

**MISSOURI MUNICIPAL ATTORNEYS ASSOCIATION**

**2018 SUMMER SEMINAR**

**STRATEGIC NUISANCE ENFORCEMENT**

**PRESENTED BY**

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**THIS IS AN INFORMATIONAL AND EDUCATIONAL REPORT DISTRIBUTED BY THE MISSOURI MUNICIPAL ATTORNEYS ASSOCIATION DURING ITS 2018 SUMMER SEMINAR. THE MMAA ASSUMES NO RESPONSIBILITY FOR THE POLICIES OR POSITIONS PRESENTED IN THE REPORT OR FOR THE PRESENTATION OF ITS CONTENTS.**

## **NUISANCES**

Nuisances are conditions of property which are detrimental to the health, safety, or welfare of the residents of the community and general public. Local governments may regulate nuisances pursuant to their police powers granted by the Missouri Constitution and statutes. After a particular nuisance condition has been identified by the local government, municipal officials commence the formal process of eliminating the public nuisance. The ultimate goal is compliance with the nuisance ordinance whereby the property owner voluntarily removes the present nuisance condition and maintains their property in such a manner to avoid creating future nuisances. In situations where the property owner refuses to voluntarily comply, then the local government must take action to abate the condition.

A local government's response to any given nuisance depends on a variety of factors including the severity and pervasiveness of the nuisance, the level of cooperation of the property owner, and the local government's own ordinances, policies, and procedures. For severity, consider a scale ranging from unsightly to immediately hazardous to human life and safety. Tall weeds and grass would fall on the less-severe side while a dangerous building would represent an imminent safety threat. Nuisances that are more severe on the scale typically require specific due process considerations for the property owners and occupiers including due notice, time for voluntary compliance, and the right to an administrative hearing before the local government may proceed with involuntary abatement. On the other end of the scale, for the less-severe nuisances, the local government may proceed to abate the nuisance if the condition remains after proper notice and no requested hearing by the property owner.

### **I. LOCAL GOVERNMENT RESPONSE TO NUISANCES**

#### **A. COMPLIANCE.**

Voluntary compliance should be the primary goal of local government code enforcement. Cooperation between the local government and the owners and occupants of a nuisance property helps to educate the owners about the local nuisance ordinances, promotes open communication between the citizens and the government, and facilitates a safe and aesthetically pleasing neighborhood for the community. Voluntary compliance is generally the quickest and most cost-effective way to remove nuisance conditions from properties. The cost savings to the local government is significant in that code enforcement resources that would have otherwise been exhausted in abatement may instead be refocused to other areas of concern.

#### **B. ABATEMENT.** The authority of a local government to abate public nuisances granted by **§71.780 RSMo.** and in the following statutes:

1. **§80.090 RSMo.** – Villages and Towns
2. **§§79.380 & 79.383 RSMo.** – Cities of the Fourth Class (note, the enabling statute specifies that the fourth class city has a civil cause of action for abatement whereby it must prosecute the nuisance in a court of competent jurisdiction to obtain the abatement relief sought. If the court finds in favor of the city, it may award reasonable attorney's fees to the city).
3. **§77.530 RSMo.** – Cities of the Third Class
4. **§82.300 RSMo.** – Constitutional Charter Cities
5. What about townships? NO! Townships lack statutory authority to prosecute actions to abate public nuisances. *Premium Std. Farms v. Lincoln Twp.*, 946 S.W.2d 234, 240 (Mo. 1997).

**C. CRIMINAL SUMMONS.**

Noncompliance with a declaration of nuisance and order to abate constitutes an ordinance violation for which the owner and/or occupant may be summonsed to municipal court. **§67.410.4 RSMo.** allows for the imposition of a fine of up to \$1,000 or imprisonment or both upon a finding of guilt.

**D. REGISTRATION OF ABANDONED BUILDINGS**

Abandoned and vacant buildings may deteriorate into nuisance conditions if they are not properly maintained. An abandoned building registration program allows the local government to secure and monitor abandoned properties within its jurisdiction. The ordinance should include a clear definition of what constitutes an abandoned building, the registration process, the registration information required, and the fee, if any. **§67.399 RSMo.** allows any municipality or St. Louis County to charge a semiannual abandoned building registration fee of up to \$200.

**II. ABATEMENT EXPANDED.**

**A. WEEDS, VEGETATION, DEBRIS, and RUBBISH**

**§67.398 RSMo.** lists specific conditions that any village, town, or city may regulate from overgrown vegetation to debris and junk. Also specified in the statute are the notice requirements, reasonable time that the owner has to abate, authority of the local government to abate if the owner fails to do so, and that the costs of abatement may be assessed against the property as a special tax bill.

**§71.285 RSMo.** is limited to weeds and trash, and contains a notice and hearing provision. This section also allows the local government to forego the notice and hearing requirements for additional violations on the same property during the calendar year.

**B. DANGEROUS BUILDINGS**

**1. §67.400 RSMo.** – Local governments may require owners and occupants of nuisance buildings to vacate the property, repair the property such that it no longer constitutes a public nuisance, or demolish the property to remedy the nuisance.

**2. Declaration of nuisance - §67.400 RSMo.**

**a. Identification.** The declaration of nuisance and order to abate issued to the owner and/or occupants of the property must identify and enumerate the conditions that are detrimental to the health, safety, or welfare of the residents of the local government. It should include citations to the code of ordinances as well as to adopted codes such as the International Property Maintenance Code and the International Building Code.

**b. Duties.** The declaration should identify the duties of building inspectors and officials.

**c. Notice.** **§67.410 RSMo.** requires adequate notice of the declaration of nuisance. Adequate notice means the declaration identifies with specificity the property upon which the nuisance condition exists; identifies the action necessary to alleviate the nuisance condition; and provides reasonable time for

the owner to comply. Allowable methods of service include personal service or certified mail, but if those methods fail, the statute allows for service by publication.

