ORDINANCE NO. 11345

AN ORDINANCE TO AMEND PART II, CHATTANOOGA CITY CODE, CHAPTER 18, ARTICLE VII, SECTION 18-123(h); CHAPTER 21, ARTICLE I, SECTIONS 21-1 THROUGH 21-25; CHAPTER 21, ARTICLE II, SECTIONS 21-26, 21-28, 21-30; CHAPTER 21, ARTICLE III, SECTIONS 21-36 AND 21-40; CHAPTER 21, ARTICLE VII, SECTIONS 21-101 AND 21-123; CHAPTER 24, ARTICLE X, DIV. 3, SECTIONS 24-341(c) AND 24-345(c); CHAPTER 31, ARTICLE I, SECTION 31-2(b); AND CHAPTER 32, ARTICLE VIII, SECTION 32-174, RELATIVE TO NEIGHBORHOOD SERVICES.

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WHEREAS, T.C.A. §§13-21-101 through 13-21-208, power is conferred on municipalities to exercise their police powers to repair, close or demolish certain unfit, dilapidated, defective, unsafe or unsanitary dangerous structures in the manner therein provided; and

WHEREAS, The City Council of the City of Chattanooga finds that there exists in Chattanooga structures which are unfit for human occupation or use due to dilapidation, defects increasing the hazards of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, and due to other conditions rendering such structures unsafe or unsanitary, or dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of Chattanooga;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, as follows:

SECTION 1. That Chattanooga City Code, Part II, Chapter 18, Article VII, Section 18-123(h) is amended by deleting “Better Housing Commission” and replacing in lieu thereof “Public Officer of the Department of Neighborhood Services”.

SECTION 2.That Chattanooga City Code Part II, Chapter 21, Article I, Sections 21-1 through 21-25 be and is hereby amended by deleting the same in its entirety and inserting in lieu thereof the following:

**Sec. 21-1.Scope.**

The provisions of this code shall apply to all existing residential and nonresidential structures and all existing premises and constitutes minimum requirements and standards for premises, structures, equipment, and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; the responsibility of owners, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties.

This code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety required herein.

**Sec. 21-2.Effect of provisions on other ordinances,** **power**

**of city.**

Nothing in this Article shall be construed to impair or limit in any way the power of the City to define and declare nuisances and to their removal or abatement by summary procedures or otherwise. The measures and procedures provided in this Article do not supersede and the Article does not repeal any other measures or procedures which are provided by this Code for the elimination, repair or correction of the conditions referred to in this Article, but the measures and procedure herein provided for shall be in addition to all other powers and authority of the City or inspector.

