

ORDINANCE NO. 2303

AN ORDINANCE AMENDING THE HERMISTON CODE OF ORDINANCE BY ADDING CHAPTER 139, ENTITLED “ADMINISTRATIVE WARRANTS.”

Whereas, the staff of the City of Hermiston is conducting a major review of the City’s Code of Ordinances, now, therefore,

The City of Hermiston ordains as follows:

Section 1. The Hermiston Code of Ordinances is amended by adding Chapter 139, entitled “Administrative Warrants” to read:

Chapter 139 ADMINISTRATIVE WARRANTS

139.01 SHORT TITLE AND PURPOSE.

This Chapter sets for the procedures for obtaining an administrative warrant for purposes of enforcing the Hermiston Municipal Code. It may be cited as the Hermiston Administrative Warrants Chapter.

139.02 DEFINITIONS.

City Officer. A city police officer or any other city employee authorized by the City Manager or Council to enforce the Hermiston Municipal Code.

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.

139.03 ENTRY ONTO PROPERTY.

(A) A person applying for and obtaining a permit for development, construction, improvement or repair of property shall be deemed to have consented to normal and customary entry onto the property for purposes of inspections to verify conformance with the terms of such permit. Absent exigent circumstances, notice shall be provided and the owner or permittee present unless waived.

(B) Whenever a city officer requires entry to property for purposes of inspections pursuant to this Code or permit or a city officer has probable cause to believe there has been a violation of the Code or that a nuisance or dangerous condition exists, the city officer may enter upon a site or structure for the purpose of investigation 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 eighteen years or older and capable of consenting to the enforcement 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 property 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.

139.04 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 Chief of Police, or their designees in consultation with the City Attorney.

139.05 PROCEDURE TO OBTAIN ADMINISTRATIVE WARRANT.

(A) An application for an administrative warrant shall be presented to a court of competent jurisdiction.

(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 background, experience 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.

139.06 CAUSE FOR ISSUANCE OF WARRANT.

(A) An inspection warrant for a place of employment or property subject to a development, building or similar permit or approval, shall be issued if the court finds that the inspection is required or authorized by any federal, state or local law, ordinance or regulation relating to health and safety and cause exists. For purposes of an inspection warrant, cause shall be deemed to exist if reasonable legislative or administrative standards for conducting a routine,

periodic or area inspection are satisfied with respect to the property, including the issuance of a permit or approval, or there is probable cause to believe that there exists a condition of nonconformity with a safety or health law or regulation, with a permit, order or other approval with respect to the property, or an investigation is reasonably believed to be necessary to determine or verify conformance with the law, regulation, permit, approval or order.

(B) Cause for issuance of an abatement warrant shall be deemed to exist if the City has declared a nuisance and ordered abatement, the order is final, or in the case of summary abatement an immediate danger exists, and reasonable legislative or administrative standards for removing and abating nuisances are satisfied with respect to any building or upon any property.

(C) 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 135, the order is final and reasonable legislative or administrative standards for demolition or vacation are satisfied with respect to the property.

(D) Cause for issuance of a warrant to search or seize property in conjunction with an investigation or prosecution of a violation shall be based on a showing of probable cause to conclude that a violation has been committed at the place sought to be searched, that evidence of the violation is located on the property, or the property is evidence of the violation in the same manner as for a crime.

(E) 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 or if property poses a significant risk of harm to the public.

139.07 ISSUANCE AND EXECUTION OF ADMINISTRATIVE WARRANTS.

(A) Search warrants sought in conjunction with investigation or prosecution of a violation shall be governed by procedures governing search warrants in criminal matters, including ORS 133.565 relating to the contents of the warrant and ORS 133.575 to 133.615 relating to execution and return.

(B) 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 10 days from its date, unless the court before expiration of such time, by endorsement thereon extends the time for five days. After the expiration of the time prescribed by this subsection, the warrant is void unless executed.

(C) An abatement or demolition warrant shall describe the work authorized and set a deadline for completion of work on the property not to exceed 30 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.

(D) The person authorized by the court to execute 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. Such person need not inform anyone of the person's authority and purpose, as prescribed in subsection (a) of this section.

(E) A police officer may be requested to assist in the execution of the administrative warrant. Such peace officer 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. Effective date. This ordinance shall take effect on the 30th day after its adoption.

ADOPTED by the Common Council this 27th day of April 2020.

SIGNED by the Mayor this 27th day of April 2020.

ATTEST:

Dr. David Drotzmann, Mayor

Lilly Alarcon-Strong, CMC, City Recorder