

BILL NO. _____

ORDINANCE NO. _____

INTRODUCED BY ALDERMAN _____

AN ORDINANCE AMENDING CHAPTER 15 OF THE MUNICIPAL CODE OF THE CITY OF CRESTWOOD, MISSOURI, TO ADD A NEW SECTION TO AUTHORIZE THE MUNICIPAL JUDGE TO ISSUE ADMINISTRATIVE SEARCH WARRANTS TO INSPECT AND ABATE NUISANCES AND VIOLATIONS OF THE CITY'S PROPERTY MAINTENANCE AND ZONING ORDINANCES IN THE CITY OF CRESTWOOD

WHEREAS, the Charter of the City of Crestwood (the "City") provides that the City "shall have all powers the General Assembly of the State of Missouri has authority to confer upon any city," except as limited by the U.S. and Missouri Constitutions, Missouri statutes and any limitations within the Charter itself; and

WHEREAS, Missouri statutes provide authority for cities to inspect and abate nuisances on private property after due process has been afforded to the property owner; and

WHEREAS, the City is taking steps to ensure that property values within the City are protected and that the City remains a safe and attractive place in which to live and do business; and

WHEREAS, code enforcement officers and fire officials of the City are sometimes unable to address nuisance properties which require entry onto private property in which the property owners either cannot be found or are not responsive; and

WHEREAS, the Board of Aldermen wishes to ensure that its code enforcement officers and fire officials have the tools they need to enforce the City's ordinances regarding nuisances, property maintenance, housing, building, fire prevention, and zoning, to protect the health, welfare, and safety of the community; and

WHEREAS, in the case of *Frech v. City of Columbia*, the Missouri Supreme Court upheld a municipal ordinance authorizing the municipal judge in a charter city to issue administrative search warrants for the purpose of determining whether property owners are in compliance with zoning ordinances and minimum building standards; and

WHEREAS, the Board of Aldermen finds and determines that an administrative search warrant would be a valuable tool for its code enforcement officers and fire officials to enforce the City's ordinances consistent with due process; and

WHEREAS, the Board of Aldermen finds that the proposed amendment to Chapter 15 of the Code would be in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CRESTWOOD, MISSOURI, AS FOLLOWS:

SECTION 1: Chapter 15 of the Municipal Code of the City of Crestwood, Missouri, pertaining to the City's municipal court, is hereby amended by adding a section, to be numbered as Section 15-35, which reads as follows:

Sec. 15-35. Administrative Search Warrants.

- (a) Search Warrant Defined – Who May Issue, Execute.
 - (1) An administrative search warrant is a written order of the municipal judge permitting the entry of City officials on or into private property, structure or improvement to enforce the City's housing, building, fire prevention, zoning, health and safety regulations when government entry on or into such property is otherwise authorized by Missouri law. A warrant may issue only in conformance with this Section and only for the enforcement of the City's housing, building, fire prevention, zoning, health and safety regulations, specifically:
 - (a) To inspect private property to determine or prove the existence of physical conditions in violation of a specified regulation,
 - (b) To seize property or photograph, copy or record evidence of property or physical conditions found thereon or therein, and
 - (c) To abate such physical conditions.
 - (2) The municipal judge of the City of Crestwood may issue an administrative search warrant when:

- (a) The property to be entered is located within the City, and
- (b) The owner or occupant of the property or place to be entered:
 - (i) Has refused to allow same after official request by the City, or
 - (ii) Is not available, after reasonable investigation and effort, to consent to such search or inspection.
- (3) Any such warrant shall be directed to the chief of police or any other police officer, code enforcement officer, or fire official of the City and shall be executed by the chief of police or said police officer, code enforcement officer, fire official or other appropriate City official within the City limits and not elsewhere.
- (b) Who May Apply For Warrant – Contents Of Application.
 - (1) Any code enforcement officer, police officer, or fire official of the City may make application to the municipal judge for the issuance of an administrative warrant.
 - (1) The application shall:
 - (a) Be in writing;
 - (b) State the time and date of the making of the application;
 - (c) Identify the property or places to be entered, searched, inspected or seized in sufficient detail and particularity that the official executing the warrant can readily ascertain it;
 - (d) State that the owner or occupant of the property or places to be entered, searched, inspected or seized:
 - (i) Has been requested by the City to allow such action and has refused to allow such action, or
 - (ii) Is not available, after reasonable investigation and effort, to consent to such search or inspection;
 - (e) State facts sufficient to show probable cause for the issuance of a search warrant as provided in Subsection (c) of this Section to:
 - (i) Search or inspect for violations of an ordinance or Code Section specified in the application; or
 - (ii) Show that entry or seizure is authorized and necessary to enforce an ordinance or Code Section specified in the application and/or abate an ordinance violation and that due process has been afforded prior to the entry or seizure;
 - (f) Be verified by the oath or affirmation of the applicant; and
 - (g) Be signed by the applicant and the City’s prosecuting attorney, and shall be filed in the municipal division. The application may include affidavits, photographs, or other records necessary to establish probable cause.
 - (3) The application shall be considered in determining whether there is probable cause for the issuance of a search warrant and in filling out any deficiencies in the description of the property or place to be searched or inspected. Oral testimony shall not be considered.
 - (4) The application may be submitted to the municipal division by hand delivery, mail or facsimile or other electronic means.