**Sec. 21-3.General.**

Any requirement not specifically covered by this Code, found necessary for the safety, health and general welfare of the occupants of any dwelling and of the public, shall be determined by the Code Official subject to a hearing before United States Court of AppealsFOR THE SECOND CIRCUITDocket No. 00-6066------------------FELIX BLONDIN,Petitioner-Appellant,- v. -MARTHE DUBOIS,Defendant-Appellee.---------------------BRIEF FOR AMICUS CURIAE UNITED STATES OF AMERICASUPPORTING PETITIONER-APPELLANT AND SUPPORTING REVERSAL---------------------Preliminary StatementPursuant to 28 U.S.C. § 517 and Rule 29 of the Federal Rules of Appellate Procedure, the United States submits this brief as amicus curiae to express its views on the Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention" or the "Convention"), Oct. 25, 1980, T.I.A.S. No. 11670, implemented by the International Child Abduction Remedies Act (the "ICARA"), 42 U.S.C. §§ 11601-11610.INTEREST OF THE UNITED STATESThe Hague Convention is designed to “protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence.” Hague Convention Preamble. The Department of State has long been involved in the difficult human, legal, and diplomatic problems surrounding international parental child abduction. The Department of State represented the United States at the negotiation of the Convention, and was instrumental in proposing its implementing legislation to Congress. (A237). The Department of State has also attended periodic international meetings to review the operation of the Convention. (A237-38).The Hague Convention requires each party State to designate a "Central Authority" to cooperate with its counterparts in other party States to "secure the prompt return of children and to achieve the other objects of this Convention." Hague Convention, arts. 6, 7. The Department of States' Office of Children's Issues is the designated Central Authority in this country. 22 C.F.R. § 94.2.\* To facilitate the proper functioning of the Convention, the Office of Children's Issues carries out an active program of communications with private applicants, other Central Authorities, and, where appropriate, courts in the United States and abroad. (A238). The Department of State has a strong interest in promoting the proper operation of the Convention to ensure that the United States complies with international treaty obligations. (Id.). To the extent that other party States consider erroneous the United States courts’ application of exceptions to return under the Convention, the United States may find its views on questions of Convention interpretation accorded less weight. Blondin v. Dubois, 189 F.3d 240, 248 & n.7 (2d Cir. 1999) ("Blondin II"). As succinctly stated by the Hague Convention's official reporter, in language adopted by this Court, any "'systematic invocation of [these] exceptions, substituting the forum chosen by the abductor for that of the child's residence, would lead to the collapse of the Convention by depriving it of the spirit of mutual confidence which is its inspiration.'" Id. at 246 (quoting Elisa Perez-Vera, Explanatory Report: Hague Conference on Private International Law, in 3 Acts and Documents of the Fourteenth Session 426 (1980) ("Perez-Vera Report")). The standards applied in United States courts will thus inevitably influence the standards we can demand from other countries with respect to returning children to the United States.\* (A238). In sum, the United States Department of State has a substantial interest in ensuring that the Convention is interpreted correctly in the courts of this country. Moreover, in light of the Department of State's involvement in the negotiation and operation of the Convention, the Department's interpretation is entitled to substantial deference. See Sumitomo Shoji Am., Inc. v. Avagliano, 457 U.S. 176, 184-85 (1982).Issues Presented for ReviewThe United States will address the following:1.Whether, in refusing to return two abducted children to France, the district court misconstrued the exception to return under Article 13(b) of the Hague Convention.2.Whether the district court erred in taking into account the views of one of the children, who is eight years old.STATEMENT OF THE CASEA. The Hague ConventionThe Hague Convention was adopted to deter parents from abducting children across international boundaries in the hope of securing a court sympathetic to their position regarding custody. H.R. Rep. No. 525, 100th Cong., 2d Sess. 1-2 (1988), reprinted in 1988 U.S.C.C.A.N. 386, 386-87; see also Blondin II, 189 F.3d at 246. The Convention applies to all children under sixteen habitually resident in any of the party States. Hague Convention, art. 4. Both the United States and France are parties to the Convention. Blondin II, 189 F.3d at 244.Under the Convention framework, "'a United States District Court has the authority to determine the merits of an abduction claim, but not the merits of the underlying custody claim.'" Blondin II, 189 F.3d at 245 (quoting Friedrich v. Friedrich, 983 F.2d 1396 (6th Cir. 1993) ("Friedrich I"), and citing Hague Convention, arts. 16 and 19); see also 42 U.S.C. § 11602(b)(4). To obtain return of a child to its country of habitual residence, the person seeking return must prove only that the abduction was "wrongful" within the meaning of the Convention. Blondin II, 189 F.3d at 245 (citing 42 U.S.C. § 11603(e)(1)(A)). Once wrongful removal is established, the child must be promptly returned unless one of four narrow exceptions set forth in the Convention applies. Id. (citing Friedrich v. Friedrich, 78 F.3d 1060, 1067 (6th Cir. 1996) ("Friedrich II"), and 42 U.S.C. § 11601(a)(4)).Of the four narrow exceptions to return, the exception relevant to this action permits a court to refuse return where the abductor demonstrates by clear and convincing evidence that "'there is a grave risk that [the child's] return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.'" Blondin II, 189 F.3d at 245 (quoting Hague Convention, art. 13(b), and citing 42 U.S.C. § 11603(e)(2)(A) for "clear and convincing" standard). In addition to the four stated exceptions, the Convention also permits a Court to "'refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.'" Id. at 246 n.3 (quoting Hague Convention, art. 13). Each of the four exceptions to return, as well as the provision for taking account of an older child's objection, must be construed narrowly to avoid frustration of the Convention's purpose. Id. Thus, even if an action falls within an exception to return, the court may nonetheless order return if return is consistent with the interests represented by that exception, and the court should look for ways to order return. Id. at 246 n.4, 249-50.B.Prior Proceedings1.FactsAs initially found by the district court, the facts regarding the children's lives in France are in substance as follows: Marthe Dubois and Felix Blondin, French nationals who have never married, began living together in France after 1990. Blondin v. Dubois, 19 F. Supp. 2d 123, 124 (S.D.N.Y. 1998) ("Blondin I"). Marie-Eline was born to them in 1991, id., and Francois in 1995, id. at 125. Both children were born in France and resided in France with Dubois, her older son, Crispin, and Blondin, until Dubois brought them to the United States in August 1997 without the knowledge or consent of Blondin. Id. at 124-25.From 1991 through 1993, Blondin beat Dubois on various occasions, including when she was holding Marie-Eline, and at one point wrapped an electrical cord around Marie-Eline’s neck and threatened to kill Marie-Eline and Dubois. Id. at 124. During 1992 and 1993, Dubois and Marie-Eline periodically lived in a series of battered women’s shelters. Id. at 124-25. In 1993, apparently during a separation from Dubois, Blondin applied for custody of Marie-Eline in a French court. Id. at 125. In December 1993, Blondin and Dubois reconciled, and the French court terminated the custody case with an order giving custody rights to both parents, and indicating that the principal residence of the child would be with the father, while the mother would have visiting and sheltering rights. Id.After the reconciliation, Dubois started living with Blondin again, the physical abuse resumed, and Francois was born. Id. Dubois once threatened to throw Francoithe public officer.

