

AN ORDINANCE ADDING CHAPTER 250 TO THE CITY 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 Town of Carrollton, Missouri believes such legislation would provide an effective tool in enforcing the Town of Carrollton’s nuisance, housing, and zoning codes and health and safety regulations, all to the benefit of the public health, safety and welfare of Carrollton, Missouri residents and businesses, and is therefore necessary and indispensable; and

WHEREAS, such legislation also would help 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 Town of Carrollton, Missouri, pursuant to Section 12 of its City Charter is authorized to enact ordinances to prevent and remove nuisances, and exercise its police power for the benefit of its inhabitants,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF CARROLLTON, MISSOURI, AS FOLLOWS:

Section 1. A Chapter 250 is added to the Code of the Town of Carrollton, Missouri pertaining to the authorization and issuance of administrative search warrants to read as follows:

TITLE I	PUBLIC HEALTH, SAFETY AND WELFARE
CHAPTER 250	ADMINISTRATIVE SEARCH WARRANTS
SECTION 250.010	ADMINISTRATIVE SEARCH WARRANTS

A. Search Warrant Defined – Who May Issue, Execute

1. An administrative search warrant is a written order of the judge of the municipal division of the Circuit Court of Carroll County (the “municipal judge”) 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 Code of the Town of Carrollton, Missouri relating to the use, condition or occupancy of property or structures located within the Town of Carrollton, Missouri, or to enforce the provisions of any such ordinance or code section.

2. The municipal judge, having original and exclusive jurisdiction to determine violations against the ordinances of the Town of Carrollton, Missouri may issue an administrative search warrant when:

(a) the property or place to be searched or inspected or the thing to be seized is located within the Town of Carrollton, Missouri at the time of the making of the application, and

(b) the owner or occupant of the property or place to be searched or inspected or the thing to be seized cannot be reasonably located or has refused to allow the same after official request by the Town of Carrollton, Missouri, Codes Enforcement Officer or his designee.

3. Any such warrant shall be directed to the Chief of Police or any other Carrollton, Missouri police officer, and shall be executed by the Chief of Police or said police officer within the Carrollton, Missouri town limits and not elsewhere.

B. Who May Apply for Warrant – Contents of Application

1. Any police officer or an attorney for the Town of Carrollton, Missouri may make application to the municipal judge 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 or seized in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;

(d) State that that owner or occupant of the property or places to be entered, searched, inspected or seized has been requested by the Town of Carrollton, Missouri Codes Enforcement Officer or his designee to allow such action and has refused to allow such action or cannot be reasonably contacted to request such permission;

(e) State facts sufficient to show probable cause for the issuance of a search warrant, as provided in subsection C.3.1 hereof, to:

(1) search or inspect for violations of an ordinance or code section specified in the application; or

(2) 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;

(f) Be verified by the oath or affirmation of the application; 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.

C. Hearing and Procedure – Contents of Warrant – Execution and Return

1. Hearing and Procedure.

(a) The municipal judge shall hold a non-adversary hearing to determine whether probable cause exists to inspect or search for violations of any Town of Carrollton, Missouri ordinance or code section, or to enforce any such ordinance or code section.

(b) In doing so, the municipal judge shall determine whether the action to be taken by the Town of Carrollton, Missouri Codes Enforcement Officer or his designee 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 Town of Carrollton, Missouri 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 a Town of Carrollton, Missouri ordinance or code section.

(c) If it appears from the application and any supporting affidavit, if any, that there is probable cause to inspect or search for violations of any Town of Carrollton, Missouri ordinance or code section, or to enforce any such ordinance or code section, 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 copy of the warrant as issued shall be retained in the records of the municipal court.

2. Contents of Search Warrant.

The search warrant shall:

(a) Be in writing and in the name of Town of Carrollton, Missouri Codes Enforcement Officer or his designee;

(b) Be directed to any police officer in the Town of Carrollton, 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 to be searched or entered upon, and that any evidence of any Town of Carrollton, Missouri ordinance violations found therein or thereon, or any property seized pursuant thereto, or a description of such property seized, be returned, within ten days after filing of the application, to the municipal judge who issued the warrant, to be dealt with according to law;

(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 Carrollton, Missouri police officer, provided, however, that one or more designated Town of Carrollton, Missouri officials may accompany the officer, and the warrant shall be executed in the following manner:

(1) 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.

(2) The officer shall give the owner or occupant of the property searched, inspected or entered upon a copy of the warrant if such owner or occupant can be located or if not then a copy of the warrant shall be left at the property in a conspicuous place.

(3) If any property is seized incident to the search:

(i) 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.

(ii) A copy of the itemized receipt of any property taken shall be delivered to an attorney for the Town of Carrollton, Missouri within two (2) working days of the search.

(iii) The disposition of property seized pursuant to a search warrant under this section shall be in accordance with applicable Town of Carrollton, Missouri ordinance or code section, but in the absence of same, then with Section 542.301 of the Revised Statutes of Missouri.

(4) 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.

(5) An officer making a search pursuant to an invalid warrant, the invalidity is not apparent on its face, may use such force as he would be justified in using if the warrant were valid.

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

(b) After execution of the search warrant:

(1) The warrant, with a return thereon signed by the officer making the search, shall be delivered to the municipal court.

(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, 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. Warrant Invalid, When.

A search warrant shall be deemed invalid:

1. If it was not issued by the municipal judge;
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 C.1(b) hereof;
4. If it was not issued with respect to property or places in Carrollton, Missouri;
5. If it does not describe the property or places to be searched, inspected, entered upon or seized 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 3. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 4. This ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED AND APPROVED THIS 7th DAY OF August 2023.

TOWN OF CARROLLTON, MISSOURI



John Sweeney, Mayor

ATTEST:



Dana Reimer, Town Clerk