

BILL NO. 729

ORDINANCE NO. 729

AN ORDINANCE OF THE CITY OF ST. MARY, MISSOURI, ESTABLISHING PROCEDURES AND REQUIREMENTS FOR THE ISSUANCE OF ADMINISTRATIVE SEARCH WARRANTS.

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

WHEREAS, the Board of Aldermen of the City of St. Mary believes that such legislation would provide an effective tool in enforcing the city's housing and zoning codes and health and safety regulations, all to the benefit of the public health, safety and welfare of St. Mary residents and businesses, and is therefore necessary and indispensable; and

WHEREAS, such legislation also would help to ensure that personal and property rights of owners and occupants are secured through compliance with the requirements of the United States Constitution as provided in Camara v. Municipal Court of the City and County of San Francisco, 387 U.S. 523 (1967);

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF ST. MARY, MISSOURI, AS FOLLOWS:

ADMINISTRATIVE SEARCH WARRANTS

Section 1. Search Warrant Defined - Who May Issue, Execute

- (1) An administrative search warrant is a written order of the municipal judge commanding the search or inspection of any property, place or thing, and the seizure, photographing, copying or recording of property or physical conditions found thereon or therein, to determine or prove the existence of violations of any ordinance relating to the use, condition or occupancy of property or structures located within the City of St. Mary, or to enforce the provisions of any such ordinance.
- (2) The municipal judge having original and exclusive jurisdiction to determine violations against the ordinances of the municipality may issue an administrative search warrant when (1) the property or place to be searched or inspected or the thing to be seized is located with the owner or occupant of the property at the time of the making of the application and (2) the owner or occupant of the property or place to be searched or inspected or the thing to be seized has refused to allow same after official request by the Police Department.
- (3) Any such warrant shall be directed to the Chief of Police or any other police officer of the City of St. Mary and shall be executed by the Chief of Police or said police officer within the City limits and not elsewhere.

Section 2. Who May Apply For Warrant - Contents of Application

(1) Any police officer or an attorney of the City of St. Mary may make application to the municipal judge for the issuance of an administrative search warrant.

(2) The application:

- a. Must be in writing;
- b. State the time and date of the making of the application;
- c. Identify the property or places to be entered, searched, inspected or seized in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;
- d. State that the owner or occupant of the property or places to be entered, searched, inspected or seized has been requested by the City of St. Mary to allow such action and has refused to allow such action;
- e. State facts sufficient to show probable cause for the issuance of a search warrant, as provided in subsection (c)(1) hereof, to (1) search or inspect for violations of an ordinance specified in the application or (2) show that entry or seizure is authorized and necessary to enforce an ordinance in the application and that any required due process has been afforded prior to the entry or seizure.
- f. Be verified by the oath or affirmation of the applicant; and
- g. Be signed by the applicant and filed in the municipal court.

(3) The application may be supplemented by a written affidavit verified by oath or affirmation. Such affidavit shall be considered in determining whether there is probable cause for the issuance of a search warrant and in filling out any deficiencies in the description of the property or place to be entered, searched, inspected or seized.

Section 3. Hearing and Procedure - Contents of Warrant - Execution and Return

(1) Hearing and Procedure.

- a. The municipal judge shall hold a non-adversary hearing to determine whether probable cause exists to inspect or search for violations of any City of St. Mary ordinance, or to enforce any such ordinance.
- b. In doing so the municipal judge shall determine whether the action to be taken by the City of St. Mary is reasonable in light of the facts stated. The municipal judge shall consider the goals of the ordinance sought to be enforced and such

other factors as may be appropriate, including but not limited to the physical condition of the specified property, the age and nature of the property, the condition of the area in which the property is located, the known violation of any relevant City of St. Mary ordinance and the passage of time since the property's last inspection. The standard for issuing a warrant need not be limited to actual knowledge of an existing violation of a City of St. Mary ordinance.

c. If it appears from the application and any supporting affidavit that there is a probable cause to inspect or search for violations of any City of St. Mary Ordinance or to enforce any such ordinance, a search warrant shall immediately be issued.

