

Concerns Regarding Ord. 2024-4

1. Sec 1-6 provides the county health officer with the equivalent of a general warrant and is a violation of the 4th Amendment of the US Constitution.

Sec. 1-6. - Same—Inspections for rat infestation and harborage.

The county health officer is hereby authorized to inspect, between the hours of 8:00 a.m. and 5:00 p.m., any store, shop, building, residence, vacant lot or other premises in the city or its police jurisdiction for the purpose of determining if any rat infestation or rat harborage exists, and it shall be unlawful for the owner, operator, person in charge, or any other person whatsoever to resist or in any manner interfere with the health officer or authorized representative by word, deed or act, in the performance of such inspection.

The authority provided to the county health officer in Sec 1-6, is seemingly unbounded. (save for ensuring his searches are conducted during the listed hours and are within the city or its police jurisdiction). Sec 1-6 reads as if the county health inspector is authorized to go and search any residence, or premises without a warrant and if the owner even utters a word in protest the Ordinance declares that speech to be unlawful. The Ordinance wording raises a number of questions.

- Would refusing to open one's door to the county health inspector be unlawful?
- Is the county health inspector able to break down a door to enter a residence without a specific warrant?
- Does the county health inspector have to respect a property owner's no trespassing sign?
- Can the county health inspector climb over a fence to inspect one's private property without the consent of the owner or without a specific warrant?

Nothing in Sec. 1-6. gives a county health officer any guidance as to the answers to these basic questions.

A Brief History of the 4th Amendment

(Per <https://constitutioncenter.org/the-constitution/amendments/amendment-iv/interpretations/121>)

The primary concerns of the generation that ratified the Fourth Amendment were “general warrants” and “writs of assistance.” ... General warrants allowed the Crown’s messengers to search without any cause to believe someone had committed an offense. In those cases the judges decided that such warrants violated English common law. In the colonies the Crown used the writs of assistance—like general warrants, but often unbounded by time restraints—to search for goods on which taxes had not been paid. James Otis challenged the writs in a Boston court; though he lost, some such as John Adams attribute this legal battle as the spark that led to the Revolution. Both controversies led to the famous notion that a person’s home is their castle, not easily invaded by the government.

Today the Fourth Amendment is understood as placing restraints on the government any time it detains (seizes) or searches a person or property. The Fourth Amendment also provides that “no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.” The idea is that to avoid the evils of general warrants, each search or seizure should be cleared in advance by a judge, and that to get a warrant the government must show “probable cause”—a certain level of suspicion of criminal activity—to justify the search or seizure.

Recommendations

1. Revise Sec. 1-6 to be consistent with the 4th Amendment.

The 4th Amendment can not simply be ignored or suspended, regardless of how great the fear of rats or rat harborage is. Sec. 1-6 should be revised to make that fact abundantly clear to any current or future county health inspector. While looking at the history of the 4th Amendment a discussion of someone committing an offense is at issue. It is possible that rats could be on a property through no fault of the property owner, and it seems searches should only be authorized of a property when the owner is suspected of committing some defined offense and probable cause exists. Citizens of Hanceville are likely unwilling to accept the trade off of perhaps eliminating a few more rats at the expense of giving a health inspector such broad search authority.

