International Municipal Lawyers Association
2011 Code Enforcement Conference
Chicago, IL

Saturday, October 21, 2012

Searching for Problems:

Administrative Warrants and Code Enforcement

by

Thomas M. Carpenter
City Attorney
Little Rock, Arkansas
Assisted by Karen Beyke



Thomas M. Carpenter has been the City Attorney for Little Rock, Arkansas for 20 years, and has been in the office since 1984. He is an IMLA Fellow in Municipal Law, and has twice received the IMLA Award for National Public Service by a City Attorney, and by an Assistant City Attorney. A former President of the Arkansas City Attorney's Association, he received the Zimmerman Award for Contributions to Municipal Law, and has been honored by the Arkansas Bar Association with the Maurice Cathey Award for contributions to the Arkansas Lawyer, the state bar journal. His office oversees the enforcement of the City CAP (criminal abatement program) which targets both residential and commercial structures. He is a periodic adjunct professor at the UALR Law School and teaches courses in Civil Rights, Land Use, and Local Government Law.

©2012 International Municipal Lawyers Association. *This is an informational and educational report distributed by the International Municipal Lawyers Association during its 2012 Code Enforcement Program. IMLA assumes no responsibility for the policies or positions presented in the report or for the presentation of its contents*.

Searching for Problems:
Administrative Warrants and Code Enforcement

A complaint is made that a house is a nuisance, or that a commercial establishment does not maintain safe premises. Additional evidence is needed to pursue a court action. While some evidence can be obtained from observation, it is necessary to inspect the structures. How does the municipality accomplish this search? The answer is that an administrative search warrant, which does not require the same quantum of proof to establish probable cause for a warrant, should be sought. How are these warrants different, and what legal issues should be considered before such a warrant is sought.

I.

The seminal cases are *Camara v. Mun. Ct. of San Francisco,*[1] and its companion case, *See v. City of Seattle.*[2] In these two cases the U.S. Supreme Court upheld the validity of a residential search, and the entry of a commercial establishment, for a determination of code violations. The Court has since expressly rejected the argument that an administrative search requires the same probable cause showing as does a criminal search warrant for contraband:

> [W]here a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops sort of probable cause, we have not hesitated to adopt such a standard. We have concluded, for example, that the appropriate standard for administrative searches is not probable cause in its traditional meaning. Instead, *an administrative warrant can be obtained if there is a showing that reasonable legislative or administrative standards for conduct an inspection are satisfied.*

O'Connor v. Ortega, 480 U.S. 709, 723 (1987) (emphasis added). So, with the proper legislative or administrative foundation, a local government can conduct an administrative search upon less than traditional probable cause. In fact, the standard requires that: (1) appropriate regulations are in place; (2) the owner has rejected the request of the municipality for consent to search; (3) and

[1] 387 U.S. 523 (1967).

[2] 387 U.S. 541 (1967).

consent has been denied. Based upon these three showings an administrative search warrant should be granted.

While it is a relatively simple procedure to obtain a warrant for an administrative search, why is it necessary to follow this procedure since housing codes, fire codes, and similar regulations are for the public health and safety? In *Camara,* the U.S. Supreme Court rejected such a broad approach to the Fourth Amendment and noted that there is still somewhat of a privacy interest in certain locations. So, absent emergency situations, there is really no basis to just ignore the property owner's privacy interests without review by an independent and impartial magistrate.

One other aspect of *Camara* and *See* that should be noted is that the approved inspections are those that occur as part of a periodic inspection of all properties in an area. This periodic inspection is not a requirement that will defeat the application for an administrative search warrant, but it certainly helps if one is in place.

II.

The touchstone of *Camara, See,* and their progeny is that the regulatory scheme must be reasonable. Further, there must be some degree of particularity in the warrant to assure that the reasonableness of the scope is not violated. In *Platteville Area Apartment Ass'n. v. City of Platteville,*[3] the Seventh Circuit applied the reasonableness standard for administrative searches to the places to be searched:

> … the object determines the reasonable scope of the search, and all searches, to pass muster under the Fourth Amendment, must be reasonable. *If you are going to look for an adult elephant, searching for it in a chest of drawers is not reasonable.*

179 F.3d at 579 (emphasis added).

Yet, looking in closets may be appropriate in certain circumstances. For example, if an electrical panel is located in a closet, then a code officer certainly may need to look there to assure compliance with an electrical code. The key in this situation is that in the application for the administrative search warrant, the code officer should note that one thing to be reviewed is the electrical panel, and that it is not always attached to the outside of a structure. While this notation

[3] 179 F.3d 574 (7th Cir. 1999).

will not permit a search of the individual's chest of drawers, it certainly provides protection for the search of areas of that house that are not clearly in view.

III.

It is important that the local government assure the administrative search is not a pretext for a criminal search. This concern presents practical difficulties since often code enforcement officers are concerned about their safety when the person in control of a property presents a potential threat. In many instances, local law enforcement accompanies the code enforcement officer to assure safety, but these officers cannot be involved in a criminal investigation.

On its face, this seems like a simple concept. But, it is not. If the police officer, for example, stands on the front porch when the door is opened, and sees drug paraphernalia on a living room table, is that evidence in plain view, or is that evidence obtained under the pretext of an administrative search? The U.S. Supreme Court held, prior to *Camara* and *See*, that the subterfuge of an administrative warrant cannot be used to gather evidence for a criminal prosecution.[4]

IV.

To satisfy the particularity of an administrative warrant, and to assure the warrant is not pretextual, mandates that local governments train their code officers. The failure to train the officers can lead to municipal liability for an invasion of privacy since it suggests deliberate indifference to the rights of the persons with whom code inspectors come into contact.

For residential searches particularly, this point must be emphasized. While *Camara* and *See* and their progeny permit these types of searches, if the cases suggest a new trend towards pretextual searches, it is possible the Court will change its view. As Justice White warned in *Camara*, "[b]ecause of the nature of the municipal programs under consideration, however, these considerations must be the beginning, not the end, of our inquiry." [5] It is possible that Justice White only referred to the analytical framework for *Camara* with these words; but, it is also a clear warning for local governments since the framework mandates a discussion of reasonableness. In other words, what was reasonable under the facts of *Camara* may be deemed unreasonable in a subsequent case if natural limitations on administrative searches are not followed.

A practical consideration is to assure that there is cooperation between law enforcement and code enforcement. Code enforcement officers must be able to limit the scope of a search, and law enforcement

[4] *See* U.S.v. Abel, 362 U.S. 217 (1960).

[5] Camara, 387 U.S. at 534.

has to understand the reason for doing so. The training discussion, then, should extend to both code enforcement and law enforcement even if the training sessions are held separately.

V.

As a final matter, it is important to assure periodic reviews of code enforcement provisions. Although cases are not frequently decided on this issue, they do arise. In the federal system, a whole set of cases that deal with carefully regulated businesses has arisen. These searches may not be available at the local government area, e.g., a state alcoholic beverage board may conduct regulatory searches of liquor stores, so local government code enforcement could be more strictly limited. Yet, the scope of regulations, and the propriety of regulations, in code enforcement, should be reviewed to assure that it still meets the reasonableness test set forth in *Camara* and *See* and their progeny. Not to do so only invites challenges not to a specific inspection, but to the regimen and the ability to inspect *in toto*.

CONCLUSION

Local governments have authority for reasonable code enforcement inspections of both residential and commercial properties. These searches must be reasonable. One aspect of reasonableness is to assure that the search is not a pretext for a criminal search. Another aspect is to assure that the particularity of the search is drawn to meet the legitimate needs of the code enforcement officers. But privacy interests are implicated, it is crucial that local governments train code enforcement officers as to what actions can, and cannot, be taken. Finally, a periodic review of local code provisions is necessary to assure that a local enforcement code does not exceed the boundaries of administrative searches for local governments.

A sample brief in support of an administrative warrant

IN THE PULASKI CIRCUIT COURT OF ARKANSAS
SECOND DIVISION

CITY OF LITTLE ROCK PROSECUTOR

V. CR 02-2725

WESTERN TITLE & INVESTMENT COMPANY BY LYNN DAVIS DEFENDANT

PRE-TRIAL BRIEF OF CITY OF LITTLE ROCK

I. STATEMENT OF FACTS

During a routine survey on Louisiana, Code Enforcement Officer, Freddy Morgan, noticed broken windows at 1312 Louisiana. He contacted Code Enforcement Officer Raymond Gary Johnson, who did rental inspections, about the property, and both officers surveyed the structure. They noticed broken windows, incomplete stairways, and holes in the roof that were violations of the city code. Officer Johnson inspected several apartments at 1312 Louisiana after tenants gave him access, but he was unable to inspect all of the apartments despite his request to inspect and entitlement to inspect under the city code. Inside the apartments, he found code violations including broken windows, water heaters with no relief valve systems, outlets with receptacles that were broken or missing, ceilings with water damage, fuse panels with no dead front covers, and broken light switch covers.

On February 21, 2002, Officer Johnson wrote an inspection report listing the violations and mailed it by certified mail to Lynn Davis as agent for owner Western Title Investment Co. On February 25, 2002, Mrs. Sue Davis signed for the inspection report. On March 26, 2002, violations still existed on further inspection. On April 4, 2002, Officer Johnson contacted Mrs. Davis who reported that work to correct the violations was in progress.

On April 5, 2002, Officer Johnson went to 1312 Louisiana, knocked on an open door, and found Mr. Davis inside an apartment. Officer Johnson identified himself as a code enforcement officer and was asked into the apartment. Officer Johnson discussed the specific violations with

Mr. Davis, and Mr. Davis acknowledged having received a copy of the notice. Officer Johnson then inspected the apartment where he found more code violations and then issued Mr. Davis a citation as agent for apartment owner Western Title Investment Co., for violating Section 8-583(d) of the Little Rock City Code, failure to repair life safety violations at 1312 Louisiana on apartment Nos. 1, 2, 6, 8, 10, and 12.

Mr. Davis pled not guilty to the charges. At trial, Mr. Davis admitted that he did not refuse access to Officer Johnson but argued that he never gave consent to access and that the law did not require him to object to the officer's entry. Mr. Davis also argued that Officer Johnson had no right to be on the property because he had no search warrant. He stated that the administrative search warrant did not exist because it is unconstitutional. Judge David Stewart found the defendant guilty of the violations, and Mr. Davis appealed the decision.

