

**ORDINANCE NO. \_\_\_\_\_**

**ENTITLED: "AN ORDINANCE CREATING CHAPTER 1.28, ADMINISTRATIVE INSPECTION WARRANTS, ESTABLISHING AUTHORITY FOR THEIR ISSUANCE AND AUTHORIZING SPECIFIED CITY OFFICIALS TO APPLY FOR ADMINISTRATIVE INSPECTION WARRANTS."**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CHEYENNE, WYOMING:**

Section 1. That Chapter 1.28, Administrative Inspection Warrants, of Title 1, General Provisions, of the municipal code of the City of Cheyenne, Wyoming, is hereby created to read:

**Chapter 1.28 – ADMINISTRATIVE INSPECTION WARRANTS**

**1.28.010 – Issuance of administrative inspection warrants.**

- A. A municipal judge may issue an administrative inspection warrant only upon proper application of the fire chief, the fire marshal or the chief building official. The judge may issue the warrant only where inspection is required, authorized or reasonably necessary as provided under the Cheyenne City Code or Wyoming Statutes as specified in subsection (B) of this section, and only if the issuance of the warrant otherwise complies with the requirements imposed under this Chapter. Any inspection warrant sought under this chapter shall be limited to property as provided in subsection (C) of this section.
- B. Administrative inspection warrants shall be issued under this chapter only for inspections conducted pursuant to the following chapters and sections of the Cheyenne City Code and Wyoming Statutes, as adopted and amended by the City:
  1. When requested by the fire chief or fire marshal acting pursuant to:
    - (a) Chapter 8.12 – International Fire Code;
    - (b) Section 8.32.040 – Compliance;
    - (c) Section 8.40.050 – Authority—Inspections required—Deficiencies;
    - (d) Wyo. Stat. Section 35-9-109 – Investigation of fires; notification to fire marshal; powers of fire marshal;
    - (e) Wyo. Stat. Section 35-9-111 – Certain structures declared nuisance; repair or demolition; procedure;
    - (f) Wyo. Stat. Section 35-9-116 – Removal of combustible material; remedy of flammable conditions; and

(g) Wyo. Stat. Section 35-9-156 – Local response authority.

2. When requested by the chief building official acting pursuant to:

- (a) Chapter 15.08 – International Building Code;
- (b) Chapter 15.09 – International Existing Building Code;
- (c) Chapter 15.10 – International Residential Code;
- (d) Chapter 15.12 – International Plumbing Code;
- (e) Chapter 15.16 – International Mechanical Code;
- (f) Chapter 15.20 – National Electrical Code, including Appendix K of the International Building Code;
- (g) Chapter 15.22 – International Fuel Gas Code;
- (h) Chapter 15.24 – International Property Maintenance Code; and
- (i) Chapter 15.26 – International Energy Conservation Code.

C. An administrative inspection warrant may authorize entry onto property only where consent to inspect has been expressly denied or could not be obtained after compliance with the affidavit and consent-seeking requirements set forth in Section 1.28.020(C) of this chapter, and only if the property is:

- 1. Damaged as a result of a fire event and a post-fire investigation is required or authorized by the Cheyenne City Code or the Wyoming Statutes specified in paragraph (B)(1) of this section;
- 2. Subject to fire or life-safety inspections by the fire chief or fire marshal where the inspection is required or authorized by the Cheyenne City Code or the Wyoming Statutes specified in paragraph (B)(1) of this section;
- 3. Subject to inspection in accordance with a permit issued by the building safety department, which permit was requested by the property owner or the property owner's agent, for the purpose of constructing, enlarging, altering, repairing, moving, demolishing or changing the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system regulated by the Cheyenne City Code as specified in paragraph (B)(2) of this section; or
- 4. Abandoned as provided in this paragraph. For purposes of this paragraph, a property is considered abandoned only where:

- a. The property is unoccupied by any lawful occupant. The presence of an unauthorized person, as defined by Wyo. Stat. Section 1-21-1401(a)(v), shall not constitute occupancy;
- b. The property is not merely temporarily vacant or seasonally unoccupied; and
- c. The property exhibits two (2) or more objectively observable exterior indicators of abandonment, including:
  - i. Verified termination of one or more essential utilities, where such termination has been confirmed through lawful coordination with, or information obtained from, the applicable utility provider;
  - ii. Removal or stripping of essential fixtures;
  - iii. Vandalism;
  - iv. Secured or boarded openings inconsistent with lawful residential occupancy; or
  - v. Other comparable exterior conditions that, taken together, clearly demonstrate the dwelling is not being used for lawful purposes.

D. An administrative inspection warrant issued under this chapter shall be in the form of a written order and shall comply with the form and particularity requirements set forth in Section 1.28.030(B) of this chapter.

