ORDINANCE NO. 2012-231

SPONSOR Mr. Pry

DATE June 18, 2012

COMMITTEE Public Safety

An Ordinance enacting Section 521.11 of the Codified Ordinances of the County of Summit, entitled “Clandestine Drug Labs,” to make the owners of real property responsible for the costs incurred by the County Sheriff’s Office in removing chemicals and devices used in the manufacture of methamphetamines and other illegal drugs, for the Sheriff and Executive, and declaring an emergency.

WHEREAS, the use and manufacture of methamphetamines and other illegal drugs poses serious challenges to the health, safety and welfare of the residents of Summit County; and

WHEREAS, in particular, the manufacture of methamphetamine and other illegal drugs is dangerous, and the chemicals and processes used in the manufacture of these drugs poses serious risk to the health of nearby individuals; and

WHEREAS, the manufacture of methamphetamine and other illegal drugs often takes place in occupied residential properties as well as motor vehicles, hotels and abandoned and vacant commercial and residential properties; and

WHEREAS, the County Sheriff’s Office routinely uncovers and stops the manufacture of methamphetamine and other illegal drugs and also collaborates with other municipal and township police departments to do so; and

WHEREAS, the County Sheriff’s Office must remove and clean-up the chemicals and devices used in the manufacture of methamphetamine and other illegal drugs after discovering the same, thereby incurring costs to do so; and

WHEREAS, due to the dangerous nature of the chemicals, devices and processes used in the manufacture of methamphetamine and other illegal drugs, the costs incurred to remove the same are often substantial; and

WHEREAS, several local municipalities have enacted ordinances making the property owner responsible for the cost of their police departments for the removal of the chemicals and devices used in the manufacture of methamphetamine and other illegal drugs; and

WHEREAS, this Council finds and determines, after reviewing all pertinent information, that it is necessary and in the best interest of the County to enact an ordinance making the owner of real property responsible for the costs of the County Sheriff’s Office in removing chemicals and devices used in the manufacture of methamphetamine and other illegal drugs.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the County of Summit, State of Ohio, that:
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SECTION 1

Section 521.11 of the Codified Ordinances of the County of Summit, entitled “Clandestine Drug Labs,” is hereby enacted as follows:

521.11 CLANDESTINE DRUG LABS.

(a) Definitions.

(1) “Chemical dumpsite” means any place or areas where chemicals or other materials used, intended to be used or produced in a clandestine drug lab have been located or disposed.

(2) “Clandestine drug lab” means a location used for the unlawful manufacture or attempt to manufacture controlled substances.

(3) “Clandestine drug lab site” means any place or area where the County Sheriff has determined that conditions associated with the operation of a clandestine drug lab exist. A clandestine drug lab site may include residential, commercial, industrial or institutional structures, accessory building, accessory structures, motor vehicles, a chemical dumpsite or any land.

(4) “Controlled substance” means a drug, compound, mixture, preparation or substance included in Schedules I through V of Section 3719.41 of the Ohio Revised Code., as amended, or any dangerous drug. Controlled substance does not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.

(5) “Emergency condition” means hazardous conditions associated with a clandestine drug lab or chemical dumpsite.

(6) “Expense” means any expense incurred by the County Sheriff due to the use of his/her employees, agents, materials and/or equipment to investigate, mitigate, minimize, remove or abate any hazardous condition at a clandestine drug lab site or chemical dumpsite.

(7) “Household hazardous wastes” means wastes generated from a clandestine drug lab. Such wastes shall be treated, stored, transported or disposed of in a manner consistent with all federal, State of Ohio and/or local regulations.

(8) “Manufacture” means the production, cultivation, quality control and standardization by mechanical, physical or pharmaceutical means, packing, repacking, tableting, encapsulating, labeling, relabeling, filling or other process, of controlled substances. Manufacture does not include manufacturing which occurs in a pharmacy or licensed pharmaceutical manufacturing facility.

(9) “Owner” means any person, corporation, limited liability company or other entity that may legally hold title to land under Ohio law who alone or jointly or severally with others has legal title to any land, buildings or structures associated with a clandestine drug lab site or chemical dumpsite, with or without accompanying actual possession thereof. Owner also includes a seller or purchaser under a land contract, whether recorded or not, or the executor, executrix, administrator, administratrix, trustee or guardian of the estate of either the person with legal title or the land contract seller or purchaser.
(b) **Emergency condition.** Where, in the opinion of the County Sheriff or his/her designee, an emergency condition exists, the County Sheriff's Office staff, acting alone or in concert with any other law enforcement agency or public health agency, may dismantle and dispose of drug processing apparatus and/or chemicals and take any other action necessary to abate the immediate threat of the emergency condition to the health and safety of the public. The presence of an emergency condition is hereby determined to constitute an immediate threat to the health and safety of the public, and the County Sheriff need not provide notice to the owner or any other person prior to taking any action to abate the emergency condition.