II. ARGUMENT

A. Reasonable Search

The United States Supreme Court outlined the law for administrative searches in *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967). In *Camara*, an inspector confronted a tenant of a building and demanded that he be permitted inside the tenant's apartment to inspect, but the tenant refused. *Id.* at 526. The inspector never sought an administrative search warrant. *Id.*

The Court held that administrative searches by municipal health and safety inspectors constitute significant intrusions on interests protected by the Fourth Amendment and that warrant procedures apply. *Id.* at 534. The Court further held that probable cause to issue a warrant for inspection of a dwelling by municipal health and safety officials must exist if reasonable legislative or administrative standards for conducting area inspection are satisfied with respect to a particular dwelling. *Id.* at 538. Probable cause for an administrative warrant to issue may arise merely from the passage of time, type of residence, or condition of the area. *Id.* at 538. Reasonableness is the controlling standard for issuing an administrative warrant. *Id.* at 539. In the decision, the Supreme Court mentioned that warrants were not needed in most cases because the searches were consensual. *Id.* at 539. In *Columbia Basin Apartment Association v. City of Pasco*, 268 F.3d 791, 803 (9th Cir. 2001) citing *Camara*, 387 U.S. 523, 533-538, the Ninth Circuit cited *Ca-*

mara for the principle that "state actors require a warrant supported by probable cause in order to perform nonconsensual administrative searches in compliance with the Fourth Amendment."

The City of Little Rock authorized code enforcement officers to make routine inspections of rental buildings in Little Rock Code sections 8-355[6] and 8-357[7]. The Little Rock City Code sets out a reasonable standard for conducting an inspection on a rental dwelling; all rental dwellings are to be inspected for the purpose of "safeguarding the health and safety of the occupants." Little Rock Code Section 8-357. Little Rock's Code also states that building officials can enter premises with the consent of either the owner or the tenant during reasonable hours.

The apartment inspections at 1312 Louisiana did not violate the prohibition of unreasonable searches and seizures found in the Fourth Amendment to the United States Constitution. Probable cause arose when Officer Johnson noticed the nearby weed lot and broken windows on the premises. Based on the reasonable standard set out in the Little Rock City Code, he gained consent to search from the tenants and Mr. Davis. No warrant was constitutionally required.

B. Consent to Search

In *Schneckloth v. Bustamonte*, 412 U.S. 218 (1987), the United States Supreme Court stated that voluntarily given consent validates a search under the Fourth Amendment to the United States Constitution even if a warrant and probable cause are absent. The Court stated that con-

[6] Little Rock Code, Section 8-355 states, "The building official and his duly authorized representative upon presentation of proper identification to the owner, agent, or tenant in charge of such property, may enter any building, structure, dwelling, apartment house, or premises, during all reasonable hours, except in cases of emergency where extreme hazards are known to exist which may involve the potential loss of life or severe property damage, in which case the above limitations shall not apply."

[7] Little Rock Code, Section 8-357(a) states, The building official shall make or cause to be made inspections to determine the condition of dwellings, dwelling units, rooming houses, boarding houses, and premises in the interest of safeguarding the health and safety of the occupants of dwellings and of the general public. For the purpose of making such inspection, the building official is hereby authorized to enter, examine, and survey at all reasonable times, all dwellings, dwelling units, rooming houses, boarding houses and premises. The owner or occupant of every dwelling unit, dwelling, boarding or rooming unit, or the person in charge thereof, shall give the building official free access to such dwelling, dwelling unit, or rooming unit or boarding house and its premises, at all reasonable times for the purpose of such inspection, examination, and survey."

sent must be voluntary in light of all the circumstances, but an officer need not inform a defendant of his right to refuse access. *Id.*

The voluntary consent of the tenants to inspection is unchallenged. Regarding the voluntary consent of Mr. Davis, Officer Johnson was acting in good faith and pursuant to Little Rock City Code when he found an open door and was invited an apartment by Mr. Davis. Mr. Davis admits that he did not refuse entry. Therefore, voluntary consent existed for the search of each apartment.

The search was constitutional despite the principle that a landlord cannot consent to a warrantless search of rented premises, *Chapman v. U.S.*, 365 U.S. 610 (1961). That principle applies to criminal searches and seizures. It does not apply to the current case in which an administrative search was done to determine if code violations existed. In this case, Officer Johnson conducted administrative searches to determine what further code violations existed at 1312 Louisiana pursuant to the reasonable standard set out by the Little Rock City Code for the purpose of promoting the health and safety of the public. Mr. Davis is the agent for the owner and consented to the search by inviting Officer Johnson to enter. Therefore, the search is controlled by *Camara* and was lawful under that decision because it complied with the reasonable standard set out by the Little Rock Code.

Even if the law of criminal search and seizure found in *Chapman* did apply in this case, the United States Supreme Court recognized that consent could be obtained from a third party who possesses common authority over or other sufficient relationship to the premises or effects sought to be searched in *United States v. Matlock*, 415 U.S. 164 (1974). Arkansas Rule of Criminal Procedure Rule 11.2 states that consent to search premises may be given by a person "who, by ownership or otherwise, is apparently entitled to give or withhold consent." The Arkansas Supreme Court noted in *Grant v. State*, 267 Ark. 50 (1979) that the appearance of authority to give consent and the good faith of officers are significant factors in determining the validity of consent. Mr. Davis had apparent control of the apartment when Officer Johnson arrived and is the agent for the owner. Officer Johnson only entered after being invited by Mr. Davis. Even under criminal search and seizure law, this search would be upheld.

In *Rozman v. City of Columbia Heights*, 268 F.3d 588, 592 (8th Cir. 2001), the Eighth Circuit Court of Appeals held that landlords lack standing to assert the Fourth Amendment rights

of tenants in a case in which the City of Columbia Heights was attempting to inspect tenant's units. Therefore, Mr. Davis is prohibited from asserting that the search of his tenant's premises was unreasonable under the Fourth Amendment.

C. Proper Notice and Citation

The facts substantiating the citation for failure to repair life safety violations under Little Rock City Code Section 8-583(d) were undisputed. Little Rock City Code Section 20-28 provides that notice may be issued by personal delivery to the owner or agent of property. That Mr. Davis received notice was not disputed.

III. CONCLUSION

There is sufficient evidence to find beyond a reasonable doubt that Mr. Davis received notice as agent for Western Title & Investment Co. and was found in violation of the Little Rock City Code after lawful inspections.

Respectfully Submitted,
Thomas M. Carpenter
City Attorney

BY:_____

MARCIE NEWMARK, Appellant, v. MIAMI-DADE COUNTY UNSAFE STRUCTURE BOARD, Appellee. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 09-536 AP. L.C. Case No. DC20090130433U. April 25, 2012. 19 Fla. L. Weekly Supp. 623d
Online Reference: FLWSUPP 1908NEWM

Counties -- Code enforcement -- Unsafe structures -- Inspection of defendant's property for code violations without consent or inspection warrant was unlawful -- Plain view -- Open fields -- Where record contains photographs taken from within and beyond curtilage of defendant's residence, record does not establish that either plain view or open fields warrant exception applies -- Because evidence obtained in violation of warrant requirement was inadmissable in administrative hearing, Unsafe Structure Board's decision mandating repair or demolition of structures is not based on competent substantial evidence

An appeal from the Miami-Dade County Unsafe Structure Board.
Counsel: Marcie Newmark , pro se Appellant. Edward Shafer, Assistant Miami-Dade County Attorney, for Appellee.
(Before SIMON, BLAKE, and ZABEL, JJ.)

(SIMON, Judge.) Before this Court is an appeal of a decision rendered by Miami-Dade County's Unsafe Structure Board mandating the repair or demolition of certain structures located on the Appellant's private residential property. Based on a review of the record and the law, this Court is reversing the Board's order. The Board's decision was not based on competent substantial evidence.

This appeal emanates from a code enforcement inspection of the Appellant's residential property. On June 2, 2009, in response to an anonymous citizen's complaint, a police task force, which included health inspectors

and building inspectors, conducted a warrantless inspection of the Appellant's private residential property. The property is located in a rural open area of Miami-Dade County. Over the objections of the Appellant, the task force entered the land surrounding the home and took several photos of the main dwelling, the fence and the roofs of two separate structures. The inspection revealed that all four structures were not in compliance with the building code. Following the inspection, the Appellant was issued a notice of the various code violations for these four structures. A hearing before the Miami-Dade County Unsafe Structures Board was convened on September 30, 2009. At the conclusion of the hearing, the Appellant was ordered to repair or demolish the four

offending structures.

In this appeal, the Appellant is contesting the nonconsensual search of her private residential property by code enforcement officials and the Miami-Dade police. The Appellant objects to the area-wide canvassing technique applied in conducting the search, and the use of the evidence obtained by a warrantless, nonconsensual search which led to the Board's adverse decision. The Appellant contends the illegally obtained evidence violates the search and seizures laws of the Fourth Amendment of the US Constitution and the Declaration of Rights set forth in the Florida constitution. As such, the evidence is inadmissible, and the adverse decision of the Unsafe Structures Board should be vacated. This Court concurs.

Standard of Review

In reviewing the propriety of the Board's decision, this Court applied a three- prong standard of review applicable to administrative agency's decisions. The three-part test consists of: (1) whether procedural due process was accorded, (2) whether the essential requirements of the law have been observed, and (3) whether the administrative findings and judgment are supported by competent substantial evidence. Fla. Power & Light Co. v. City of Dania, 761 So. 2d 1089 (Fla. 2000) [25 Fla. L. Weekly S461a]; Haines City Comty. Dev. v. Heggs, 658 So. 2d 523 (Fla. 1995) [20 Fla. L. Weekly S318a]. In this instance, this Court finds that the administrative agency's decision is not supported by competent substantial evidence.

Competent Evidence -- Exclusionary Rule

Evidence derived from an illegal search conducted by government officials is not admissible in administrative proceedings that are quasi-criminal in nature and in which a government official or governmental entity is a party.