**d. Hearing.** If the property owner fails to voluntarily abate the nuisance within the time frame indicated in the nuisance, the local government shall conduct a hearing to determine if the property constitutes a public nuisance. The evidentiary standard is competent and substantial evidence

However, this hearing requirement (and the rest of the requirements of §67.410.1 RSMo., for that matter) does not apply to constitutional charter cities. See *City of Jefferson v. Buescher*, 524 S.W.3d 132, 135 (Mo. Ct. App. 2017) holding that:

“[b]ecause Section 67.410.3 gives certain cities the power to enact ordinances concerning the repair or maintenance of buildings without including Section 67.410.1's requirements, and Article VI, section 19(a) of the Missouri Constitution gives charter cities ‘all powers which the general assembly has authority to confer upon any city,’ *City of Ferguson*, 499 S.W.3d at 398-99 (emphasis added), the [charter] City had the power to enact its own ordinances concerning the repair or maintenance of buildings without including Section 67.410.1(4)'s hearing requirement.”

**e. “Or Else” Provision.** The local government may abate the nuisance if the owner fails to do so, and the expenses incurred in the abatement shall be assessed against the property owner via a special tax bill.

**3.** Local governments should ensure that their ordinances are not inconsistent with the statutory authority enabling them. Further, local governments should ensure that they strictly follow their own ordinances when undertaking abatements, especially demolition. No city attorney wants to be in the position where they have to explain a \$206,000 damage award for wrongful demolition! See *McNeill v. City of Kansas City*, 459 S.W.3d 509 (Mo. Ct. App. 2015). See also *Blodgett v. Rhymer*, 279 S.W.3d 242 (Mo. Ct. App. 2009) (finding that the local government could not assess and collect a special tax bill against the property owner because it failed to provide a hearing that was required by its own ordinance).

### III. COST RECOVERY

#### A. SPECIAL TAX BILL.

Statutory authority to recover the expenses of nuisance abatements is granted by **§71.780 RSMo.**, which allows the local government to assess the expenses as a special tax bill against the property. Note that the cost certification authorized under this statute is limited to the actual expenses incurred by the local government in effectuating the abatement. If the local government desires to add fees or fines to the special tax bill, it must first obtain authority from the voters to do so. See **§67.451 RSMo.**

1. Grass, Weeds, and Debris - **§67.398 RSMo.** The expenses of abatement and proof of notice to the owner shall be certified by the city clerk and included on a special tax bill against the property. The special tax bill is both a personal debt against the owner and a lien against the property upon which the nuisance condition existed. See also **§71.285 RSMo.**

2. Dangerous Buildings - **§67.410 RSMo.** The costs of demolition, repair, or securing the structure shall be certified by the city clerk and assessed as a special tax bill.

**B. CIVIL ACTION.**

If the abatement expenses certified as a special tax bill remain unpaid, the local government may prosecute a civil action in the circuit court to secure a judgment against the property owner. Once the local government has reduced the debt to a judgment, it may pursue any available methods of collection including garnishment of wages and bank accounts.

**C. RECEIVERSHIP.**

Receivership is a common law equitable remedy whereby an individual is appointed to a custodial position over property. When demolition is not the appropriate method to abate the nuisance condition of an abandoned property, consider a receivership. The circuit court may appoint a receiver to take charge of the property and effectuate the repairs needed to abate the nuisance conditions. The receiver may seek an order from the court to sell the property to pay for the cost of the abatement repairs.

NOTE! Statutory authority only applies to constitutional charter cities, see **§82.1026 RSMo.** Had the General Assembly intended for receivership to be a remedy for the abatement of nuisance conditions in abandoned buildings in non-charter local governments, it would have enacted appropriate statutory authority.

Local ordinances should be specific because receiverships fall on the extreme end of the severity scale. Consideration should be taken to address the due process rights of the property owners in terms of notice, specific definitions, and enumeration of the powers and responsibilities of the receiver. For an example, see **§56-600 et. seq. of the Kansas City (MO) City Code.**

**IV. ADDITIONAL CONSIDERATIONS**

When local governments perform abatements on nuisance conditions, a holistic approach involving other entities may be beneficial.

- A. **SOCIAL SERVICES.** If the nuisance conditions of an occupied property are dangerous to human habitation, consider involving social services to assist the occupants. Children's Division has resources for families to help them, and they have the authority to remove the children in extreme cases where the nuisance condition rises to the level of neglect. Also, elderly inhabitants of nuisance properties may benefit senior services and health departments. Nuisance conditions of homes occupied by the elderly typically include sanitation issues, hoarding, and an accumulation of pets.
- B. **CIVIC ORGANIZATIONS.** Civic and religious organizations may be available to assist owners and occupants in the repair and rehabilitation of their property. These groups work directly with the property owner to achieve voluntary compliance with the local government's nuisance order. Organizations like Habitat for Humanity may work with the landowner to purchase a vacant, nuisance property, demolish it, and rebuild a new structure on the property.

C. LAW ENFORCEMENT. Code Enforcement Officer safety is at the forefront of any nuisance response. No unsightly, unsanitary, or hazardous condition is worth getting a friend injured or worse. Property owners and occupants who are faced with involuntary abatement by the government could pose a safety risk to code officials and abatement contractors. Consider having a police presence during the abatement if the situation dictates.

## APPENDIX

- I. SAMPLE NUISANCE DECLARATION – WEEDS AND GRASS
- II. SAMPLE DANGEROUS BUILDING DECLARATION AND ABATEMENT ORDER
- III. SAMPLE DANGEROUS BUILDING HEARING NOTICE
- IV. SAMPLE PETITION TO COLLECT ABATEMENT COSTS
- V. SAMPLE ADMINISTRATIVE SEARCH WARRANT FOR DANGEROUS BUILDING
- VI. CITY OF JEFFERSON ABANDONED BUILDING REGISTRATION ORDINANCE

\*LEGAL DISCLAIMER – The sample documents contained herein are examples intended for informational purposes only and should not be construed as sufficient legal documents. Please contact an attorney prior to the use of any or all parts of these documents.

