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Melissa Ashburn

Municipal Technical Advisory Service

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June 1, 2010

ADMINISTRATIVE INSPECTION WARRANTS

Melissa Ashburn, Legal Consultant

Administrative inspection warrants are valuable tools for city code enforcement. This publication interprets and explains the statutory administrative inspection warrant process for code enforcement at the municipal level. Administrative inspection warrants provide legal authority for city building inspectors to enter and inspect dilapidated, substandard, and unsafe properties. This process is used when a property owner refuses permission to inspect premises suspected of being in violation of building codes and property maintenance codes adopted by a city. The administrative inspection warrant process is controlled by state law enacted in 2003, found at *Tennessee Code Annotated* § 68-120-117.

I. Who may use the administrative inspection warrant process?

Tennessee Code Annotated § 68-120-117 empowers local governments to take action against property owners who refuse to permit certified building inspectors to enter their premises, when there is reason to believe that code violations exist on the property. Following is the statutory language explaining who is required to be involved in the process:

- (a) (1) "Agency" means any county, city, or town employing a building official certified pursuant to § 68-120-113;
- (2) "Building official" means any local government building official certified pursuant to § 68-120-113; provided, that

such officials are acting in their capacity as an official of a municipality or county, and provided that the official is seeking to enforce the ordinances or codes of such local government; ...

A city must first employ a certified building inspector and adopt building codes, fire codes and/or property maintenance ordinances before taking action under the law. Certification of building inspectors is a function of the office of the State Fire Marshall. *Tennessee Code Annotated* § 68-120-113. It is important to note that the inspector must be certified under the code being enforced in order to apply for an inspection warrant. The building inspector is the only municipal official charged with taking action under the law to obtain an inspection warrant.

II. What courts may issue administrative inspection warrants?

The statute provides alternative sources for the issuance of an administrative inspection warrant:

- (3) "Issuing officer," means:
 - (A) Any official authorized by law to issue search warrants;
 - (B) Any court of record in the county of residence of the agency making application for an administrative inspection warrant; or
 - (C) Any municipal court having jurisdiction over the agency making application for an administrative

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inspection warrant; provided that the judge of the court is licensed to practice law in the state of Tennessee. *Tennessee Code Annotated* § 68-120-117(a)(3).

The building official may apply for an administrative inspection warrant in a state court that has jurisdiction, or in the municipal court operated by the city. The municipal court may only be used if the judge is also a licensed attorney. If a state court is used, circuit or chancery court would probably be the best option. General sessions judges have the power to issue administrative inspection warrants, but most general sessions judges are far more familiar with criminal search warrants and may be inclined to apply the stricter burden of proof required in criminal cases.

It is important to note that the building official may apply for an administrative inspection warrant without involving the city attorney. It is certainly best to consult with the city attorney to be sure the evidence is in place and is appropriately documented before making application for an inspection warrant, but legal representation is not required by the law.

III. What must the city building official prove when applying for a warrant?

Before the building official takes action under this law, he must be denied access to the property and he must prepare an affidavit stating why the official believes a code violation exists on the premises, according to the following statutory language:

- (b) In the event that a building official is denied permission to make an inspection and a warrant is required by the Constitution of

the United States or the state of Tennessee to perform such inspection, a building official may obtain an administrative inspection warrant in accordance with the procedures outlined in this section. The provisions of title 40, chapter 6, part 1, shall not apply to warrants issued pursuant to this section. [*this language references criminal law requirements for search warrants*]

- (c) The issuing officer is authorized to issue administrative inspection warrants authorizing a building official to inspect named premises. In so doing, the issuing officer must determine from the affidavits filed by the building official, acting as an officer of the agency requesting the warrant, that:
- (1) The agency has the statutory authority to conduct the inspection;
 - (2) Probable cause exists to believe that a violation of law has occurred or is occurring. For the purposes of this section, probable cause is not the same standard as used in obtaining criminal search warrants. In addition to a showing of specific evidence of an existing violation, probable cause can be found upon a showing of facts justifying further inquiry, by inspection, to determine whether a violation of any state law or local building, fire, or life safety code is occurring. This finding can be based upon a showing that:
 - (A) Previous inspections have shown violations of law and the present inspection is necessary to determine whether those violations have been abated;

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- (B) Complaints have been received by the agency and presented to the issuing officer, from persons who by status or position have personal knowledge of the violations of law occurring on the named premises;
 - (C) The inspection of the premises in question was to be made pursuant to an administrative plan containing neutral criteria supporting the need for the inspection; or
 - (D) Any other showing consistent with constitutional standards for probable cause in administrative inspections;
- (3) The inspection is reasonable and not intended to arbitrarily harass the persons or business involved;
- (4) The areas and items to be inspected are accurately described and are consistent with the statutory inspection authority; and
- (5) The purpose of the inspection is not criminal in nature and the agency is not seeking sanctions against the person or business refusing entry. *Tennessee Code Annotated* § 68-120-117(b) and (c).