In One 1958 Plymouth Sedan v. Pennsylvania, 380 US 693 (1965), the US Supreme Court did not allow evidence illegally acquired by the Pennsylvania Liquor Control Board officers to be admitted as evidence in a

civil forfeiture proceeding. The Court ruled that the exclusionary rule, which precludes the admission of evidence obtained by an illegal search,

is applicable to civil forfeiture proceedings. In reaching its decision, the court considered the appropriateness of the exclusionary rule in light of the nature of the proceedings and the beneficial value of the sanction. Specifically, the Court noted the exclusionary rule should be extended to civil actions in which the penalty imposed is commensurate with criminal sanctions; and the exclusionary rule should be invoked to remove any incentive of government officials to violate the Fourth Amendment protections in instances when the search is prompted or undertaken by government officials who intend to use the evidence in a civil or an administrative proceeding.

The exclusionary rule has been applied in a wide variety of federal administrative proceedings which are civil in name, but in effect quasi-criminal due to the punitive nature of the penalty. For example the exclusionary rule has been applied to Federal Trade Commission hearings1, SEC proceedings2, OSHA proceedings3, civil deportation hearing4, employment termination proceedings5, and civil tax proceedings6. In each instance unlawfully obtained evidence was excluded to deter government officials from engaging in illegal searches with the objective of using the evidence in subsequent quasi-criminal administrative proceedings. Because the exclusionary rule is a tool to enforce compliance with the fourth amendment by deterring administrative, governmental officials from using illegally obtained evidence in civil forums that are penal in nature, the rule logically applies to the pending case involving county officials who are prosecuting code violations in a civil forum. Like most regulatory laws designed to determine if health, fire or housing violations exists, the County Code enforcement provisions governing buildings and unsafe structures are enforced by an administrative compliance order. A refusal to comply is considered an offense punishable by a fine, or even jail. Miami-Dade County Code, Part III, Chapt. 8, Art. 1 §8-17 -- Violations & Penalties. In this case, non-compliance subjects the offender to the ultimate demolition of the offending property. Miami-Dade County Code, Part III, Chapt. 8, Art.1 §8-5 -- Unsafe Structures. Since the Unsafe Structure Board relies on administrative inspections as its primary method of acquiring information, any evidence obtained as a result of an unlawful search conducted by code enforcement officials during an inspection is not admissible if the illegally acquired

evidence is seized specifically for use in an enforcement proceeding.7

Administrative Inspections -- Warrant Requirement

This Court's decision to apply the exclusionary rule to the pending case is based on Camara v. Municipal Court of City & County of San Francisco, 387 U.S. 523, (1967). In Camara, the US Supreme Court established 45 years ago that administrative searches and inspections conducted by code enforcement officials, without the consent of the property owner, are subject to the Fourth Amendment's warrant requirement. The Supreme Court determined that the Fourth Amendment via the Fourteenth Amendment prevents local prosecution of persons who resist warrantless code enforcement inspections conducted under local ordinances. The Court extended the Fourth Amendment's requirement of probable cause to local governmental inspectors entering private residences or portions of commercial premises not open to the general public to conduct regulatory inspections.
In Marshall v. Barlow's, Inc., 436 US 307 (1978), the US Supreme Court reaffirmed that nonconsensual inspections could not be conducted without a warrant. In that case, the US Supreme court addressed whether OSHA inspectors have unfettered access to commercial premises to conduct warrantless inspections for safety violations. The Court ruled that health and safety inspections conducted without a warrant by OSHA inspectors, while in accordance with the OSHA Act, was unconstitutional. The Court noted the warrant requirement prevents unbridled discretion, assures supervision by a neutral officer, and advises the citizen of the scope and object of the inspection. Id., at 323.

Florida courts, relying on the foregoing US Supreme Court decisions, have ruled in general that the Fourth Amendment and Article I, §12 of the state's constitution, which proscribe unreasonable searches and seizures, are applicable in administrative inspection. Florida courts have specifically ruled that a warrant is required for a governmental agency to conduct an inspection of a private residence for purposes of investigating or enforcing compliance with local laws governing regulatory standards. For instance, in Fla. Dept. of Agric. & Consumer Serv. v. Haire, 836 So. 2d 1040 (Fla. 4th DCA 2003) [28 Fla. L. Weekly D245b], the Fourth District Court of Appeal required citrus canker inspectors seeking to access private property, without the consent of the property owner, to obtain an inspection warrant.

Sections 933.20 through 933.26, Fla. Stat., (2012) specify the procedures for issuance and execution of an inspection warrant in order to investigate compliance with state or local law regulating building, fire, safety, environmental, animal control, land use, plumbing, electrical,

health, housing, or zoning standards. These provisions apply when the administrative inspector seeks access to places of business, factories, residences, motor vehicles or vessels in order to conduct the inspections.

The US Supreme the Court, in Camara, also established that in procuring a warrant for code inspections, the standard for establishing probable cause is less onerous than the standard required to obtain a search warrant for criminal investigations. Administrative probable cause may be based merely on the need for periodic inspections, a valid public interest, or any legislative or administrative criteria for conducting an inspection. The Court reasoned that by virtue of the unique character of regulatory inspections, a different and less rigorous probable cause standard is compelled than the traditional standard required for the issuance of police warrants. Id., at 538. In Roche v. State, the Florida Supreme Court ruled agricultural inspectors may legally obtain a search warrant under the less demanding probable cause test to conduct sweeping class-wide searches.

In sum, the foregoing cases essentially hold that administrative inspections of private property for purposes of assuring compliance with local regulatory codes generally require inspection warrants in the absence of consent. Probable cause to issue such warrants will be established when a search is undertaken pursuant to legislative or administrative standards designed to effectuate a regulatory scheme.

Applying this standard to the facts of the appeal, this Court finds the inspection of the Appellant's property should not have been conducted by county code enforcement officials without the consent of the Appellant or an inspection warrant.

In addition, pursuant to §933.21, Fla. Stat., governing the standards for procuring the issuance of an inspection warrant, the proof required for the issuance of such warrants is simply a showing that the requested inspection is based on "a reason to believe that a condition of nonconformity exists . . . which would constitute a violation of state or local law or rule relating to [code] standards." §933.21, Fla. Stat. (2012). Therefore, in the pending appeal, an inspection warrant should have been obtained under the circumstances of this appeal unless an exception to the warrant requirement applies.

Exceptions to the Warrant Requirement

There are only two exceptions to the warrant requirement which may apply to the pending case, i.e., the "open fields" exception and the "plain view" exception.

Open Fields

Visual inspections by inspectors of the outdoors or the exterior premises of buildings or businesses, made without warrants or the owner's consent, have been held to be valid under the "open fields" exception to the Fourth Amendment. See Air Pollution Variance Bd. v. Western Alfalfa Corp., 416 US 861, (1974). That exception allows a warrantless search and seizure of evidence visible to an official or any member of the public provided the observer is located where he or she is lawfully allowed. Thus, in Air Pollution Variance Bd., where county health officials conducted a warrantless visual inspection of the premises, without a warrant and without consent, the inspection was held valid on the ground that there is no Fourth Amendment protection against observation by a public official of what is observable by the general public.

However, the US Supreme Court also addressed the complex nature of this exception in United States v. Dunn, 480 U.S. 294 (1987). In particular, the open fields exception does not apply to open fields within the curtilage of the dwelling. The Court noted that the task of defining the extent of a home's curtilage should be resolved with particular reference to expectations of privacy. This may be premised on whether the area is included within an enclosure surrounding the home, or the steps taken by the resident to protect the area from public observation.

Plain View Exception

The "plain view" exception, which permits a warrantless seizure, has been applied when a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object. Coolidge v. New Hampshire, 403 U.S. 443, (1971). The US Supreme Court has identified three requirements of the "plain view" exception. First, there must be a prior valid intrusion. Second, the discovery of the

seized items must be inadvertent. Third, the incriminating character of the evidence must be immediately apparent.

Notably, under the first prerequisite for the application of the plain view doctrine, the police must be lawfully engaged in an activity in a particular place that brings the officer within plain view of the item.

Application of Exceptions

In the pending appeal, the record does not set forth sufficient facts to determine whether the "plain view" exception or the "open fields" exception applies. In particular, the County's photos, which appear to be taken from both within and beyond the home's curtilage, do not corroborate or establish that the visual inspection qualified under the warrant exceptions. Unless the inspection, under review, falls within an exception to the warrant requirement, the warrantless visual inspection of the

Appellant's private property by County officials violates the search and seizure protections of state and federal law.

Ruling

Therefore, this Court finds the inspection conducted by the county's code enforcement inspectors, without the consent of the Appellant, an inspection warrant, or proof that the warrantless inspection qualifies as an exception to the warrant requirement, violated the search and seizure laws of the Fourth Amendment and the state's constitution. As such, the evidence obtained was inadmissible in the subsequent administrative hearing. Accordingly, the Unsafe Structure Board's decision is reversed since the Board's decision was not based on competent substantial evidence. (BLAKE and ZABEL, JJ., concur).

1Knoll Assocs. v. Federal Trade Comm'n, 397 F.2d 530 (7th Cir. 1968)
2OKC Corp. v. Williams, 461 F. Supp. 540 (N.D. Tex. 1978)
3Donovan v. Sarasota Concrete Co., 693 F. 2d 1061 (11th Cir. 1982)
4Lopez-Rodriguez v. Mukasey, 536 F.3d 1012, (9th Cir. 2008)
5Pike v. Gallagher, 829 F. Supp. 1254 (D. N.M. 1993)
6Vander Linden v. U.S., 502 F. Supp. 693 (S.D. Iowa 1980)
7This court is aware of Valdez v. Dept of Revenue, State, 622 So. 2d 62
(Fla. 1st DCA 1993) in which the First District Court of Appeal ruled the exclusionary rule does not apply to administrative proceedings involving tax assessments. However, the Court of Appeal did not conduct an analysis of the exclusionary rule and its application to administrative proceedings in general, as was done in the federal court cases cited herein. More
importantly, the Court of Appeal did not rule that the exclusionary rule is never applicable to administrative hearings. Rather, the court acknowledged that exceptions exist to its ruling, albeit in unique circumstances. Thus, this court is not convinced that the First District Court of Appeal's case precludes the application of the exclusionary rule solely on the basis that the proceeding is an administrative proceeding.

104.6, 107.1, 107.5

CITY OF FRANKLIN
PROCEDURAL CHECKLIST FOR NEW LEGAL MATTERS
FOR VIOLATION OF MAINTENANCE CODE

1. SUBJECT PROPERTY

_____
OWNER OF RECORD NAME(S) OTHER INTERESTED PARTY

_____
OTHER INTERESTED PARTY OTHER INTERESTED PARTY

_____
STREET ADDRESS LAND LOT, PARCEL

_____
CITY, STATE, ZIP CODE OTHERINFORMATION/SUBDIVISION

2. INITIAL COMPLAINT / REQUEST FOR INVESTIGATION

A. On the _____ day of _____, 20_____, I/ the City received a complaint from _____ whose address is_____ and whose phone number is _____ concerning possible Franklin Municipal Code/International Property Maintenance Code violations of a structure located at _____.

