Administrative Search Warrants for Fire, Health, and Code Inspections

Presented by
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Course objectives

• Define an Administrative Search Warrant

• Discuss the legal background and legal authority for issuance of an Administrative Search Warrant

• Describe the procedural steps for issuance of an Administrative Search Warrant

• Highlight areas of concern and factual examples of potential problems in the issuance of an Administrative Search Warrant

Why is this course important to you?

• Judge is the literal/figurative gatekeeper.
What are the legal ways to gain entry onto property?

- Consent
- Exigent circumstances (i.e. fire)
- Statutory authorization (Tex. Health & Safety Code 341.019, mosquito abatement)
- Easement
- Contract (i.e. landlord/tenant)
- Warrant

What is an Administrative search warrant?

- Article 18.05 of the C.C.P.
- Allows for the inspection of property by a fire marshal, health officer, or code enforcement official
- for the purposes of identifying a fire or health hazard, an unsafe building condition, or a violation of any fire, health, or building regulation, statute, or ordinance
- An Administrative Search Warrant does not allow for the seizure of persons or property.

What is an Administrative search warrant NOT?

- An Administrative Search Warrant does not allow for the seizure of persons or property.
- Exception: plain-view doctrine
The Law: Federal

- 4th Amendment to U.S. Constitution

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and 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 Law: State

- Texas Bill of Rights

- SEARCHES AND SEIZURES. The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

The Law: Case law

- Camara v. Municipal Court, 387 U.S. 523 (1967)

- Michigan v. Tyler, 436 U.S. 499 (1978);

Procedures for issuing an Administrative Search Warrant

- Ex parte proceeding
- Judge presented with Affidavit
- Judge must determine whether probable cause exists to issue warrant
- If Judge determines that probable cause exists, then Judge will sign the warrant

Affidavit sample form

AFFIDAVIT FOR INSPECTION WARRANT
FOR FIRE, HEALTH & CODE VIOLATIONS

THE STATE OF TEXAS §
COUNTY OF _________ §

The undersigned Affiant, __________, being the Code Enforcement Official for the City of ___________, Texas, and being duly sworn on oath makes the following statements and accusations:

1. There is in the City _________, _______ County, Texas a suspected place and premises located at 1111 Main Street, Texas, 77555 (hereinafter referred to as "Property") which is a substandard structure. See Exhibit "A". Affiant believes this Property to be abandoned.

Sample form con't.

2. Affiant further believes that the Property presents a fire or health hazard or unsafe building condition or a violation of a fire, health or building regulation, statute, or ordinance.

3. The Property is owned by ________________.

4. It is the belief of Affiant, and Affiant hereby charges and accuses that the owner of the Property is in violation of Section 10-166(2) of the __________ City's Code.

WHEREFORE, Affiant asks for issuance of a Warrant that will authorize Affiant to inspect the suspected place and premises for the purpose of establishing the presence of a fire or health hazard or unsafe building condition or a violation of any fire, health, or building regulation, statute or ordinance; more specifically Chapter 10 of the __________ Code of Ordinances.
Sample warrant form

INSPECTION WARRANT FOR FIRE, HEALTH & CODE VIOLATIONS

STATE OF TEXAS
COUNTY OF _______

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

GREETINGS:

WHEREAS, in accordance with Article 18.05 of the Code of Criminal Procedure of the State of Texas authorizing certain municipal officers to inspect any specified premises to determine the presence of a fire or health hazard or unsafe building condition or a violation of any fire, health, or building regulation, statute, or ordinance, and in accordance with the general police powers granted to municipalities in the State of Texas to preserve the health, safety, and welfare of its citizens, ___________, Code Enforcement Official of the City ________, has sworn and alleged, under oath, that a certain premises located at approximately _____________ is in apparent violation of Chapter 10 the Code of Ordinances.

WHEREAS, the particular grounds and probable cause for this Warrant to issue are set forth in the Affidavit, which is attached and made a part hereof; and upon examination by me, I am satisfied that the grounds exist and that probable cause is shown, and I believe in its existence and do so hereby find.

NOW THEREFORE, is commanded to enter and inspect the suspected place and premises described above and in said Affidavit and to make notes of findings and take photographs and video recordings of the specified premises to determine the presence of a fire or health hazard or unsafe building condition or a violation of any fire, health, or building regulations, statute, or city ordinance.

HEREIN FAIL NOT, but you have then and there this Warrant for execution within three (3) days after the date of issuance and exclusive of the date of execution with your return thereon, showing how you have executed the same.

Pitfalls to look out for in issuing an Administrative Search Warrant

• Has the City made a proper designation under the CCP?

• What about allowing police officers to accompany inspection?

• Has the return been made?

• Others?