2. Sec 1-6 is inconsistent with the rights provided to Citizens by 1st Amendment of the US Constitution.

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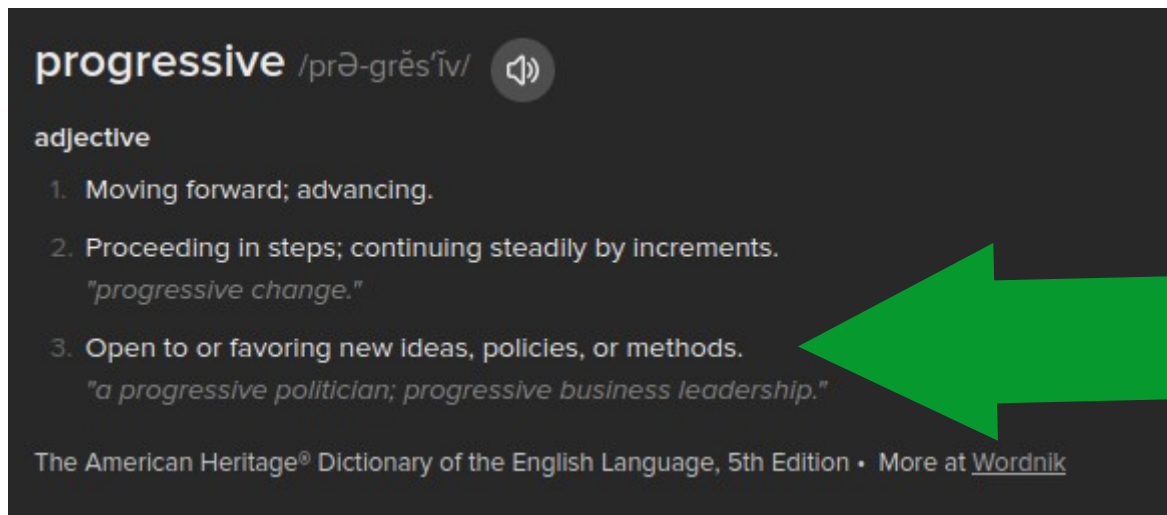
Sec 1-6 includes a restriction on speech unlikely to survive any standard of review. It reads as if a person verbally refusing a search without a warrant by simply exercising their 1st Amendment rights to verbally assert their rights under the 4th Amendment could be considered unlawful. Lawful speech can not be made unlawful by Ord. 2024-4. The 1st Amendment provides the right to speech as well as the right to petition (including to a county health officer), neither of which can be made unlawful. The Supremacy Clause (Article VI, Clause 2) of the U.S. Constitution establishes that federal law takes priority over state law (and certainly municipal Ordinance) when they conflict.

Recommendations

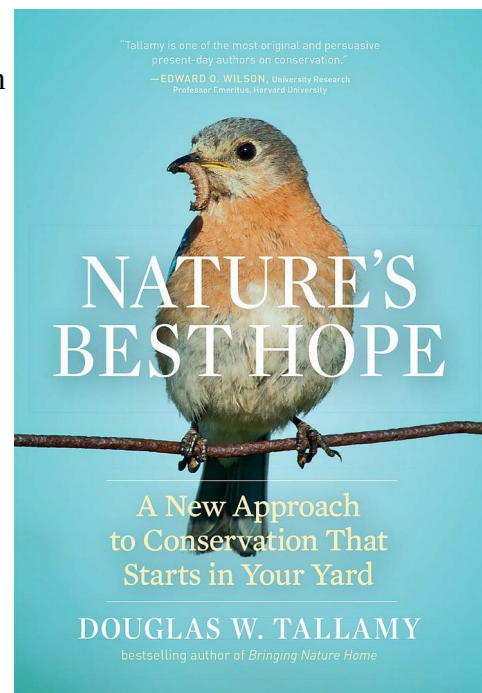
1. Remove and replace the "by word" with something like "by an unlawful act".
2. Provide a procedure in the Ord. for a Citizen to challenge / delay a search of their property.
3. Add a requirement for the health officer to obtain a specific search warrant prior to performing any search of any property.

3. Ord. 2024-4 prevents conservation efforts of Citizens that are in the best interest of the community.

Hanceville, a self proclaimed "Positive & Progressive Community" should be open to new ideas and adapt Ordinance 2024-4 to support new ideas.



The book **Nature's Best Hope** promotes a home-grown approach to conservation and Citizens should have the freedom to support Nature in their yard as they see fit. Not everyone wants a mono-culture yard resembling artificial turf devoid of any life. The Monarch Butterfly population is in serious decline and growing weeds, (milkweed) can help, should that be permitted by Ord. 2024-4. The strict enforcement of Ord. 2024-4 will hinder grass-roots based conservation efforts such as <https://homegrownnationalpark.org/>



4. Property managed by the City is frequently in violation of Ordinance 2024-4



After getting a notice to cut his grass on Oct 10 2024, Charles Wright decided to help Hanceville by reporting violations of Ord. 2024-4 on City property and request that such violations be addressed. Charles is publishing the results of his efforts here:

<https://charleswright.co/wp/archives/122>

The City should lead by example and have the goal to have all its property live up to Ord. 2024-4, before making such demands on Citizens. Regarding the storm shelter pictured above, Charles requests that the storm shelter be painted so that it does not rust further, and in addition have dirt pushed up against it so that it is installed consistently with other shelters managed by the City. Also note the height of the grass around the shelter is in violation of the Ord.