OR

B. On the _____ day of _____, 20_____, I became aware of a

structure located at _____

which appeared to violate the Franklin Municipal Code and/or the International Property Maintenance Code.

3. INSPECTION

A. Codes Inspector: _____

B. On the _____ day of _____, 20_____, I inspected the subject property and found it to be in violation of the City of Franklin Municipal Code and/or the International Property Maintenance Code.

C. Attached is a copy of the Notice of Violation which lists the specific violation(s).

4. NOTICE OF VIOLATON

A. On the _____ day of _____, 20_____, I personally posted the Notice of Violation at the property.

C. On the _____ day of _____, 20_____, I personally hand delivered the Notice of Violation at the property.

B. On the _____ day of _____, 20_____, I mailed by certified and regular mail the Notice of Violation to the owner(s) of the property at the following address: _____.

5. NON-RESPONSIVE VIOLATORS

A. As of the _____ day of _____, 20_____, the subject property continued to violate the City of Franklin Municipal Code and/or the

International Property Maintenance Code.

B. Additional Notice of Violations were posted at the subject property on the

_____ day of _____, 20_____, and the _____ day of _____,

20_____. (Copies attached if applicable).

OR

C. A citation was issued on the following dates to the owners:

Citation Date	Disposition in Court
_____	_____
_____	_____
_____	_____

Attached are copies of all citations, court judgments, notes, letters and matters of record (complete file).

D. A legal warning letter was sent on the following date: _____

Response/Notes:

_____

_____

_____

_____

_____.

E. Meeting on _____ with the Codes Director and Codes

_____ _____
Codes Inspector Date

Officer authorizing suit.

_____ _____
City Administrator Assistant City Administrator

_____
Tom Marsh
Interim Codes Administration Director

_____, 200__

RE: COMPLAINT AND NOTICE OF INITIATION OF PROCEEDINGS

Dear Property Owner:

You have been identified as the owner of the property located at _____, TN 3706___. I have received several complaints regarding the safety of the structure at that location. After a preliminary investigation viewing the structure from the roadway, I have, upon my own motion, determined that the roof is in danger of collapse, posing a serious threat of danger (i.e., dilapidation and collapse) to occupants or invitees. It appears that conditions exist that are dangerous or injurious to the health, safety or morals of the occupants or users of such structure, the occupants or users of neighboring structures or other City residents. Such conditions include the following: *defects therein increasing the hazards of fire, accident, or other calamities; dilapidation, disrepair, structural defects; and uncleanliness*.

YOU ARE HEREBY NOTIFIED that a hearing will be held on _____, 200__ at 10:00 a.m. (which is not less than 10 days nor more than 30 days after service of this complaint, pursuant to the Orlinda Municipal Code §13-204). The owner and parties in interest shall have the right to file an answer to the complaint and to appear in person or otherwise and give testimony at that time. The rules of evidence prevailing in a court of law or equity shall not be controlling. You have the right to an attorney, if you should so choose.

Furthermore, under Orlinda Municipal Code § 13-214, it shall be unlawful for any owner of record to create, maintain or permit to be maintained in the City structures which are unfit for human occupation due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or unsanitary or dangerous or detrimental to the health, safety and morals, or otherwise inimical to the welfare of the residents of the City. **Violations of this section shall subject the offender to a penalty of up to five hundred dollars ($500) for each offense. Each day a violation is allowed to continue shall constitute a separate offense.**

If you should fail to answer or otherwise appear, you will have waived your right to contest the charges and the City may enter a finding that the structure is unfit. The City will pursue all remedies available, including but not limited to an Order of Demolition, requiring the structure to be removed demolished by a certain date, pursuant to Orlinda Municipal Code §13-207. If the owner fails to comply with the Order of Demolition, the City is entitled to repair or demolish the structure, pursuant to Orlinda Municipal Code §§13-206 and –207 and lien the property for the expense of costs associated with repair or demolition. Said lien may be collected as delinquent property taxes are collected and subject to the same penalty and interest as delinquent property taxes.

For more information, a copy of the Orlinda Municipal Code is available for your inspection at the City Clerk's Office.

Sincerely, City Manager

NOTICE OF VIOLATION
AND ORDER OF ABATEMENT

DATE:
NAME:
ADDRESS:
(description of property):
OFFENSE(S) CHARGED:

Pursuant to the State of Tennessee Code Annotated **§** 68-102-107 and § 68-102-116 (a)

"(1) [w]hen (the Fire Marshal) finds any building or other structure which for want of repairs, lack of sufficient fire escapes, automatic or other fire alarm apparatus or fire-extinguishing equipment, or by reason of age or dilapidated condition, or from any other cause, is especially liable to fire, or constitutes any other dangerous or defective conditions, and which is situated so as to endanger life or property, and whenever such officer shall find in any building combustible or explosive matter or inflammable conditions dangerous to the safety of such buildings, such officer shall order the same removed or remedied, and such order shall be immediately complied with by the owner or occupant of such premises or buildings, or by any architect, contractor, builder, mechanic, electrician or other person who shall be found to be responsible for the dangerous or defective conditions. The provisions of this subsection apply to any building or other structure that is being erected, constructed or altered, and to any building that has been erected, constructed or altered.

(2) If compliance with such order is not expedient and does not permanently remedy the condition, after giving written notice, then the officer has the authority to issue a citation for the violation, requiring the person found to be responsible for the dangerous or defective conditions to appear in court at a specified date and time.

You are hereby notified of the findings of this office that the above structure is especially liable to fire and constitutes a dangerous and defective condition, and is situated so as to endanger life and property. I have found combustible matter or inflammable conditions dangerous to the safety of such buildings, as described in the report(s) attached hereto.

If compliance with such order is not expedient and does not permanently remedy the condition, a citation shall be issued for the violation, requiring your appearance in court at a specified date and time.

These conditions also constitute violations of the International Property Maintenance Code ("IMPC"). Section 111 of the IMPC gives you the right to appeal the findings and orders stated herein within twenty (20) days of this notice to the City of Franklin Fire and Building Codes Board of Adjustments and Appeals. In accordance with Section 106.3 of the IMPC, any

action taken by the City on the premises shall be charged against the real estate upon which the structure is located and shall be a lien upon the property.

Please contact me directly if you have any additional concerns.

Sincerely,
Andy King
Fire Marshal

Encl. Fire Prevention and Life Safety Reportcc:Gary Luffman, Codes Enforcement Official

City of Franklin, Tennessee
Codes Administration
Division of Code Enforcement
CONSENT TO INSPECT FORM

I, _____**,** have been requested to consent to
(Insert Property owner name or authorized Person)

an examination of my property located at:_____.
(Exact physical address and/or description of property)

I am the lawful owner/occupant/agent of this property and I have the legal authority to authorize the below listed officials permission to entry and inspection**.**

I have been advised of my constitutional rights to refuse any further entry, and to require that a search warrant be obtained prior to any examination.

I have been informed of my constitutional right not have an inspection my property for building and life safety violations thereinafter mentioned without an inspection warrant and of my right to refuse to consent to such an inspection.

I hereby authorize _____
(Insert Official Name(s) and Title(s)).

to conduct an inspection of the above premises.

I am giving this written permission to the above named person(s) voluntarily and without threats or promises of any kind.

I have been further advised that if I do consent to an examination, any evidence found as a result of such examination can be used in a court of appropriate jurisdiction, and that I may withdraw my consent at any time prior to the conclusion of the inspection.

The above officers are authorized by me to record, document and photograph materials or other property that they may desire. I understand that the documents and photographs and other recording materials become public records that are open for public inspection under Tennessee's Open Records Act.

Signed _____
Printed Name _____
Place _____
Date _____
Time _____

NAME:_____ ADDRESS:_____ OFFICER:_____

City of Franklin Code Administration
Division of Code Enforcement

PROPERTY INSPECTION
ADMONITION AND WAIVER

Comment [kb1]: To be used only under suspicion of possible criminal activity.

Before we ask you any questions, you must understand your rights:

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and t have your lawyer with you during questioning, if you wish one.

If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.

If you decide to answer any questions now without a lawyer present, you still have the right to stop answering at any time. You also still have the right to stop answering at any time until you talk to a lawyer.

Waiver of Rights

I have read this statement of my rights and I understand what my rights are.
I am willing to make a statement and answer any questions.
I do not want a lawyer at this time.
I understand and know what I am doing.
No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed _____
Printed Name _____
Place _____
Date _____
Time _____

Witness #1 _____
Witness #2 _____
Time _____

NAME: _____ ADDRESS: _____ OFFICER: _____

Appendix A
Administrative Inspection Warrants
Information for Codes Officers

A. Authority:

T.C.A. § 68-120-117 (Added by 2003 Pub.Acts, c. 326, § 1, eff. June 11, 2003)

B. Who is authorized to issue an Administrative Inspection Warrant?

1) Any official authorized by law to issue search warrants; or

2) Any court of record in the county of residence of the agency making application for an administrative inspection warrant.

3) Any municipal court having jurisdiction over the agency making application for an administrative inspection warrant, provided that the judge of the court is licensed to practice law in the state of Tennessee.

C. Who may apply for an inspection warrant?

The Building official may apply for the warrant. "Building Official" means any local government building official certified pursuant to § 68-120-113, provided that such official is acting in their capacity as an official of a municipality or county, and provided that the official is seeking to enforce the ordinances or codes of such local government.

D. Under what circumstances may the building official apply for a warrant?

1) When the building official is denied permission to make an inspection;
2) When a warrant is required by the Constitution of the United States or the State of Tennessee to perform such inspection;
3) When probable cause exists to believe that a violation of law has occurred or is occurring;
   i) Probable cause is not the same standard as used in obtaining criminal search warrants. In addition to a showing of specific evidence of an existing violation, probable cause can be found upon a showing of facts justifying further inquiry, by inspection, to determine whether a violation of any state law or local building, fire, or life safety code is occurring. This finding can be based upon a showing that:
      (1) Previous inspections have shown violations of law and the present inspection is necessary to determine whether those violations have been abated;
      (2) Complaints have been received by the agency and presented to the issuing officer, from persons who by status or position have personal knowledge of violations of law occurring on the named premises;
      (3) The inspection of the premises in question was to be made pursuant to an administrative plan containing neutral criteria supporting the need for the inspection; or
      (4) Any other showing consistent with constitutional standards for probable cause in administrative inspections.

   ii. Probable cause must exist not only at the time the warrant is issued, but also at the time the inspection is carried out.

