



INFORMATION MEMO

Administrative Search Warrants

Understand when and why administrative search warrants are needed. Learn common situations where a city might need an administrative search warrant and the basic requirements for obtaining one.

RELEVANT LINKS:

[Camara v. Municipal Court](#), 387 U.S. 523, 531 (1967).
[City of Golden Valley v. Wiebesick](#), 899 N.W.2d 152, 168 (Minn. 2017).

[City of Golden Valley v. Wiebesick](#), 899 N.W.2d 152, 161 (Minn. 2017).
[Camara v. Municipal Court](#), 387 U.S. 523, 538 (1967).

[Wiebesick](#) at 161.

I. Lawfully entering private property

In many situations, such as when conducting rental housing inspections and investigating possible ordinance violations, cities will need to enter private property. When a property owner refuses to allow a city's agent to enter private property, an administrative search warrant is needed (unless an emergency exists). An administrative search warrant is issued by a judge and allows designated people to enter the property for certain purposes specified in the warrant.

It is important that cities enter property lawfully because there are constitutional protections for the rights of property owners. Citizens have a substantial interest in "limiting the circumstances under which the sanctity of [their] home may be broken by official authority," and they have a constitutional right to insist that a city inspector obtain a warrant before entering their property. Also, evidence and documentation obtained by a city could be excluded if a person's property rights are violated. If a city is found to have violated a person's property rights, it may be liable for civil rights claims and trespass claims, not to mention attorneys' fees.

It's worth noting that this memo concerns *administrative* search warrants rather than search warrants obtained for criminal investigations. There are similarities (both issue upon probable cause, both allow entry onto public property), but the administrative search warrant does not require individualized suspicion of a code violation. The administrative search warrant requires meeting "reasonable legislative or administrative standards for conducting an area inspection." Probable cause is easier to meet for administrative search warrants, which are generally intended for routine inspections to protect health and welfare. As the Minnesota Supreme Court and U.S. Supreme Court have held, "[w]here considerations of health and safety are involved, the facts that would justify an inference of 'probable cause' to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken."

Cities should work with their attorney when pursuing an administrative search warrant to make sure they are complying with all related laws.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[U.S. Constitution.](#)

[Minnesota Constitution.](#)

[U.S. Const., Amendment IV.](#)

[U.S. Const., Amendment XIV.](#)

[Camara v. Municipal Court](#), 387 U.S. 523 (1967).

[U.S. Const., amendments V, XIV. Minn. Const., art. I. Minn. Const., art. 1, § 7.](#)

[Dunn v. U.S.](#), 480 U.S. 294, 107 S. Ct. 1134 (1987).

See III.-A.-1. Consent.

[Camara v. Municipal Court](#), 387 U.S. 523 (1967).
[State v. Larsen](#), 482 U.S. 691 (2002).

[U.S. v. Eisler](#), 567 F.2d 814, 816 (8th Cir. 1977).

[City of Golden Valley v. Wiebesick](#), 899 N.W.2d 152, 182, n.1 (Minn. 2017).

II. Constitutional concerns

The need for an administrative search warrant results from constitutional protections contained in the Fourth and 14th amendments to the U.S. Constitution. These same amendments are in the Minnesota Constitution, art. I, §§ 1 and 7.

A. Fourth Amendment

The Fourth Amendment to the U.S. Constitution prohibits unreasonable searches and seizures of persons or property. This applies to the federal, state, and local governments, by virtue of the 14th Amendment of the U.S. Constitution, as well as provisions in the Minnesota Constitution. The fundamental purpose of the Fourth Amendment is to “safeguard the privacy and security of individuals against arbitrary invasions by government officials.” The U.S. Supreme Court has held that these Fourth Amendment guarantees apply to city inspections.

Government entry onto private property has implications not only for privacy rights. It also raises concerns around the due process that is constitutionally guaranteed before a person can be deprived of life, liberty, or property. One way a citizen is afforded due process is to have an impartial judge consider the circumstances and potentially give judicial permission, or deem it warranted, that the government may enter private property.