The building official must establish in an affidavit that there is reason to believe that violations of city building codes are occurring on the premises. The official may prove probable cause by showing that previous inspections have revealed violations; by stating the official's opinion that a violation exists, based on personal observation of the exterior of the structure; or, by complaints received from citizens or other persons with knowledge of the condition of the premises.

Some cities have building inspection schedules, under which certain structures are inspected on a rotating schedule. In those situations, when a neutral administrative plan is in place, the city is not required to establish reasons why the building official believes a violation of the code is occurring.

The building official should be prepared to identify the codes or ordinances that are violated on the property, and establish that such codes have been properly adopted by the city, in order to establish jurisdiction. There is no requirement that specific sections of model codes be specified, but it is recommended that the official be prepared to testify as to what portions of the code he believes are violated on the property.

In addition to stating facts to establish probable cause that a code violation is occurring on the property, the building official should also be prepared to provide proof that the inspection request is reasonable and is not sought in an attempt to harass the persons or business involved. Officials cannot base their decision to apply for an inspection warrant on the mere fact that the property owner refused them access.

There is no requirement that a formal complaint be filed and served on the property owner. In fact, notice to the property owner is not even mentioned in the law. Although a city building official may obtain an inspection warrant without notice to the property owner, any other enforcement actions taken against the property owner must comply with the due process and notice requirements of the applicable code or ordinance. It is important to remember that the administrative inspection warrant process is supplemental in nature, and cities must

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carefully follow all procedural requirements of the codes or ordinances being enforced.

IV. How long must the city wait for an inspection warrant?

Once the city building official applies for an administrative inspection warrant, the judge must make a decision immediately as to whether or not the warrant should be issued. *Tennessee Code Annotated* § 68-120-117(d). The effect of this requirement of immediacy is that the property owner has no right to notice that a warrant is being considered, and the judge does not have to hear from the owner prior to making a decision on the warrant.

V. What must the warrant state?

After finding that probable cause exists, the city has jurisdiction through its codes and the city is not acting arbitrarily in seeking the warrant, the judge issues a warrant, which must contain the following information:

- (e) All warrants shall include at least the following:
 - (1) The name of the agency and building official requesting the warrant;
 - (2) The statutory or regulatory authority for the inspection;
 - (3) The names of the building official or officials authorized to conduct the administrative inspection;
 - (4) A reasonable description of the property and items to be inspected;
 - (5) A brief description of the purposes of the inspection; and

- (6) Any other requirements or particularity required by the constitutions of the United States and the state of Tennessee regarding administrative inspections. *Tennessee Code Annotated* § 68-120-117(e).

The above requirements are clear with the possible exception of items (2), (5) and (6). The authority for the city to conduct the inspection, in requirement (2), will be found in the building codes, fire codes and other uniform codes adopted by the city that the official believes are being violated on the property. The purpose of the inspection, in requirement (5), will generally be to protect public health, safety and welfare, as that is the reason local governments adopt codes. The warrant should state, with as much specificity as practical, the violations that the building official believes exist on the property. The requirement found in subsection (6) was apparently added by the General Assembly to prevent appellate court judges from invalidating the statute, just in case the proof required by the law does not fully satisfy constitutional requirements. It appears the proof required in subparagraphs (1) through (5) covers the waterfront, and no additional evidence will be necessary to satisfy rights granted to property owners by the federal and state constitutions.

VI. How long is the inspection warrant active?

The final requirement contained in the statute for these warrants is found in subparagraph (f), which states "All warrants shall be executed within ten (10) days of issuance." *Tennessee Code Annotated* § 68-120-117(f). The building official must take this short time limit into account when applying for the warrant.

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VII. What if the property owner or others interfere with inspection?