# City of Jefferson

Department of Planning & Protective Services  
320 E. McCarty St. Room 120  
Jefferson City, MO 65101



Carrie Tergin, Mayor

Sonny Sanders, AICP, Director  
Phone: 573-634-6410  
Fax: 573-634-6562

June 26, 2018

## **DECLARATION AND NOTICE OF PUBLIC NUISANCE AND ORDER TO ABATE**

CITY OF JEFFERSON  
320 E MCCARTY ST  
JEFFERSON CITY, MO 65101

RE: 320 E MCCARTY ST (PID:1103070004008001)

Tracking # 17368

To Whom It May Concern:

The City of Jefferson has taken a proactive approach on neighborhood revitalization, which involves environmental inspections within the community. The purpose of these inspections is to identify deteriorating conditions within the community and have those conditions corrected in an effort to protect the health, safety, and welfare of the community.

On 5/10/2018, the office of Code Enforcement inspected 320 E MCCARTY ST and found a violation of "21-2A Noxious weeds and other rank vegetation over twelve (12) inches in height" of the Jefferson City Code of Law.

Please cut all vegetation ( grass, weeds and other vegetation) in a legal manner.

This letter serves as notice that the violation(s) should be corrected within 10 days from the date of this notice.

Failure to resolve the above violations(s) can result in prosecution and/or abatement costs being assessed against your property as a tax lien.

If you have already completed the work listed above; please disregard this notice and accept the thanks of the community for maintaining your property. If you have any questions, please contact this office at (573) 634-6410.

Sincerely,

CODY MCENFORCER  
Housing/Property Inspector  
CC: Occupant

Individuals should contact the ADA Coordinator at (573) 634-6570 to request accommodations or alternative formats as required under the Americans with Disabilities Act. Please allow three business days to process the request.

# City of Jefferson

Department of Planning & Protective Services  
320 E. McCarty St., Room 120  
Jefferson City, MO 65101



Carrie Tergin, Mayor

Sonny Sanders, AICP, Director  
Phone: 573-634-6410  
Fax: 573-634-6562

## DECLARATION AND NOTICE OF PUBLIC NUISANCE AND ORDER TO ABATE

June 26, 2018

CITY OF JEFFERSON  
320 E MCCARTY ST  
JEFFERSON CITY, MO 65101

Re: Property located at: 320 E MCCARTY ST (PID: 1103070004008001)

An inspection was conducted at the property located at 320 E MCCARTY ST and found to be out of compliance with the ordinance(s) described below.

Code Identifier / Code Descriptor:

Chapter 8; Article V, Property Maintenance Code / Chapter 21; Nuisance Code

Violation(s):

1. **304.18 Building Security** which states **In part that exterior doors, windows or hatchways shall be secure from unauthorized entry.**

Correction Action:

1. **secure all ground level and accessible upper level exterior doors, windows and other openings by boarding up using an approved system.**

Corrective action shall be commenced immediately and shall be completed within 10 days of receipt of this letter.

Right to Appeal:

You have the right to appeal this notice by filing a request for appeal with the Department of Planning and Protective Services. The application for appeal must be filed within 10 days of receipt of this letter based on the claim that the intent of the code or rules legally adopted have been incorrectly interpreted. After receipt of your request, a hearing shall be scheduled and you will be notified of the time, date and place of your hearing. Hearing request forms may be downloaded from [www.jeffersoncitymo.gov/government/property\\_maintenance/hearing\\_requests.php](http://www.jeffersoncitymo.gov/government/property_maintenance/hearing_requests.php).

Penalty for Noncompliance:

Section 21-11 provides authority to the City to have the nuisance abated and charge all cost along with a \$250 administration fee to the real estate as a tax lien, should you fail to correct these violations by date specified. In addition, you may be found guilty of a misdemeanor and subject to a municipal fine, not to exceed Five Hundred dollars (\$500.00) and or up to six (6) months in the county jail, pursuant to the Building Code, Chapter 8, Article V, Section 8-50.

Please feel free to contact this office at 573-634-6410 to discuss the matter.

Sincerely,

Housing/Property Inspector  
CC: Occupant

*Individuals should contact the ADA Coordinator at (573) 634-6570 to request accommodations or alternative formats as required under the Americans with Disabilities Act. Please allow three business days to process the request.*

**City of Jefferson**

Department of Planning & Protective Services  
320 E. McCarty St., Room 120  
Jefferson City, MO 65101



**Carrie Tergin, Mayor**

Sonny Sanders, Interim Director  
Phone: 573.634.6410  
Fax: 573.634.6457

February 2, 2017

CITY OF JEFFERSON  
320 E MCCARTY ST  
JEFFERSON CITY, MO 65101

**Certified Mail Notice**  
**1234 5678 9101 1121 3141**

**Re: Request for Hearing/Notice of Hearing Date**  
**320 E McCarty Street**  
**Jefferson City, Missouri**

Dear Mr. Jefferson:

At your request, a hearing regarding the above properties has been scheduled. Please be advised that pursuant to Section 21-8.B of the Nuisance Code, the Director of Planning and Protective Services of the City of Jefferson, Missouri, has scheduled a hearing at the following time and place:

**Wednesday, February 22, 2017 at 9:30 a.m.,**  
**Boone/Bancroft (Large Conference) Room, (Room #200)**  
**John G. Christy Municipal Building (City Hall)**  
**320 E. McCarty Street, Jefferson City, Missouri**

These hearings have been scheduled to address violations of Chapter 8, Article V, Property Maintenance Code and Chapter 21, Nuisance Code as provided by written notice on January 4, 2017 for 827 E. High Street Jefferson City, Missouri:

At the hearing all parties shall have an opportunity to be heard and present relevant evidence. The Hearing Officer shall then determine whether:

1. The building or structure involved is a public nuisance under the terms of this article
2. The procedures required by the Nuisance Code have been substantially followed.
3. The abatement order was reasonable within the standards of the ordinance.