Therefore, to lawfully enter private property to inspect or investigate a suspected violation, the city must generally obtain either voluntary consent from the owner or an administrative search warrant. Getting the owner’s consent for entry, preferably in writing, is always best. However, if the city does not or cannot obtain the owner’s written consent to enter the property, another way to enter the property is to obtain an administrative search warrant. An administrative search warrant effectively removes the need for consent.

B. What property is protected?

Fourth Amendment protection of property rights applies to private property such as homes and residences. (In Minnesota, they’ve been held to extend to fish houses!) Importantly for cities, these protections also apply to tenants and their rental units.

Certain areas of residential buildings, however, may not have protection. For example, residents do not have a reasonable expectation of privacy in common areas of multi-unit apartment buildings.

Landlords have a lower expectation of privacy than tenants in the tenants’ rental units, and landlords typically cannot assert privacy rights on behalf of tenants.

RELEVANT LINKS:

[Dunn v. U.S.](#), 480 U.S. 294, 301, n.4 (1987).

[New York v. Burger](#), 482 U.S. 691, 699 (1987).

[Camara v. Municipal Court](#), 387 U.S. 523, 539 (1967).

[Camara v. Municipal Court](#), 387 U.S. 523 (1967).
[Schneckloth v. Bustamonte](#), 412 U.S. 218, 93 S. Ct. 2041 (1973).

Fourth Amendment protections also apply to the area that is known as the curtilage of the person's property. Curtilage historically has been defined to be the area adjacent to a person's house where "intimate activities associated with domestic life and the privacies of the home" take place. Examples may include a:

- Deck
- Patio
- Porch
- Back yard
- Front yard
- Free-standing structure on the property

Commercial property is similarly protected by the Fourth Amendment, although the U.S. Supreme Court has said there is a lesser expectation of privacy there than in an individual's home.

III. When warrant required

Broadly speaking, administrative search warrants are required when government entry onto private property is necessary to carry out a law, consent is refused or unavailable, and no exception—such as those discussed below—applies to the situation. Administrative search warrants will typically be involved when a city is doing routine inspections, is investigating a complaint, or suspects a code or ordinance violation.

It may be helpful to first discuss when an administrative search warrant is not needed.

A. Exceptions

There are certain exceptions to the requirement of a warrant: consent, emergency, and highly regulated industries.

1. Consent

In most cases, property owners allow inspections of their property without a warrant. Seeking consent often is the simplest way to gain access to property. If the city has consent to enter the property, it may do so.

Consent may be given by the owner or tenant of the property, or by an individual in control of the premises. Consent must be given voluntarily, and it is important that the person giving consent is aware of the purpose and scope of the inspection before consenting (so-called "knowing consent"). It is preferable to obtain consent in writing. Though not every law or occasion requires written consent, it is best to have it in writing in case proof of consent is later needed.

RELEVANT LINKS:

Carlin v. Comm'r of Pub. Safety, 413 N.W.2d 249 (Minn. Ct. App. 1987).

U.S. v. J. B. Kramer Grocery Co., 418 F.2d 987 (8th Cir. 1969).

Camara v. Municipal Court, 387 U.S. 523 (1967).

New York v. Burger, 482 U.S. 691, 703 (1987).

U.S. v. Biswell, 406 U.S. 311, 316 (1972).
New York v. Burger, 482 U.S. 691, 703 (1987). *State v. Wybierala*, 235 N.W.2d 197, 200 (1975).
Donovan v. Dewey, 452 U.S. 594, 603 (1981).

Dow Chemical Co. v. U.S., 476 U.S. 227 (1986).
Air Pollution Variance Bd. v. Western Alfalfa Corp., 416 U.S. 861 (1974).

Courts have upheld consent searches when individuals provide a tacit welcoming action such as opening a front door, stepping back, leaving the door open, and walking upstairs instead of providing a verbal response. The inspector does not have to explain an individual's right to refuse entry. However, the inspector also cannot insist on entering or otherwise perform any acts of coercion if the individual denies entry.

