

**CITY OF ROCKAWAY BEACH, OREGON**

**ORDINANCE NO. 2024-07**

**AN ORDINANCE PROVIDING AUTHORITY AND PROCEDURES FOR ADMINISTRATIVE WARRANTS AND CREATING A NEW CODE CHAPTER 97**

**RECITALS:**

1. The City Council seeks to establish authority and procedures for issuing administrative warrants.

**Now, therefore, the City of Rockaway Beach ordains as follows:**

**Section 1.** The City of Rockaway Beach Code of Ordinances is hereby amended to add a new Chapter 97 as follows:

**CHAPTER 97: ADMINISTRATIVE WARRANTS**

**97.01 SHORT TITLE AND PURPOSE.**

This chapter sets forth the procedures for obtaining an administrative warrant for purposes of enforcing the Rockaway Beach Code. It may be cited as the Rockaway Beach Administrative Warrants Chapter.

**97.02 DEFINITIONS.**

*ADMINISTRATIVE WARRANT.* A court order authorizing entry onto property for purposes of conducting an administrative search, inspection or investigation, or authorizing an administrative seizure of property or abatement of a nuisance as authorized by the Code. It does not include an arrest, search or other warrant arising from commission or prosecution of a crime.

*CITY OFFICER.* A Tillamook County Sheriff or Deputy, or any city employee authorized by the City Manager or Council to enforce the Rockaway Beach Code.

**97.03 ENTRY ONTO PROPERTY.**

Whenever a city officer requires entry to property for purposes of inspections pursuant to this Code, a city officer has probable cause to believe there has been a violation of the Code or that a nuisance or dangerous condition exists, or City Council or City Manager has ordered the removal or abatement of an identified nuisance, the city officer may enter upon a site or structure for the purpose of investigation or abatement subject to one or more of the following:

- (1) Consent is obtained from the owner or person with authority to consent to entry on the premises. A person with actual authority must be a person age 18 years or older and capable of consenting to the city officer's entry on the premises.
- (2) The entry is pursuant to a recognized lawful exception to the requirement to obtain a warrant.
- (3) An administrative warrant or a search warrant is obtained.

Nothing in this section precludes use of any information obtained where there is no reasonable expectation of privacy or the property is in plain view from public right-of-way, public property, or other private property entered with the consent of the owner or person in charge.

#### **97.04 AUTHORITY TO REQUEST WARRANT.**

(A) Unless unreasonable under the circumstances, a city officer shall seek to obtain the consent of the owner or person in charge of property to enter onto property or to seize property before applying for a warrant.

(B) A request for a warrant must first be approved by the City Manager, or their designee.

#### **97.05 PROCEDURE TO OBTAIN ADMINISTRATIVE WARRANT.**

(A) An application for an administrative warrant shall be presented to the local municipal court. The Tillamook County Justice Court shall have jurisdiction to issue administrative warrants for service within the city limits of the City of Rockaway Beach.

(B) The application shall be accompanied by a supporting affidavit containing the following, together with such other information as the court deems necessary, including:

- (1) The nature of the warrant sought, and action sought to be authorized;
- (2) In the case of an abatement or demolition warrant, the information also shall include a description of the work to be performed and the estimated time to complete performance;
- (3) The affiant's employment title and authority;
- (4) A description of the property sought to be entered onto, seized, abated or demolished;
- (5) The Code provision, permit or other law alleged to have been violated or otherwise supporting issuance of the warrant together with facts, information and belief demonstrating cause for issuance of the warrant; and

(6) A statement that consent to entry or other action has been sought but not obtained, or facts or circumstances reasonably showing the purpose of the warrant might be frustrated if consent was sought.

**97.06 CAUSE FOR ISSUANCE OF WARRANT.**

(A) Cause for issuance of an abatement warrant shall be deemed to exist if the city has declared a nuisance and ordered abatement pursuant to Chapter 94.090 through 94.093, or in the case of summary abatement, an immediate danger exists.

(B) Cause for issuance of a warrant authorizing the city to enter onto property to demolish a structure or to enter on the property to effectuate vacation of a property shall be deemed to exist if the city has issued an order to demolish, or vacate the property or structure pursuant to Chapter 151, and the order is final.

(C) Cause for issuance of a warrant to seize property, other than in conjunction with an investigation or prosecution, shall be based on a showing that the seizure is authorized by law and is reasonable and necessary to achieve a legitimate legislative purpose. Examples include but are not limited to seizing a dog for quarantine, pursuant to Chapter 91, or if property poses a significant risk of harm to the public, such as Chapter 94 nuisances affecting public health or public spaces.

(D) Cause for issuance of a warrant for any other purpose shall be based on a showing that the action sought to be authorized is made in compliance with applicable code procedures and authority. Examples include but are not limited to examining removing an abandoned vehicle under Chapter 92.

**97.07 ISSUANCE AND EXECUTION OF ADMINISTRATIVE WARRANTS.**

(A) An inspection, abatement, or demolition warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m. or where the court has specifically determined upon a showing that it cannot be effectively executed between those hours, that it may be executed at any additional or other time of the day or night. Unless directed otherwise by the court, the warrant shall be executed and returned to the court within fourteen (14) days from its date, unless the court before expiration of such time by endorsement thereon extends the time. After the expiration of the time prescribed by this subsection, the warrant is void unless executed.

(B) An abatement or demolition warrant shall describe the work authorized and set a deadline for completion of work on the property not to exceed fourteen (14) days unless good cause is shown why a longer time is necessary. The city may apply to the court for an extension for good cause.

(C) The person authorized by the court to execute a warrant shall, before entry, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the property designated in the warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request, except that the person authorized to execute the warrant may promptly enter the designated property if it is, or is reasonably believed to be, vacant or unoccupied.

(E) A Sheriff or Sheriff's Deputy may be requested to assist in the execution of the administrative warrant. Such Deputy may assist the person authorized to execute the warrant, including using any reasonable force necessary, to enter the property if the administrative warrant specifically allows the use of reasonable force to execute the warrant.

**Section 2.** Severability Clause. A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part of this ordinance shall not affect the validity of the remaining parts to this ordinance.

**Section 3.** Effective Date. This ordinance shall become effective 30 days after its adoption by the City Council and approval by the Mayor.

1st reading by the Rockaway Beach City Council September 11, 2024.

2nd reading by the Rockaway Beach City Council September 11, 2024.

Adopted and Approved by the Rockaway Beach City Council September 11, 2024.



Charles McNeilly, Mayor

City Council	Aye/Nay
Mary McGinnis	X /
Tom Martine	X /
Kristine Hayes	/ X
Alesia Franken	X /
Penny Cheek	X /

Attest:



Melissa Thompson, City Recorder