



**CITY OF BELTON
CITY COUNCIL
WORK SESSION
TUESDAY, AUGUST 7, 2018 – 6:30 P.M.
CITY HALL ANNEX
520 MAIN STREET
AGENDA**

- I. CALL WORK SESSION TO ORDER
 - II. ITEMS FOR REVIEW AND DISCUSSION
 - A. Abatement and Enforcement Committee update, including review on a revised ordinance for the administrative search warrant process.
- Page 3
- B. Other Business
 - III. ADJOURN

SECTION II

A



CITY OF BELTON CITY COUNCIL INFORMATION FORM

AGENDA DATE: August 7, 2018

DIVISION: Planning and Building, Legal Department

COUNCIL: Regular Meeting Work Session Special Session

<input type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution	<input type="checkbox"/> Consent Item	<input type="checkbox"/> Change Order	<input type="checkbox"/> Motion
<input type="checkbox"/> Agreement	<input checked="" type="checkbox"/> Discussion	<input type="checkbox"/> FYI/Update	<input type="checkbox"/> Presentation	<input type="checkbox"/> Both Readings

ISSUE/RECOMMENDATION:

Review and discussion of the work of the Abatement and Enforcement Committee, including a review on a revised ordinance for the administrative search warrant process.

BACKGROUND:

The City Manager created an inter-departmental working group, the Abatement and Enforcement Committee. The committee consisted of staff from the Planning and Building Department, Police and Fire staff, City Prosecutor, Municipal Court Administrator, City Attorney, City Clerk and Assistant City Manager/Finance Director.

The purpose of the group was to focus on the City Council priority of Code Enforcement, and determine if current procedures were sufficient to bring about enhancements in enforcement and compliance efforts.

The Committee met on January 18th, February 15th and April 5th, 2018. Among the topics discussed were enforcement activity reports, perpetual violators, business license coordination with code enforcement, the administrative search warrant process and communications with all parties.

Enforcement process flow charts were prepared to help analyze current enforcement processes for weed abatement, public nuisances, dangerous structures and the administrative search warrant process.

After discussion, the Committee determined that the existing administrative search warrant process was inefficient and did not provide adequate guidance to staff in meeting the process requirements of the code. To address this, the City Attorney, Court Administrator and City Prosecutor prepared a revised administrative search warrant procedures that improves department and court procedures and provides appropriate due process to property owners.

IMPACT AND ANALYSIS:

The Abatement and Enforcement Committee believe the updated flow charts provide improved processes, efficiency and communication for enforcement activities.

The proposed administrative search warrant revisions will help ensure that procedures and requirements are completely addressed, and property rights of owners and occupants are properly balanced with the health, safety and general welfare of the citizens of Belton.

STAFF RECOMMENDATION AND ACTION:

Staff recommends that the City Council acknowledge the process improvement and flow charts revisions by the Enforcement and Abatement Committee, and schedule an Ordinance for approval for the revised Administrative Search Warrant process.

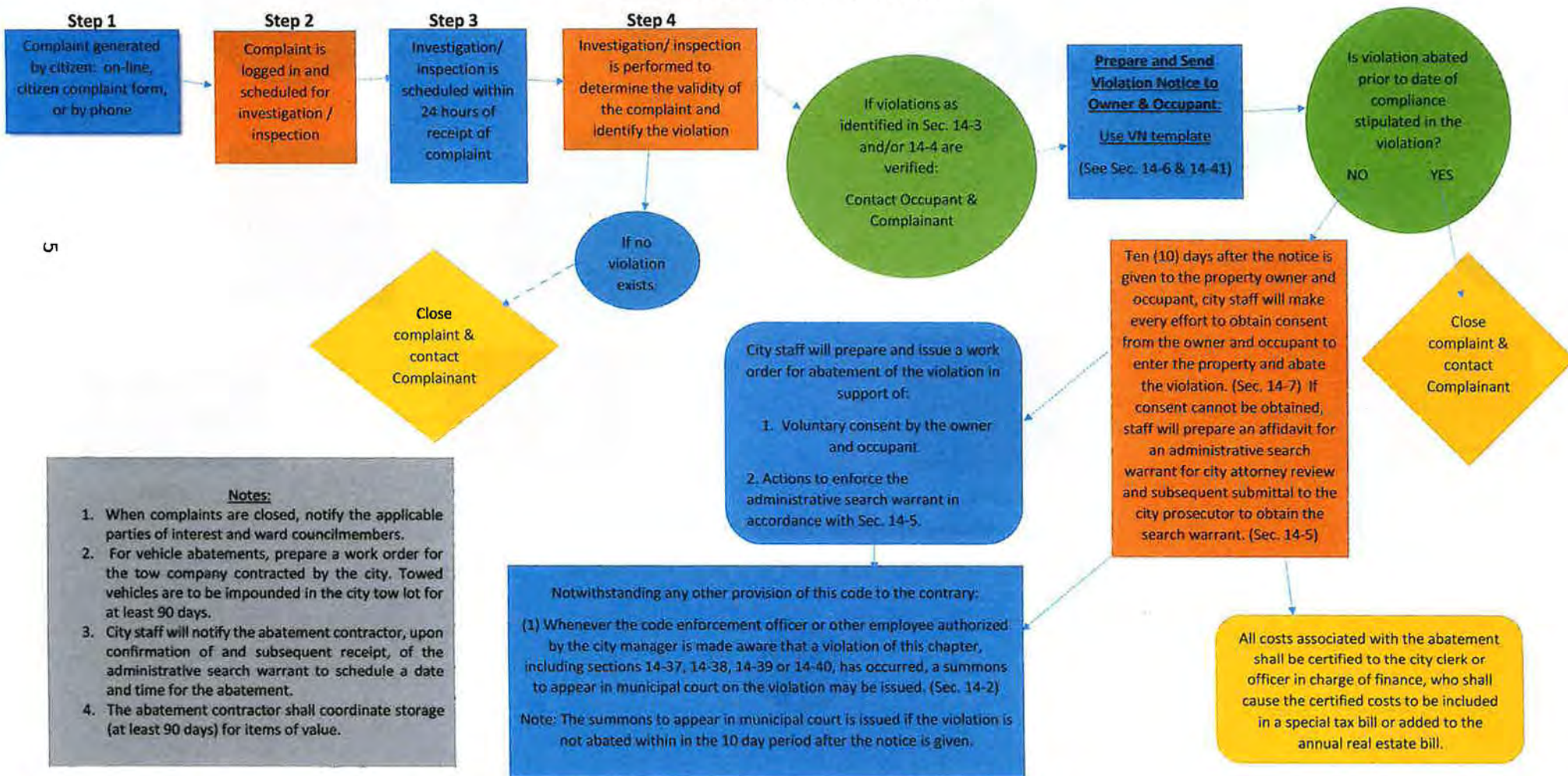
LIST OF REFERENCE DOCUMENTS ATTACHED:

1. Abatement of Public Nuisances: Junk, Trash, Debris Flowchart
2. Abatement of Weeds and Vegetation Flowchart
3. Dangerous Structure Process Flowchart
4. Administrative Search Warrant Process Flowchart
5. Administrative Search Warrant Procedures



Abatement of Public Nuisances: Junk, Trash, Debris Flowchart

Belton Code of Ordinances- Chapter 14- Article I

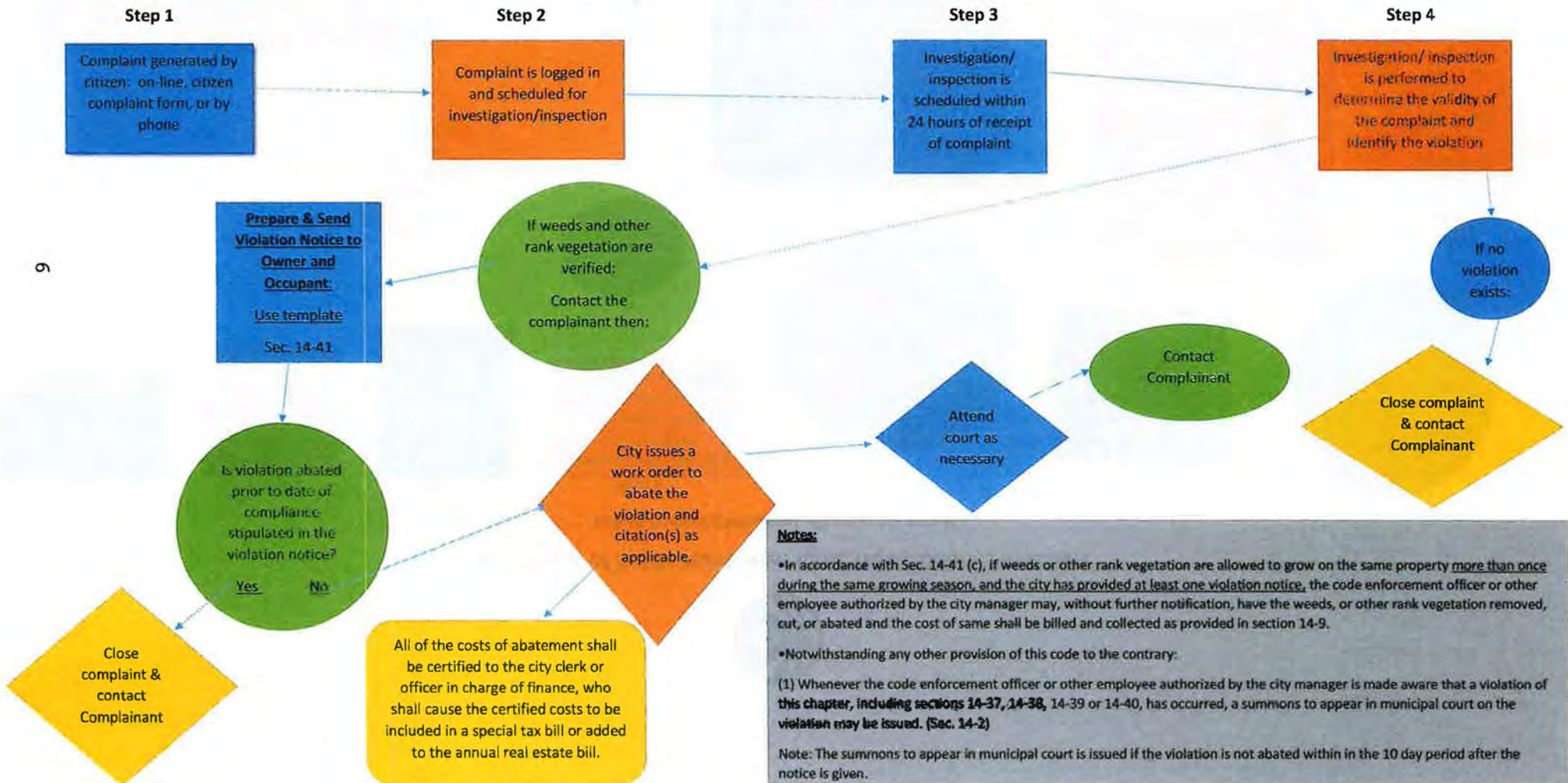


*larger print document available at meeting



Abatement of Weeds and Vegetation Flowchart

Belton Code of Ordinances- Chapter 14- Article II

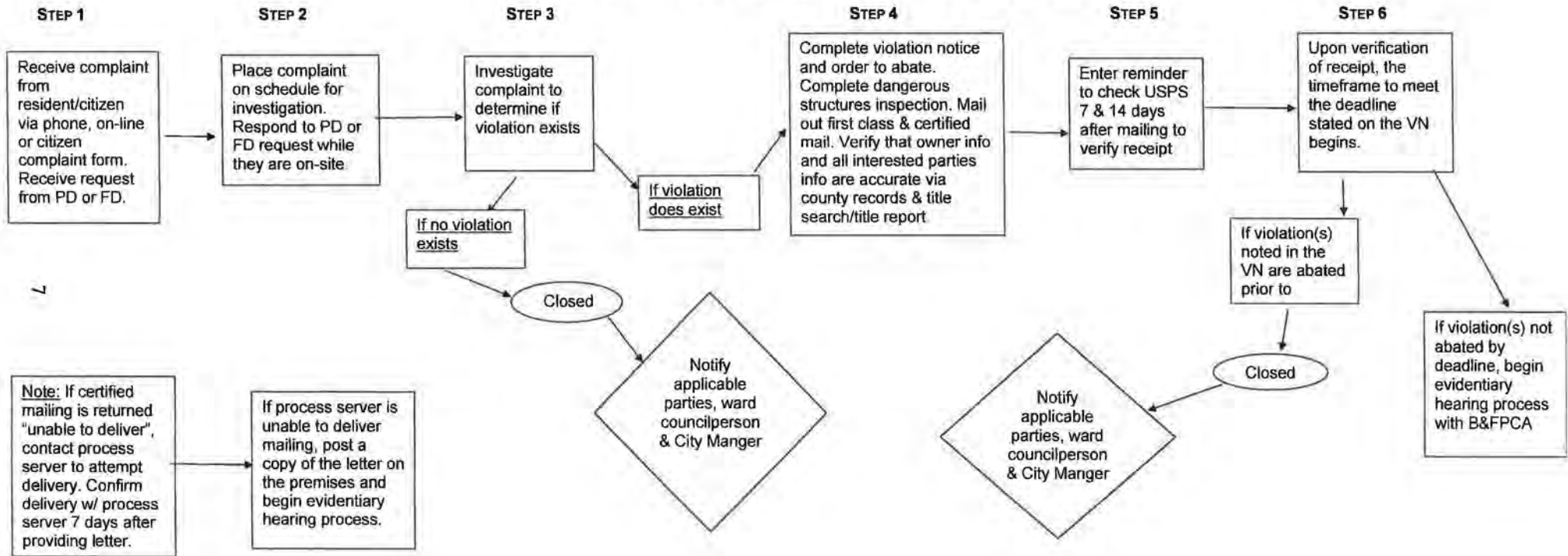


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DANGEROUS STRUCTURE PROCESS FLOWCHART

UNIFIED DEVELOPMENT CODE- (UDC) - CHAPTER 10- ARTICLE III



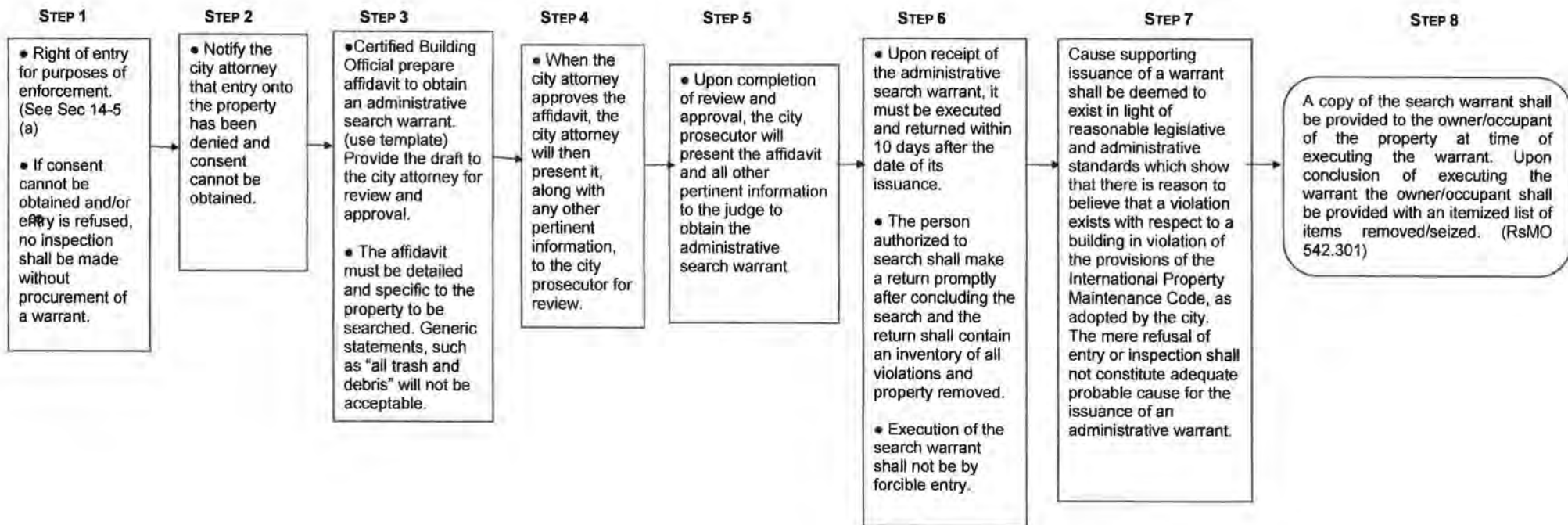
1. Date of compliance for violation notice and order to abate will typically be no less than 30 days.
2. Due process must be followed in all cases. No exception.
3. If the owner and/or tenant refuses entry onto the property or within the structure(s), leave the premises and begin the administrative search warrant process.

* larger print document available at meeting



ADMINISTRATIVE SEARCH WARRANT PROCESS FLOWCHART

BELTON CODE OF ORDINANCES- CHAPTER 14- ARTICLE I- SEC. 14-5



* larger print document available at meeting

Bold print means addition; ~~Strikethrough~~ means deletion

With Referenced Forms in Blue

7-6-18 FINAL

Sec. 14-5. - Right of entry for purposes of enforcement, **Administrative Search Warrant**.

- (a) Whenever necessary to make an inspection or to enforce any of the provisions of this Code on **private property** or whenever the code enforcement officer, **building official**, chief of police, **fire official** or other employee authorized by the city manager (**hereinafter "authorized person"**) has reasonable cause to believe that there exists a nuisance, or in any building or structure any condition which makes such building or structure unsafe, ~~the code enforcement officer, chief of police, or other employee authorized by the city manager~~ **authorized person** may go upon the property and/or enter the building or structure at any reasonable time to inspect the same or to perform any duty imposed upon the ~~code official~~ **authorized person** by this Code, including abatement or removal of any nuisance; provided, if such property is occupied, the ~~code official~~ **authorized person** shall first present proper credentials and request and obtain permission to enter before entering the building or structure. Reasonable effort must be made to locate the owner or other persons having charge or control of the property when seeking permission for entry.
- (b) If no consent has been given to enter or inspect any building, structure, or premises, no entry or inspection shall be made without the procurement of an **administrative search** warrant from the judge presiding in the municipal court.
- ~~(c) If a complaint in writing is filed by the code official, any police officer, city attorney or prosecuting attorney of the city with the municipal court of the city stating that he or she has probable cause to believe there exists on a property or in a building or structure, more particularly described therein, a violation or violations of provisions of this Code and it is within the territorial jurisdiction of the city, and if the complaint is verified by oath or affirmation stating evidential facts from which the judge determines the existence of probable cause, then the judge may issue a search warrant directed to the authorized person to search the structure or premises therein described for the purposes requested.~~
- ~~(d) The search warrant must be executed and returned within ten days after the date of its issuance. The person authorized to search shall make a return promptly after concluding the search and the return shall contain an itemization of all violations of this Code discovered pursuant to the search. Refusal to allow entry upon presentation of a search warrant shall be an ordinance violation. Execution of a search warrant issued under this section shall not be by forcible entry.~~
- ~~(e) For its determination of probable cause for issuance of an administrative warrant, the municipal court may consider any of the following factors along with such other matters as it deems pertinent in its discretion as to whether a warrant shall be issued:
 - ~~(1) Eyewitness accounts of violation;~~
 - ~~(2) Citizen complaints;~~
 - ~~(3) Tenant complaints;~~
 - ~~(4) Plain view violations;~~
 - ~~(5) Violations apparent from city records;~~
 - ~~(6) Nature of alleged violation, the threat to life or safety and imminent risk of significant property damage;~~
 - ~~(7) Previous unabated or similar violations in the building or structure or on the premises;~~
 - ~~(8) Passage of time since the last inspection of the building, structure, or premises;~~
 - ~~(9) The age and condition of the building or structure to be inspected; and~~~~