(c) **Costs associated to Cleanup.** When the County Sheriff has taken action to abate an emergency condition as set forth in subsection (b), the owner shall be responsible for the expenses incurred by the County Sheriff in so doing, together with an administrative charge, as set forth in subsection (e), which shall be paid to the County by the owner within thirty (30) days of receipt of the notice provided for in this subsection.

Following the abatement of an emergency condition and calculation of the County Sheriff's expenses, the County Sheriff or his/her designee shall serve written notice to the owner, which shall include the following statements: (i) that an emergency condition existed on the property, (ii) that action was taken by the County Sheriff to abate the same, (iii) the expenses incurred by the County Sheriff to abate the emergency condition, together with an administrative charge, as set forth in subsection (e), and (iv) that payment for said expenses and administrative costs shall be paid by the owner to the County within thirty (30) days of receipt of the notice. Expenses associated with the first occurrence of an emergency condition submitted to the owner shall not exceed $1,200.00, including the administrative charge as set forth in subsection(e).

The notice shall be served upon the owner by personal service or by certified mail at either the property at issue or the tax mailing address maintained by the Fiscal Officer. If personal service and certified mail service are not successful, then the notice may be served by posting the notice in a conspicuous location at the property at issue and mailing, by regular mail with proof of mailing, to the tax mailing address maintained by the Fiscal Officer.

(d) **Appeal.** Any person subject to a notice and order to pay the cost of abating an emergency condition under this Section may request and shall be granted a hearing on the matter before an Appeals Committee consisting of the County Sheriff or his/her designee, County Executive or his/her designee and County Council President or his/her designee.

(1) **Filing.** The person shall file with the County Sheriff a written request for a hearing and shall set forth the name, address and telephone number of the appellant and a brief statement of the grounds for the hearing and appeal from the notice and order to pay the cost of abating the emergency condition. Requests shall be filed within 7 days after the notice and order is personally served, mailed or posted, whichever occurs first, and shall be accompanied by a non-refundable deposit of $15.00, which shall be paid to the County Sheriff.
(2) **Hearing.**

A. Upon receipt of the request for a hearing, the County Sheriff or his/her designee shall set a time and place for a hearing, and shall notify the other members of the Appeals Committee. Written notice of the hearing shall be sent by regular mail to the address provided by the appellant in the request for a hearing. The hearing shall be held within a reasonable time after a request has been filed.

B. At the hearing, the appellant shall be given an opportunity to be heard and to show cause why the obligation to pay and/or the amount to be paid under subsection (c) should be modified or dismissed. The failure of the appellant or his representative to appear and present the appellant’s position at the hearing shall be grounds for dismissal of the request.

C. Upon consideration of the evidence presented at the hearing, Appeals Committee, by a majority vote, may affirm, modify or dismiss the obligation to pay or the amount to be paid under subsection (c). The appellant shall be notified in writing of the decision, which shall be sent by the County Sheriff or his/her designee by regular mail to the address provided by the appellant in the request for a hearing or to the appellant’s representative.

D. Any person aggrieved by the decision of the Appeals Committee under division (d) of this section may seek relief pursuant to Chapter 2506 of the Ohio Revised Code.

(e) **Administrative charge.** In addition to the expenses set forth in division (c) of this section, the owner shall pay an administrative charge of $200.00 for each time that the County Sheriff abates an emergency condition at a property, to cover the administrative costs associated with such abatement and the enforcement of this Section.

(f) **Failure to pay; lien upon property.** If, after thirty (30) days of receipt of the notice provided for in subsection (c), the owner has failed to make the required payment, the County Sheriff shall certify said non-payment to the County Fiscal Officer, who shall enter a lien in the amount of the total expenses and administrative charge upon the property, to be collected as other taxes and assessments.

(g) **Preemption.** This chapter shall be null and void on the day that statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this Section, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Summit.

**SECTION 2**

This Ordinance is hereby declared to be an emergency measure in the interest of the health, safety and welfare of the citizens of the County of Summit, Ohio, and for the further reason that it is necessary in order to immediately ensure, due to budgetary concerns, that the County recovers its costs when removing chemicals and devices used in the manufacture of illegal methamphetamines and other illegal drugs.
SECTION 3

Provided this Ordinance receives the affirmative vote of eight members, it shall take effect immediately upon its adoption and approval by the Executive; otherwise, it shall take effect and be in force at the earliest time provided by law.

SECTION 4

It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

INTRODUCED       June 4, 2012

ADOPTED          June 18, 2012

CLERK OF COUNCIL

APPROVED        June 18, 2012

EXECUTIVE

ENACTED EFFECTIVE    June 18, 2012

Voice Vote: 11-0. YES: Comunale, Crawford, Feeman, Kostandaras Kurt, Lee, Prentice, Rodgers, Roemer, Schmidt, Shapiro