E. The warrant shall authorize entry onto the designated property only at reasonable times and in a reasonable manner for the purposes of conducting the inspection specified therein. Absent a specific finding by the issuing court to the contrary, entry between the hours of 7:00 a.m. and 7:00 p.m. shall be presumed to constitute a reasonable time for purposes of this subsection.

F. Nothing in this section shall be construed to authorize the issuance of an administrative inspection warrant in a manner inconsistent with the United States Constitution, the Wyoming Constitution, or the laws of the United States or the State of Wyoming.

#### **1.28.020 – Grounds for issuance.**

- A. An administrative inspection warrant shall be issued only upon probable cause, supported by affidavit made under oath or affirmation, particularly describing:
  1. The applicant's authority and status in applying for the warrant;
  2. The legal authority requiring or authorizing the inspection;

3. The property to be inspected; and
4. The purpose for the inspection, including the basis upon which probable cause exists to inspect.

B. Probable cause shall be deemed to exist if:

1. Reasonable legislative or administrative standards for conducting a routine, periodic or area inspection are satisfied with respect to the particular property;
2. There is probable cause to believe that a condition of nonconformity, violation or other circumstance requiring corrective action exists with respect to the designated property; or
3. An inspection is reasonably necessary to determine, discover or verify the condition of the property or structures for compliance with applicable law as provided in this chapter.

C. In addition to the requirements imposed under subsection (A) of this section, and before any warrant under this chapter may be issued, the affidavit shall affirmatively state that entry has been sought and refused, or that a reasonable attempt to contact the property owner or lawful occupant to obtain consent has been unsuccessful. The affidavit shall further state that the following sequential efforts to contact the property owner or lawful occupant, specified in paragraphs (1) through (3) of this subsection, were undertaken, as applicable. No administrative inspection warrant shall be issued unless compliance with this subsection is demonstrated to the satisfaction of the municipal court judge as part of the warrant application:

1. An attempt to make personal contact at the location of the property;
2. An attempt to make contact by telephone, electronic mail, or other reasonably available digital means using contact information known to or reasonably obtainable by the City; and
3. If the attempts described in paragraphs (1) and (2) of this subsection are unsuccessful, transmission of a certified letter to the property owner at the owner's last known address as reflected in County records or other reliable sources.

**1.28.030 – Procedure for issuance.**

A. Before issuing an administrative inspection warrant, the municipal judge shall determine, based upon a sworn affidavit, whether probable cause exists to believe that the inspection is authorized under this chapter and that sufficient grounds exist for granting the application.

- B. If the municipal judge finds probable cause exists and further finds that all other requirements imposed by this chapter have been satisfied, the judge shall issue the warrant. The warrant shall particularly describe the name and title of the person or persons authorized to execute it, the specific property, area, premises or building to be inspected, and the scope and purpose of the inspection.
- C. The warrant shall direct that it be executed only during reasonable hours and in a reasonable manner, except that where the municipal judge makes a specific finding, supported by the affidavit, that effective execution cannot be accomplished during those hours, the judge may authorize execution at such other times as the judge determines appropriate.
- D. The municipal judge shall retain the warrant application, the sworn affidavit, and a copy of the warrant as part of the official record of the proceeding.

**1.28.040 – Execution of administrative inspection warrants.**

- A. In executing an administrative inspection warrant, the person authorized to execute the warrant shall, before entry, make a reasonable effort to present their credentials and state their authority and purpose to any occupant or person in possession of the property designated in the warrant and shall, upon request, display a copy of the warrant.
- B. No administrative inspection warrant issued under this chapter shall authorize entry without prior announcement of authority and purpose where any occupant or person is present. Entry commonly referred to as a “no-knock” entry is expressly prohibited. The announcement of authority and purpose required under subsection (A) of this section shall not apply where the property is deemed abandoned as provided by Section 1.28.010(C)(4) of this chapter.
- C. A peace officer or other law enforcement official may be requested to accompany or assist in the execution of an administrative inspection warrant when reasonably necessary to ensure the safety of personnel or the security of the property.
- D. An administrative inspection warrant shall be executed and returned to the municipal judge within ten (10) days from its date of issuance, unless the judge, before the expiration of the ten (10) day period, extends the time for execution by written endorsement for an additional five (5) days. Any warrant not executed within the prescribed time shall be void.

Section 2. Sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or otherwise unlawful, such declaration shall not affect any of the remaining sections, paragraphs, sentences, clauses, and phrases.

Section 3. This ordinance shall be in full force and effect upon approval and publication.

**FIRST READING:** \_\_\_\_\_

**SECOND READING:** \_\_\_\_\_

**THIRD AND FINAL READING:** \_\_\_\_\_

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PATRICK COLLINS, MAYOR

(SEAL)

ATTEST:

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KYLIE SODEN, CITY CLERK

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