You may represent yourself or be represented by private counsel. Should you choose not to appear, the Hearing Officer may proceed to hear evidence and make a determination on further action by the City.

The technical rules of evidence shall not apply in the hearing. Any relevant evidence may be admitted and considered by the Hearing Officer. Objections to evidence shall be noted and the ruling given by the Hearing Officer. All testimony shall be under oath, which may be administered by the Hearing Officer and a recording shall be made by the City, or a written record of the hearing may be made by a court reporter.

Individuals should contact the ADA Coordinator at (573) 634-6570  
to request accommodations or alternative formats as required under the Americans with Disabilities Act.  
Please allow three business days to process the request.

*Mr. City of Jefferson*

*February 2, 2017*

The hearing shall be closed at the conclusion of all evidence or two hours after the hearing began, whichever occurs first. A continuance of the hearing may be requested by either party and may be granted at the discretion of the Hearing Officer.

If after the hearing, competent and substantial evidence shows the building to be a nuisance and detrimental to the health, safety, or welfare of the residents of the City, the Hearing Officer shall issue specific findings of fact and order the building to be repaired or demolished. If the evidence presented does not support a finding that the building is a nuisance or is detrimental to the health, safety or welfare of the residents of the City, an order reflective of that shall be issued.

In the event that any or all of the parties fail to appear at the hearing, the evidence of the existence of facts which constitute grounds for the demolition of building or mandatory repair and maintenance of a building shall be considered un-rebutted.

If the work needed to abate this nuisance can be completed and verified by inspection, that the nuisance has been abated prior to the scheduled hearing date, then the City shall notify you in writing that the matter is closed and the hearing will be cancelled and no action will be taken.

Sincerely,

Department Director

CC: Relevant Folks

Individuals should contact the ADA Coordinator at (573) 634-6570  
to request accommodations or alternative formats as required under the Americans with Disabilities Act.  
Please allow three business days to process the request.

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI**

|                           |   |                   |
|---------------------------|---|-------------------|
| <b>CITY OF JEFFERSON,</b> | ) |                   |
| <i>Plaintiff,</i>         | ) |                   |
|                           | ) |                   |
| vs.                       | ) | <b>Cause No.:</b> |
|                           | ) |                   |
| <b>SLUMM LORDE,</b>       | ) |                   |
| <i>Defendant.</i>         | ) |                   |

**PETITION FOR DAMAGES**

**Facts Common to All Counts**

1. That Plaintiff is a constitutional charter municipality of the State of Missouri, located in Cole County, Missouri.
2. That Defendant is an individual who resides at and may be found for service of process at 123 DERELICT DRIVE, Jefferson City, Missouri, 65101.
3. That pursuant to its powers as a constitutional charter City, the City of Jefferson has adopted a nuisance code in chapter 21 of the City of Jefferson City Code, which prohibits the maintaining of nuisances within the city. Said ordinance is compliant with the State law on this matter located in RSMO 67.410.
4. Pursuant to the aforementioned chapter 21, nuisances include violations of the City's building code found in Chapter 8, the International Building Code (adopted by reference in Chapter 8 of the City Code) and International Property Maintenance Code (Adopted by Reference in Chapter 8).
5. Chapter 21 provides that the an administrative procedure, which is subject to the Missouri Administrative Procedures Act, allows the City of Jefferson to abate a nuisance

and assess the cost of the abatement to the property after due process.

6. RSMo 71.780 allows a city to collect the cost of abatement of a nuisance against the property owner thusly: “If the nuisance is suppressed within the city limits, the expense for abating the same may be assessed against the owner or occupant of the property...”.
7. In all cases hereinafter mentioned the City of Jefferson followed the procedures set out in Chapter 21 and complied with the Missouri Administrative Procedures Act, and all such abatement actions are final and no longer may be appealed.
8. The total amount of all damages listed in all counts below, equals \$\$\$.

### **COUNT I**

COMES NOW Plaintiff, the City of Jefferson (“City”), by and through counsel, and for Count I of its cause of action against Defendant Slumm Lorde states:

9. Defendant is and was at all relevant times described herein the owner of 123 DERELICT DRIVE Jefferson City, Missouri upon which all events described in this Count of the petition occurred.
10. On or about DATE, the City did board up and secure windows and doors, pursuant to the authorized powers described in the Facts Common to All Counts at a cost of \$, as identified in the certification of costs provided to the City Clerk, which is attached as exhibit A.
11. The abatement action of the City of Jefferson may be charged against the property pursuant to city code chapter 21 and RSMo 71.780.
12. Defendant has not produced payment, nor has she agreed to a payment plan.
13. As a direct and proximate cause of Defendant’s failure to abate a nuisance, the City has suffered damage in that the bill for the cost of abatement described in this Count

remains outstanding.

WHEREFORE, Plaintiff prays for judgment against Defendant Slumm Lorde, for damages in the amount of \$ plus interest at the legal rate until Judgment is satisfied in full, and further relief as the court deems just and proper.

## **COUNT II**

COMES NOW Plaintiff, the City of Jefferson (“City”), by and through counsel, and for Count II of its cause of action against Defendant Slumm Lorde states:

14. Defendant is and was at all relevant times described herein the owner of 123 DERELICT DRIVE, Jefferson City, Missouri upon which all events described in this Count of the petition occurred.
15. On or about DATE, the City did cut and trim weeds and overgrown grass pursuant to the authorized powers described in the Facts Common to All Counts at a cost of \$ as identified in the certification of costs provided to the City Clerk, which is attached as exhibit B.
16. The abatement action of the City of Jefferson may be charged against the property pursuant to city code chapter 21 and RSMo 71.780.
17. Defendant has not produced payment, nor has she agreed to a payment plan.
18. As a direct and proximate cause of Defendant’s failure to abate a nuisance, the City has suffered damage in that the bill for the cost of abatement described in this Count remains outstanding.

WHEREFORE, Plaintiff prays for judgment against Defendant Slumm Lorde, for damages in the amount of \$ plus interest at the legal rate until Judgment is satisfied in full, and further relief as the court deems just and proper.

