



Administrative Search Warrants for Beginners

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What is a search warrant?

U.S. Constitution – The Fourth Amendment: “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.**”

Texas Code of Criminal Procedure Art. 18.01:

- “A **written order**, issued by a magistrate and directed to a peace officer, commanding him **to search for any property or thing and to seize the same and bring it before such magistrate...**” (CCP 18.01(a))
- “**No search warrant shall issue** for any purpose in this state **unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist** for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested.” (CCP 18.01(b))

Camara v. Municipal Court



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387 U.S. 523 (1967)

- Administrative searches by San Francisco, CA H&S inspectors constitute significant intrusions upon interests protected by Fourth Amendment; such searches, when authorized and conducted w/o warrant procedure, lack traditional safeguards which Fourth Amendment guarantees to individuals.
- “[E]xcept in certain carefully defined classes of cases, a search of private property without proper consent is ‘unreasonable’ unless it has been authorized by a valid search warrant.”

What's an administrative search warrant?



See Tex. Code of Crim. Proc. 18.05(a)

Administrative search warrant is issued to a:

- fire marshal,
- health officer, or
- code enforcement official.

ASW allows inspection of any specified premises to determine presence of:

- a fire or health hazard,
- unsafe building condition, or
- a violation of any fire, health, or building regulation, statute or ordinance.

Need “presentation of evidence of probable cause to believe that a fire or health hazard or violation or unsafe building condition is present in the premises sought to be inspected.” (CCP 18.05(b))

Sample complaints and violations

Occupied residential home

- Neighbors reported concerns about drug use/sales, **outdoor storage of tires**
- ISD reported truancy concerns to SROs
- **Fire call** due to operation of generator
- **Water and electricity disconnected** for non-payment



Sample complaints and violations

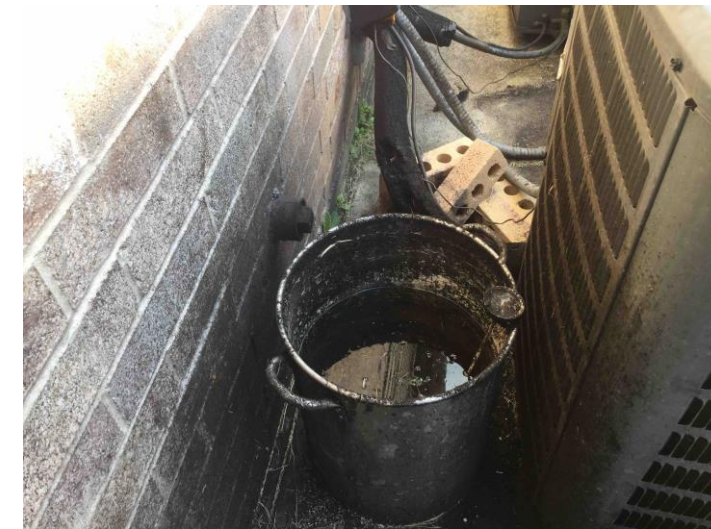
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While en route, MDT notes advised that a caller who was not the homeowner, advised they could see white smoke coming from the vents on the outside. They knocked on the door of the home but was not able to get an answer.

Engine 3 arrived on location, two story single family dwelling, no hazards visible from the exterior. Engine 3 in Command, investigating. Battalion 1 arrived on location, along with Medic 3.

Engine 3 performed a 360 of the residence, and found no signs of smoke or fire. While performing the 360, Engine 3C advised Command that the homeowner had come out of the home and was in the front yard. Command advised Harris County to slow all incoming units down to normal traffic. Ladder 1 arrived on location, staged. FMO and Battalion 1 made contact with the homeowner, who advised she was running a generator in her attic. The smoke that was visible was from a vent hose that the homeowner had installed. There was no fire, no emergency. Command advised 7-1 incident, holding Engine 3 only. All units returned to service, holding Engine 3.



ASW grants authority to inspect



A valid administrative search warrant includes:

- Sworn affidavit
- Search warrant
- Warrant return and inventory



The sworn affidavit should include:



- Affiant's statutory authority to search (code officer, fire marshal, etc.)
- Factual basis (CCP 18.01(c) "substantial facts") A.K.A. why affiant is asking to search the named property
- Affirmation stating the document's contents are true and correct
- Affiant's signature (signed in front of the magistrate)
- Date and time affidavit was signed

“Substantial facts” permitted in ASW



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CCP 18.05(c) – for administrative search warrant, magistrate is not limited to evidence of specific knowledge, but may consider:

- Age, general condition of premises
- Previous violations or hazards present
- Type of premises
- Purposes for which premises used
- Presence of hazards or violations in and the general condition of premises near the premises sought to be inspected

More flexibility = easier to reach probable cause

Search warrant (CCP 18.04)



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- Must run in the name of “The State of Texas”
- Identify what is to be seized and name or describe person, place, or thing to be searched, “as near as may be”
- Command any peace officer of the proper county (or others authorized in CCP 18.05) to search forthwith the person/place/thing
- Dated and signed by magistrate, with date and hour of issuance per 18.07(b)
- Magistrate’s name must appear in clearly legible handwriting or in typewritten form with magistrate’s signature
- Your search warrant should affirm:
 - Person signing affidavit has statutory authority to search
 - Probable cause established



Who may issue a warrant?



