

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING TITLE 2 OF THE CODE OF ORDINANCES OF THE CITY OF PERRYVILLE, MISSOURI, BY ADDING CHAPTER 2.69 TO BE ENTITLED "ADMINISTRATIVE SEARCH WARRANTS," AND REPEALING ALL ORDINANCES IN CONFLICT THEREWITH.

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

Section 1. That Title 2 of the Code of Ordinances of the City of Perryville, Missouri, is hereby amended by adding Chapter 2.69 to read as follows:

"Chapter 2.69

### **ADMINISTRATIVE SEARCH WARRANTS**

#### **2.69.010 Establishment.**

Since the Missouri Supreme Court has authorized municipal administrative search warrants and the City of Perryville has determined that same is necessary for the public health and welfare to assist the city in enforcing its ordinances relating to housing, zoning, health and safety, administrative search warrants may be issued under the provisions of this article.

#### **2.69.020. Administrative search warrant defined.**

An "administrative search warrant" is a written order of the judge of the City of Perryville Municipal Division of the Circuit Court of Perry County, Missouri, commanding the search or inspection of any property, place, or thing and the seizure, photographing, copying, or recording of property or physical conditions found thereon or therein to determine or prove the existence of violations of any ordinance or code section of the city relating to the use, condition or occupancy of property or structures located within the said city or to enforce the provisions of any such ordinance or code section.

#### **2.69.030. Who may issue.**

The judge of the City of Perryville Municipal Division of the Circuit Court of Perry County, Missouri, having original and exclusive jurisdiction to determine violations against the ordinances of the municipality, or another judge of the Circuit Court of Perry County, Missouri, if he or she is unavailable, may issue an administrative search warrant when the property or place to be searched or inspected or the thing to be seized is located within the city at the time of the making of the application.

#### **2.69.040. Who may execute.**

Any such warrant shall be directed to the chief of police or any other police officer, or any code enforcement officer, fire department personnel, or building inspector of the city, and shall be executed by authorized city personnel within the city limits or any other place where the Perryville Municipal Code may be enforced.

**Sec. 2.69.050. Application.**

- A. Any police officer, code enforcement officer, fire department personnel, building inspector, or city attorney for the City of Perryville, Missouri, may make application to the municipal judge for the issuance of an administrative search warrant.
- B. The application shall:
  - 1. Be in writing;
  - 2. State the time and date of the making of the application;
  - 3. 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;
  - 4. State that the owner or occupant of the property or places to be entered, searched, inspected, or seized has been requested by an appropriate officer of the city to allow such action and has refused to allow such action;
  - 5. State facts sufficient to show probable cause for the issuance of a search warrant, as provided in this chapter, to:
    - a. Search or inspect for violations of an ordinance or code section specified in the application; or
    - b. Show that entry or seizure is authorized and necessary to enforce an ordinance or code section specified in the application and that any required due process has been afforded prior to the entry or seizure.
  - 6. Be verified by the oath or affirmation of the applicant;
  - 7. Be signed by the applicant;
  - 8. Be signed by the city attorney.
- C. The application may be supplemented by a written affidavit by oath or affirmation. such affidavit shall be considered in determining where there is a 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. Electronic signatures in conformity with Missouri Supreme Court Rules shall be sufficient.

**2.69.060. Procedure.**

- A. The municipal judge shall determine whether probable cause exists to inspect or search for violations of any ordinance or code section or to enforce any ordinance

or code section, including the abatement of violations and the seizure of property related thereto.

- B. The municipal judge shall determine whether the action to be taken 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 ordinance or code section and the passage of time since the property's last inspection. The standard for issuing a warrant need not be limited to actual knowledge of an existing violation of an ordinance or code section.
- C. If it appears from the application and any supporting affidavit that there is probable cause to inspect or search for violations of any ordinance or code section or to enforce any such ordinance or code section, a search warrant shall immediately be issued.
- D. The warrant shall be issued in the form of an original and two copies and the application and any supporting affidavits and one copy of the warrant as issued shall be retained in the records of the municipal court.

**2.69.070. Contents of search warrant.**

The search warrant shall:

- A. Be in writing and in the name of the City of Perryville, Missouri;
- B. Be directed to any police officer, code enforcement officer, fire department personnel, or building inspector in the City of Perryville, Missouri.;
- 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. Command that the described property or places be searched or entered upon and that any evidence of any ordinance violations found therein or thereon, or any abatement performed therein or thereon, or a description of any property seized pursuant to an abatement, be returned within ten days after filing the application, via a warrant return to the municipal judge who issued the warrant, to be dealt with according to law;
- F. Be signed by the judge with the title of his/her office indicated.

**2.69.080. Execution and return.**

A search warrant issued under this chapter shall be executed only by the chief of police, other police officer, code enforcement officer, fire department personnel, or building inspector of

the City of Perryville, Missouri; provided however, that one or more designated city officials may accompany the officer and the warrant shall be executed in the following manner:

- A. The warrant shall be executed by conducting the search, inspection, entry or seizure as commanded and shall be executed as soon as practicable and in a reasonable manner.
- B. The officer shall give the owner or occupant of the property searched, inspected, or entered upon a copy of the warrant.
  - 1. 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.
  - 2. A copy of the itemized receipt of any property taken shall be delivered to an attorney for the city within two working days of the search.
  - 3. The disposition of property seized or abated pursuant to a search warrant under this section shall be in accordance with an applicable ordinance or code section, but in the absence of same, then with RSMo 542.301.
- C. The officer may summon as many people as he/she deems necessary to assist him/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. 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/she would be justified in using if the warrant were valid.
- E. A search warrant shall expire if it is not executed, and the required return made within ten days after the date of the issuance of the warrant.
- F. 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.
- G. 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 and places searched or seized.
- H. The return shall be accompanied by any photographs, copies or recordings made, a description of any abatements performed, and by any property seized pursuant to an abatement, 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.
- I. 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.

**2.69.090. Warrant invalid—When.**

A search warrant shall be deemed invalid:

- A. If it was not issued by the municipal judge, or another judge of the Perry County Circuit Court if he or she is unavailable;
- 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 this chapter;
- D. If it was not issued with respect to property or places in the City of Perryville;
- 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 and the required return made within ten days after the date of the making of the application.”

Section 2. It is the intent of the Mayor and Board of Aldermen of the City of Perryville, Missouri, and it is hereby ordained that this ordinance shall become and be made a part of the Code of Ordinances of the City of Perryville, Missouri, and that sections of this ordinance may be renumbered to accomplish such intention.

Section 3. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 4. That this ordinance shall take effect and be in force from and after its passage and approval.

Section 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

FIRST READING: \_\_\_\_\_.

SECOND READING: \_\_\_\_\_.

PASSED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2023, by a vote of \_\_\_\_\_ ayes, \_\_\_\_ nays, \_\_\_\_\_ abstentions and \_\_\_\_\_ absent.

CITY OF PERRYVILLE, MISSOURI

(SEAL)

ATTEST:

BY: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

Pending