**Sec. 21-4.Definitions.**

For the purpose of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this section.

*Accessory Structure* means all structures including detached garages, storage buildings, fences and walls and other similar type structures.

*Alter or Alteration* means change or modification in construction or occupancy.

*Approved* shall mean approved by the building official.

*Basement* shall mean a portion of a building located partly underground but having less than one-half (1/2) or more of its clear floor-to-ceiling height below the average grade of the adjoining ground.

*Building* shall mean any structure or part thereof not a dwelling as defined in this Section.

*Building Code* shall mean the building code officially adopted by the legislative body of this jurisdiction, or such other code as may be officially designated by the legislative body of the jurisdiction for the regulation of construction, alteration, repair, removal, demolition, use, location, occupancy and maintenance of buildings and structures.

*Building Official* shall mean the officer, or other person, charged with the administration and enforcement of Municipal Building Codes or his duly authorized representative.

*Cellar* shall mean a portion of a building located partly or wholly underground, having one-half (1/2) or more of its clear floor-to-ceiling height below the average grade of the adjoining ground.

*Code Official* shall mean the officer, or other person, charged with the administration and enforcement of this code or any duly appointed representative.

*Condemn* shall mean to adjudge unfit for use or occupancy.

*Dwelling* shall mean any building or structure, or part thereof, used and occupied for human habitation or intended to be so used, and including any accessory structure, outhouse and appurtenances belonging thereto or usually enjoyed therewith.

*Dwelling Unit* shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking or eating.

*Extermination* shall mean the control and extermination of insects, rodents, or other pests, eliminating their harborage places by removing or making inaccessible materials that may serve as their food by poisoning, spraying, fumigating, trapping, or by any other recognized and legal pest elimination methods.

*Family* shall mean one (1) or more persons living together whether related by blood, marriage or adoption, and having common housekeeping facilities.

*Floor Area* shall mean the total area of all habitable space in a building or structure.

*Garbage* shall mean the animal and vegetable waste resulting from handling, preparation, cooking and consumption of food.