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See CCP 18.01(c), (d), (i), (j)

- Municipal court judge/county court judge who is an attorney licensed by Texas
- Statutory county court judge
- District court judge
- Judge of the Court of Criminal Appeals
- Justice of Supreme Court of Texas
- Magistrate with jurisdiction over criminal cases serving a district court



STATE OF TEXAS § A SINGLE FAMILY RESIDENCE
LOCATED AT:
§
COUNTY OF _____ § _____ COUNTY, TEXAS

ADMINISTRATIVE SEARCH WARRANT

THE STATE OF TEXAS to the Sheriff or any Peace Officer of _____ County, or the State of Texas, and/or Building or Code Enforcement Official of the City of Pearland.

GREETINGS:

WHEREAS, the Affiant, whose signature is affixed to the Affidavit attached hereto (which said Affidavit is by this reference incorporated herein for all purposes), is a person duly authorized by law to make inspections of premises for the purpose of enforcing health, fire, or building regulations, statutes, or ordinances, and did heretofore this day subscribe and swear to a said Affidavit before me.

WHEREAS, I find that the verified facts stated by Affiant in said Affidavit show that Affiant has probable cause for the belief he expresses therein and establishes the existence of proper grounds for the issuance of this Warrant;

NOW, THEREFORE, you are hereby commanded to enter the location set forth in the Affidavit as the location of the single family dwelling premises located at _____, Pearland, _____ County, Texas, said premises being described as _____ and search and inspect said premises to determine the existence of any violation of health, fire, or building regulations, ordinances, or statutes.

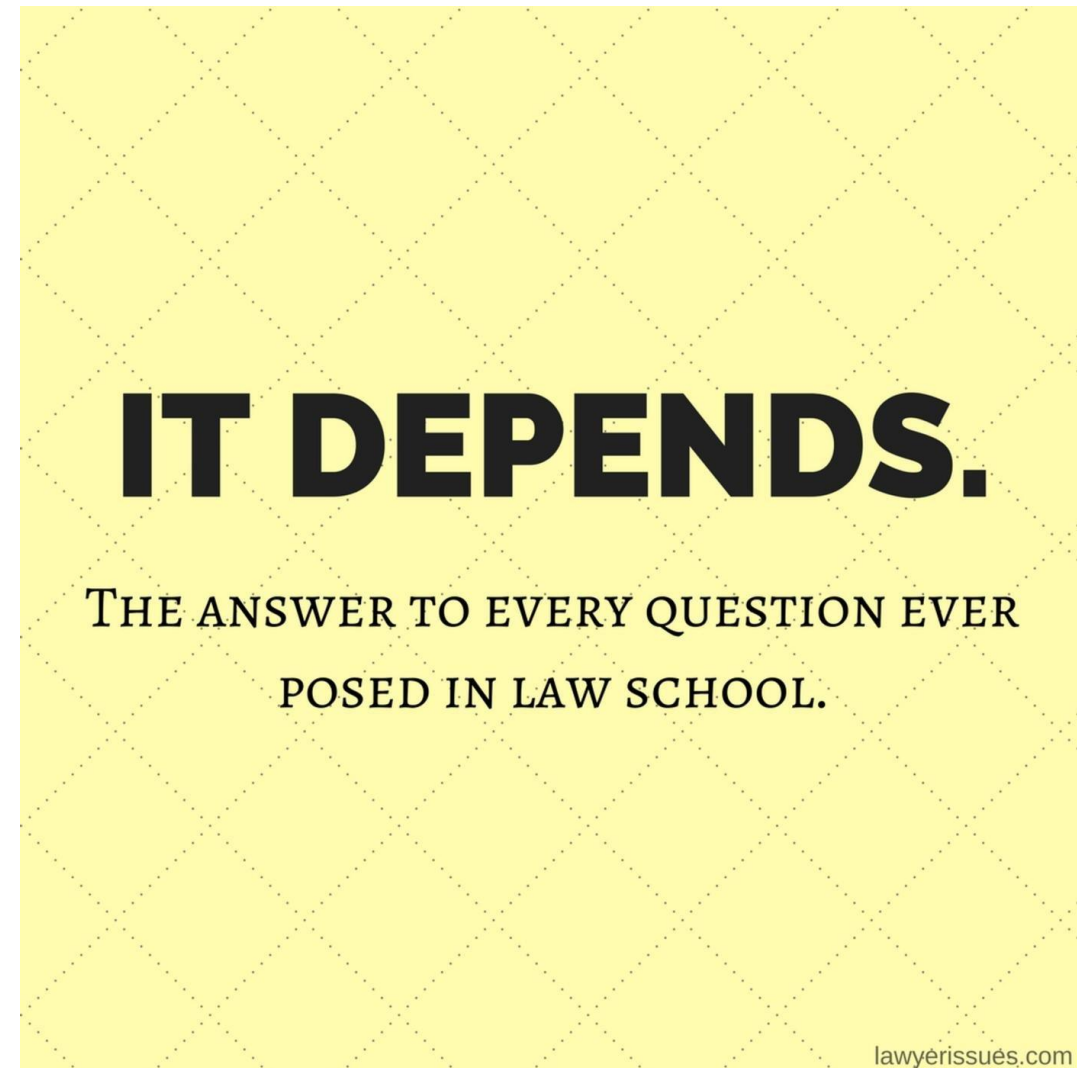
WITNESS my signature on this the _____ day of _____, A.D. 20____ at _____ o'clock __.m.