### **COUNT III**

COMES NOW Plaintiff, the City of Jefferson (“City”), by and through counsel, and for Count III of its cause of action against Defendant Slumm Lorde states:

19. Defendant is and was at all relevant times described herein the owner of 123 DERELICT DRIVE, Jefferson City, Missouri upon which all events described in this Count of the petition occurred.
20. On or about DATE, the City did remove brush, vines and weeds, pursuant to the authorized powers described in the Facts Common to All Counts at a cost of \$400.00, as identified in the certification of costs provided to the City Clerk, which is attached as exhibit C.
21. The abatement action of the City of Jefferson may be charged against the property pursuant to city code chapter 21 and RSMo 71.780.
22. Defendant has not produced payment, nor has she agreed to a payment plan.
23. As a direct and proximate cause of Defendant’s failure to abate a nuisance, the City has suffered damage in that the bill for the cost of abatement described in this Count remains outstanding.

WHEREFORE, Plaintiff prays for judgment against Defendant Slumm Lorde, for damages in the amount of \$400.00 plus interest at the legal rate until Judgment is satisfied in full, and further relief as the court deems just and proper.

### **COUNT VI**

COMES NOW Plaintiff, the City of Jefferson (“City”), by and through counsel, and for Count XVI of its cause of action against Defendant Slumm Lorde states:

24. Defendant is and was at all relevant times described herein the owner of 111 Adams

Street, Jefferson City, Missouri upon which all events described in this Count of the petition occurred.

25. On or about the 27<sup>th</sup> day of October 2014, the City did demolish the dangerous building/residence upon the property, pursuant to the authorized powers described in the Facts Common to All Counts at a cost of \$17,000.00, as identified in the certification of costs provided to the City Clerk, which is attached as exhibit D.
26. The abatement action of the City of Jefferson may be charged against the property pursuant to city code chapter 21 and RSMo 71.780.
27. Defendant has not produced payment, nor has she agreed to a payment plan.
28. As a direct and proximate cause of Defendant's failure to abate a nuisance, the City has suffered damage in that the bill for the cost of abatement described in this Count remains outstanding.

WHEREFORE, Plaintiff prays for judgment against Defendant Slumm Lorde, for damages in the amount of \$17,000.00 plus interest at the legal rate until Judgment is satisfied in full, and further relief as the court deems just and proper.

#### **COUNT V**

COMES NOW Plaintiff, the City of Jefferson ("City"), by and through counsel, and for Count XVII of its cause of action against Defendant Slumm Lorde states:

29. Defendant is and was at all relevant times described herein the owner of 105 Jackson Street, Jefferson City, Missouri upon which all events described in this Count of the petition occurred.
30. On or about the 15<sup>th</sup> day of January, 2015, the City did cut down a dead tree, demolish a shed, and removed debris, pursuant to the authorized powers described in the

Facts Common to All Counts at a cost of \$780.00, as identified in the certification of costs provided to the City Clerk, which is attached as exhibit E.

31. The abatement action of the City of Jefferson may be charged against the property pursuant to city code chapter 21 and RSMo 71.780.
32. Defendant has not produced payment, nor has she agreed to a payment plan.
33. As a direct and proximate cause of Defendant's failure to abate a nuisance, the City has suffered damage in that the bill for the cost of abatement described in this Count remains outstanding.

WHEREFORE, Plaintiff prays for judgment against Defendant Slumm Lorde, for damages in the amount of \$780.00 plus interest at the legal rate until Judgment is satisfied in full, and further relief as the court deems just and proper.

Respectfully Submitted,

/s/ City Attorney

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City Attorney, # 12345  
CITY OF JEFFERSON  
320 East McCarty  
Jefferson City, Missouri 65101  
Telephone: (573) 634-6313  
Facsimile: (573) 634-6504

ATTORNEY FOR PLAINTIFF

**APPLICATION**

FOR ADMINISTRATIVE SEARCH WARRANT TO AUTHORIZE  
A SEARCH AND INSPECTION OF PROPERTY FOR COMPLIANCE WITH CHAPTERS 8,  
13 AND 21 OF THE CODE OF THE CITY OF JEFFERSON

STATE OF MISSOURI        )  
  ) ss.  
COUNTY OF COLE         )

IN THE MUNICIPAL COURT, DIVISION VII OF THE COLE COUNTY CIRCUIT  
COURT WITHIN AND FOR THE COUNTY OF COLE:

Bryan W. Wolford, Associate City Counselor being duly sworn, deposes and states upon information and belief that the property, articles, materials or substances that constitute a violation of Chapters 8, 13 and 21 of the Code of the City of Jefferson, to-wit:

Slumm Lorde is the owner of an inhabited residential structure known as 123 Derelict Drive, Jefferson City, Missouri, (hereafter referred to as the "Property"). The property is open to the public. On May 5, 2017, Property Housing Inspector Cody McEnforcer has observed from the City's right-of-way and public common area violations of Chapters 8, 13 and 21 of the City Code. The violations include no electric service to the top floor of the building and electricity provided via an external extension cord, the roof is rotted and deteriorated, the odor of cat urine and feces is detectible from the street and numerous cats were observed in the windows, broken wooden back decks, blocked exits, and trash strewn about the premises. The conditions thereon pose a threat to the health, safety, and welfare of the occupants. Based upon the type of violations and the visual inspection on those days, Inspector Helmick believes the violations extend further into the building and contain violations of the City's Building and Property Maintenance Codes, found in Chapter 8, Fire Code, found in Chapter 13, and Nuisance Code, found in Chapter 21. An additional inspection of the entire property is necessary to determine compliance with the Code and whether the Property poses a real and immediate threat to the life and property of persons within the structure. The property owner has refused requests for entry in to the Property which prevents inspection without a warrant.

At the following location:

123 Derelict Drive, Jefferson City, Missouri, including all structures therein.

That the basis of the affiant's information and belief are contained in the attached affidavit of Property Housing Inspector Cody McEnforcer to facts concerning the said matter which affidavit is made a part hereof and submitted herewith as a basis upon which the Court may find the existence of probable cause for the issuance of said warrant.

