by a fire door assembly;
- b) The unit has no other opening to another unit or space;
- c) The heating, ventilating, and air conditioning system of any other unit, except for: (1) a hot water boiler that serves more than one (1) unit in the structure; or (2) an air conditioning condenser located outside the structure.

WHEREAS, under 318 IAC 1-3-2, the owner of contaminated property must clean up the contaminated property after the law enforcement agency has dismantled an operation for illegal manufacture of an illegal drug before the owner may:

- a) Continue to occupy or use the property;
- b) Reoccupy or reuse the property;
- c) Allow the property to be reoccupied or reused; or
- d) Transfer any interest in the property to another person;

WHEREAS the Indiana Department of Environmental Management enacted

regulations found in 318 IAC Article 1 that set forth:

- a) criteria as to who may perform the clean-up of contaminated property;
- b) standards for the clean-up and inspection of the contaminated property;
- c) provisions for the issuance of a certificate of decontamination by a qualified inspector; and
- d) provisions for the issuance of a notice that demolition of the contaminated property has been completed;

WHEREAS, IC 16-41-20-2 gives the inspector of buildings in a town the power

to exercise all of the powers granted by an Ordinance of the Town of Edinburgh dealing with housing; and

WHEREAS, IC 16-41-20-2 also gives the inspector of buildings in a town the same powers granted to boards of health that are set forth in the IC 16-41-20 entitled "Health, Sanitation, and Safety: Dwellings Unfit for Human Habitation;"

WHEREAS, the Edinburgh Town Council has determined that contaminated property, as defined by 318 IAC 1-2-8, is unfit for human habitation, because it is dangerous or detrimental to life or health due to the existence on the premises of an unsanitary condition that is likely to cause sickness among occupants of the dwelling.

**NOW, THEREFORE, BE IT ORDAINED BY THE EDINBURGH TOWN COUNCIL, AS FOLLOWS:**

**I. SECTION 1. ORDERS TO VACATE DWELLINGS**

- a. The Town of Edinburgh Building Commissioner may declare a property identified by a law enforcement agency as having been used for the illegal manufacture of an illegal drug and for which a report has been issued pursuant to IC 5-2-15-3 to be a dwelling unfit for human habitation pursuant to IC 16-41-20-1. However, the dwelling is not unfit for habitation if the law enforcement agency that identified the property as having been used for the illegal manufacture of an illegal drug determines that:
  - i. The process used to manufacture the illegal drug has not been started;
  - ii. All chemicals to be used in the illegal manufacture of the illegal drug have been removed; and
  - iii. No contamination related to the illegal manufacture of an illegal drug is present.
- b. Whenever the Town of Edinburgh Building Commissioner determines that a dwelling is unfit for human habitation, the Building Commissioner may issue an order requiring all persons living in the dwelling to vacate the dwelling

within not less than five (5) days and not more than fifteen (15) days ("Vacate

Order"). (Authority: IC 16-41-20-4)

- c. The Vacate Order must set forth:
- i. the name of the person to whom the order is issued;
  - ii. the legal description or address of the uninhabitable premises that is the subject of the order;
  - iii. that the dwelling is unfit for human habitation;
  - iv. that there exists on the premises an unsanitary condition that is likely to cause sickness among occupants of the dwelling;
  - v. that the dwelling is contaminated property that was used for the illegal manufacture of a controlled substance;
  - vi. order the dwelling to be vacated until the owner has complied with the requirements of 318 Indiana Administrative Code, Article 1;
  - vii. the name, address and telephone number of the Building Commissioner. (Authority: IC 16-41-20-4; IC 16-41-20-7; 318 IAC 1-3-2)
- d. The Town of Edinburgh Building Commissioner shall, for a good reason, extend the time within which to comply with the Vacate Order. The extension shall be in writing, signed by the Building Commissioner, and dated on the date that it is signed by the Building Commissioner. (Authority: IC 16-41-20-5)
- e. No owner shall continue to occupy or use the property; reoccupy or reuse the property; allow the property to be reoccupied or reused; or transfer any interest in the property to another person until the Vacate Order is revoked by the Town of Edinburgh Building Commissioner. (Authority: 318 IAC 1-3-2)
- f. The Town of Edinburgh Building Commissioner may order the owner of the real estate to purify, cleanse, disinfect, renew, alter, repair, or improve a dwelling, excavation, building, structure, sewer, plumbing, pipe, passage, premises, ground, or thing in or about a dwelling that is found to be unfit for human habitation or the dwelling's lot. (Authority: IC 16-41-20-7)