Comment [KMB2]: ii.Federal Casting Division, Chromalloy American Corporation v. Donovan, 684 F.2d 504, 509 (8th Cir.1982)

4) The inspection is reasonable and not intended to arbitrarily harass the persons or business involved;

5) The areas and items to be inspected are accurately described and are consistent with the statutory inspection authority; and

6) The purpose of the inspection is not criminal in nature and the agency is not seeking sanctions against the person or business for refusing entry.

E. What information should the application (and warrant) include?

1) The name of the agency and building official requesting the warrant;

2) The statutory or regulatory authority for the inspection;

3) The names of the building official(s) authorized to conduct the administrative inspection;

4) A reasonable description of the property and items to be inspected;

5) A brief description of the purposes of the inspection; and

6) Any other requirements or particularity required by the constitutions of the United States and the State of Tennessee, regarding administrative inspections.

F. What happens after the application is made?

The issuing officer shall immediately make a finding as to whether an administrative inspection warrant should be issued and if the issuing officer so determines, issue such warrant. No notice shall be required prior to the issuance of the warrant.

G. How soon must the warrant be executed?

All warrants shall be executed **within ten (10) days** of issuance.

H. What if someone interferes with the execution of the warrant?

Any person who willfully refuses to permit inspection, obstructs inspection or aids in the obstruction of an inspection of property described in an administrative inspection warrant commits a Class C misdemeanor. The building inspector conducting the inspection should contact a police officer for assistance.

I. How should the inspection be conducted?

1) **Read** the inspection warrant carefully to determine the scope of authority to conduct the search (i.e., the specific location of the search, what is or is not included in the search, etc.). If you are not certain, call the City Attorney.

2) Conduct the inspection in the most **courteous**, reasonable manner.

3) **Document** the search. Take video, photographs and detailed notes. When possible, have a second certified building inspector available to witness the inspection and discuss your findings before you leave the premises.

4) If you see any evidence in plain view of a separate, additional crime or violation of state or local law, contact the police or relevant agency (i.e., fire marshal, Animal Control, sanitation department, etc.) as soon as it is practical.

J. What if this procedure or the inspection is not carried out lawfully?

Any person aggrieved by an unlawful inspection of premises named in an administrative inspection warrant may in any judicial or administrative proceeding move to suppress any evidence or information received by the agency pursuant to such inspection. If the court or the administrative agency finds that the inspection was unlawful, such evidence and information shall be suppressed and not considered in the proceeding.

The inspector or the City may be subject to additional penalties. If there is a question, exercise extreme caution. Check with your supervisor or with the City Attorney for advice how to proceed.

IN THE CHANCERY COURT OF WILLIAMSON COUNTY
STATE OF TENNESSEE

IN RE:

PERSON TO BE SEARCHED
LOCATION TO BE SEARCHED.

CITY OF FRANKLIN, TENNESSEE
DEPARTMENT OF CODES ADMINISTRATION
ADMINISTRATIVE INSPECTION WARRANT APPLICATION

AFFIDAVIT

Personally appeared before me, Gary Luffman, Codes Official and makes oath that he has good ground and belief, and does believe that violations of Tennessee law or the City of Franklin's Code section 12-501, the International Property Maintenance Code, are taking place upon the following described property as detailed in the attached Notice of Violation as Exhibit A hereto and incorporated by reference as if fully stated herein.

Pursuant to authority granted by Tennessee Code Annotated, §§ 6-54-501 through 6-54-506, and for the purpose of securing the public safety, health, and general welfare through structural strength, stability, sanitation, adequate light and ventilation in dwellings, apartment houses, rooming houses, and other buildings, the International Property Maintenance Code, 2003 edition, (hereinafter "IMPC") was adopted by the City of Franklin on April 12, 2004.

The Codes Official, having been authorized pursuant to T.C.A. § 68-120-117(A) to conduct an inspection of said premises for compliance with the aforementioned code provisions respectfully requests the Court, having been authorize pursuant to T.C.A. § 68-120-117(B) as a court of record in the county of the residence of the agency making application for the administrative warrant, to issue the same for the property located at:

(PREMISES TO BE SEARCHED, INCLUDING SPECIFIC ADDRESS)

Further, Affiant states that the City of Franklin Codes Administration has statutory authority to inspect the above premises, that he, as a certified building official, has properly notified owner/occupants but has been denied permission to enter said premises and the following facts or circumstances exist establishing probable cause that a violation of the aforementioned code(s) is (are) occurring upon said premises:

(PROBABLE CAUSE FOR SEARCH: Choose one OR both)

1) Previous inspection on __***(date)***_____ showed violation(s) of law and the present inspection is necessary to determine whether those violations have been abated.

2) Complaints have been received by the agency and presented herein by persons who by status or position have personal knowledge of violations of law occurring on the named premises. (***NAME COMPLAINANTS, TITLE)***

Affiant further states that the purpose of the inspection is:

(*BRIEF SUMMARY OF PURPOSE OF INSPECTION)*

Affiant further states that the purpose of the inspection is: to confirm suspected continuing violations of code as portrayed in the photographs, to determine the extent of repairs made, if any, and to take proper legal action to abate the nuisance existing within and outside the exterior of the structure.

Affiant further states that the inspection is reasonable in scope and not intended to arbitrarily harass the persons or business involved; that the purpose of the inspection is not criminal in nature and the City of Franklin is not seeking sanctions against the person for refusing entry.

Gary Luffman, therefore, complains and asks that a warrant issue to inspect the said ***PREMISES*** of the above named ***PERSON,*** above described in said City, where he believes said ***PREMISES*** described above are currently in violation of City Code(s) .

_____

Gary Luffman,
Codes Official

Sworn to and subscribed before me, this___day of _____200___.

_____
(Signature of Judge or Magistrate)

Title:_____

Court:_____
Williamson County, Tennessee

Prepared by

IN THE CHANCERY COURT OF WILLIAMSON COUNTY
STATE OF TENNESSEE

IN RE:

PERSON TO BE SEARCHED
LOCATION TO BE SEARCHED

ADMINISTRATIVE INSPECTION WARRANT

TO ANY BUILDING OFFICIAL OF THE CITY OF FRANKLIN:

Proof by affidavit having been made before me by Gary Luffman, Codes Official of the City of Franklin, Tennessee, Department of Codes Administration, that there is probable cause for believing that violations of the laws of the State of Tennessee or the building, fire, or life safety codes of the City of Franklin are occurring upon the following described property, as stated in his affidavit and Application for Inspection Warrant

(insert property address, tax map description)

situated in FRANKLIN, WILLIAMSON County, Tennessee;

And the Codes Inspector, having been authorized pursuant to the under T.C.A. § 68-120-117 to conduct an inspection of said premises for compliance with Franklin's building, fire and life safety codes, including but not limited to the International Property Maintenance Code, you are, therefore, commanded to make an immediate inspection of the above described property and to return this Administrative Inspection Warrant **within ten (10) days**.

TO THOSE IN POSSESSION OF SAID PREMISES:

Tennessee Code § 68-120-117 having been complied with, you are hereby notified that subsection (g) of that code section states:

Any person who willfully refuses to permit inspection, obstructs inspection or aids in the obstruction of an inspection of property commits a Class C misdemeanor.

This the _____day of _____, 200__. Time: AM/PM

Title: _____
(Signature of Judge or Magistrate)

Court. _____

IN THE CHANCERY COURT OF WILLIAMSON COUNTY
STATE OF TENNESSEE

IN RE:

PERSON TO BE SEARCHED
LOCATION TO BE SEARCHED,

OFFICER'S RETURN

The within warrant came to hand; I executed it on this ____ day of _____, 200___, by inspection the premises herein described, herein and (if applicable) bringing before the Franklin Municipal Court the following personal property:

I witnessed the following code violations:

(Detail violations or refer to attached Notice of Violation.)

Signed:_____
Codes Official
Williamson County, Tennessee

IN THE CHANCERY COURT OF WILLIAMSON COUNTY
STATE OF TENNESSEE

IN RE:

PERSON TO BE SEARCHED
LOCATION TO BE SEARCHED.

CITY OF FRANKLIN, TENNESSEE
DEPARTMENT OF CODES ADMINISTRATION
ADMINISTRATIVE INSPECTION WARRANT APPLICATION

AFFIDAVIT

Personally appeared before me, Gary Luffman, Codes Official and makes oath that he has good ground and belief, and does believe that violations of Tennessee law or the City of Franklin's Code section 12-501, the International Property Maintenance Code, are taking place upon the following described property as detailed in the attached Notice of Violation as Exhibit A hereto and incorporated by reference as if fully stated herein.

Pursuant to authority granted by Tennessee Code Annotated, §§ 6-54-501 through 6-54-506, and for the purpose of securing the public safety, health, and general welfare through structural strength, stability, sanitation, adequate light and ventilation in dwellings, apartment houses, rooming houses, and other buildings, the International Property Maintenance Code, 2003 edition, (hereinafter "IMPC") was adopted by the City of Franklin on April 12, 2004.

The Codes Official, having been authorized pursuant to T.C.A. § 68-120-117(A) to conduct an inspection of said premises for compliance with the aforementioned code provisions respectfully requests the Court, having been authorize pursuant to T.C.A. § 68-120-117(B) as a court of record in the county of the residence of the agency making application for the administrative warrant, to issue the same for the property located at:

(PREMISES TO BE SEARCHED, INCLUDING SPECIFIC ADDRESS)

Further, Affiant states that the City of Franklin Codes Administration has statutory authority to inspect the above premises, that he, as a certified building official, has properly notified owner/occupants but has been denied permission to enter said premises and the following facts or circumstances exist establishing probable cause that a violation of the aforementioned code(s) is (are) occurring upon said premises:

(PROBABLE CAUSE FOR SEARCH: Choose one OR both)

3) Previous inspection on ***__(date)***_____ showed violation(s) of law and the present inspection is necessary to determine whether those violations have been abated.

