

Bill No. 10-03

Ordinance No. _____

**AN ORDINANCE OF THE CITY OF NORMANDY, MISSOURI,
AMENDING ARTICLE I OF CHAPTER 140 OF TITLE I OF THE
MUNICIPAL CODE BY THE ADDITION OF A NEW SECTION
RELATING TO THE REQUIREMENTS AND PROCEDURE FOR
ISSUANCE OF ADMINISTRATIVE SEARCH WARRANTS BY THE
JUDGE OF THE MUNICIPAL COURT.**

WHEREAS, Federal and Missouri State Courts have held that administrative search warrants are necessary with regard to certain inspections and abatement for purposes of enforcing zoning, housing and health and safety regulations and, in *Frech v. City of Columbia*, 693 S.W.2d 813 (Mo. banc 1985), the Missouri Supreme Court determined that municipal administrative warrant legislation did not conflict with the authority of the Missouri Legislature or the Missouri Supreme Court; and

WHEREAS, the City Council of the City of Normandy believes that such legislation is necessary in enforcing the City's housing and zoning codes and health and safety regulations, all to the benefit of the public health, safety and welfare of the City residents and businesses; and

WHEREAS, such legislation also helps to ensure that personal and property rights of owners and occupants are secured through compliance with the requirements of the United States Constitution as provided in *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967); and

WHEREAS, the Missouri legislature has enacted certain procedures and requirements relating to issuance of administrative search warrants and the procedures and requirements set forth in this legislation are consistent with such procedures and requirements.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF NORMANDY, MISSOURI, AS FOLLOWS:

Section One.

Article I of Chapter 140 of Title I of the Municipal Code is hereby amended by the addition of a new Section 140.155 which is hereby enacted to read as follows:

other police officer of the City and shall be executed by the chief of police or said police officer, in conjunction with the code enforcement officer or other appropriate city official, within the City limits and not elsewhere.

(4) Any such warrant shall not permit the entry of City officials into the residence of the property to be searched, inspected or entered upon.

B. *Who May Apply For Warrant--Contents of Application*

(1) Any code enforcement officer, police officer, or attorney of the City may make application to the municipal judge for the issuance of an administrative warrant.

(2) 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 officer 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 filed in the municipal court.

(3) The application may be supplemented by a written affidavit verified by oath or affirmation. Such affidavit 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 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 provided the City has received a reasonable complaint based on reliable informant information that such a violation of a City ordinance or code section has occurred.

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, a 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 copy of the warrant as issued shall be retained in the records of the municipal court.

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 Search Warrant.* The search warrant shall:

a. Be in writing and in the name of the City;

b. Be directed to any police officer 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 so 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 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 court, to be dealt with according to law;

h. Be signed by the judge, with his title of office indicated.

(3) *Execution.* A search warrant issued under this Article shall be executed only by a City police officer, provided, however, that one (1) or more designated City officials may accompany the officer, 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 deems necessary to assist him 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 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 an attorney for the City 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 of the Revised Statutes of Missouri.

(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 court.
- 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 court 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) A 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.

(2) 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 would be justified in using if the warrant were valid.

Section Two.

This Ordinance shall be in full force and effect both from and after its passage and approval by the Mayor.

**PASSED BY THE CITY COUNCIL FOR THE CITY OF NORMANDY THIS ____
____ DAY OF _____, 2010.**

Presiding Officer

Attest:

City Clerk, Pam Rogers

APPROVED THIS ____ DAY OF _____, 2010.

Mayor, Patrick Green

Attest:

City Clerk, Pam Rogers

**AFFIDAVIT IN SUPPORT OF
ADMINISTRATIVE SEARCH WARRANT**

I, _____ (CEO# _____), being duly sworn,
depose the following to wit:

There exists property in the City of Normandy numbered _____
_____. According to the city's records, the property is owned by _____
_____.

I personally inspected the property on _____.

The property was in violation of the following ordinance(s): _____
_____ for the reason that _____

_____.

As a result of that inspection, I posted / mailed (circle which applies) a violation
notice ordering that the property be brought into compliance on or before _____
_____. A copy of the violation notice is attached.

I re-inspected the property on _____ and
found that the violations remain.

The violations constitute a nuisance and a hazard to the public health, safety and
welfare.

Affiant

Subscribed to and sworn before me this ____ day of _____, 2010,
at _____ a.m. / p.m.

Notary Public

My commission expires: