

**BEFORE THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF FIRE PREVENTION**

IN THE MATTER OF:

**SOUTHERN CARE GROUP HOME
DBA SECOND CHANCE
Ms. Whitley Gilbert, Owner
4680 Reggie Drive
Morristown, TN 37814**

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**ORDER OF REMOVAL OR REMEDY OF
DANGEROUS AND DEFECTIVE CONDITIONS**

AUTHORITY

Authority is conferred upon the Commissioner of the Tennessee Department of Commerce and Insurance (hereinafter "Commissioner"), the Commissioner's deputies and the Commissioner's assistants by Tenn. Code Ann. § 68-102-117(a) to order the removal or remedy of dangerous or defective conditions of any building or other structure within its jurisdiction that has been erected, constructed, or altered upon finding that the building or other structure, 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 that is situated so as to endanger life or property. The order shall be immediately complied with by the owner, occupant, or any other person found to be responsible for the dangerous or defective conditions. *Tenn. Code Ann. § 68-102-117(a)*. The Commissioner, as the State Fire Marshal, shall supervise and direct the activities of the Division of Fire Prevention (hereinafter "Division") through the Director of the Division of Fire Prevention. *Tenn. Code Ann. § 68-102-112*.

APPLICABLE LAW

The State Fire Marshal is authorized to promulgate rules establishing minimum statewide building construction safety standards. *Tenn. Code Ann. § 68-120-101(a)*. These standards shall be designed to afford a reasonable degree of safety to life and property from fire and hazards incident to the design, construction, alteration, and repair of buildings or structures. *Id.* Further, the standards “[m]ay be selected wholly or partially from publications or amended versions of publications of nationally recognized agencies or organizations.” *Id.* *Tenn. Comp. R. & Regs. 0780-02-02.01(1)(a)* adopts by reference the International Building Code (“IBC”), 2012 edition, published by the International Code Council, Inc. *Tenn. Comp. R. & Regs. 0780-02-01-.02(1)* adopts by reference the National Electrical Code (“NEC”), 2017 edition, published by the National Fire Protection Association.

The State Fire Marshal’s Office is authorized to require review and approval of plans and specifications prior to construction or alteration of certain types of buildings or structures. *Tenn. Code Ann. § 68-120-101(d)(1)*. Construction means the erection of a new building, an addition to an existing building, a change of occupancy or occupancy group, an alteration that alters the exit arrangement, fire resistive assemblies, or type of construction, or involves the installation of fire suppression or detection systems or fuel-fired equipment. *Tenn. Comp. R. & Regs. 0780-02-03-.01(b)*. Where such approval is required, a new building or addition shall not be occupied, nor shall a change of occupancy be made, until the Division has issued a “certificate of occupancy” therefor. *Tenn. Comp. R. & Regs. 0780-02-03-.01(b)*.

If it is found by any person, association or corporation supplying electrical energy or gas (natural, artificial or liquid petroleum) to equipment or installations in any building or structure or

on any premises located in this state, or if it is found by any official making an inspection pursuant to this chapter that such facility or equipment are defective so as to be especially liable to fire or hazard to life and property, or to have been installed in violation of laws or regulations, then such person, association or corporation may discontinue the supplying of such electrical energy or gas until the defective or unlawful conditions have been corrected. *Tenn. Code Ann. § 68-102-117(c)*.

FINDINGS

1. On February 3, 2021, Deputy State Fire Marshal Michael Myers visited the Southern Care Group Home dba Second Chance located at 4680 Reggie Drive, Morristown, Tennessee, in response to a complaint received by the Division on January 29, 2021. Upon arrival, Deputy Myers met with Ms. Whitley Gilbert, the owner and manager of the facility.
2. Deputy Myers reported that the facility was originally constructed as a single-family dwelling and had undergone a change of occupancy to become an unlicensed group home, an R-3 classification pursuant to IBC.
3. Deputy Myers reported that the facility housed nine (9) permanent residents, excluding staff or Ms. Gilbert, who lives on the second floor. Further, two (2) of the residents are not capable of self-preservation.
4. Deputy Myers reported that along with the unlawful change of occupancy, other deficiencies included the bedrooms within the facility lacking a second means of egress or adequate fire separation, fire extinguishers that had not been properly serviced, open junction boxes, extension cords used as permanent wiring, missing outlet covers, oxygen and other combustibles improperly stored, and the facility was non-sprinkled and without a fire alarm.

5. Deputy Myers instructed Ms. Gilbert to provide a Plan of Corrective Action (“POCA”) to the Division on or before February 8, 2021.
6. On February 4, 2021, Inspector Larry Craddock conducted a safety electrical inspection at the facility. Inspector Craddock reported nine (9) electrical violations in the structure’s failed inspection report.
7. The nine (9) electrical violations found on February 4, 2021, are as follows:
 - a. Power supply cords, specifically extension cords, used in place of permanent wiring in multiple locations in violation of NEC 400.12;
 - b. A branch-circuit load was not calculated in the kitchen area in violation of NEC 220.1;
 - c. Missing illumination for the main panelboard in violation of NEC 110.26(D);
 - d. Improper installation of electrical equipment in violation of NEC 110.13(B);
 - e. Improper installation of licensed and labeled equipment, specifically the dryer, in violation of NEC 110.3(B);
 - f. Missing cover for outlet box, specifically an open junction box in the ceiling, in violation of NEC 410.22;
 - g. Incorrect installation of luminaire conductor and connecting devices, including the presence of an open bulb and keyless fixture, in violation of NEC 410.16(B) and NEC 410.20;
 - h. Failure of grounded conductors to terminate within the panelboard in an individual terminal that is not also used for another conductor, specifically

the presence of double and triple “tapped” terminations within the main panel, in violation of NEC 408.41; and

- i. The use of unlisted or unidentified handle ties used for double-pole breakers, in violation of NEC 240.15(B)(1).
8. On February 9, 2021, the Division had not received a POCA for the facility. When contacted, Ms. Gilbert informed Deputy Myers that she had been unable to digitally sign the document. Deputy Myers advised Ms. Gilbert to print and sign the document by hand.
9. Also on February 9, 2021, a POCA was received by the Division. The POCA was rejected as it was not legible, nor did it contain the required information. Deputy Myers informed Ms. Gilbert that the POCA was rejected.
10. On February 11, 2021, Director of Codes Enforcement Chris Bainbridge sent Ms. Gilbert a letter which stated that an approved POCA had not been received by the Division, and that failure to provide an acceptable POCA by February 16, 2021, would result in the issuance of an Order to Remove or Remedy the Dangerous or Defective Conditions.
11. To date, an acceptable POCA has not been received by the Division. The facility remains especially liable to fire so as to endanger life or property.

CONCLUSION OF LAW

1. Southern Care Group Home dba Second Chance, located at 4680 Reggie Drive, Morristown, Tennessee is not in compliance with Tenn. Code Ann. §§ 68-120-101 *et seq.* and 68-102-113.
2. A change of occupancy was made at the facility prior to review and approval of plans and specifications by the State Fire Marshal’s Office as required by Tenn. Comp. R. & Regs 0780-02-03-.10(1).

3. At the time of inspection and at all times relevant, the facility was not in compliance with NEC, 2017 edition.
4. The facility is especially liable to fire so as to endanger life or property.
5. Ms. Whitley Gilbert, as the owner and person found to be responsible for the dangerous or defective conditions on the property, is in violation of Tenn. Code. Ann. 68-102-117(a).
6. The facility's lack of compliance and violation of state law constitutes a dangerous and defective condition.

ORDER

Based on all of the above facts, it is hereby **ORDERED** that Southern Care Group Home dba Second Chance located at 4680 Reggie Drive, Morristown, Tennessee, is in such a condition that it is especially liable to fire and constitutes a dangerous or defective condition. It is further **ORDERED** that Ms. Whitley Gilbert, as the responsible party, shall immediately upon receipt of this Order cease use and occupation of the facility by the facility's residents, and to discontinue use of the facility as a group home in any capacity, until plans have been submitted and approved, and the facility is inspected and approved, by the State Fire Marshal's Office.

ENFORCEMENT OF ORDER

If Ms. Gilbert does not immediately comply with this Order and does not permanently remedy the conditions set forth above, the State Fire Marshal may, after giving written notice, require Ms. Gilbert to appear in court at a specified date and time to respond to a citation pursuant to Tenn. Code Ann. § 68-102-117(a)(2).

In addition to any other remedy available, if the State Fire Marshal finds that the safety and welfare of the public may be threatened, then the State Fire Marshal or district attorney may file a

petition for injunction in the appropriate court against any person responsible for the dangerous or defective conditions for the purpose of enjoining such violation. *Tenn. Code Ann. § 68-102-117(b)*.

Furthermore, failure to comply with this Order could result in the disconnection of electricity pursuant to *Tenn. Code Ann. § 68-102-117(c)*.

RIGHT TO APPEAL

Ms. Whitley Gilbert may, **within twenty-four (24) hours of the entry of this Order**, appeal to the Commissioner, who shall, within ten (10) days, review such Order and file the Commissioner's decision thereon. Request for appeal to the Commissioner shall be made by e-mail to gary.farley@tn.gov within twenty-four (24) hours of the entry of this Order. Failure to appeal constitutes admission of all facts presented in this Order.

Unless the Order is revoked or modified, it shall remain in full force and be complied with within the time fixed in the Order or decision of the Commissioner. *Tenn. Code Ann. § 68-102-118*. Any appeal beyond the Commissioner shall be submitted in accordance with the provisions of the Uniform Administrative Procedures Act, compiled at *Tenn. Code Ann. §§ 4-5-301 et seq.*, pertaining to Contested Case Hearings. *Tenn. Comp. R. & Regs. § 0780-02-03-.11*.

EXECUTED AND ENTERED this the 3rd day of March, 2021.



Gary Farley
Assistant Commissioner
Department of Commerce and Insurance

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Order of Removal or Remedy has been hand-delivered to Ms. Whitley Gilbert or an authorized agent thereof, at Southern Care Group Home dba Second Chance, located at 4680 Reggie Drive, Morristown, Tennessee, on the 3 day of March, 2021.

Receipt Acknowledged:

Name (Printed)

Signature

Whitley Gilbert

[Handwritten Signature]

[Handwritten Signature]

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