~~(10) Whether the scope of the search has been specifically and narrowly defined so as to limit the discretion of the inspector.~~

~~(f) Cause supporting issuance of a warrant shall be deemed to exist in light of reasonable legislative and administrative standards which show that there is reason to believe that a condition of nonconformity exists with respect to a building in violation of the provisions of the International Property Maintenance Code, as adopted by the city. The mere refusal of entry or inspection shall not constitute adequate probable cause for the issuance of an administrative warrant.~~

(c) Administrative search warrant defined – who may issue, execute.

(1) An administrative search warrant is a written order of the municipal court judge commanding the search or inspection of any property, place or thing, and the seizure, photographing, copying or recording of property or physical conditions found thereon or therein, to determine or prove the existence of violations of any ordinance or code section of the city of Belton relating to the use, condition or occupancy of property or structures located within the city, or to enforce the provisions of any such ordinance or code section.

(2) The municipal court judge having original and exclusive jurisdiction to determine violations against the ordinances of the municipality may issue an administrative search warrant when:

a. The property or place to be searched or inspected or the thing to be seized is located within the city of Belton at the time of the making of the application; and

b. The owner or occupant of the property or place to be searched or inspected or the thing to be seized has refused to allow same after official request by the authorized person.

(3) Any such administrative search warrant shall be directed to the chief of police or any other police officer of the city of Belton and shall be executed by the chief of police or said police officer within the city of Belton limits and not elsewhere.

(d) Who may apply for an administrative search warrant – contents of application.

(1) The city prosecutor or city attorney for the city of Belton may make application to the municipal court for the issuance of an administrative search warrant.

(2) The application shall:

a. Be in writing;

b. State the time and date of the making of the application;

c. Identify the property or places to be entered, searched, inspected or seized in sufficient detail and particularity that the officer executing the administrative search 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 authorized person to allow such action and refused to allow such action ([denial of access form](#));

e. State facts sufficient to show probable cause for the issuance of an administrative search warrants, as provided in subsection (c)(1) hereof, to:

1. Search or inspect for violations of an ordinance or code section specified in the application; or

2. Show that entry or seizure is authorized and necessary to enforce an ordinance or code section specified in the application and that any required due process has been afforded prior to the entry or seizure;

f. Be verified by the oath or affirmation of the applicant; and

g. Be signed by the applicant and filed in the municipal court.

(3) The application shall 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 an administrative search warrant and in filling out any deficiencies in the description of the property or place to be searched or inspected. Oral testimony shall not be considered.

(e) Hearing and procedure – contents of administrative search warrant – execution and return.