- g.** An Order issued under this Ordinance and pursuant to IC 16-41-20, shall be served on the tenant and the owner of the dwelling or the owner's rental agent. The Order may be served on a person who, by contract, has assumed the duty of doing the things that the Order specifies to be done. (Authority: IC 16-41-20-8)
- h.** Whenever a building, dwelling, dwelling unit, rooming house, or rooming unit is declared unsafe or unfit for human habitation by the Town of Edinburgh Building Commissioner and a Vacate Order is issued, the Building Commissioner shall also affix a copy of the Vacate Order to a conspicuous part of the premises. (Authority: IC 16-41-20-8)
- i.** The Town of Edinburgh Building Commissioner may list the properties that have been used as the site of a methamphetamine laboratory on its website. The list of properties shall be based on information received from a law enforcement agency under IC 5-2-15-3.
- j.** The Town of Edinburgh Building Commissioner shall remove a listed property from its website after a copy of the certificate of decontamination pursuant to 318 IAC 1-5-9 or a notice that demolition has been completed pursuant to 318 IAC 1-6-3 is delivered to the Building Commissioner.
- k.** The Town of Edinburgh Building Commissioner may revoke the Vacate Order when a copy of the certificate of decontamination issued pursuant to 318 IAC 1-5-9 or a notice that demolition has been completed pursuant to 318 IAC 1-6-3 is delivered to the Building Commissioner. The certificate of shall be sufficient evidence that the danger from the dwelling has ceased to exist and that the dwelling is fit for habitation. (Authority: IC 16-41-20-5(b))
- l.** The Town of Edinburgh Building Commissioner may declare the dwelling that is unfit for human habitation a public nuisance. The Building Commissioner may order to be removed, abated, suspended, altered, improved, or purified a dwelling, structure, excavation, business, pursuit, or thing in or about the dwelling or the dwelling's lot, or the plumbing,

sewerage, drainage, light, or ventilation of the dwelling. (Authority: IC 16-

41-20-6)

- m.** A person aggrieved by a Vacate Order of the Town of Edinburgh Building Commissioner issued under IC 16-41-20 and this Ordinance may, not more than ten (10) days after the making of the order, file with the circuit or superior court a petition seeking a review of the order. Pursuant to IC 16-41-20-9(b), the court's decision is final. (Authority: IC 16-41-20-9)
- n.** The appeal and review proceedings are governed by IC 16-41-20-9, et seq.
- o.** A person who fails to comply with an Order to Vacate of the Town of Edinburgh Building Commissioner is liable for all costs and expenses paid or incurred by the Building Commissioner in executing the order. This amount may be recovered in a civil action brought by the Building Commissioner, who is entitled to recover reasonable attorney's fees. (Authority: IC 16-41-20-12)
- p.** It shall be a violation of this Ordinance for a person to:
- i.** Occupy, use, reoccupy or reuse, allow the property to be reoccupied or reused, and/or transfer a contaminated property that is the subject of a Vacate Order;
  - ii.** Knowingly interfere with or delay the carrying out of a Vacate Order made under this Ordinance;
  - iii.** Deface, remove, or alter any notice of the Building Commissioner's Vacate Order from any structure or dwelling except by the express written permission of the Building Commissioner.
- II. SECTION 2. PUBLIC BENEFIT**
- a.** That the Edinburgh Town Council finds that this Ordinance will be in the best interest of the Town and for the benefit of the public and residents of the Town.
- III. SECTION 3. REPEALER**
- a.** All ordinances or parts of ordinances in conflict with provisions of this Ordinance are hereby repealed.

**IV. SECTION 4. SEVERABILITY**

- a. Should any section or provision of this Ordinance be declared by the Courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part declared to be unconstitutional or invalid.


**V. SECTION 5. EFFECTIVE DATE**

- a. This ordinance shall be in full force and effect from and after its passage, approval and publication according to law.


ADOPTED this 28<sup>th</sup> day of October, 2013.

**EDINBURGH TOWN COUNCIL**

  
Ron Hoffmann, Council President

  
Curtis Rooks, Vice President

  
John R. Drybread, Member

  
Kami Ervin, Member

  
Jeffrey A. Simpson, Member

ATTEST:

  
Scott Finley, Clerk-Treasurer