

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, ADDING TO CHAPTER 210 OFFENSES SECTION 210.050 ADMINISTRATIVE SEARCH WARRANTS OF THE OSAGE BEACH CODE OF ORDINANCES.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, AS FOLLOWS TO WIT:

Section 1: There is hereby enacted a new section of Chapter 210 Offenses to be known as Section of 210.050.

Section 210.050 Administrative Search Warrants

- A. The City hereby finds that it is beneficial for the public health and welfare of the City to utilize administrative search warrants as may be issued under the provisions of this Section.
- B. Administrative search warrant defined; procedure.
 - 1. An “administrative search warrant” is a written order 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 relating to the use, condition or occupancy of property or structures located within the said City or to enforce the provisions of any such ordinance or Code section. *See Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 538-39 (1967).
 - 2. An administrative search warrant may be issued by the judge of the Osage Beach Municipal Division or by another judge of the county circuit court having jurisdiction over the things or places to be searched or seized.
 - 3. Any such warrant shall be directed to the chief of police or any other police officer, or any code enforcement officer, or building inspector of the City, and shall be executed by authorized City personnel within the City limits and not elsewhere.
- C. Application
 - 1. Any police officer, code enforcement officer, fire department personnel, building inspector, or city attorney for the City may make application to the judge 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 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 an appropriate officer of the city to allow such action and has refused to allow such action, or give the reasons such request has not been made;
 - e. State facts sufficient to show probable cause for the issuance of a search warrant, as provided in this chapter, to:
 - i. Search or inspect for violations of an ordinance or Code section specified in the application; or
 - ii. 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;
 - g. Be signed by the applicant and filed in the court of the judge hearing the application.
3. The application may be supplemented by a written affidavit by oath or affirmation. Such an affidavit shall be considered in determining where there is a probable cause for the issuance of a search warrant and in filling out any deficiencies in the description of the property or place to be searched or inspect. Oral testimony shall not be considered. The application or execution of a search warrant shall not be deemed invalid for the sole reason that the application or execution of the warrant relies upon electronic signatures of any person seeking the warrant or judge issuing the warrant.

D. Hearing procedure

- 1. The judge shall hold a non-adversary *ex parte* hearing to determine whether probable cause exists to inspect or search for violations of any ordinance or Code section or to enforce any ordinance or Code section, including the abatement of violations and the seizure of property related thereto.
- 2. The judge shall determine whether the action to be taken is reasonable in light of the facts stated. The judge shall consider the goals of the ordinance or Code section sought to be enforced and such other factors as may be appropriate including, but not limited to, the physical condition of the specified property, the age and nature of the property, the condition of the area in which the property is located, the known violation of any relevant ordinance or Code section and the passage of time since the property's last inspection. The standard for issuing a warrant need not be limited to actual knowledge of an existing violation of an ordinance or Code section.
- 3. If it appears from the application and any supporting affidavit that there is probable

cause to inspect or search for violations of any ordinance or Code section or to enforce any such ordinance or Code section, a search warrant shall immediately be issued.

4. The warrant shall issue in the form of an original and two copies and the application and any supporting affidavits and one copy of the warrant as issued shall be retained in the records of the municipal court.

E. The search warrant shall:

1. Be in writing and in the name of the City;
2. Be directed to any police officer, code enforcement officer, or building inspector in the City;
3. State the time and date the warrant was issued;
4. Identify the property or places to be searched, inspected or entered upon in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;
5. Command that the described property or places be searched or entered upon and that any evidence of any ordinance violations found therein or thereon, or any abatement performed therein or thereon, or a description of any property seized pursuant to an abatement, be returned within ten days after filing the application, via a warrant return to the judge who issued the warrant, to be dealt with according to law;
6. Be signed by the judge with the title of his/her office indicated.

F. A search warrant issued under this chapter shall be executed only by the chief of police, other police officer, code enforcement officer, or building inspector of the City; provided however, that one or more designated city officials may accompany the officer. The warrant shall be executed in the following manner:

1. The warrant shall be executed by conducting the search, inspection, entry or seizure as commanded and shall be executed as soon as practicable and in a reasonable manner.
2. The officer shall give the owner or occupant of the property searched, inspected or entered upon a copy of the warrant.
 - a. If any property is seized incident to the search, the officer shall give the person from whose possession it was taken, if the person is present, an itemized receipt for the property taken. If no such person is present, the officer shall leave the receipt at the site of the search in a conspicuous place.
 - b. A copy of the itemized receipt of any property taken shall be kept in the files of the officer conducting the search. If more than one officer conducts the search, only one copy of the receipt needs to be kept.
 - c. The disposition of property seized or abated pursuant to a search warrant

under this section shall be in accordance with an applicable ordinance or Code section, but in the absence of same, then with R.S.Mo. § 542.301.

3. The officer may summon as many persons as he/she deems necessary to assist him/her in executing the warrant and such persons shall not be held liable as a result of any illegality of the search and seizure.
4. An officer making a search pursuant to an invalid warrant, the invalidity of which is not apparent on its face, may use such force as he/she would be justified in using if the warrant were valid.
5. A search warrant shall expire if it is not executed and the required return made within ten days after the date of the issuance of the warrant.
6. After execution of the search warrant, the warrant, with a return thereon signed by the officer making the search, shall be delivered to the municipal court.
7. The return 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 and places searched or seized.
8. The return shall be accompanied by any photographs, copies or recordings made, a description of any abatements performed, and by any property seized pursuant to an abatement, along with a copy of the itemized receipt of such property required by this section; provided however, that seized property may be disposed of as provided herein and in such a case a description of the property seized shall accompany the return.
9. The court clerk, upon request, shall deliver a copy of the return to the possessor and the owner, when not the same person, of the property searched or seized.

Section 2. Severability

The chapters, sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or degree of any Court of any competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section 3. Repeal of Ordinances not to affect liabilities, etc.

Whenever any part of this ordinance shall be repealed or modified, either expressly or by implication, by a subsequent ordinance, that part of the ordinance thus repealed or modified shall continue in force until the subsequent ordinance repealing or modifying the ordinance shall go into effect unless therein otherwise expressly provided; but no suit, prosecution, proceeding, right, fine or penalty instituted, created, given, secured or accrued under this ordinance previous to its repeal shall not be affected, released or discharged but may be prosecuted, enjoined and recovered as fully as if this ordinance or provisions had continued in force, unless it shall be therein otherwise expressly provided.

Section 4. That this Ordinance shall be in full force and effect from and after the date of

passage and approval of the Mayor.

READ FIRST TIME: August 17, 2023

READ SECOND TIME: September 7, 2023

I hereby certify that Ordinance No.23.65 was duly passed on September 7, 2023, by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: 5 Nays: 0 Abstentions: 0 Absent: 1

This Ordinance is hereby transmitted to the Mayor for his signature.

September 7, 23

Date

Tara Berreth

Tara Berreth, City Clerk

Approved as to form:

Cole Bradbury

Cole Bradbury, City Attorney

I hereby approve Ordinance No.23.65.

Michael Harmison

Michael Harmison, Mayor

September 7, 23

Date

Tara Berreth

Tara Berreth, City Clerk