2. Emergencies

There are emergency situations that allow cities to act without a warrant. These situations are so dangerous they require the city to repair or eliminate the condition immediately. For a condition to be an emergency, it must pose an imminent threat to the public's safety, health, or welfare. Common examples of such emergencies might include:

- Open wells
- Downed power lines
- Fallen trees
- Obstructed streets and sidewalks
- Raw sewage
- Fires

3. Highly regulated industries

Warrantless searches are permissible for certain commercial properties in highly regulated industries with "such a history of government oversight" that there can be no reasonable expectation of privacy. They can be inspected or investigated during normal business hours without a warrant. Some examples include:

- Firearms dealers
- Junkyards/junk dealers
- Stone quarries

The ability to perform inspections without an administrative warrant in these industries is a very limited exception. Cities should rely on their attorney before using this exception.

4. Plain view/open field

When a city official is able to observe a violation from a public street, sidewalk, or neighboring property (provided that neighboring property owner granted permission to be there), a person can be charged with an ordinance violation. The observation must give the official all the information necessary to conclude that the ordinance has been violated.

RELEVANT LINKS:

LMC information memo,
[Public Nuisances](#).

[Camara v. Municipal Court](#),
387 U.S. 523, 538 (1967).

[Camara v. Municipal Court](#),
387 U.S. 523, 539 (1967).
[City of Golden Valley v. Wiebesick](#), 899 N.W.2d 152,
168 (Minn. 2017).

The most common context for this is a nuisance condition. Common examples of nuisances that can be classified as such from a plain view include diseased trees, noxious weeds, long grass, and the accumulation of junk. Plain view can even be used to determine if noise violates local ordinance or state law.

The plain view doctrine is an old idea, but it continues to develop in light of new technology. In particular, whether a drone could be used to obtain a view into someone's property that could not otherwise be achieved without entering the property is an open question. For this reason, cities should rely on the advice of their attorney before relying on technology to acquire "plain view" evidence of an ordinance violation.

IV. General requirements for administrative search warrants

Again, given the various documents and court involvement required, it is important to get assistance from the city attorney when obtaining an administrative search warrant. Some of the requirements and documentation necessary when applying for a warrant are outlined below.

An affidavit must be drafted to support the application for a warrant. The affidavit should describe the city inspection program or ordinance involved and establish that the particular inspection falls within the program.

The affidavit must establish "probable cause" based on standards used to initiate and conduct an inspection or investigation.

The standards will vary based on the city program involved, and they do not necessarily have to be based on specific knowledge of the condition of the property. The standards may be based on:

- The passage of time (for example, regularly scheduled inspections),
- The nature of the building (for example, multi-unit residential buildings),
or,
- The condition of the entire area.

Unless there is an emergency, an administrative search warrant should typically be sought only after entry has been refused.

V. Common situations

Cities should be aware of the situations when they might need an administrative search warrant and they should consult the city attorney. Some situations have specific statutory authority and procedures for obtaining an administrative search warrant, while others are more general.

RELEVANT LINKS:

[Camara v. Municipal](#), 387 U.S. 523 (1967). [Search Warrant of Columbia Heights v. Rozman](#), 586 N.W.2d 273, 276 (Minn. Ct. App. 1998).

[City of Golden Valley v. Wiebesick](#), 899 N.W.2d 152, 168 (Minn. 2017).

[City of Golden Valley v. Wiebesick](#), 899 N.W.2d 152, 168 (Minn. 2017).

[City of Golden Valley v. Wiebesick](#), 899 N.W.2d 152, 168 (Minn. 2017).

[City of Golden Valley v. Wiebesick](#), 899 N.W.2d 152, 168 (Minn. 2017).

[City of Golden Valley v. Wiebesick](#), 899 N.W.2d 152, 168 (Minn. 2017).

[City of Golden Valley v. Wiebesick](#), 899 N.W.2d 152, 168 (Minn. 2017).

[City of Golden Valley v. Wiebesick](#), 899 N.W.2d 152, 168 (Minn. 2017).

A. Rental and housing code inspections

One of the most common reasons for a city to obtain an administrative search warrant is to inspect for rental and housing code violations.

Although there is no specific statutory authority for issuing administrative search warrants, Minnesota courts rely on long-standing cases providing for administrative search warrants for inspection and investigation of code violations.

A typical city rental ordinance will require inspections on a set schedule as well as when violations are suspected. An administrative search warrant should only be sought after an inspection or entry is refused by the owner or tenant.