A search warrant is authorized pursuant to the United States Supreme Court in *Camara v. Municipal Court of the City and County of San Francisco* 387 U.S. 523 in that:

1. The Court states: “Where considerations of health and safety are involved, the facts that would justify an inference of ‘probable cause’ to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken. Experience may show the need for periodic inspections of certain facilities without a further showing of cause to believe that substandard conditions dangerous to the public are being maintained. The passage of a certain period without inspection might of itself be sufficient in a given situation to justify the issuance of warrant.” *Camara v. Municipal Court of the City and County of San Francisco* 387 U.S. 523.
2. Chapters 8, 13, and 21 allow inspection for the safety of the public and allow for an appeal process for any finding by a code official. The appeal is first to a hearing officer, then if needed to the Circuit Court.
3. The owner has not returned multiple phone calls requesting consent to inspect the property.

WHEREFORE, applicant prays that a search warrant be issued as provided by law in Section 20.10.1 of the Code of the City of Jefferson.

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Associate City Counselor

**SEARCH WARRANT**

A SEARCH AND INSPECTION OF PROPERTY FOR COMPLIANCE WITH CHAPTERS 8,  
13, AND 21 OF THE CODE OF THE CITY OF JEFFERSON

STATE OF MISSOURI        )  
  )ss.  
COUNTY OF COLE         )

IN THE CIRCUIT COURT, MUNICIPAL DIVISION, WITHIN AND FOR SAID  
COUNTY:

WHEREAS, an application in writing duly verified by oath, has been filed with the undersigned Judge of this Court stating upon information and belief that certain property, articles, materials or substances that constitute evidence of a violation of Chapters 8, 13, and 21 of the Code of the City of Jefferson:

Slumm Lorde is the owner of an inhabited residential structure known as 123 Derelict Drive, Jefferson City, Missouri, (hereafter referred to as the "Property"). The property is open to the public. On May 5, 2017, Property Housing Inspector Cody McEnforcer has observed from the City's right-of-way and public common area violations of Chapters 8, 13 and 21 of the City Code. The violations include dangerous and unsound structural members, ceiling, roof structural members, and stairs rotted and deteriorated, infestation of insects, obstructed paths of egress by windows being boarded, and accumulation of trash, rubbish, and garbage about the premises. The conditions thereon pose a threat to the health, safety, and welfare of the occupants. Based upon the type of violations and the visual inspection on those days, Inspector Helmick believes the violations extend further into the building and contain violations of the City's Building and Property Maintenance Codes, found in Chapter 8, Fire Code, found in Chapter 13, and Nuisance Code, found in Chapter 21. An additional inspection of the entire property is necessary to determine compliance with the Code and whether the Property poses a real and immediate threat to the life and property of persons within the structure. The property owner has refused requests for entry in to the Property which prevents inspection without a warrant.

At the following location:

123 Derelict Drive, Jefferson City, Missouri, including all buildings and sub-units therein.

WHEREAS, the Judge of this Court from the sworn allegations of said application and from the supporting written affidavit filed therewith has found that there is probable cause to believe the allegations of the application to be true and probable cause for the issuance of a search and seizure warrant herein.

NOW THEREFORE, any code official and/or fire inspector is commanded to search the buildings, rooms, and sub-units located in or upon 123 Derelict Drive, Jefferson City, Missouri, within ten days after the issuance of this administrative search warrant between the hours of 8:00

a.m. and 6:00 p.m. If said above-described violations are found on said premises, that you photograph or copy the same, and take same into possession any item which violates Chapters 8, 13, or 21 of the Code of the City of Jefferson and causes an immediate danger to life of any occupants, making a complete and accurate inventory of the articles, materials or substances so taken in the presence of the person from whom possession of the same is taken, if that be possible, and giving to such person a receipt for such property, together with a copy of this warrant, or, if no person be found in violations of said chapters that a duly verified copy of the return and inventory be filed with this Court within ten days of the execution of this search warrant.

This warrant issued at \_\_\_\_\_ AM/PM on the 10th day of May, 2017.

Witness my hand attached hereto at that time and date.

\_\_\_\_\_  
JUDGE

**AFFIDAVIT SUPPORTING SEARCH WARRANT**

Comes now, Cody McEnforcer duly sworn and under oath and states as follows:

1. I am a Senior Housing Inspector assigned by the Department of Planning and Protective Services to inspect 123 Derelict Drive, Jefferson City, Missouri, for compliance with Chapters 8, 13 and 21 of Code of the City of Jefferson City, Missouri.
2. I viewed 123 Derelict Drive from the City's right-of-way and public common area, from the public area of the premises, and from Unit # by invitation of the tenant, on May 5, 2017 and observed the following violations of Chapters 8, 13, 21:
  - a. dangerous and unsound structural members;
  - b. ceiling, roof structural members, and stairs rotted and deteriorated;
  - c. infestation of insects;
  - d. obstructed paths of egress by windows being boarded;
  - e. accumulation of trash, rubbish, and garbage about the premises.
3. I believe these conditions and others which I personally observed violate numerous provisions of the Building, Property Maintenance, Fire, and Nuisance Codes.
4. Based on the type of violations and my personal observations it is likely that the violations extend beyond those viewed from the right-of-way and public common area and the public common area.
5. "Where considerations of health and safety are involved, the facts that would justify an inference of 'probable cause' to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken. Experience may show the need for periodic inspections of certain facilities without a further showing of cause to believe that substandard conditions dangerous to the public are being maintained. The passage of a certain period without inspection might of itself be sufficient in a given situation to justify the issuance of warrant." *Camara v. Municipal Court of the City and County of San Francisco* 387 U.S. 523

\_\_\_\_\_  
Cody McEnforcer

Subscribed and sworn to before me this date: May 10, 2017.