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

Section 4. Contents of Search Warrant

The Search Warrant shall:

- a. Be in writing and in the name of the Owner or Occupant of the property;
- b. Be directed to any police officer in the City of St. Mary;
- c. State the time and date the warrant was issued;
- d. Identify the property or places to be searched, inspected or entered upon in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;
- e. Command that the described property or places be searched or entered upon, and that any evidence of any City of St. Mary ordinance violations found therein or thereon, or any property seized pursuant thereto, or a description of such property seized, be returned, within ten days after filing of the application, to the municipal judge who issued the warrant, to be dealt with according to law.
- f. Be signed by the judge, with his title of office indicated.

Section 5. Execution and Return

- a. A search warrant issued under this ordinance shall be executed only by a City of St. Mary police officer, provided, however that one or more designated City of St. Mary officials may accompany the officer, and the warrant shall be executed in the following manner.

1. The warrant shall be executed by conducting the search, inspection, entry or seizure as commanded and shall be executed as soon as practicable and in a reasonable manner.
2. The officer shall give the owner or occupant of the property searched, inspected or entered upon a copy of the warrant.
3. (a) If any property is seized incident to the search, the officer shall give the person from whose possession it was taken, if the person is present from whose possession it was taken, an itemized receipt for the property taken. If no person is present, the officer shall leave the receipt at the site of the search in a conspicuous place.
- 3 (b) A copy of the itemized receipt of any property taken shall be delivered to an attorney for the City of St. Mary within two (2) working days of the search.
- 3 (c) The disposition of property seized pursuant to a search warrant under this section shall be in accordance with an applicable ordinance, but in absence of same, then with Section 543.301 of the Revised Statutes of Missouri.
4. The officer may summon as many persons as he deems necessary to assist him in executing the warrant, and such persons shall not be held liable as a result of any illegality of the search and seizure.
5. An officer making a search pursuant to an invalid warrant, the invalidity of which is not apparent on its face, may use such force as he would be justified in using if the warrant was valid.
6. A search warrant shall expire if it is not executed and the required return made within ten (10) days after the date of the making of the application.
 - (b) 1. After execution of the search warrant, the warrant, with a return signed by the officer making the search, shall be delivered to the municipal court.
 - (b) 2. The return shall show the date and manner of execution and the name of the possessor and of the owner, when not the same person, if known, of the property or places searched or seized.
 - (b) 3. The return shall be accompanied by any photographs, copies, or recordings made, and by any property seized, along with a copy of the itemized receipt of such property required by this section; provided, however, that seized property may be disposed of as provided herein, and in such a case a description of the property seized shall accompany the return.

4. The court clerk, upon request, shall deliver a copy of the return, to the possessor and the owner, when not the same person, of the property searched or seized.

Section 6. Warrant Invalid, When

A search warrant shall be deemed invalid:

- (1) If it was not issued by the municipal judge;
- (2) If it was issue without a written application having been filed and verified;
- (3) If it was issued without sufficient probable cause in light of the goals of the ordinance to be enforced and such other factors as provided in subsection (c)(1)(b) hereof.
- (4) If it was not issued with respect to property or places in the City of St. Mary
- (5) If it does not describe the property or places to be searched, inspected, entered upon or seized with sufficient certainty;
- (6) If it is not signed by the judge who issued it; or
- (7) If it was not executed and the required return made with ten (10) days after the date of making the application.

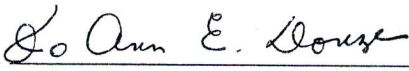
Section 7.

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

Passed and approved this the 10th day of September, 2001.


MAYOR CARLTON WYATT

ATTEST:


CITY CLERK JOANN E. DONZE

<u>ALDERMEN</u>	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Robert Bequette	x			
Brian Chapman	x			
Charlotte Otte	x			
Robert Schultz	x			

I, JoAnn E. Donze, Clerk of the City of St. Mary, Missouri do hereby certify that the foregoing ordinance was duly passed at a regular meeting of the Board of Aldermen so held on Monday, September 10, 2001.

Jo Ann E. Donze

CITY CLERK JOANN E. DONZE