

AN ORDINANCE ENACTING A NEW SECTION 8 OF THE MUNICIPAL CODE ESTABLISHING PROCEDURES AND REQUIREMENTS FOR THE ISSUANCE OF ADMINISTRATIVE SEARCH WARRANTS.

WHEREAS, in *Frech v. City of Columbia*, 693 S.W.2d 813 (Mo. banc 1985), the Missouri Supreme Court determined that municipal administrative search warrant legislation did not conflict with the authority of the Missouri Legislature or the Missouri Supreme Court; and

WHEREAS, the Board of Trustees of the Village of Centertown, Missouri, believes that such legislation would provide an effective tool in enforcing the Village's housing and zoning codes and health and safety regulations, all to the benefit of the public health, safety and welfare of the Village residents and businesses, and is therefore necessary and indispensable; and

WHEREAS, such legislation also would help to ensure that personal and property rights of owners and occupants are secured in 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);

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF CENTERTOWN, MISSOURI, AS FOLLOWS:

Section One. The Code of Ordinances of the Village of Centertown, Missouri, is hereby amended by the addition of one new Section 8 establishing procedures and requirements for the issuance of administrative search warrants, to read as follows:

8.00 Search Warrant Defined--Who May Issue, Execute

1. An administrative search warrant is a written order of the judge hearing municipal cases commanding the search or inspection of any private property, structure, or improvement, and the seizure, removal, photographing, copying or recording of property or physical conditions found thereon or therein, to determine or prove the existence of property conditions germane to the Village's enforcement of its police and zoning regulations when government entry on or into such private property, structure, or improvement is authorized by law. It may also include a command to enter the property and take any and all actions necessary to give effect to any final decision of any Village authority charged with enforcing said ordinances.

2. The judge hearing municipal cases, having original and exclusive jurisdiction to determine violations against the ordinances of the municipality, may issue an administrative search warrant when (i) the property or place to be searched or inspected or the thing to be

seized or removed is located within the Village at the time of the making of the application and (ii) the owner or occupant of the property or place to be searched or inspected or the thing to be seized has refused to allow same after official request by the Village, unless the making of such request of the owner would compromise the effectiveness of the investigation or enforcement action.

3. Any such warrant shall be directed to the chief of law enforcement, any other law enforcement officer of the Village, the Village attorney or a person designated by the Village attorney and shall be executed by the chief of law enforcement or said law enforcement officer, the Village attorney or person designated by the Village attorney within the Village limits and not elsewhere.

8.05 Who May Apply For Warrant--Contents Of Application

1. The Village building commissioner, any law enforcement officer, the Village attorney or any person designated by the Village attorney, may make application to the judge hearing municipal cases for the issuance of an administrative 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 entered, searched, inspected, seized or removed 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, seized or removed has been requested by the Village to allow such action and has refused to allow such action or that such request of the owner would compromise the effectiveness of the investigation or enforcement action;

E. State facts sufficient to show probable cause for the issuance of a search warrant (i) to search or inspect for violations of an ordinance or code section specified in the application or (ii) to show that entry, seizure or removal is authorized and necessary to enforce an ordinance or code section specified in the application 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 court hearing municipal violations.

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. The application may be submitted by facsimile or other electronic means.

8.10 Hearing and Procedure--Contents Of Warrant--Execution And Return

1. Hearing and Procedure.

A. The judge hearing municipal cases shall hold a non-adversary hearing to determine whether probable cause exists to inspect or search for violations of any Village ordinance or code section, or to enforce any such ordinance, code section or decision of the Village.

B. In doing so the judge hearing municipal cases shall determine whether the action to be taken by the Village is reasonable in light of the facts stated. The judge hearing municipal cases 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 Village 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 Village ordinance, code section or decision of the Village.

C. If it appears from the application and any supporting affidavit that there is probable cause to inspect or search for violations of any Village ordinance or code section, or to enforce any such ordinance, code section or decision of the Village, a search warrant shall immediately be issued.