- (c) Determination Of Probable Cause – Issuance – Contents Of Warrant – Execution And Return.
- (1) *Determination of probable cause/issuance.*
- (a) The municipal judge shall determine whether probable cause exists to inspect or search for the purposes noted herein.
 - (b) In doing so the municipal judge shall determine whether the action to be taken by the City is reasonable in light of the facts stated. The municipal judge shall consider the goals of the ordinance or Code Section sought to be enforced and such other factors as may be appropriate including, but not limited to, the physical condition of the specified property, the age and nature of the property, the condition of the area in which the property is located, the known violation of any relevant City ordinance or Code Section, the passage of time since the property’s last inspection and the authority authorizing government entry onto private property. The standard for issuing a warrant need not be limited to actual knowledge of an existing violation of a City ordinance or Code Section.
 - (c) If it appears from the application and any supporting affidavit that there is probable cause to inspect or search the private property for the enforcement of the City’s housing, zoning, health and safety regulations, an administrative search warrant shall immediately be issued.
 - (d) The warrant shall issue in the form of an original and two (2) copies and the application, any supporting affidavit and one (1) copy of the warrant as issued shall be retained in the records of the municipal division.
 - (e) A search warrant shall expire if it is not executed within ten (10) days after the date of the making of the application.
- (2) *Contents of administrative search warrant.* The administrative search warrant shall:
- (a) Be in writing and in the name of the City;
 - (b) Be directed to any police officer, code enforcement officer, or fire official in the City;
 - (c) State the time and date the warrant was issued;
 - (d) Identify the property or places to be searched, inspected or entered upon in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;
 - (e) Identify the regulation sought to be enforced;
 - (f) Command that the described property or places be entered upon for one (1) or more specified enforcement purposes as provided herein, including inspection or abatement;
 - (g) Direct that any evidence of any suspected ordinance violations be seized, recorded or photographed and a description of such property be returned within ten (10) days after issuance of the warrant to the clerk of the municipal division to be dealt with according to law;
 - (h) Be signed by the judge with his or her title of office indicated.

- (3) *Execution.* A search warrant issued under this Section shall be executed only by a City police officer, code enforcement officer, or fire official, provided however, that one (1) or more designated City officials may accompany the officer or official and the warrant shall be executed in the following manner:
- (a) Copies of the warrant shall be given to the officer executing the warrant. Copies may be transmitted by hand delivery, mail or by facsimile or other electronic means.
 - (b) The warrant shall be executed by conducting the search, inspection, entry, abatement, or seizure as commanded and shall be executed as soon as practicable and in a reasonable manner but in no less than ten (10) days after issuance of the warrant.
 - (c) The officer may summon as many persons as he or she deems necessary to assist him or her in executing the warrant and such persons shall not be held liable as a result of any illegality of the search and seizure.
 - (d) The officer shall give the owner or occupant of the property searched, inspected or entered upon a copy of the warrant or shall leave a copy of the warrant at the property if the owner or occupant is not available.
 - (e) In the event that a warrant authorizes abatement of a nuisance or other conditions, the police officer, code enforcement officer, or fire official is not required to stay on the property during the entire length of time that it takes for the abatement to be completed.
- (4) *Itemized receipt/disposition of seized property.*
- (a) If any property is seized incident to the search or abatement, the officer shall give the person from whose possession it was taken, if the person is present, an itemized receipt for the property taken. If no such person is present, the officer shall leave the receipt at the site of the search or abatement in a conspicuous place.
 - (b) A copy of the itemized receipt of any property taken shall be delivered to the prosecuting attorney for the City or the City Attorney within two (2) working days of the search.
 - (c) The disposition of property seized pursuant to a warrant under this Section shall be in accordance with an applicable City ordinance or Code Section, but in the absence of same, then with Section 542.301, RSMo.
- (5) *Return required after execution of search warrant.*
- (a) After execution of the search warrant, the warrant, with a return thereon signed by the officer making the search, shall be delivered to the municipal division.
 - (b) The return shall show the date and manner of execution and the name of the possessor and of the owner, when not the same person, if known, of the property or places searched or seized.
 - (c) The return shall be accompanied by any photographs, copies or recordings made and by any property seized, along with a copy of

the itemized receipt of such property required by this Section; provided however, that seized property may be disposed of as provided herein and, in such a case, a description of the property seized shall accompany the return.

- (d) The municipal division clerk, upon request, shall deliver a copy of the return to the possessor and the owner, when not the same person, of the property searched or seized.
- (d) Warrant Invalid, When.
 - (1) An administrative search warrant shall be deemed invalid:
 - (a) If it was not issued by the municipal judge;
 - (b) If it was issued without a written application having been filed and verified;
 - (c) If it was issued without sufficient probable cause in light of the goals of the ordinance to be enforced and such other factors as provided in Subsection (c) hereof;
 - (d) If it was not issued with respect to property or places in the City;
 - (e) If it does not describe the property or places to be searched, inspected, entered upon or seized with sufficient certainty;
 - (f) If it is not signed by the judge who issued it; or
 - (g) If it was not executed within ten (10) days after the date of the issuance of the warrant.
 - (1) An officer making a search pursuant to an invalid warrant, the invalidity of which is not apparent on its face, may use such force as he or she would be justified in using if the warrant were valid.

SECTION 2: The remaining provisions of Chapter 15 of the City's Code shall remain in full force and effect.

SECTION 3: This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and its approval by the Mayor.

PASSED AND SIGNED this ____ day of _____, 2019.

Mayor

ATTEST:

City Clerk

APPROVED this ____ day of _____, 2019.

Mayor