*Habitable Room* shall mean a room or enclosed floor space used or intended to be used for living, sleeping, cooking, or eating purposes, excluding bathrooms, water closet compartments, laundries, pantries, foyers, or communicating corridors, closets and storage spaces.

*Infestation* shall mean the presence within a dwelling of insects, rodents or other pests.

*Inspector* shall mean the code enforcement inspector of the city.

*Multiple Dwelling* shall mean any building, or portion thereof, which is designed, built, rented, leased, let or hired out to be occupied, or which is occupied as the home or residence of more than two (2) families living independently of each other and doing their own cooking in such building, and shall include flats and apartments.

*Nuisance* - the following shall be defined as nuisances:

1.Any public nuisance known at common law or in equity jurisprudence.

2.Any attractive nuisance, which may prove detrimental to children whether in a building, on the premises of a building, or upon an unoccupied lot. This includes any abandoned wells, shafts, basements or excavations; abandoned refrigerators and motor vehicles, any structurally unsound fences or structures; or any lumber, trash, fences, debris or vegetation which may prove a hazard for inquisitive minors.

3.Whatever is dangerous to human life or is detrimental to health, as determined by the health officer.

4.Overcrowding a room with occupants.

5.

Insufficient ventilation or illumination.

6.Inadequate or unsanitary sewage or plumbing facilities.

7.Uncleanliness, as determined by the health officer.

8.Whatever renders air, food or drink unwholesome or detrimental to the health of human beings, as determined by the health officer.

*Occupant* shall mean any person over one (1) year of age living, sleeping, cooking or eating in or having actual possession of a dwelling unit or rooming unit.

*Openable Area* shall mean that part of a window or door which is available for unobstructed ventilation and which opens directly to the outdoors.

*Owner* shall mean any person, agent, operator, firm, or corporation having a legal or equitable interest in the property, or recorded in the official record of the state, county or municipality as holding title to the property, or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

*Operator* shall mean any person who has charge, care or control of a building, or part thereof, in which dwelling units or rooming units are let.

*Parties in Interest* shall mean all individuals, associations and corporations who have an interest of record in a dwelling or building or who are in possession thereof.

*Plumbing* shall mean the practice, materials and fixtures used in the installation, maintenance, extension and alteration of all piping, fixtures, appliances and appurtenances in connection with any of the following: sanitary drainage or storm drainage facilities, the venting system and the public or private water supply systems, within or adjacent to any building, structure or conveyance. Also, the practice and materials used in the installation, maintenance, extension or alteration of storm water, liquid waste, or sewerage and water supply systems, or any premises to their connection with any point of public disposal or other acceptable terminal.

*Premises* shall mean a lot, plot or parcel of land including the buildings or structures thereon.

*Public Areas* shall mean an unoccupied open space adjoining a building and on the same property that is permanently maintained accessible to the fire department and free of all encumbrances that might interfere with its use by the fire department.

*Public Officer* shall mean the Administrator of the Department of Neighborhood Services or his designee who is authorized by this to exercise the power prescribed by this ordinance for enforcement of this code or Division 1 of the Municipal Court of the City of Chattanooga.

*Public Record* shall include deeds, deeds of trust and other instruments of record in the register's office of the county.

*Repair* shall mean the replacement of existing work with an approved material similar to that used in the existing work, not including additional work that would change the structural safety of the building, or that would affect or change required exit facilities, a vital element of an elevator, plumbing, gas piping, wiring or heating installation, or that would be in violation of a provision of law or ordinance. The term "repair" or "repairs" shall not apply to any change of construction.

*Required* shall mean required by some provision of this chapter.

*Rooming House* shall mean any dwelling or that part of any dwelling containing one (1) or more rooming units, in which space is let by the owner or occupant to three (3) or more persons who are not husband and wife, son or daughter, mother or father, sister or brother of the occupant.

*Rooming Unit* shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

*Rubbish* shall mean combustible and noncombustible waste materials except for garbage, and the term shall include the residue from the burning of wood, coal, coke and other combustible material, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metal mineral matter, glass crockery and dust.