D. The warrant shall issue in the form of an original and two copies, and the application, any supporting affidavit and one copy of the warrant as issued shall be retained in the records of the court hearing municipal violations.

2. Contents of Search Warrant.

The search warrant shall:

A. Be in writing and in the name of the Village;

B. Be directed to any law enforcement officer of the Village, the Village attorney or a person designated by the Village attorney;

C. State the time and date the warrant was issued;

D. Identify the property or places to be searched, seized, removed, inspected or entered upon in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;

E. Command that the described property or places be searched or entered upon, and that any evidence of any suspected Village ordinance violations or any pertinent property conditions found therein or thereon be seized, recorded or photographed, and a description of such property be returned, within ten days after filing of the application, to the clerk of the court hearing municipal violations, to be dealt with according to law, and that if any final order to abate nuisance or other final order from the Village has been entered affecting the property, that the officer executing the warrant implement the order of the Village and that a description of the work done be returned within ten days after the filing of the application to the clerk of the court hearing municipal violations.

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

3. Execution and Return.

A. A search warrant issued under this ordinance shall be executed only by a Village law enforcement officer, the Village attorney or a person designated by the Village attorney, provided, however, that one or more designated Village officials may accompany the officer, and the warrant shall be executed in the following manner:

(1) The warrant may be issued by facsimile or other electronic means.

(2) The warrant shall be executed by conducting the search, inspection, entry, seizure, repair, or removal as commanded and shall be executed as soon as practicable and in a reasonable manner.

(3) The officer shall give the owner or occupant of the property searched, inspected or entered upon a copy of the warrant.

(4) (a) If any property is seized incident to the search, 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 in a conspicuous place. If the premises is being cleaned up or otherwise modified pursuant to an order of the Village and the only property seized or removed is of no monetary or evidentiary value the officer executing the order may arrange for disposal of the same.

(b) A copy of the itemized receipt of any property taken shall be delivered to the Village attorney within two (2) working days of the search.

(c) The disposition of property seized pursuant to a search warrant under this section shall be in accordance with an applicable Village ordinance or code section, but in

the absence of same, then pursuant to Section 542.301 of the Revised Statutes of Missouri.

(5) The officer may summon as many persons as deemed 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.

(6) 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.

(7) A search warrant shall expire if it is not executed and the required return made within ten (10) days after the date of the making of the application.

B. (1) After execution of the search warrant, the warrant, with a return thereon signed by the officer making the search, shall be delivered to the court hearing municipal violations.

(2) 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.

(3) The return shall be accompanied by any photographs, copies, or recordings made, and by any property seized (which is not disposed of pursuant to this ordinance), along with a copy of the itemized receipt of such property required by this ordinance; 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.

(4) 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.

8.15 Warrant Invalid, When

A search warrant shall be deemed invalid:

1. If it was not issued by the judge hearing municipal cases;
2. If it was issued without a written application having been filed and verified;
3. 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 8.10.1B hereof;
4. If it was not issued with respect to property or places in the Village;

- 5. If it does not describe the property or places to be searched, inspected, entered upon, seized or removed with sufficient certainty;
- 6. If it is not signed by the judge who issued it; or
- 7. If it was not executed and the required return made within ten (10) days after the date of the making of the application.

Section Two. This Ordinance shall be in full force and effect upon final passage and approval.

FIRST READING HELD: March 14, 2006.

SECOND READING HELD AND FINAL PASSAGE ON THIS 14th DAY OF March, 2006 BY THE FOLLOWING VOTE:

	<u>Aye</u>	<u>Nay</u>
Cathy Colbert	<u>X</u>	_____
John Doyle	<u>X</u>	_____
Gayle Garvin	<u>Absent</u>	_____
Doug Heineman	<u>X</u>	_____
Curtis B. Holzer	<u>X</u>	_____

Doug Heineman
Chairman, Board to Trustees

Attest:
Doug Heineman
Village Clerk