



Administrative Search Warrants

Job Aid

What sections of the federal and state constitutions protect the rights of individuals when being subjected to search or seizure?

- 1 The 4th Amendment of the U.S. Constitution and Article XIV of the Massachusetts Constitution outline the rights of individuals when being subjected to search or seizure.

What are the laws and regulations that grant LBOH the authority to conduct inspections?

- 2 The laws and regulations that grant LBOH the authority to conduct inspections include:
 - MGL Ch111 s122 requires LBOH to examine all nuisances, sources of filth, and causes of sickness which may be injurious to the public health
 - 310 CMR 11.00 and 105 CMR 400.000 provide LBOH authority for inspections
 - Specific environmental and public health regulations, including 105 CMR 410.000, 105 CMR 590.000, and 105 CMR 430.000, have sections on inspection authority

What are the regulation sections that address interference with inspections?

- 3 310 CMR 11.03 and 105 CMR 400.100 contain inspection and interference provisions that allow LBOH to:
 - Request a search warrant that specifies the nature of the inspection and justification for the inspection
 - Seek the assistance of police authorities in presenting the warrant
 - Revoke or suspend any license, permit, or other permission regulated under the code

What is the preferred way for LBOH in Massachusetts to gain access for inspections?

- 4 The preferred way for LBOH in Massachusetts to gain access for inspections is to ask permission.

Who can grant permission for an inspection?

- 5 The person who can give permission for inspections varies depending on the type of property.
 - For regulated establishments – the owner, manager, or person in charge
 - For private property that is not housing – the owner, occupant, or occupant's representative
 - For housing – the occupant or the occupant's representative (not the owner or property manager)

What are the steps to take if permission is not granted?

- 6 If it's an emergency situation and permission is not granted, ordinary procedures can be suspended. LBOH can take any action deemed necessary to meet an emergency. The LBOH can appoint an agent or director of public health to act for them in cases of an emergency. This agent/director can decide which procedures or actions are necessary to protect the public's health during the emergency and must report them to the LBOH for approval within two days. If it's a non-emergency situation and permission is not granted, make observations using the plain view principle, seek an administrative search warrant, and pursue revocation or suspension of any license, permit, or other permission regulated under a code. Never force your way in.

What is the plain view principle?

- 7** The plain view principle refers to LBOH making observations based on what is visible from plain view or from a legally obtainable vantage point like sidewalks, adjacent properties (with that owner's permission), and common areas (i.e., hallways and entranceways of an apartment building). The plain view principle does not allow for the seizure of any evidence from the property the LBOH is attempting to enter and inspect.

What is a search warrant and how does it differ from an administrative search warrant?

- 8** A search warrant is a court order authorizing the examination or inspection of a property. Administrative searches are considered less intrusive than criminal searches, and probable cause standards for administrative search warrants are more lenient because enforcement of public health regulations by government agencies is meant to promote and safeguard the general welfare of society. Administrative search warrants allow **ONLY** for conducting an inspection, taking photographs, reviewing documentation, and obtaining samples for testing purposes. It does not allow for the seizure of items.

What are some situations in which a LBOH might request an administrative search warrant?

- 9** Some reasons a LBOH might request an administrative search warrant when access for an inspection has been denied include:
- Piles of trash and debris in a yard
 - Evidence of an active rodent infestation
 - Excessive number of animals
 - Unusual smells
 - Complaints from neighbors
 - Reports from other officials (i.e., police or fire department)
 - Apparent physical damage to the property that indicates abandonment or neglect

What are the eight steps to get and serve an administrative search warrant?

- 10** The eight steps to get and serve an administrative search warrant are:
1. Determine which court jurisdiction is appropriate for issuing the administrative search warrant (i.e., district or housing court)
 2. Gather the required forms, including an affidavit
 3. Fill out all forms completely and accurately, using written documentation
 4. File the affidavit and any related documentation with the clerk magistrate
 5. Obtain the administrative search warrant
 6. Notify municipal legal staff of the decision and request a police officer to accompany you to serve the administrative search warrant
 7. Serve the administrative search warrant and conduct the inspection as soon as possible
 8. Return the administrative search warrant to the court within seven days

How can I learn more?

- 11** LPHI *On Your Time* trainings and resources
- <http://sites.bu.edu/masslocalinstitute/training/on-your-time-tranings/>
 - <http://sites.bu.edu/masslocalinstitute/resources>
- Manual of Laws and Regulations Relating to Boards of Health
- <http://www.mass.gov/eohhs/docs/dph/emergency-prep/board-of-health-manual.pdf>