

CHAPTER 36: ADMINISTRATIVE PROCEDURES

Section

36.01 Administrative search warrants

§ 36.01 ADMINISTRATIVE SEARCH WARRANTS.

(A) As used in this section, unless the context otherwise requires, the following definition shall apply:

"ADMINISTRATIVE SEARCH WARRANT." A written order of a judge or other officer authorized by statute to issue search warrants that commands the search or inspection of any property, place or thing, and the seizure, photographing, copying, or recording of property or physical conditions found. An "ADMINISTRATIVE SEARCH WARRANT" authorizes an officer to enter any premises to conduct any inspection, sampling, and other functions required or authorized by law to determine compliance with the provisions of an ordinance, code, or other regulation including, but not limited to, those relating to the use, condition, or occupancy of property or structures.

(B) Who may apply for warrant:

(1) Whenever a law requires or authorizes an inspection or investigation of any place or thing, the administrative officer charged to enforce that law, acting in the course of his or her official duties, may apply for an administrative search warrant. For this purpose, "ADMINISTRATIVE OFFICER" includes a building inspector, code enforcement officer, fire chief, their deputies, or other duly authorized representative, as the case may be.

(2) Before filing an application for an administrative search warrant, the administrative officer shall consult with legal counsel as to its legality in both form and substance.

(C) Contents of application. The application shall:

(1) Be supported by an affidavit sufficient under Section 10 of the Kentucky Constitution and be sworn to before an officer authorized to administer oaths as provided in the Kentucky Rules of Criminal Procedure or other applicable law;

(2) State the applicant's status in applying for the warrant, the ordinance or regulation requiring or authorizing the inspection or investigation, and the nature, scope and purpose of this inspection to be performed;

(3) Describe the property or places to be entered, searched, inspected or seized in sufficient detail and particularity that the officer executing the search warrant can readily ascertain it;

(4) State:

(a) that, for the purpose of making an inspection, access to the property has been sought from and refused by the regulated party, or

(b) that, after making a reasonable effort, the applicant has been unable to locate the regulated party, or

(c) that the facts or circumstances reasonably show that the purposes of the inspection or investigation might be frustrated if entry were sought without first procuring a warrant; and

(d) State the basis upon which sufficient cause exists to search or inspect for violations of the ordinance or regulation specified.

(D) Grounds for issuance.

(1) An administrative search warrant may issue upon a showing that probable cause for the inspection or investigation exists and that the other requirements for granting the warrant are satisfied. Probable cause may be shown by:

(a) Reasonable legislative or administrative standards for conducting a routine, periodic, or area inspection and that those standards are satisfied with respect to the location;

(b) A reasonable administrative inspection program exists regarding the condition of the property and that the proposed inspection comes within that program;

(c) A health, public protection or safety ordinance, regulation, rule, standard or order and that specific evidence of a condition or nonconformity exists with respect to the particular location; and

(d) An investigation is reasonably believed to be necessary in order to determine or verify the condition of the location.

(2) A copy of the administrative search warrant and supporting affidavit shall be retained by the issuing officer and filed by such officer with the clerk of the court to which the warrant is returnable.

(E) Contents of warrant. The warrant:

(1) May direct its execution and return by the administrative officer charged to enforce the ordinance or regulation specified in the application;

(2) Shall specify the property, place, structure, premises, vehicle or records to be searched, inspected or entered upon in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;

(3) May contain a direction as to the time and manner of its execution; and

(4) Shall command the return to the appropriate court of any evidence of ordinance violations found, or of any property seized pursuant thereto, or a description of such property seized, to be dealt with according to law.

(F) Execution and return.

(1) Unless otherwise prescribed in the warrant, the officer executing an administrative search warrant shall make return thereof to the appropriate court within a reasonable time of its execution. The return shall show the date and hour of service.

(2) Except as provided in the following sentence, in executing a search warrant the person authorized to execute it shall before entry make a reasonable effort to present credentials, authority and purpose to an occupant or person in possession of the location designated in the warrant and show him or her the warrant or a copy thereof upon request. In executing a search warrant, the person authorized to execute the warrant need not inform anyone of his or her authority and purpose, as prescribed in the preceding sentence, but may promptly enter the designated location if it is at the time occupied or not in the possession of any person or at the time reasonably believed to be in such condition, but shall orally announce their credentials and authority to execute the warrant prior to entry.

(3) If any property is seized incident to the search, the officer shall give the person from whose possession it was taken, if the person is present, an itemized receipt for the property taken. If no such person is present, the officer shall leave the receipt at the site of the search in a conspicuous place. The return shall be accompanied by any photographs, copies or recordings made, and by any property seized, along with a copy of the itemized receipt of such property required by this section.

(4) The officer may summon as many persons as he deems necessary to assist him in executing the warrant and may request that a peace officer assist in the execution of the warrant.

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