



# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Ward and Members of the City Council

**FROM:** Robert V. Wadden Jr., City Attorney

**DATE:** April 18, 2006

**SUBJECT:** Adoption of an Ordinance Revising Section 5.01.260 of the Manhattan Beach Municipal Code Regarding Animal Control Procedures

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**RECOMMENDATION:**

Staff recommends that the City Council adopt Ordinance No. 2084.

**FISCAL IMPLICATION:**

There are no fiscal implications associated with the recommended action.

**BACKGROUND:**

On April 4, 2006 the City Council introduced and waived further reading of Ordinance No. 2084 which amend Manhattan Beach Municipal Code section 5.01.260. Currently Section 5.01.260 authorizes the City "poundmaster" to enter into private premises to enforce the animal control provisions of the municipal code. The section purports to require residents to allow such incursions. However, warrantless searches are governed by the Fourth Amendment to the United States Constitution and the many cases which have construed it. Since this municipal code section seems to encourage incursions by City enforcement personnel into private property which in many circumstances would be illegal the proposed ordinance replaces the language permitting searches with language prohibiting obstruction or interference with an animal control officer performing his or her duties.

**DISCUSSION:**

Ordinance No. 2084 replaces language in Manhattan Beach Municipal Code section 5.01.260 which states that "The Poundmaster or any police officer or other authorized contractor or agent of the City charged with the enforcement of this Chapter is authorized to enter upon any private premises for the purpose of such enforcement." However searches and entry into private property by government officials are regulated by the Fourth Amendment to the United States Constitution which prohibits "unreasonable searches." Over time case law has established a standard of exigent circumstances which must be present to justify entry onto private property without a warrant. The language of the municipal code section simply ignores these standards and tends to give the impression that entry at any time for purposes of enforcing the City's animal control ordinance is authorized. In place of this misleading language we have added a provision which prohibits obstruction or interference with an animal control officer in the conduct of their duties. Surprisingly we have seen many instances over the years where an individual cited for a dog

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infraction (typically not having a license or having a dog off leash) refuse to provide identification, walks away from the citing officer, uses abusive and profane language in response to a citation or actively attempts to escape from the animal control officer. This added language would make someone engaging in such actions guilty of a misdemeanor.

Attachment: Ordinance No. 2084.  
cc: Geoff Dolan, City Manager.

ORDINANCE NO. 2084

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA AMENDING SECTION 5.01.260 OF THE MANHATTAN BEACH MUNICIPAL CODE REGARDING ENFORCEMENT OF ANIMAL CONTROL REGULATIONS

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings:

- A. Presently the City's Animal Control ordinance has a provision which appears to authorize warrantless entry by animal control officers into private premises.
- B. The law regarding entry into private premises is complex and in many cases a warrant is required before any law enforcement officers can make such an entry.
- C. It is in the best interests of the public health, safety and welfare to revise the Manhattan Beach Municipal Code to excise any provision which might be construed to authorize or encourage warrantless entries without adequate legal cause and to add language to the code requiring cooperation with animal control officers.

SECTION 2. The City Council of the City of Manhattan Beach hereby amends Section 5.01.260 of the Manhattan Beach Municipal Code as follows:

**"5.01.260 Obstruction or Interference With Animal Control Officers**

Every person who willfully resists, delays, obstructs or interferes any City animal control Officer in the discharge or attempt to discharge any duty of his or her office or employment shall be guilty of a misdemeanor"

SECTION 3. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 4. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other Ordinance of the City, to the extent that they are inconsistent with this Ordinance, and no further, are hereby repealed.

SECTION 5. This Ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 6. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate, posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 18th day of April, 2006.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Mayor, City of Manhattan Beach, California

ATTEST:

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City Clerk