

Accessing Blight: The Basics of Administrative Search Warrants

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Many of the blighted properties across Pennsylvania's various municipalities are owned by anonymous LLCs, deceased individuals with unopened estates, or those unwilling to consent to inspection by a municipal code enforcement officer, making it especially difficult to address safety concerns that go beyond the front yard. Municipal code enforcement officers can cite violations for anything they can observe from the public street, adjacent property with the consent of that owner, municipal/park property, or within their plain view from lawful access points (i.e. observations made while approaching the front door) without obtaining an administrative search warrant. However, numerous violations of the building code, fire code, and property maintenance code, particularly important to the safety of surrounding properties, can only be truly assessed from the interior of the structure on the private property, so when the property owner is nowhere to be found or refuses consent, municipal code enforcement officers must turn to their solicitors and the court for help.

Because municipal officials are government actors, entering private property without permission (consent or a warrant), may violate the property owner's state and federal constitutional protections against unreasonable searches. Where consent is refused or cannot be obtained from the property owner, municipal officials cannot force entry on the property but instead can apply for an administrative search warrant. Such warrants do not need to be served upon the property owner, so they are particularly useful in gaining access to vacant property owned by an LLC or a deceased individual. Administrative search warrants differ from general search warrants which are used in criminal investigations to seek evidence of a crime and require the police to meet the traditional probable cause standard. A showing of probable cause is required for administrative search warrants; however, the standard has been modified by Pennsylvania Courts which acknowledge the importance of code compliance and the lesser stakes associated with a municipal notice of violation rather than a criminal investigation.

The modified probable cause standard is met when reasonable legislative or administrative standards justify the inspection with Pennsylvania Courts evaluating (i) the passage of time since the last inspection; (ii) the condition of the premises; and (iii) the condition of the surrounding area. Recently, the Pennsylvania Commonwealth Court in *Rivera v. Borough of Pottstown*, 349 A.3d 486 (Pa. Cmwlth. 2025) clarified that the Pennsylvania Constitution provides greater protection than the Fourth Amendment and therefore, administrative search warrants without individualized probable cause are unconstitutional under the Pennsylvania Constitution Article I, § 8. In *Rivera*, the Borough's ordinance required biennial rental inspections of all units and when an owner/tenant refused entry, the Borough would obtain an administrative search warrant based solely on the passage of time and refusal of consent, offering no individualized probable cause of a code violation. The *Rivera* Court held that the ordinance which authorized administrative search warrants without individualized probable cause was facially unconstitutional because it provided for routine inspection based only on generalized suspicion. Therefore, municipalities cannot rely on blanket inspection programs when applying for an administrative search warrant, instead the municipality must establish probable cause for that specific property prior to the issuance of an administrative search warrant.

There is not a standard form for administrative search warrant applications, however, an application should include: (i) the street address of the property to be inspected; (ii) a specific description of the property to be entered; (iii) the name of the property owner/occupant; (iv) a list of the ordinance violations existing on the property; (v) a probable cause affidavit from the municipal code enforcement officer; and (vi) a section for the judge to fill out granting the warrant and establishing the parameters around the same. The most important component of the application is the probable cause affidavit which should include the following information: (i) dates and details of inspection of the exterior of the property; (ii) previous dates of the inspection of the interior of the property (if applicable); (iii) details about the existing violations on the exterior of the property and believed violations on the interior of the property and reasoning for the same; and (iv) information about communication with or lack thereof with the property owner.

Applications for administrative search warrants can be granted by the court of common pleas, magisterial district judges, and other neutral officers. If your municipality utilizes administrative search warrants sparingly, it is best to have your solicitor present to answer questions or discuss the probable cause analysis with the judge upon presentation of the application. While some magisterial district judges review these requests frequently, others may not and both the municipality and the judge would benefit from establishing rapport as to what information they want to see in the applications and what is required to establish individualized probable cause. If an application is granted, it will likely be limited to a same day or near same day inspection, so municipal officials should be prepared for quick entry upon presentation. Before presentation, a municipal official should consider what may be a necessary outcome and whose determination may be required. For instance, if an emergency demolition might be a required remedy after inspection, consider whose sign off is required under the local ordinance or UCC requirements (i.e. municipal engineer, building code inspector, code enforcement officer). Additionally, repeat administrative search warrants on the same property are unlikely, so photographs and a detailed report of the inspection should be created for record keeping purposes. That inspection report can be used by the municipality in the future as evidence of code violations, evidence that the structure needs to be condemned or demolished, and a tool to evaluate whether the property is a good candidate for the local land bank or potential conservatorship.

Administrative search warrants allow municipalities to conduct inspections required for public safety, enforce housing, building, and fire codes, and protect tenants and the public while ensuring that those inspections occur only after neutral judicial review and a finding of probable cause, which protects both the municipality and the property owner. It is important to remember that courts also recognize the legitimate privacy interests in commercial property as well, so business owners also have a constitutional right to be free from unreasonable government entry in spaces not held open to the public.

Municipal code enforcement officers should (i) request voluntary consent for inspections and if access is refused, apply for an administrative search warrant; (ii) rely on neutral inspection programs to support findings of probable cause; (iii) conduct inspections pursuant to warrant authority; and (iv) make sure the proper officials are on site for the inspection and that the necessary information obtained from the inspection is well documented. Municipal officials should also confirm that their municipality's adoption of the International Property Maintenance Code included the necessary amendments to avoid improper inspection language that does not comply with Pennsylvania law. Administrative search warrants are not always required, for example where exigent circumstances exist, a statutory right exists, or in areas where no reasonable expectation of privacy exists, so always confirm with your solicitor whether an administrative search warrant needs to be obtained prior to entering private property.

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