4) Complaints have been received by the agency and presented herein by persons who by status or position have personal knowledge of violations of law occurring on the named premises. (***NAME COMPLAINANTS, TITLE)***

Affiant further states that the purpose of the inspection is:

(*BRIEF SUMMARY OF PURPOSE OF INSPECTION)*

Affiant further states that the purpose of the inspection is: to confirm suspected continuing violations of code as portrayed in the photographs, to determine the extent of repairs made, if any, and to take proper legal action to abate the nuisance existing within and outside the exterior of the structure.

Affiant further states that the inspection is reasonable in scope and not intended to arbitrarily harass the persons or business involved; that the purpose of the inspection is not criminal in nature and the City of Franklin is not seeking sanctions against the person for refusing entry.

Gary Luffman, therefore, complains and asks that a warrant issue to inspect the said ***PREMISES*** of the above named ***PERSON,*** above described in said City, where he believes said ***PREMISES*** described above are currently in violation of City Code(s) .

_____

Gary Luffman,
Codes Official

Sworn to and subscribed before me, this___day of _____200_.

_____
(Signature of Judge or Magistrate)

Title:_____

Court:_____
Williamson County, Tennessee

Prepared by

WEED, HUBBARD, BERRY & DOUGHTY, PLLC

IN THE CHANCERY COURT OF WILLIAMSON COUNTY
STATE OF TENNESSEE

IN RE:

PERSON TO BE SEARCHED
LOCATION TO BE SEARCHED.

CITY OF FRANKLIN, TENNESSEE
FIRE DEPARTMENT
ADMINISTRATIVE INSPECTION WARRANT APPLICATION

AFFIDAVIT

Personally appeared before me, Jason Jones, Acting Fire Marshal of the City of Franklin, and makes oath that he has good ground and belief, and does believe that violations of Tennessee law or the City of Franklin's Code section 12-501, the International Property Maintenance Code, are taking place upon the following described property as detailed in the attached Notice of Violation as Exhibit A hereto and incorporated by reference as if fully stated herein.

Pursuant to authority granted by Tennessee Code Annotated, §§ 6-54-502 et seq., and for the purpose of regulating and governing the safe-guarding of life and property from fire or explosion, hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises, the City of Franklin, has adopted on _____the 2003 edition of the International Fire Code, including Appendix B and Appendix C, with any subsequent amendments or revisions that may be added, or as replaced by any later editions, as prepared by the International Code Council, Inc.

Under the International Fire Code, Section 104.3,

> "Whenever it is necessary to make an inspection to enforce the provisions of (the International Fire Code), or whenever the fire code official has reasonable cause to believe that there exists in a building or upon any premises any conditions or violations of the code which make the building or premises unsafe, dangerous or hazardous, the fire code official shall have the authority to enter premises at all reasonable times to inspect or to perform the duties under (that) code."

Jason Jones, Acting Fire Marshal of the City of Franklin requests the court's permission to conduct an inspection of said premises for compliance with the aforementioned code provisions re-

spectfully requests the Court, having been authorize pursuant to T.C.A. § 68-120-117(B) as a court of record in the county of the residence of the agency making application for the administrative warrant, to issue the same for the property located at:

(PREMISES TO BE SEARCHED, INCLUDING SPECIFIC ADDRESS)

Further, Affiant states that the City of Franklin Fire Department has statutory authority to inspect the above premises, that he has properly notified (or reasonably attempted) to notify owner/occupants but has not been given permission by the owners/occupants to enter said premises and the following facts or circumstances exist establishing probable cause that a violation of the aforementioned code(s) is (are) occurring upon said premises:

(PROBABLE CAUSE FOR SEARCH: Choose one OR both)

5) Previous inspection on ***__(date)***_____ showed violation(s) of law and the present inspection is necessary to determine whether those violations have been abated.

6) Complaints have been received by the agency and presented herein by persons who by status or position have personal knowledge of violations of law occurring on the named premises. (***NAME COMPLAINANTS, TITLE)***

Affiant further states that the purpose of the inspection is:

(*BRIEF SUMMARY OF PURPOSE OF INSPECTION)*

Affiant further states that the purpose of the inspection is: to confirm suspected continuing violations of code as portrayed in the photographs, to determine the extent of repairs made, if any, and to take proper legal action to abate the nuisance existing within and outside the exterior of the structure.

Affiant further states that the inspection is reasonable in scope and not intended to arbitrarily harass the persons or business involved; that the purpose of the inspection is not criminal in nature and the City of Franklin is not seeking sanctions against the person for refusing entry.

Jason Jones, therefore, complains and asks that a warrant issue to inspect the said ***PREMISES*** of the above named ***PERSON,*** above described in said City, where he believes said ***PREMISES*** described above are currently in violation of City Code(s) .

_____

Jason Jones
Acting Fire Marshal, City of Franklin

Sworn to and subscribed before me, this___day of _____200_.

_____
(Signature of Judge or Magistrate)

IN THE CHANCERY COURT OF WILLIAMSON COUNTY
STATE OF TENNESSEE

IN RE:

PERSON TO BE SEARCHED
LOCATION TO BE SEARCHED

ADMINISTRATIVE INSPECTION WARRANT

TO ANY BUILDING OFFICIAL OF THE CITY OF FRANKLIN:

Proof by affidavit having been made before me by Gary Luffman, Codes Official of the City of Franklin, Tennessee, Department of Codes Administration, that there is probable cause for believing that violations of the laws of the State of Tennessee or the building, fire, or life safety codes of the City of Franklin are occurring upon the following described property, as stated in his affidavit and Application for Inspection Warrant

(insert property address, tax map description)

situated in FRANKLIN, WILLIAMSON County, Tennessee;

And the Codes Inspector, having been authorized pursuant to the under T.C.A. § 68-120-117 to conduct an inspection of said premises for compliance with Franklin's building, fire and life safety codes, including but not limited to the International Property Maintenance Code, you are, therefore, commanded to make an immediate inspection of the above described property and to return this Administrative Inspection Warrant **within ten (10) days**.

TO THOSE IN POSSESSION OF SAID PREMISES:

Tennessee Code § 68-120-117 having been complied with, you are hereby notified that subsection (g) of that code section states:

Any person who willfully refuses to permit inspection, obstructs inspection or aids in the obstruction of an inspection of property commits a Class C misdemeanor.

Furthermore, under the International Fire Code, Section 104.3.1, "When the fire code official has first obtained a proper inspection warran or other remedy provided by law to secure entry, an owner or occupant or person having charge, care or control of the building or premises shall not fail or neglect, after proper request is made to permit entry therein…"

This the _____day of _____, 200__.

Time: AM/PM

Title: _____
(Signature of Judge or Magistrate)

Court. _____

IN THE CHANCERY COURT OF WILLIAMSON COUNTY
STATE OF TENNESSEE

IN RE:

PERSON TO BE SEARCHED
LOCATION TO BE SEARCHED,

OFFICER'S RETURN

The within warrant came to hand; I executed it on this ____ day of _____, 200___, by inspection the premises herein described, herein and (if applicable) bringing before the Franklin Municipal Court the following personal property:

I witnessed the following code violations:

(Detail violations or refer to attached Notice of Violation.)

Signed:_____
Codes Official
Williamson County, Tennessee

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY
AT FRANKLIN, TENNESSEE

CITY OF FRANKLIN, TENNESSEE,	*	
	*	
Plaintiff,	*	
	*	
v.	*	**Civil Action No. _____**
	*	
JAMES STEELE AND PHILLIP STEELE,	*	
	*	
Defendants.	*	

COMPLAINT FOR PERMANENT INJUNCTION

COMES NOW the plaintiff, **CITY OF FRANKLIN, TENNESSEE,** and would bring this action for permanent injunction against the Defendant, **JAMES STEELE**, and would show to the Court as follows:

STATEMENT OF JURISDICTION AND VENUE

1. The plaintiff, CITY OF FRANKLIN ("the City"), is a Tennessee municipality, incorporated within Williamson County, Tennessee. Its principal place of business is 109 Third Avenue South, Franklin, Tennessee, 37065.

2. The defendant JAMES STEELE is a resident of Franklin, Williamson County, Tennessee, residing at 102 Chestnut Lane, Franklin, Tennessee, 37064.

3. The defendant, JAMES STEELE, is the owner of a parcel of property in the City with the address of 102 Chestnut Lane, Franklin, Tennessee, 37064 ("the property"). This property is within the corporate limits of the City.

4. The defendant PHILLIP STEELE is a resident of Franklin, Williamson County, Tennessee, residing at 102 Chestnut Lane, Franklin, Tennessee, 37064.

5. The defendant PHILLIP STEELE is the son of JAMES STEELE. The defendant PHILLIP STEELE cohabitates with his father and, therefore, is also in possession of the property.

AUTHORITY TO ABATE NUISANCES

6. Tennessee Code Annotated ("T.C.A.") § 29-3-102 gives the Chancery Court jurisdiction over actions filed by a city attorney on behalf of a city to abate nuisances, defined in T.C.A. §29-3-101(a)(2), in pertinent part, as that which is declared to be such by other statutes as a nuisance. T.C.A. §§6-54-119 gives municipalities statutory authority to adopt and to incorporate by reference the provisions of building safety and other standardized health and safety codes that declare unsafe conditions such as those in the instant action as nuisances.

7. The City has adopted an ordinance relating to nuisances by incorporating by reference the International Property Maintenance Code ("IPMC"). The IPMC requiring all persons within the City to keep their premises in a clean and sanitary condition, free from accumulations of refuse, except when stored as provided under the Code. *Ordinance 2004-44; Franklin Municipal Code Section 12-501 et seq.; International Property Maintenance Code 301.2 et seq. (relevant sections attached as Exhibit A hereto).*

8. The IPMC 302.8 prohibits inoperative or unlicensed motor vehicles from being parked, kept or stored on any premises in violation of the IPMC. No vehicle shall at any time be in a state of major disassembly, disrepair or in the process of being stripped or dismantled.

9. The defendants, jointly or individually, own inoperative and unlicensed motor vehicles and have parked, kept and stored them on the property in violation of the IPMC. The vehicles appear to be in a state of major disassembly and disrepair and are believe to be in the process of being dismantled.