The statute anticipates potential interference with the inspection, and provides that persons who interfere with the inspection once a warrant is received commit a Class C misdemeanor. *Tennessee Code Annotated* § 68-120-117(g) states: “Any person who willfully refuses to permit inspection, obstructs inspection or aids in the obstruction of an inspection of property described in an administrative inspection warrant commits a Class C misdemeanor.”

VIII. What if the warrant is sought for purposes other than code enforcement?

The last two paragraphs of the law state that if an inspection is unlawful, presumably because no probable cause exists or if the city acted arbitrarily, then all evidence found in the inspection will be suppressed.

(h) Any person aggrieved by an unlawful inspection of premises named in an administrative inspection warrant may, in any judicial or administrative proceeding, move to suppress any evidence or information received by the agency pursuant to the inspection.

(i) If the court or the administrative agency finds that the inspection was unlawful, such evidence and information shall be suppressed and not considered in the proceeding.

Tennessee Code Annotated § 68-120-117.

This language was added to the statute to provide reassurance that the process cannot be used for purposes of a criminal prosecution, but only for a codes enforcement action. Any drugs or illegal contraband discovered as a result of a search conducted under an administrative inspection

warrant will be suppressed if the court finds that the warrant was sought in order to avoid the criminal probable cause requirement for obtaining a criminal search warrant. Such a misuse of this statute results in an “unlawful” search under subparagraph (i), and all evidence will be suppressed upon such finding. The judge may make such a finding with or without a complaint being made by the property owner or resident.

Law enforcement officers are advised by MTAS that administrative inspection warrants are only to be used for code enforcement purposes. MTAS further advises that if illegal activity is discovered in the course of executing an administrative inspection warrant, the search must immediately cease, and law enforcement must seek a warrant from criminal court in order to obtain or use such evidence in a criminal prosecution. Failure to do so will result in suppression of such evidence for any purposes.

IX. Warrant form and assistance.

The following pages contain an administrative inspection warrant form drafted by MTAS consultants, which satisfies the requirements of this statute. If you have any questions about the process, or if you need further assistance, please contact your MTAS management consultant or visit our Web site at <http://www.mtas.tennessee.edu>.

ADMINISTRATIVE INSPECTION WARRANT

State of Tennessee

City of _____

To Building Official of _____ (city), State of Tennessee

Proof by:

(1) Affidavit having been made before me by _____ (name of city and building official)

that there is probably cause, pursuant to *Tennessee Code Annotated* § 68-120-117, to believe that violations of the _____ (list ordinances violated either by general title or code number)

of the city exist;

(2) *Tennessee Code Annotated* § 68-120-117 authorizes city building officials to conduct inspections;

(3) Description of the property and items to be inspected: _____

(4) Purpose(s) of the inspection: _____

(5) Other facts pertinent to the inspection: _____

You are therefore hereby commanded to make immediate inspection of said premises, the same being located in

_____ (city), and I hereby certify that I signed and delivered this inspection warrant for execution to

_____ at _____ o'clock, _____ m.,

on this the _____ day of _____, 20_____.

Judge, Municipal Court

City of _____, Tennessee

AFFIDAVIT AND ADMINISTRATIVE INSPECTION WARRANT AFFIDAVIT

State of Tennessee

City of _____

Personally appeared before me, _____

Judge of the Municipal Court of the City of _____, the undersigned

_____ and made oath in due form of law that there is probable cause to believe

that violations of the ordinances of the city exist on the premises at: _____

said violations believe to exist are as follows: _____ (list ordinances violated, either by general title or code number)

This affidavit is made (from the personal observation and knowledge of affiant) or (upon information received by affiant which affiant verily believes to be true) as follows: _____

(Signature of Affiant)

Sworn to and subscribed before me this _____ day of _____, 20_____.

Judge, Municipal Court

City of _____, Tennessee

State of Tennessee

City of _____

City of _____ VS. _____ (property owner)

OFFICER'S RETURN

The within warrant came to hand, and executed on this _____ day of _____, 20____
inspecting the premises herein described, and finding therein the violations named below:

Building Official of the City of _____

Due and proper return having been made of the Inspection warrant, and within warrant, Affidavit and return shall be filed in the office of the clerk for the City of _____.

This _____ day of _____, 20_____.

Judge, Municipal Court

City of _____, Tennessee

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