(1) Hearing and procedure.

a. The municipal court judge shall hold a non-adversary hearing to determine whether probable cause exists to enter, inspect or search for violations of any city of Belton ordinances or code section, or to enforce any such ordinance or code section.

b. In doing so the municipal court judge shall determine whether the action to be taken by the city of Belton is reasonable in light of the facts stated. The municipal court judge shall consider:

1. The goals of the ordinance or code section sought to be enforced;
2. The physical condition of the specified property;
3. The age and nature of the property;
4. The condition of the area in which the property is located;
5. The known violation of any relevant city of Belton ordinance or code section;
6. Eyewitness accounts of violation;
7. Citizen complaints;
8. Tenant complaints
9. Plain-view violations;
10. Violations apparent from city records;
11. Nature of alleged violation, the threat to life or safety and imminent risk of significant property damage;

12. Previous unabated or similar violations in the building or structure or on the premises;

13. Passage of time since the last inspection of the building, structure or premises;

14. The age and condition of the building or structure to be inspected; and

15. Whether the scope of the search has been specifically and narrowly defined so as to limit the discretion of the inspector.

c. The standard for issuing an administrative search warrant need not be limited to actual knowledge of an existing violation of an ordinance or code section:

d. If it appears from the application and any supporting affidavit that there is probable cause to enter, inspect or search for violations of any city of Belton ordinance or code section or to enforce any such ordinance or code section, an administrative search warrant shall immediately be issued.

e. The administrative search warrant shall issue in the form of an original and two (2) copies, and the application, any supporting affidavit and copy of the administrative search warrant as issued shall be retained in the records of the municipal court.

(2) Contents of the administrative search warrant.

The administrative search warrant shall:

a. Be in writing and in the name of the city of Belton;

b. Be directed to any police officer in the city of Belton;

c. State the time and date the administrative search warrant was issued;

d. Identify the property or places to be entered upon, searched or inspected in sufficient detail and particularity that the police officer executing the administrative search warrant can readily ascertain it;

e. Command that the described property or places to be entered upon or searched, and that any evidence of any city of Belton ordinance violations found therein or thereon, or any property seized pursuant thereto, or a description of such property seized, be returned, within ten (10) days after filing of the application, to the municipal court judge who issued the administrative search warrant, to be dealt with according to law;

f. Be signed by the municipal court judge, with his title of office indicated.

(3) Execution and return of administrative search warrant.

a. An administrative search warrant issued under this article shall be executed only by a city of Belton police officer, provided, however, that one or more designated city of Belton officials may accompany the officer, and the administrative search warrant shall be executed in the following manner:

1. The administrative search warrant shall be executed by conducting the entry, search, inspection or seizure as commanded and shall be executed as soon as practicable and in a reasonable manner.

2. The police officer shall give the owner or occupant of the property entered upon, searched or inspected a copy of the administrative search warrant.

3. If any property is seized incident to the search, the authorized person shall:

(i) Give the person from whose possession it was taken, if the person is present, a receipt for property for the property taken. If no such person is present, the officer shall leave the receipt for property at the site of the search in a conspicuous place.

(ii) A copy of the receipt for property of any property taken shall be delivered to the municipal court within two (2) working days of the search.

(iii) The disposition of property seized pursuant to an administrative search warrant under this section shall be in accordance with section 14-10 of this code.

(iv) The police officer may summon as many persons as he/she deems necessary to assist him/her in executing the administrative search warrant, and such person shall not be held liable as a result of any illegality of the search and seizure.

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

(vi) An administrative 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. After execution of the administrative search warrants, the officer's return and inventory thereon signed by the officer making the search, shall be delivered to the municipal court.

1. The officer's return and inventory 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.

2. The authorized person shall keep any photographs, copies or recordings made, and by any property seized, along with a copy of the receipt for property of such property required by this section; provided, however, that the seized property may be disposed of as provided therein.

3. The municipal court clerk, upon request, shall deliver a copy of the officer's return and inventory, to the possessor and the owner, when not the same person, of the property searched or seized.

(f) Warrant invalid, when.