10. Defendant JAMES STEELE has been given notices of violations and citations into Franklin Municipal Court for parking inoperable vehicles in violation of the Franklin Municipal Code as described in the affidavit of Codes Enforcement Officer John Forster, Jr., attached hereto as Exhibit B and incorporated by reference as if fully stated herein.

11. The defendants have willingly and knowingly in violation of the codes and ordinances of Franklin, Tennessee, maintained and accumulated inoperable and unlicensed vehicles in such manner as to endanger the health, safety and welfare of the citizens of Franklin and to encourage the infestation of rats and other harmful animals on his property, posing a health and sanitation danger to himself and to adjacent property owners within the City.

12. The defendants, by allowing such vehicles to accumulate on their property, have created and maintain a public nuisance under the IPMC.

13. Alternatively, the condition of the property poses a nuisance at common law and must be abated.

WHEREFORE, PREMISES CONSIDERED, the plaintiff prays:

1. That the Court find that the defendants are in violation of the International Property Code and are maintaining a public nuisance at the property, and that the Court issue a permanent injunction prohibiting the defendants from maintaining or using the property at 102 Chestnut Lane, Franklin, Tennessee in violation of the City's ordinances.

2. That the Court issue a permanent injunction requiring the defendants to abate or remove such unlawful vehicles from the property.

3. That process issue and be served upon the defendants, requiring the defendants to answer this Complaint, but not under oath.

4. That the plaintiff be granted such further and different relief as the plaintiff shows itself entitled to or the Court may deem appropriate.

5. That no cost bond is required to be filed by plaintiff, pursuant to T.C.A. § 29-3-104.

6. That the costs of this action be taxed to the defendants.

Respectfully submitted,

HUBBARD, BERRY, DOUGHTY,
HARRIS & BARRICK, PLLC

_____

Karen Beyke (023137)
SunTrust Bank Building, Suite 1420
201 Fourth Avenue North
Nashville, Tennessee 37219
(615) 251-5444

Attorneys for Plaintiff,
City of Franklin, Tennessee

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY
AT FRANKLIN, TENNESSEE

CITY OF FRANKLIN, TENNESSEE,	*	
	*	
Plaintiff,	*	
	*	
v.	*	**Civil Action No. _____**
	*	
JAMES STEELE AND PHILLIP STEELE,	*	
	*	
Defendants.	*	

AFFIDAVIT OF JOHN FORSTER, JR.

JOHN FORSTER, JR., having been first duly sworn, deposes and states as follows:

1. I, John Forster, Jr., being of sound mind and over the age of 18, give this affidavit based on my personal knowledge.

2. I have been employed with the City of Franklin for (14) fourteen years, twelve of those years as a police officer and two as Codes Officer. Prior to my employment with the City of Franklin, I was employed with the Metro Nashville Airport Authority Police & Fire Department. I worked there for 3-1/2 years in the capacity of police officer/firefighter. Prior to that, I served four (4) years active duty Air Force as a Security Police Officer.

3. The following is a chronological listing of my involvement with the aforementioned property:

   (a) January 22, 2003, a letter was sent to James Steele advising him of the violations that were noted upon his property and the requirements for abatement. The violations were related to (3) three or more disabled/unlicensed vehicles observed upon 102 Chestnut Lane, Franklin, Tennessee, owned by James Steele.
   (b) James Steele was cited to court for failing to abate the violations.
   (c) March 4, 2003, he appeared before Judge Taylor to answer the charge. He told the judge that the vehicles belonged to his son, Phillip Steele. Judge Taylor issued

a subpoena that required the son to appear before him on March 11, 2003. Franklin Police Department Officer Melvin Scales personally served the subpoena upon Phillip.

(d) March 11, 2003, Phillip Steele failed to appear before the court to answer the subpoena
(e) August 22, 2003, I personally served upon Phillip Steele an Order to Show Cause. The order required him to appear before Judge Taylor on August 26, 2003.
(f) August 26, 2003, Phillip Steele failed to appear as previously scheduled.
(g) December 19, 2004, an inspection of the property revealed the two disabled and/or disabled vehicles as well as other trash and rubbish laying about the property. I wrote a citation and attempted to contact the property owner, James Steele. There were vehicles in the driveway but no one answered the door. I attached an adhesive sticker to the citation and attached both to the back door, which is closest to the driveway.
(h) December 14, 2004, Mr. James Steele failed to appear in court.
(i) I have located older files dating back to the early 1990 that involve this property and the Steele family. From what I have gathered in perusing the file, there is a continuing history of failing to comply with codes related to disabled/unlicensed vehicles and failing to appear for court.
(j) At present, there are two inoperable vehicles on the property. The first is an older model white Pontiac Grand Prix. It has been placed on blocks and the tires/wheels have been removed. There is extensive front-end and undercarriage damage. I did not see a license plate affixed to the vehicle. The second vehicle is a green Chevrolet, 4 door, model unknown. There is no license plate attached to the vehicle and the front right tire is flat. The above listed descriptions are current as of today (Feb. 1, 2005).
(k) In addition, there is trash, appliances, and other miscellaneous rubbish that is about the property.

Further affiant saith not.

_____
John Forster, Jr.
Codes Officer, City of Franklin

Sworn to and subscribed before me this _____ day of _____, 2005.

_____
Notary Public
My commission expires: _____
(SEAL)



UNSAFE STRUCTURE DO NOT ENTER UNTIL FURTHER NOTICE



Pursuant to the International Property Maintenance Code Section 109, you are hereby notified that this structure

<u>ENDANGERS LIFE</u>.

THIS STRUCTURE IS UNSAFE AND ITS OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL.

ESTA ESTRUCTURA ES PELIGROSA Y SU OCUPACION HA SIDO PROHIBIDA POR EL FUNCIONARIO de CODIGO.

Any person who defaces or removes this placard, occupies the premises or operates unsafe equipment within the structure without the approval of the code official shall be subject to the penalties in section 106 of the international property maintenance code. Any person violating the code shall be guilty of a MISDEMEANOR and be prosecuted within the limits of the law as a strict liability offense.

Section 106 and 109, International Property Management Code.
For information, contact Gary Luffman, Codes Official at 791-3217 or
Andy King, Fire Marshal

CITY OF FRANKLIN
INVITATION TO BIDDERS

The CITY OF FRANKLIN, Tennessee (the "City') will receive bids until _____p.m. on _____, 2003 for demolition of a specific structure at _____ (describe location and/or name of building). The building may/may not have asbestos materials inside. The existence, quantity and location of any materials made from asbestos are unknown to the City. However, the age of the structure is ____ years, and it is known that asbestos was commonly used in building materials during that time. If involved, removal and disposal of asbestos materials must meet all federal, state, and local requirements. The contractor is responsible for all notifications and fees for the demolition and asbestos removal, if applicable.

Demolition includes removal of the structure, miscellaneous debris associated with the structure, and all foundations and slabs. The property is to be graded to a level condition.

The Contractor shall be responsible for all utility disconnections.

Bids are to be addressed to the City Recorder and mailed or delivered to:
CITY OF FRANKLIN, Street, 109 3rd Avenue South, Franklin, TN 37064.

Bids shall be identified on the exterior of the sealed envelope with all the information required by law, including the name of the project and the bidder's name, address and license number, expiration date and classification.

The successful bidder will not be required to furnish a Performance and Payment Bond. Payment shall be for the entire contract amount after completion and acceptance.

The Owner reserves the right to waive any irregularities or reject any or all bids.

Further information may be obtained from the Codes Department at Franklin City Hall, 109 3rd Avenue South, Franklin, TN 37064.

CITY OF FRANKLIN

INSTRUCTIONS TO BIDDERS AND GENERAL CONDITIONS FOR DEMOLITION PROJECT

SECTION B

1. Defined Terms:

1.1. The term "City" means the Owner, the CITY OF FRANKLIN.

1.2. The term "Bidder" means one who submits a Bid directly to the City, as distinct from a sub bidder who submits a bid to a Bidder.

1.3. The term "Successful Bidder" means the lowest, qualified, responsible and responsive Bidder to whom the City shall make an award of the Contract.

1.4. The term "Bidding Documents" includes the Advertisement, these Instructions, the Bid Form, and the proposed Contract Documents.

1.5. The term "Engineer" means the City Recorder or the Recorder's designee assigned to this project as the Contract Administrator.

2. Qualifications of Bidders:

2.1. Bidders must be licensed contractors in the State of TN as required by title 62, Chapter 6 of the Tennessee Code Annotated if the bid being submitted is in excess of $25,000.

2.2. Each Bidder must be prepared to submit upon request such written evidence as may be requested to demonstrate the Bidders qualifications to perform the Work. Such evidence may include financial data, previous experience and references, present commitments, and proposed contractors and suppliers. By submitting a bid, the Bidder certifies that he has the proper license to do the work within and/or for the City of Franklin, TN, including contractors and business licenses.

3. Examination of the Contract Documents and Project Sites:

3.1. It is the responsibility of the Bidder to:

1. Thoroughly examine the Contract Documents.

2. Visit the site and become familiar with the existing conditions and the scope of the project work; and become familiar with the surrounding conditions that may affect the cost, progress, performance or furnishing of the work,

3. Consider all federal, state and/or local laws and regulations that may affect the cost, progress, performance or furnishing of the Work,

4. Study and carefully correlate the Bidders observations with the Contract Documents, and

5. Notify the Engineer of all conflicts, errors or discrepancies found in the Contract Documents.

3.2. The submission of a bid will constitute an incontrovertible representation by the Bidder that the Bidder has complied with every requirement of this section, that without exception, the bid is premised upon performance and furnishing the work required by the Contract Documents, using the products, means, methods, techniques, sequences and/or procedures contained therein, and that the Contract Documents are sufficient in scope and detail and convey understanding of all terms and conditions for performance and furnishing the Work.

4. Bid Form:

4.1. The Bid Form is included in the Bidding Documents.

4.2. All blanks on the Bid Form must be completed, either in ink or typewritten.

4.3. Bids by corporations must be executed in the corporate name by the President or Vice-President, or other corporate officer, when proper authorization to sign is attached to the bid.

4.4. Bids by a partnership must be signed by all partners.

5. Bonds:

5.1. Due to the dollar amount of the contract and time for construction, no bonds will be required for the project. However, no payment shall be made to the contractor until the project is completed and accepted by the Owner. Should the project be delayed for some reason that is not the fault of the Contractor, a performance bond for the remainder of the work may be submitted and payment made.