\_\_\_\_\_  
Notary Public

## ARTICLE VIII. ABANDONED BUILDINGS

### Sec. 8-150. Findings

The City Council determines that the presence of vacant and abandoned structures creates an element of neighborhood blight. It is recognized that blight lowers property values, leads to deteriorating housing conditions, undermines the quality of neighborhood life, affects the public health, safety and general welfare and can also result in human injury and criminal activities. It is also determined that vacant and unoccupied structures occupy an inordinate amount of City administrative and ordinance enforcement resources. As such, the City Council finds the prolonged presence of vacant and abandoned structures to be unacceptable to the citizens of Jefferson City.

### Sec. 8-151. Definitions

As used in this chapter:

- A. "Abandoned structure" means any building which, including an accessory building, including buildings owned, operated, or subsidized by public or nonprofit agencies, which:
1. has been unoccupied for a period of at least ninety (90) consecutive days; and
  2. which also meet at least two of the following conditions:
    - a) not secured; or
    - b) Is fire damaged to an extent which prohibits safe human occupancy; or
    - c) Is the site of loitering or vagrancy; or
    - d) Demonstrates a lack of property maintenance and upkeep as evidenced by one or more violations of the City Code; or
    - e) Has been boarded up for at least ninety (90) days; or
    - f) Has taxes in arrears to the City for a period of time exceeding 365 days; or
    - g) Has water and/or electricity that has been disconnected; or
    - h) Is structurally unsound; or
    - i) Is a potential hazard or danger to persons.

(Ord. 15777, §2, 4-2-2018)

- B. "Accessory building" means a subordinate structure on the same premises as the main structure, the use of which would be naturally and normally incidental to that of the main structure, whether the main structure is an Abandoned Structure or not, such as, but not limited to, a garage, barn or storage shed.
- C. "Director" means the Director of Planning and Protective Services or his or her designee. (Ord. 15777, §2, 4-2-2018)

- D. "Owner" means any person with a legal or equitable ownership interest in the structure.
- E. "Secured" means a building which has all points of entry into the structure either:
  - 1. Closed by use of windows and doors which are in proper working order, intact, without holes, broken elements, and are locked; or
  - 2. Are secured by clear polycarbonate sheeting in compliance with this chapter.

(Ord. 15777, §2, 4-2-2018)

### **Sec. 8-152. Registration**

Owners of Abandoned Structure shall register such properties with the City and pay an administration fee. Registration shall occur upon the building meeting the requirements set forth in this Article, and in no event more than 15 days after notice by the City that the property is required to be registered. The duty to register an Abandoned Structure shall not require prior notice to the owner by the City. Registration of an Abandoned Structure does not preclude the City from taking appropriate actions to secure the property or to issue orders to repair or abate dangerous, hazardous or unlawful conditions or from acting to eliminate an imminent hazard to public health and safety.

### **Sec. 8-153. Registration Information**

- A. For each Abandoned Structure each owner shall register with the City and provide the following information on an Abandoned structure Registration Form available from the City:
  - 1. The common name of the property, if any, and exact street address of each dwelling to be registered, including unit number and total number units in the dwelling;
  - 2. The legal names of all owners of the property;
  - 3. The complete mailing address of all owners;
  - 4. Telephone numbers of each owner, including cell phone and mobile phone numbers;
  - 5. Date of birth of all owners;
  - 6. If the property is owned by a corporation, limited liability company, partnership, limited partnership, trust or real estate investment trust, the name, address and phone number of the any following shall be provided:
    - a. For a corporation, a corporate officer and the chief operating officer;
    - b. For a partnership, the managing partner;
    - c. For a limited liability company, the managing or administrative member;
    - d. For a limited partnership, a general partner;
    - e. For a trust, a trustee; or
    - f. For a real estate investment trust, a general partner or an officer.

7. The full name, address, telephone number, and email address of a local agent or representative authorized by the owner to handle the affairs of the property. The local agent or representative shall be an individual over the age of 18 years. For the purpose of this subsection, "local" shall mean a person who resides within the City of Jefferson or within fifty (50) miles of the City limits and may be one of the owners. If the local representative is not an owner, the owners shall provide proof that the local representative is authorized to act on the owner's behalf;
8. The reason for vacancy of the property;
9. The estimated length of time the property is expected to remain vacant; and
10. Any plans for restoration, reuse or removal with an accompanying timeline and work schedule.

(Ord. 15777, §2, 4-2-2018)

- B. An owner shall notify the City and file an amended form within seven days of any change in the registration information required by this section.

#### **Sec. 8-154. Registration**

- A. An owner of an Abandoned Structure, whether registered or not, shall pay an Abandoned Structure registration fee, the amounts of which shall be established by the City Administrator, for the time during which such structure remains an Abandoned Structure.
- B. The Director shall investigate any property that may be subject to registration. Based upon his findings, the Director may register property as a vacant residential structure subject to this Article.
- C. Within five (5) business days of such registration, the Director shall notify the owners of the registered property by mail at their last known address according to the records of the City of Jefferson and Cole County. Such notice shall state:
  1. A description of the property registered;
  2. A description of the abandoned building criteria found on the property;
  3. The fact that a semi-annual registration fee has been levied on the property; and
  4. The amount of the semi-annual registration fee.
- D. Within thirty (30) days of the date of notification, the property owner may complete any improvements to the property that may be necessary to remove the property from registration under this Article and may request an inspection of the property and reconsideration of the levy of the registration fee. Upon receipt of a written request for reconsideration of the levy of the registration fee which sets out the reasons claimed by the property owner as to why the registration fee should be waived, the Director may waive levy of the registration fee following timely compliance.
- E. Appeal of Registration and/or Reconsideration To City Administrator. Within thirty (30) days of the date of such notification or within thirty (30) days of the date of reconsideration by the Director, the property owner may appeal the decision to the City Administrator. The decision of the City Administrator shall constitute a final administrative decision pursuant to Section 536 of the Revised Statutes of Missouri.

