

**AN ORDINANCE PROVIDING FOR THE REVISION OF
SEARCH WARRANTS IN THE CITY OF CHESTERFIELD**

WHEREAS, the City Council of the City of Chesterfield seeks to protect its residents;
and

WHEREAS, the use of search warrants may be needed to protect the welfare of the
community; and

WHEREAS, search warrants enable the City of Chesterfield to accomplish important
and appropriate duties in the protection of their citizens.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:**

Sec. 24-5. Shall now be amended and replaced as follows:

Sec. 24-5. Administrative Search warrants.

- (a) The Municipal Judge for the City of Chesterfield shall have the authority to issue search warrants for searches or inspections to determine the existence of municipal code violations and to authorize entry onto private property for enforcement purposes, both inspection and abatement, involving the condition, use, or occupancy of any property or structure.
- (b) Before the issuance of a search warrant, the police officer, City Attorney, or Prosecuting Attorney requesting the warrant must first seek consent. Only after refusal of entry may a warrant be issued.
- (c) Warrants and searches or inspections made pursuant thereto shall conform to and be governed by the following provisions:
 - (1) Any police officer, City Attorney, Prosecuting Attorney of the City of Chesterfield, or zoning enforcement officer may make application for the issuance of a search 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 searched in sufficient detail and particularly that the officer executing the warrant can readily ascertain it;
 - d. State facts detailing the actual or suspected property conditions, either applicable to the specific property or the general area, that would justify entry and show probable cause for the issuance of a search warrant to search for municipal code violations involving the condition, use, or occupancy of any property or structure. Probable cause does not require individualized suspicion and may be based on factors including, but not limited to, the passage of time

since the last inspection, the nature of the building in question, and the condition of the entire area to be searched;

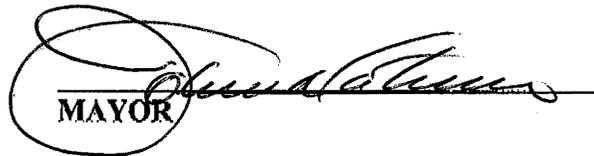
- e. Be verified by the oath for affirmation of the applicant;
 - f. State that entry onto property was requested and the owner or occupant refused entry; and
 - g. Be filed with the municipal court of the City of Chesterfield, Missouri.
- (3) The application shall be supplemented by written affidavits verified by oath or affirmation. Such affidavits 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 places to be searched. Oral testimony shall not be considered.
- (4) The Judge shall hold a nonadversary hearing to determine whether sufficient facts have been stated to justify the issuance of a search warrant. If it appears from the application and any supporting affidavits that there is probable cause to inspect or search for violations of any specified provision of the ordinances of the City of Chesterfield, a search warrant shall immediately be issued to search for such violations. The warrant shall be issued in the form of an original and two (2) copies.
- (5) The applications and any supporting affidavits and a copy of the warrant shall be retained in the records of the Court.
- (6) The search warrant shall:
- a. Be in writing and in the name of the issuing authority;
 - b. Be directed to any City of Chesterfield police officer;
 - c. State the time and date the warrant is issued;
 - d. Identify the specific property to be searched in sufficient detail and particularly that the officer executing the warrant can readily ascertain it;
 - e. Provide directions for recording or seizing appropriate property as evidence and/or abating existing nuisances;
 - f. Command that the described property or places be searched and that any photographs of violations found thereof or therein be brought, within ten (10) days during daylight hours, after filing of the application, to the Judge who issued the warrant, to be dealt with according to law; and,
 - g. Be signed by the Judge, with his or her title of office indicated.
- (7) A search warrant issued under this section may be executed only by a police officer. The warrant shall be executed by conducting the search commanded and inspecting the property for code violations, recording or seizing appropriate property as evidence and/or abating existing nuisances, as directed by the terms of the search warrant.