6. Signing of the Agreement:

6.1. When the City submits to the Successful Bidder the "Notice of Award" and Agreement for execution, it will be in the number of copies necessary, all of which shall be signed and shall constitute an original Agreement. Within five days thereafter, the Successful Bidder shall sign and deliver all copies of the Agreement to the City, accompanied by a certificate of insurance. The City, within three days thereafter, shall return to the Successful Bidder a fully executed copy of the agreement.

7. Notice of Award:

7.1. The City may give the Successful Bidder a Notice of Award at any time within twenty (20) days from the date of opening of bids. The Successful Bidder shall begin the Work no less than twenty (20) days from the receipt of the Notice of Award or no less than ten (10) days from the date of his receipt of the fully executed agreement, whichever is later.

8. Indemnity

8.1 The contractor will indemnify and save harmless the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees to the extent resulting from a willful or negligent act or omission of the Contractor, its officers, agents, servants, and employees in the performance of this Contract; provided, however, that the Contractor shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees arising out of or relating to the award of or execution of this Contract or a willful or negligent act or omission of the City, its officers, agents, servants and employees.

9. Insurance

9.1 The Contractor shall at all times during the Contract maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability and Property Damage Insurance, including contractual liability coverage for the provisions of Indemnity. All insurance shall be by insurers and for policy limits acceptable to the City and before commencement of work hereunder the

Contractor agrees to furnish the City certificates of insurance or other evidence satisfactory to the City to the effect that such insurance has been procured and is in force.

For the purpose of the Contract, the Contractor shall carry the following types of insurance in at least the limits specified below: COVERAGES	LIMITS OF LIABILITY
Workmen's Compensation	Statutory

Employer's Liability	$500,000
Bodily Injury Liability Except Automobile	$500,000 each occurrence $1,000,000 aggregate
Property Damage Liability Except Automobile	$300,000 each occurrence $300,000 aggregate
Automobile Bodily Injury Liability	$500,000 each person $1,000,000 each occurrence
Automobile Property Damage Liability	$300,000 each occurrence
Excess Umbrella Liability	$1,000,000 each occurrence

CITY OF FRANKLIN
PROPOSAL FOR THE DEMOLITION PROJECT

SECTION C

_____
Name of Bidder

In compliance with your legal Notice to Bidders for the CITY OF FRANKLIN, TN Demolition Project, the undersigned bidder, a corporation organized and existing under the laws of the State of _____, or a partnership of _____, or an individual doing business as _____, of the City of, State of _____, having examined the specifications and contract forms thereto attached, and being fully advised as to the extent and character of the work to be performed, and the equipment to be furnished, hereby proposed to furnish all labor, tools, material, plant and equipment necessary for the Project.

The undersigned further proposes to perform all work and furnish all equipment in accordance with the specifications and contract stipulations thereof, within the time limit specified, for the price so stated below.

TOTAL BID PRICE FOR BUILDING DEMOLITION, INCLUDING ABSETOS REMOVAL (IF APPLICABLE) OF _____ (*NAME OF OR DESCRIPTION OF BUILDING*)

_____DOLLARS AND _____CENTS ($_____.____).

BIDDER understands that the City reserves the right to reject any or all bids and to waive any informality in bidding.

The bidder agrees that his bid shall be good and may not be withdrawn for a period of FIFTEEN (15) days after the scheduled closing time for receiving bids.

Upon receipt of written notice of acceptance of this bid, Bidder will execute the formal contract attached within FIVE (5) days and deliver insurance coverage as required by the Instructions to Bidders.

BY:

Contractor's Name

Signature _____ Title

Seal--if bid is by a corporation.

(_____) _____ - _____
Telephone Number

_____
Contact Person

CITY OF FRANKLIN

CONSTRUCTION CONTRACT
FOR DEMOLITION PROJECT

SECTION D

This AGREEMENT made this _____ day of _____, 20__ by and between the CITY OF FRANKLIN, hereinafter referred to as the "City," and _____ hereinafter referred to as the "Contractor," witnesses that the City and the Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1. Work:

1.1. The work is generally described as building demolition, asbestos removal (if applicable) of _____ building and grading of site. The Contractor shall furnish all labor and materials necessary to facilitate the Project as described in the Contract documents.

2. Engineer:

2.1. The Project has been initiated by the City Recorder who is hereinafter referred to as the "Engineer," and who is to act as the City's representative, assume all duties and responsibilities and have the rights and authority assigned to the Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

3. Contract Time:

3.1. The work will be substantially completed within 30 calendar days from the date when the Contract Time commences.

4. Contract Price and Payment Procedures:

4.1. The City shall pay the Contractor for completion of the work in accordance with the Contract Documents in current funds, as follows:

$ _____

4.2. The Contractor shall submit Applications for payment at the completion of the work. Applications will be processed by the Engineer, and upon determining the Contractor's satisfactory completion of the work in accordance with the Contract Documents, the City will make payment within thirty (30) days from the request for payment.

5. Other Considerations:

5.1. IN WITNESS WHEREOF, the City and the Contractor have signed this AGREEMENT in duplicate. One counterpart each has been delivered to the City and the Contractor.

5.2. This AGREEMENT will be effective upon its signing of each party thereto and will be binding until the acceptance by the City of all the work therein.

CITY OF FRANKLIN CONTRACTOR

By: _____ By:_____

Title: _____ Title: _____

(SEAL) (SEAL)

Attest: _____Attest: _____

Date: _____Date: _____

Address for giving Notices:
CITY OF FRANKLIN
109 3rd Avenue South
Franklin, TN 37064
_____

Address for giving Notices:
_____
_____
_____

APPROVED AS TO FORM:

_____
City Attorney

I:\Forms\Unsafes\InvitationtoBiddersforDemolition.doc

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,

Plaintiff,)
)
v.) **Docket No. _____**
)
OWNERS OF PROPERTY WITH)
DELINQUENT DEMOLITION LIENS)
FILED WITH THE REGISTER OF DEEDS)
OFFICE IN DAVIDSON COUNTY, TENNESSEE)
AND MORE SPECIFICALLY DESCRIBED)
IN EXHIBIT A.)
)
Defendants.)

COMPLAINT

COMES NOW the Plaintiff, the Metropolitan Government of Nashville and Davidson County, and for its cause of action states as follows:

1. Plaintiff, the Metropolitan Government of Nashville and Davidson County (hereinafter "Metropolitan Government"), is a municipal corporation created and existing under the Constitution and the laws of the State of Tennessee.

2. Section 13-21-103 of the Tennessee Code Annotated grants municipalities the power to exercise its police powers to repair, close, or demolish structures determined to be, "…unfit for human occupation or use due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such structures unsafe or unsanitary, or dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of such municipality…"

3. Exhibit A, attached hereto and incorporated herein by reference, is a schedule depicting and identifying each defendant owner, as defined in Tennessee Code Ann. § 13-21-101, and identifying the property owned by each defendant owner by map and parcel numbers as as-

signed on the official property maps prepared, adopted, and filed with the Metropolitan Clerk. Defendants may be severally liable and indebted to Plaintiff for the costs associated with demolitions on the properties listed on Exhibit A as well as penalty and interest pursuant to Tennessee Code Ann. § 13-21-103(6) and for which liens have been filed pursuant to the same. These debts are and remain delinquent, past due and unpaid, together with costs, attorney's fees, penalty and interest accruing from and after the filing of each lien.

4. Exhibit A, attached hereto and incorporated herein by reference, is a schedule depicting and identifying the amount of each lien recorded in the Register of Deeds Office as of the filing of this action. As the full and exact amount due from each Defendant is variable due to the continuing accrual of penalty, interest and costs, Plaintiff moves to be permitted to ascertain the exact amount of its claim against each Defendant on the date when the judgment is ordered.

WHEREFORE, Plaintiff prays:

1. That the proper process issue upon Defendants, requiring them to appear and answer this cause.

2. That all Defendants who are minors, or under other disability, without regular guardian, be represented by appointment of a guardian ad litem with respect to the property or properties involved.

3. That personal judgments and decrees be rendered in favor of Plaintiff against Defendants who are personally liable for the amount owed, with penalty, interest, costs, attorney fees and all other fees and charges found due to Plaintiff in enforcement of the liens with respect to each and every parcel of real property herein involved.

4. That Plaintiff be permitted to ascertain the exact amount of its claim against each Defendant on the date when the judgment is ordered.

5. That decrees for the sale of the property be rendered to satisfy the judgments as proscribed in Tennessee Code Ann. § 13-21-103.

6. For interest at the current legal rate per annum on the judgments and decrees herein rendered against Defendants until they are paid.

7. That Plaintiff be permitted to correct any errors appearing in the description of the properties, in the names of any of the parties, and in the amounts stated to be due, and any other similar errors appearing hereafter.

8. That Plaintiff be allowed to execute on the judgments entered against Defendants.

9. That Plaintiff have such other general and equitable relief as the Court deems just and proper.

Respectfully submitted,

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
KARL F. DEAN, # 10419
DIRECTOR OF LAW

_____
John P. Long, Jr., BPR #21900
Metropolitan Attorney
204 Metropolitan Courthouse
Nashville, Tennessee 37201
(615) 862-6341

CROSS REFERENCE TO:
DEED BOOK, PAGE
PREPARED BY:

WEED, HUBBARD, BERRY & DOUGHTY, PLLC
201 Fourth Avenue, North, Suite 1420
Nashville, TN 37219

C E R T I F I C A T E O F A B A T E M E N T

Property of: **(name of owner)**
Tax Map____, Group ____, Parcel ____
STATE OF TENNESSEE
WILLIAMSON COUNTY
CITY OF FRANKLIN

Pursuant to **Franklin Municipal Code § 12-801 et seq.,** adopting the **International Property Maintenance Code ("IMPC")**, and in accordance with Section of said Code, NOTICE is hereby given that the building or structure located at:

***(insert address)* , (the above subject property)**

being the property of *(owner)* was previously declared unsafe as defined in the provisions of the above-referenced code. In accordance with Section of the IMPC, the Building Codes Official recorded a Certificate of Unsafe Structure with the Register of Deeds, Williamson County, on the _____day of _____, 200__. Corrective action has since been taken to abate these conditions such that **the subject structure is no longer unsafe and is no longer in violation of the provisions of the Standard Unsafe Building Abatement Code**. The undersigned does hereby certify that the contents of this NOTICE are true and correct.