Bring the right people



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- Code Enforcement
- PD, FMO, or both
- Building Official/
Inspectors
- Environmental Svcs.
- Animal Control
- Utilities
- Legal
- Etc.



Bring the right equipment



- Steel-toe boots
- Gloves
- Hard hats
- Safety glasses
- Tyvek suits
- Face masks/respirators
- Duct tape + plastic sleeve
- **CAMERAS**

Find the violations



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Find the violations



Find the violations



Find the violations



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Find the violations



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But what if...



- If plain view observations of criminal conduct, pause your administrative warrant inspection
- Hold the property and get a criminal search warrant ASAP
- Finish your administrative warrant inspection after criminal warrant executed, items seized, and criminal warrant search is complete
- Release the property only after all aspects of search and inspection are complete

Cardoso v. State



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438 S.W.3d 815 (Tex. App.--San Antonio 2014)

- Search warrant issued pursuant to CCP 18.05; defendant convicted of animal cruelty charges based on staff's plain view observations while serving ASW
- Lack of specific dates/times listed in warrant ok, complaint history indicated course of conduct



CCP 18.10 Warrant Return and Inventory



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- Return not later than 3 days after executing search warrant
- Include:
 - Manner in which warrant was executed (who searched and where/when search occurred)
 - Written inventory of what, if anything, affiant seized during search
- Signed by affiant

SEARCH WARRANT RETURN AND INVENTORY

THE STATE OF TEXAS §

COUNTY OF BRAZORIA §

The undersigned Affiant, being a Peace Officer or Code Enforcement Officer under the laws of the State of Texas, and being duly sworn, on oath duly certifies that the Honorable Judge Farnie on the 7th day of March, 2018, issued a search warrant authorizing the inspection of certain property or items, to-wit:

- a) Interior and Exterior of residential homes and property located at 3406 Dixie Farm, Pearland, Brazoria County, Texas, and being described as Jenkins (A0070 W D C Hall)(Pearland), Lot 15A1, Property ID: 218956 Pearland, Brazoria County, Texas;

Affiant states that the said warrant came to hand on the day it was issued and that it was executed on the 7th day of March, 2018 by inspecting the property or items as follows; to-wit:

- a) Interior and Exterior of residential homes and property located at 3406 Dixie Farm, Pearland, Brazoria County, Texas, and being described as Jenkins (A0070 W D C Hall)(Pearland), Lot 15A1, Property ID: 218956 Pearland, Brazoria County, Texas;

Seungho Maldonado
AFFIANT

No items removed from property. Photos only.

Evaluating your warrant search



- Did staff observe any
 - fire or health hazard,
 - unsafe building condition, or
 - violation of any fire, health, or building regulation, statute or ordinance?
- Did staff observe criminal violations?

Choosing among abatement options



Different cities have different statutory tools to abate nuisance conditions.

- Civil action
 - Local Gov't Code 54.012
 - Local Gov't Code Ch. 214.001 + adopted ordinance
 - Civ. Prac. & Rem. Code 125.002
 - Etc.
- Health & Safety Code § 341.019 mosquito abatement
- Health & Safety Code § 342.008 abatement of weeds/high grass
- Authority to abate may exist in other ordinances and/or adopted int'l codes
- File Class C Misdemeanor or higher-level charges

End goal: abate the nuisance



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Thank you!

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