*Stairway* shall mean one (1) or more flights of stairs and the necessary landings and platforms connecting them, to form a continuous and uninterrupted passage from one story to another in a building or structure.

*Story* shall mean that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above.

*Structural Alteration* shall mean any change except for repair or replacement in the supporting members of a building, such as bearing walls, columns, beams or girders.

*Structure* shall mean that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. The term "structure" shall be construed as if followed by the words "or part thereof".

*Supplied* shall mean paid for, furnished, or provided by or under control of the owner or operator.

*Temporary Housing* shall mean any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure or to any utilities system on the same premises for more than thirty (30) consecutive days.

*Ventilation* shall mean the process of supplying and removing air by natural or mechanical means to or from any space.

*Workmanlike* shall mean that whenever the words "workmanlike construction" are used in this Code they shall mean that such maintenance and repair be made in a reasonably skillful manner.

*Yard* shall mean an open unoccupied space on the same lot with a building extending along the entire length or a street, or rear or interior lot line.

**Sec. 21-5.Approval**.

Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this code, the Code Official shall have the authority to grant modifications for individual cases, provided the Code Official shall first find that special individual reason(s) makes the strict letter of the code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the department files.

Alternative materials, methods and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternate material or method of construction shall be approved where the Code Official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

Requiring testing. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the Code Official shall have the authority to require tests to be made as evidence of compliance at no expense to the jurisdiction.

**Sec. 21-6.Violations**.

Unlawful acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this code.

Notice of violation. The Code Official shall serve a notice of violation or order in accordance with Sec. 21-20.

Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with Sec. 21-20 shall be deemed guilty of a misdemeanor, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the Code Official shall institute the appropriate proceeding at law or in equity to retrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

Violation penalties. Any person, who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the legal office of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation, or to prevent legal occupancy of a building, structure or premises, or to stop an illegal act, conduct business or utilization of the building, structure or premises.

**Sec. 21-7.Authority relative to unfit dangerous buildings.**

General. The Code Official shall order the owner of any premises upon which is located any structure, which in the Code Official’s judgment is so old, dilapidated or has become so out of repairs as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner’s option; or where there has been cessation of normal construction of any structure for a period of more than two (2) years, to demolish and remove such structure.

If repair, alteration or improvement of the structure cannot be made at a reasonable cost which is less than fifty percent (50%) of the value of the structure, the owner may be required, within the time specified in the order, to remove or demolish such structure.

**Sec. 21-8.Duties of the Public Officer.**

The public officer shall have the authority to:

(1)Upon receipt of a report of housing inspectors, as provided in Section 21-10) of this Code, the Code Official shall give written notice to the owner, occupant, mortgagee, lessee, agent and all other persons having an interest in such dwelling or building, as shown by the public records, ordering them to appear before the public officer on the date specified in the notice or show cause why the dwelling or building reported to be unfit for human habitation or a dangerous building should not be repaired or demolished in accordance with the statement of particulars set forth in the inspector's notice provided for in Section 21-11 of this Code. If a person notified fails to appear in person or through a representative, public officer shall hear testimony and notify such person of its decision. The public officer shall have authority to issue subpoenas for witnesses and administer oaths. Any person duly served with a subpoena failing to appear shall be guilty of a misdemeanor and punishable as such.

(2)Hold a hearing and hear such testimony as the inspector or the owner, occupant, mortgagee, lessee or any other person having an interest in such building, as shown by the public records, shall offer relative to the dwelling or rooming house being unfit for human habitation or dangerous building.

(3)Make written findings of fact from the testimony offered pursuant to subsection (2) of this Section as to whether or not the dwelling or rooming house is unfit for human habitation or the building within the terms and provisions of Section 21-12 of this Code.

(4)Issue an order, based upon the findings of fact made pursuant to subsection (3) of this Section, commanding the owner, occupant, mortgagee, lessee, agent and all other persons having an inter