(Ord. 15777, §2, 4-2-2018)

#### **8-155. Registration Fee**

- A. Amount of Fee. There is hereby established and assessed a semi-annual fee in the amount of two hundred dollars (\$200.00) imposed on all owners of property registered under this Article.
- B. Owner Responsible. It shall be the joint and several responsibility of each owner of property registered pursuant to this Article to pay the semi-annual registration fee.
- C. Accrual of Fee. The registration fee shall begin to accrue on the beginning of the second (2nd) calendar quarter after registration by the Director or reconsideration by the Director; however, in the event that an appeal is filed with Circuit Court, the registration fee shall begin to accrue on the beginning of the second (2nd) calendar quarter after the final decision of the Circuit Judge or court of competent jurisdiction.
- D. Billing Procedures-Late Penalties. The Finance Department shall cause to be mailed to the owner of property registered under this Article, at his/her last known address, a bill for the semi-annual registration fee. The fee shall be due and payable within thirty (30) days of mailing. In addition to any other penalties provided by law, if an owner fails to pay the fee assessed for such property within thirty (30) days of the date of mailing, a late payment fee of twenty-five dollars (\$25.00) per month shall be assessed for each month during which the fee remains unpaid.
- E. Failure to Pay Fee Unlawful. It shall be unlawful for any owner of property registered pursuant to this Article to fail to pay the registration fee imposed for such property. Any person found guilty of failing to pay any required fee shall be punished as provided in Section 1-13 of the City Code.
- F. Collection of Delinquent Fees – Lien on Property and Other Effects of Delinquent Fees-Foreclosure Proceedings.
  - 1. Action to Recover. In addition to any other penalties provided by law, the City may initiate and pursue an action in a court of competent jurisdiction to recover any unpaid fees, interest and penalties from any person liable therefore and, in addition, may recover the cost of such action, including reasonable attorney fees.
  - 2. Lien on Property. Any unpaid or delinquent fees, interest and/or penalties, whether or not reduced to judgment, shall constitute a lien against the property for which the fee was originally assessed until the same shall be fully satisfied. The City Clerk is authorized to take all steps necessary to file and perfect such liens as may be required or directed by the Director from time to time.
  - 3. Obtaining Permits Prohibited. In addition to any other penalties provided by law, if an owner fails to pay the fee assessed for such property, including any late payment fee subsequently imposed, within sixty (60) days of the date of mailing of the initial bill, said owner shall not be permitted to apply for, obtain or renew any City license or permit of any kind until such delinquency has been satisfied.
  - 4. Foreclosure. Any registration fees which are delinquent for a period of one (1) year shall be subject to foreclosure proceedings in the same manner as delinquent real property taxes. The owner of the property against which the assessment was originally made shall be able to redeem the property only by presenting evidence that the violations of the applicable City Code cited by the Director has been cured and presenting payment of all registration fees and penalties.
  - 5. Sale of Property. Upon bona fide sale of the property to an unrelated party, the lien on such property for the registration fees shall be considered released and the delinquent registration fee forgiven.

(Ord. 15777, §2, 4-2-2018)

### **Sec. 8-156. Securing Structures**

All Abandoned Structures must be secured upon qualifying as an Abandoned Structure, or upon notice that the building must be registered as an Abandoned Structure, or upon order of the Director of Planning and Protective Services or his or her designee.

- A. A City order to secure an abandoned property shall be complied with by the owner within seventy-two hours. If the securing has not been completed or does not comply with the requirements for securing the structure under this chapter, the City shall secure the structure and the City shall bill the owner of record for all costs incurred, including service fee and administrative costs. The amount so billed may be assessed as a lien against the property and shall also be a personal debt against the owner of the abandoned property.
- B. If any structure previously ordered secured and then subsequently secured by the City shall thereafter become unsecured without the consent of the City, the City shall re-secure the structure. The costs of re-securing the structure shall be assessed against the owner as a lien against the property and shall also be a personal debt against the owner of the abandoned property.
- C. Clear polycarbonate sheeting shall be placed over all points of entry on an Abandoned Structure such that all exterior openings suitable for animal or human entry are secured as follows:
  - 1. On all first story and ground accessible points of entry, such shall be secured by use of clear polycarbonate sheeting or its equivalent, of approved thickness, cut to the size of the opening and secured by the use of an appropriate mounting system; and
  - 2. On entry points being secured above the first story or were not accessible from ground level, such shall be secured by use of clear polycarbonate sheeting or its equivalent of approved-thickness, cut to the size of the opening and secured by the use of an appropriate mounting system.

(Ord. No. 15689, §1, 8-7-2017)

### **Sec. 8-157. Right of Entry and Inspection**

If the owner has failed to secure a property and it has been secured by the City, the City may enter or reenter the structure to conduct necessary inspections to insure compliance with the requirements of this chapter and to determine if there are any emergency or hazardous conditions.

### **Sec. 8-158. Reuse and Occupancy**

No Abandoned Structure shall be reoccupied until inspected and found to be in full compliance with all applicable City codes and a Certificate of Occupancy is issued by the City.

**Sec. 8-159. Responsibility for Violations**

All nuisance, housing, building and related code violations will be cited and noticed to the owner of record and shall become the owner's responsibility to bring in compliance. If the owner sells or otherwise disposes of the property to another party, the new owner shall not be entitled to any extension of time to correct or address such violations as existed at the time of sale, transfer or conveyance of the property.

**Sec. 8-160. Penalty**

- A. A person who fails to comply with the requirements of this Article is guilty of an ordinance violation and shall be subject to a fine of not more than Five Hundred Dollars (\$500) or up to ninety (90) days in jail, or both, for each offense.
- B. In addition to any other penalty provided, the City may enforce this Article by a suit for an injunction.
- C. Prior to charging any person with violating the registration requirement in Article VIII, the City Administrator shall notify the accused of the violation and give the accused ten days to register, if the accused shall register within the said ten days then this shall be a complete defense to the charge of failure to register.

(Ord. 14786, §1, 4-18-2011; Ord. No. 14829, §6, 8-1-2011; Ord. 15777, §2, 4-2-2018)