In 2017 the Minnesota Supreme Court set out procedure for district courts to follow when issuing administrative search warrants in the rental housing context:

- Absent an emergency or other compelling need, an administrative search warrant should not be issued unless the party seeking the warrant has provided reasonable notice to the tenants.
- At the hearing on the petition for the administrative search warrant, it is “absolutely essential” that the tenant be given an opportunity to be heard and to ask for reasonable restrictions on the warrant.
- The court must take care to impose a “suitably restricted warrant,” which may include restrictions on the timing and scope of the inspection, even if the tenant does not attend the hearing.
- If the city does not disclose whether law enforcement will be present in the application for the warrant, the court may inquire into the extent of police presence. “Typically absent the threat of danger, the police will not be participating in the inspection within the premises.”

These are not the only issues to be considered by the court. In the end, it is up to the sound discretion of the district court to determine the restrictions on the warrant “based on the needs of the particular tenant and inspector.”

Obtaining an administrative warrant for an inspection pursuant to a rental ordinance will require involvement of the city attorney. The city attorney may include information related to the above items in the application documents. The city attorney can also address the necessity of police presence.

RELEVANT LINKS:

[Minn. Stat. § 299F.08, subd. 1.](#)

[Minn. Stat. § 299F.08, subd. 2.](#)

[Minn. Stat. §§ 343.22-.235.](#)

See LMC information memo [Animal Regulations in Cities.](#)

[Minn. Stat. § 343.235, subd. 3.](#)

B. Fire investigation

Another example of when a city might need an administrative warrant is for the investigation of a fire. Minnesota Statutes authorize the state fire marshal and subordinates, while fighting a fire and for a reasonable time after the fire has been extinguished, to enter any building or premises where a fire has occurred, as well as other adjoining buildings and premises, to investigate and gather evidence.

Once a reasonable time has passed after the fire has been extinguished, subsequent entry into the building or premises to investigate and gather evidence may be made only if there is consent from the owner or occupant of the building or premises, or pursuant to an administrative search warrant issued by a judge.

In determining whether to issue an administrative search warrant, the judge shall consider, but not be limited to, the following factors:

- Scope of the proposed search.
- Number of prior entries by fire officials.
- Time of day when the search is proposed to be made.
- Lapse of time since the fire.
- Continued use of the building.
- The owner's or occupant's efforts to secure the building against intruders.

Although the statute is explicitly for the state fire marshal and subordinates, many cities follow similar procedures, obtaining an administrative search warrant first to allow for investigating, and obtaining a traditional search warrant later, if necessary.

C. Animal regulations

State law provides a detailed process, including notice and hearing requirements, for investigating animal cruelty complaints. A person may make a complaint to a court. If appropriate, the court issues a search warrant and an order for investigation to a peace officer in the county.

Under certain circumstances an animal can be seized and impounded. A person having an interest in the animal may request a hearing to determine the validity of the seizure and impoundment.

If the seizure was done pursuant to a warrant, the hearing must be conducted by the judge who issued the warrant.

RELEVANT LINKS:

[Minn. Stat. § 145A.04, subd. 8.](#)

See LMC information memo [Dangerous Properties.](#)

[Minn. Stat. § 145A.02, subd. 5.](#)

See MN Dept. of Health [list of community health boards.](#)

[Minn. Stat. § 145A.04, subd. 7.](#)

[Minn. Stat. §§ 463.15-463.261.](#)

See LMC information memo [Dangerous Properties.](#)

D. Garbage houses

The Local Public Health Act allows community health boards to deal with buildings that pose a public health threat such as being a public health nuisance, a source of filth, or a cause of sickness. A so-called “garbage house” is an example of this. Although the statutes authorize the governing board of a city to establish a community health board, most community health boards are set up at the county level.

State law allows a community health board, county, or city official to enter property where an infection or other source of preventable disease exists or is reasonably suspected.

E. Hazardous buildings

Minnesota law provides specific authority and a process to deal with hazardous buildings. State law defines a hazardous building or hazardous property as “any building or property, which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment constitutes a fire hazard or a hazard to public safety or health.”

To deal with a hazardous building, the city must first determine that the building is indeed hazardous. This must be done during an open city council meeting. Determining whether a building is hazardous depends on the particular facts of each situation and may require inspecting the property.