- (8) A search warrant shall be executed as soon as practicable and shall expire [if] it is not executed and the return made within ten (10) days after the date of the making of the application.
- (9) After execution of the search warrant, the warrant, with a return thereon signed by the officer making the search, shall be delivered to the Judge who issued the warrant. The return shall show the date and manner of execution, include copies of receipts for any property seized as well as the seized property, and provide the name of the possessor and of the owner of the property or places searched, when he is not the same person, if known.
- (10) The officer executing the warrant must leave copies of the warrant and any receipts for property seizure with the property owner or occupant or, if no one is available, in a conspicuous place on the property.
- (11) A search warrant shall be deemed invalid:
 - a. If it was not issued by a Judge of the City of Chesterfield; or
 - b. If it was issued without a written application having been filed and verified; or
 - c. If it was issued without probable cause; or
 - d. If it was not issued with respect to property or places within the jurisdiction of the chapter on which the ordinance violation was based; or
 - e. If it does not describe the property or places to be searched with sufficient certainty; or
 - 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 upon which the application therefore was made.
- (12) Nothing herein is intended to preclude the validity of a warrantless inspection in the following circumstances:
 - a. The entry does not intrude on the constitutionally recognized expectations of privacy;
 - b. Emergency situations;
 - c. Express or implied consent to the inspection; or
 - d. Any condition requiring immediate abatement for the health, safety and welfare of the public.
- (13) Warrantless, non-exigent, nonconsensual administrative inspections of commercial premises may be allowed in limited circumstances. A closely regulated business may be inspected without a warrant provided that:
 - a. The purpose of the warrantless search is to protect the health, safety, and welfare of the public; and
 - b. The warrantless inspection is necessary to further the regulatory scheme, and there is a significant possibility that the subject of the search could conceal violations without the surprise element that the warrantless search would allow; and

- c. The requirement of a warrant would seriously frustrate the important governmental purpose behind the inspection;
 - d. Those executing the warrantless search follow the guidelines in section 24-5(14); and
 - e. All those businesses that are considered closely regulated businesses have been informed of their status and the possibility of unannounced, warrantless, administrative searches.
- (14) Any warrantless entry authorized in Section 24-5(13) must abide by the following guidelines:
- a. A police officer must be present for any warrantless search;
 - b. And the search must occur between the hours of 9:00 am and 5:00 pm, Monday-Friday or within the normal operating hours of the business;
 - c. Those executing the search must reasonably believe that all the elements of section 24-5(13) are satisfied; and
 - d. The scope of the search is limited to those elements relevant to the business occurring and possible violations of municipal code ordinances.

This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 19th day of September, 2005.



MAYOR

ATTEST:

Marta A. DeMay
CITY CLERK



BEACH, STEWART, HEGGIE, MITTLEMAN & CURTIS, LLC

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July 12, 2005

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Mr. Timothy Engelmeyer
Prosecuting Attorney
City of Chesterfield
1400 Eldbridge Payne Road, Suite 220
Chesterfield, Missouri 63017

Re: Municipal Search Warrants

Dear Tim:

Recently there was an article in the Missouri Municipal Review regarding municipal search warrants. I looked at that article, a copy of which I am enclosing, and reviewed it against our ordinance. It appears that we are in fairly good shape with most everything except the possibility of administrative searches and perhaps stating with particularity what might be contained in the information, Section 24-5 (2) d. Accordingly, there are a few spots where we would recommend some changes, which I am including with this document for your review.

The thing that I remember is that we passed this search warrant ordinance without any fanfare and without raising any red flags. Then some time right after that there was quite a bit of hoopla in the media over search warrants in some of the other cities.

I do think that for administrative issues, we may need to have something additional so I am sending this on to you for your thoughts and to find out whether or not you think changes are necessary. I am also including a little review of what we found looking at a couple of cases, which are more national than narrowly defined to Missouri.

Let me know what you think.