An administrative search warrant shall be deemed invalid:

- (1) **If it was not issued by the municipal judge;**
 - (2) **If it was issued without a written application having been filed and verified;**
 - (3) **If it was issued without sufficient probable cause in light of the goals of the ordinance of be enforced and such other factors as provided in subsection (c)(1) hereof;**
 - (4) **If it was not issued with respect to property or places in the city of Belton;**
 - (5) **If it does not describe the property or places to be entered upon, searched, inspected or seized with sufficient certainty;**
 - (6) **If it is not signed by the municipal court judge who issued it; or**
 - (7) **If it was not executed and the required return made within ten (10) days after the date of the making of the application.**
- (g) The ~~code official~~ **authorized person** may enter the premises without consent or an administrative warrant to make an inspection or enforce any of the provisions of this Code in the following circumstances:
- (1) The activity has a high risk of illegal conduct and poses a serious danger to the public;
 - (2) Emergency situations;
 - (3) The inspection is conducted at a pervasively regulated business;
 - (4) In connection with such accepted regulatory techniques as licensing programs which require inspections prior to operating a business or marketing a product; or
 - (5) When ~~the~~ **imminent** circumstances or conditions otherwise threaten the health, safety or welfare of the public.

(Code 1976, § 16-4; Ord. No. 89-1947, § 1, 12-12-1989; Ord. No. 2010-3620, § 2, 5-11-2010; Ord. No. 2015-4084, § 1, 4-14-2015)

Sec. 14-10. - Disposition of nuisance property.

- (a) If not removed within the times specified in the notice to abate provided for within sections 14-6, 14-7 and 14-8, **the nuisance property shall be removed as follows by or at the direction of the authorized person, at the expense of the owner or person in custody thereof:**
- (1) **Vehicles shall be hauled by a certified towing company and stored on their lot pursuant to state law;**
 - (2) **Miscellaneous personal items that appear to be readily usable or reasonably repairable, including but not limited to lawn care items, yard decorative items, car parts, furniture, children's toys, clothing, household items, appliances or building materials shall be taken to a storage area/building and stored** ~~vehicles, junk or other property constituting the nuisance shall be transported to a storage area, by or at the direction of the code enforcement officer, police chief or other employee authorized by the city manager, at the expense of the owner or person in custody thereof. It shall then be stored for a period of at least 90 days. and the~~ **The person entitled to possession thereof may redeem the property by payment to the city of the actual costs of removal and a the storage fee.**
 - (3) **Garbage/trash/broken items shall be bagged/stacked and disposed of by the city or solid waste contractor.**
- (b) The owner of the property constituting the nuisance, if known, or owner or occupant of the premises where the nuisance existed, or his or her agent, shall be notified of the right to redeem the property pursuant to subsection 14-10(a), above. The notice shall be served in the manner outlined in section 14-6 before the 90-day redemption period expires.
- (c) ~~If the vehicle or junk or other property constituting a nuisance~~ **or miscellaneous personal items are** ~~is unredeemed after the expiration of the 90-day period, the code enforcement officer, chief of police or other employee authorized by the city manager,~~ **authorized person** may sell the vehicle, ~~junk or other property~~ **or miscellaneous personal items** to the highest bidder or, if it has no resale value, may otherwise dispose of it. Any money received from the sale or disposal of any vehicle or ~~junk~~ **miscellaneous personal items** shall be applied to the abatement expenses charged to the owner or person in charge thereof. Any money received from the sale in excess of the actual costs of abatement and storage shall be returned to the owner or person in charge thereof provided that:
- (1) ~~Prior to the sale or disposal of any nuisance property under the provisions of this section, the code enforcement officer, chief of police or other employee authorized by the city manager~~ **authorized person** shall notify the owner or occupant of the premises where such nuisance exists or his or her agent in the manner outlined in section 14-6, and shall cause to be posted in City Hall, the place of storage and at least one other public place in the city, a notice of sale stating:
 - a. The terms of the sale;
 - b. The date, time and place of the sale; and
 - c. An itemized description of the property.

The notice shall be published not less than ten, nor more than 30 days prior to the sale.

(Code 1976, § 16-9; Ord. No. 89-1947, § 1, 12-12-1989; Ord. No. 2015-4084, § 1, 4-14-2015)