It is possible that a city official can observe and document all parts of the hazardous building in plain view from a public location. It is more likely, however, that the city will need to obtain consent from the owner or obtain an administrative search warrant to legally enter the private property and conduct the inspection.

Once the building is found to be hazardous, the statutes allow the city to order a property owner to repair or remove the hazardous conditions or, in extreme cases, to raze the building. At this stage, the city will again need consent or an administrative search warrant to inspect and confirm whether repairs have been done.

The law requires that the court oversee or be involved during most of this process. As such, it is very important to work with the city attorney, who will be needed to draft documents, file court papers, appear in court, and provide specific legal advice throughout the process.

RELEVANT LINKS:

[Plisner v. Sweeney](#), No. CIV 04-3352 JNE/SRN, 2007 WL 474964, at *6 (D. Minn. Feb. 9, 2007).

[Minn. Stat. § 168B.04, subd. 2.](#)

[Minn. Stat. § 168B.011.](#)

F. Utilities

Before entering a home to check, replace, or repair city meters, cities typically ask for the consent of the property owner. If the property owner refuses to give consent to enter private property to deal with a meter issue, the city should pursue an administrative search warrant. Even if a city ordinance allows a city to enter private property to inspect, replace, or repair meters, a court will likely consider it trespassing if a city official enters private property without either consent of the property owner or an administrative search warrant.

In one case, a court held that a city had violated a resident’s Fourth Amendment property rights when it added surcharges to his water and sewer bill. The surcharges came after a city official had inspected the resident’s sump pumps with neither his consent nor an administrative search warrant.

G. Motor vehicles

Under state statutes, certain motor vehicles are considered health and safety hazards. Cities have the authority to take into their custody:

- Abandoned vehicles left on public or private property with no potential for further use.
- Junk vehicles (unregistered and only valued for the scrap metal within).

When vehicles are impounded, cities are required to follow specific notice requirements concerning both the taking of the vehicle, as well as the possible sale or disposal.

When determining whether a vehicle is a “junk vehicle” or an “abandoned vehicle,” cities may need to obtain consent from the property owner to observe the vehicle unless officials can observe the vehicle in plain view without entering the property. If consent is denied and plain view is not possible, the city will need to obtain an administrative search warrant to enter the property and observe the vehicle.

H. Trees in right of way and on private property

Cities generally have liberal authority for performing public works tasks in the city’s right of way. When performing work in the right of way, however, employees should be fully aware of right-of-way boundaries. More specifically, staff should know where the public right of way ends, and private property begins.

RELEVANT LINKS:

[Minn. Stat. § 222.37.](#)

[Minn. Stat. § 561.04.](#)

If entrance to private land is needed to perform work in the right of way, the city may need written consent or an administrative search warrant. In addition, the city will ideally obtain, a waiver, temporary easement, permanent easement, or contract to perform the work on the private property.

Trees on private property pose unique challenges when performing public works duties in the right of way. Public works employees frequently encounter trees that interfere with right-of-way utility work or utility function itself. Trees also may interfere with sight lines or obstruct signs in the right of way.

Cities have specific statutory authority to cut or trim trees within their rights of way if doing so is reasonable and necessary to maintain most utilities. If a city wishes to trim back a tree on private land that is interfering with the right of way, it may be best to ask for specific consent to trim the tree and, ideally, to obtain a waiver of liability. A tree or sightline ordinance may provide the city with some authority to trim back a private tree encroaching on a public right of way. Cities should, however, consult their city attorney to discuss potential legal consequences. Minnesota law states that it is trespassing to cut a tree on a property owner's land without permission. If the city is found to be liable to a property owner for a trespassing claim, it could be liable for treble damages (damages up to three times the loss suffered), in addition to other damages.

VI. Conclusion

There are important constitutional concerns at stake when cities enter private property. When a city cannot obtain consent from a property owner, the city may need to obtain an administrative search warrant. Cities should be aware of the situations that might require an administrative warrant and understand what they need to do to obtain an administrative search warrant. The city attorney should be consulted in these situations so that important evidence is not excluded when cities try to establish an ordinance violation and so that cities are not liable for violating the property rights of individuals.