Very truly yours,

Douglas R. Beach

Enclosures

cc: **Mr. Michael G. Herring, City Administrator**
Chief Ray Johnson

* Also admitted in Illinois
+ Fellow of the American Academy of Matrimonial Lawyers
+ Fellow of the American Academy of Adoption Lawyers

Sec. 24-5. Administrative Search warrants.

- (a) ~~(a)~~—A Judge of the County Municipal Court of St. Louis County shall have the authority to issue search warrants for searches or inspections to determine the existence of municipal code violations and to authorize entry onto private property for enforcement purposes, both inspection and abatement, involving the condition, use, or occupancy of any property or structure. of any ordinance whose violation is punishable by fine or jail or both.
- (b) Before the issuance of a search warrant, the police officer, City Attorney, or Prosecuting Attorney requesting the warrant must first seek consent. Only after refusal of entry may a warrant be issued.
- (b)(c) Warrants and searches or inspections made pursuant thereto shall conform to and be governed by the following provisions:
- (1) Any police officer, City Attorney or Prosecuting Attorney of the City of Chesterfield may make application for the issuance of a search 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 searched in sufficient detail and particularly that the officer executing the warrant can readily ascertain it;
 - d. d.—State facts sufficient detailing the actual or suspected property conditions, either applicable to the specific property or the general area, that would justify entry and to show probable cause for the issuance of a search warrant to search for municipal code violations involving the condition, use, or occupancy of any property or structure. violations of any ordinance of the City of Chesterfield specified in the application; Probable cause does not require individualized suspicion and may be based on factors including, but not limited to, the passage of time since the last inspection, the nature of the building in question, and the condition of the entire area to be searched;
 - e. Be verified by the oath for affirmation of the applicant;
 - f. State that entry onto property was requested and the owner or occupant refused entry; and
 - ~~e.— Be verified by the oath for affirmation of the applicant; and,~~
 - ~~f.—g. Be filed with the municipal court of the City of Chesterfield, Missouri.~~
- (3) The application shall be supplemented by written affidavits verified by oath or affirmation. Such affidavits 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 places to be searched. Oral testimony shall not be considered.
- (4) The Judge shall hold a nonadversary hearing to determine whether sufficient facts have been stated to justify the issuance of a search warrant. If it appears from the application and any supporting affidavits that there is probable cause to inspect or search for violations of any specified provision of the ordinances of the City of Chesterfield, a search warrant shall immediately be issued to search for such violations. The warrant shall be issued in the form of an original and two (2) copies.
- (5) The applications and any supporting affidavits and a copy of the warrant shall be retained in the records of the Court.
- (6) The search warrant shall:
- a. Be in writing and in the name of the issuing authority;

- b. Be directed to any City of Chesterfield police officer;
 - c. State the time and date the warrant is issued;
 - d. ~~d.~~ Identify the specific property or places to be searched in sufficient detail and particularly that the officer executing the warrant can readily ascertain it;
 - e. Provide directions for recording or seizing appropriate property as evidence and/or abating existing nuisances;
 - e.f. e. Command that the described property or places be searched and that any photographs of violations found thereof or therein be brought, within ten (10) days during daylight hours, after filing of the application, to the Judge who issued the warrant, to be dealt with according to law; and,
 - f.g. Be signed by the Judge, with his or her title of office indicated.
- (7) A search warrant issued under this section may be executed only by a police officer. The warrant shall be executed by conducting the search commanded and inspecting the property for code violations, recording or seizing appropriate property as evidence and/or abating existing nuisances, as directed by the terms of the search warrant.
- (8) A search warrant shall be executed as soon as practicable and shall expire [if] it is not executed and the return made within ten (10) days after the date of the making of the application.
- (9) ~~(9)~~ After execution of the search warrant, the warrant, with a return thereon signed by the officer making the search, shall be delivered to the Judge who issued the warrant. The return shall show the date and manner of execution, include copies of receipts for any property seized as well as the seized property, and provide the name of the possessor and of the owner of the property or places searched, when he is not the same person, if known.
- (10) The officer executing the warrant must leave copies of the warrant and any receipts for property seizure with the property owner or occupant or, if no one is available, in a conspicuous place on the property.
- (11) ~~(11)~~ A search warrant shall be deemed invalid:
- a. If it was not issued by a Judge of the City of Chesterfield; or
 - b. If it was issued without a written application having been filed and verified; or
 - c. If it was issued without probable cause; or
 - d. If it was not issued with respect to property or places within the jurisdiction of the chapter on which the ordinance violation was based; or
 - e. If it does not describe the property or places to be searched with sufficient certainty; or
 - f. If it is not signed by the Judge who issued it; or
 - g. ~~g.~~ If it was not executed within ten (10) days after the date upon which the application therefore was made.

(13) Nothing herein is intended to preclude the validity of a warrantless inspection in the following circumstances:

- a. The entry does not intrude on the constitutionally recognized expectations of privacy;
- b. Emergency situations;
- c. Express or implied consent to the inspection; or
- d. Any condition requiring immediate abatement for the health, safety and welfare of the public.

(14) Warrantless, non-exigent, nonconsensual administrative inspections of commercial premises may be allowed in limited circumstances. A closely regulated business may be inspected without a warrant provided that:

- a. The purpose of the warrantless search is to protect the health, safety, and welfare of the public; and
- b. The warrantless inspection is necessary to further the regulatory scheme, and there is a significant possibility that the subject of the search could conceal violations without the surprise element that the warrantless search would allow; and
- c. The requirement of a warrant would seriously frustrate the important governmental purpose behind the inspection;
- d. Those executing the warrantless search follow the guidelines in section 24-5(15); and
- e. All those businesses that are considered closely regulated businesses have been informed of their status and the possibility of unannounced, warrantless, administrative searches.

(15) Any warrantless entry authorized in Section 24-5(14) must abide by the following guidelines:

- a. A police officer must be present for any warrantless search;
- b. And the search must occur between the hours of 9:00 am and 5:00 pm, Monday-Friday or within the normal operating hours of the business;
- c. Those executing the search must reasonably believe that all the elements of section 24-5(14) are satisfied; and
- d. The scope of the search is limited to those elements relevant to the business occurring and possible violations of municipal code ordinances.

ADMINISTRATIVE AND NON-INVESTIGATORY SEARCHES

§ 5.01 Building Inspections

[A] Warrant Requirement

Except in the case of emergency or consent, a warrant is required to enter a residential or commercial building for the purpose of conducting administrative health and safety inspections therein. However, such warrant is not based on probable cause to believe there is criminal activity underfoot. *Camara v. Municipal Court*, 387 U.S. 523 (1967), and *See v. City of Seattle*, 387 U.S. 541 (1967).

[B] Administrative Probable Cause Standard

In *Camara*, the Supreme Court developed a special probable cause standard to apply in administrative search cases. In such cases, probable cause exists to issue a warrant to inspect premises for administrative code violations as long as there are "reasonable legislative or administrative standards" for conducting the inspection. Administrative probable cause does not require individualized suspicion of wrongdoing and may be founded on the basis of general factors such as:

- the passage of time since the last inspection.
- the nature of the building in question.
- the condition of the entire area to be searched.

[C] Exception to Warrant Requirement

In limited circumstances, warrantless, non-exigent, nonconsensual administrative inspections of *commercial premises* are constitutional. A "closely regulated" business may be inspected without a warrant if three conditions are met:

- (1) the administrative regulatory scheme *must advance a "substantial interest,"* such as to protect the health and safety of workers;
 - (2) warrantless inspections must be *necessary to further the regulatory scheme, i.e.,* if there is a significant possibility that the subject of the search could conceal violations without the surprise element that the warrantless search would allow;
 - (3) the ordinance or statute that permits warrantless inspections must, by its terms, *provide an adequate substitute for the warrant,* such as rules that limit the discretion of the inspectors, regarding the time, place, and scope of the search.
- New York v. Burger*, 482 U.S. 691 (1987).