

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS – TRIAL DIVISION
PHILADELPHIA MUNICIPAL COURT**

Joint General Court Regulation No. 2015-01

***In re: Administrative Search Warrants – Right of Entry –
Residential and Commercial Properties***

The Philadelphia Code authorizes code officials (i.e., “The Commissioner of Licenses and Inspections [as well as the Fire Commissioner in Fire Code matters] or his or her duly authorized representative charged with the administration and enforcement of such codes”) to enter any building or structure, subject to reasonable limitations, when there is reasonable cause to believe that a code violation exists or a dangerous condition is present which may cause serious harm to the public. *See* Title 4 of the Philadelphia Code, Section A-106 and Section A- 401.2 (2).

The Philadelphia Home Rule Charter also authorizes similar access. Section 5-1004 of the Home Rule Charter provides as follows:

Subject to the limitations of the Constitutions of the United States and of the Commonwealth of Pennsylvania, any officer or employee of the Department of Licenses and Inspections, in the performance of his duties, may at any reasonable hour, without hindrance, enter, examine and inspect all vessels, vehicles, premises, grounds, structures, buildings, and underground passages of every sort, including their contents and occupancies, and may likewise examine, inspect and test any substance, article, equipment or other property.

The United States Supreme Court and this Commonwealth’s appellate courts have had occasion to address the constitutional limitations imposed on city inspectors and code officials. *See eg. Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967); *See v. Seattle*, 387 U.S. 541 (1967); *Commonwealth v. Tobin*, 828 A.2d 415 (Pa. Cmwlth. 2003); and *Warrington Township v. Powell*, 796 A.2d 1061 (Pa. Cmwlth. 2002).

In light of the important private and public rights involved and the concomitant necessary restrictions, the intent of this Joint General Court Regulation is to set forth the process to be followed in seeking administrative search warrants to enter and search residential and commercial premises while safeguarding the property rights of the property owners and lessees as well as other legal restrictions.

1. General Statement. Generally, a search warrant is not needed to inspect or search commercial premises which are open to the general public. However, the search of residential premises and commercial premises or sections within commercial premises which are not open to the public are presumptively unreasonable if conducted without an administrative search warrant, as provided herein. Moreover, an administrative search warrant to enter or inspect should be sought whenever the property owner, occupant, or possessor refuses entry, even if such administrative search warrant is not legally required.

2. Residential Property. Unless the property owner, occupant, possessor, or other authorized agent consents to the entry, inspection or search of a residential premises before the premises are entered, inspected or searched, an administrative warrant shall be obtained as provided in Section 5. Provided, however, that entry, inspection or searches may be conducted due to exigent circumstances, which may include a fire or abandoned lot or property (as defined).

3. Commercial Property open to the public. An administrative search warrant is not required to enter, inspect or search a commercial property open to the general public.

4. Commercial Property not open to the public. Unless the property owner, occupant, possessor, or other authorized agent consents to the entry, inspection or search of a commercial property not open to the public, an administrative warrant shall be obtained as provided in Section 5. Provided, however, that entry, inspection or searches may be conducted due to exigent circumstances, which may include a fire or abandoned lot or property (as defined).

5. Application for Administrative Search Warrant and Authorization. The following process shall be followed in seeking an *Administrative Search Warrant*.

- a. **Affiant.** The Commissioner of Licenses and Inspections or any other authorized code officer may file an *Application for Administrative Search Warrant and Authorization*. The name of the Affiant, identification number, Agency name, address and telephone number shall be set forth in the *Application*.
- b. **Property to be entered, inspected or searched.** The property to be entered, inspected or searched must be identified and described in as much detail as possible. The description shall include the street address as well as the specific area within the property if necessary.
- c. **Property owner, occupant or possessor.** The property owner, occupant, or possessor as disclosed in available property records or other registrations (such as rental agent or business owner) shall be identified.
- d. **Reason for entry, inspection or search.** The specific factual and legal reasons for entry, inspection or search must be set forth in as much detail as possible, and any alleged statutory violation or ordinance violation must be identified. In the event a Code Enforcement violation or other legal proceedings are pending, the case number must be provided.
- e. **Reasonable Cause.** The affiant shall set forth with specificity the factual reasons which necessitate the entry, inspection or search, such as a violation of a city building, fire or other code with an adverse effect on the public health, safety or welfare. The affiant shall include a statement as to whether the property at issue was previously inspected and if so, the date of such inspection and shall attach any documentation or other description of the results of such inspection.
- f. **Review by City Solicitor.** The affiant shall submit the *Application* to the Assistant City Solicitor(s) designated by the City of Philadelphia to review such *Applications* for review and for approval to file such *Application* with the appropriate judicial officer.
- g. **The *Application* is to be brought to the designated Judicial Officer.** The affiant shall bring any *Application* approved by the designated Assistant City Solicitor to the judicial officer designated from time to time by the Administrative Judge of the Trial Division, Court of Common Pleas and/or by the President Judge of Philadelphia Municipal Court, as appropriate.

- h. **Oath to be administered by Judicial Officer.** The judicial officer shall administer the requisite oath to the affiant and shall determine whether reasonable cause exists for the issuance of an Administrative Search Warrant based on the information contained within the *Application* or provided therewith.
- i. **Issuance of Administrative Warrant.** If the issuing authority determines that reasonable cause exists for the issuance of an Administrative Search Warrant, the Warrant shall be issued. The judicial officer shall set forth the timing of the service of the Administrative Search Warrant as well as to the return of the Administrative Search Warrant and shall sign and seal the warrant and return it to the affiant. The Warrant shall be returnable to the Judicial Officer upon service. The original *Application*, Warrant and attachments shall be forwarded to the Office of Judicial Records and a copy of the *Application* and all attached documentation shall be retained by the judicial officer.

6. Reasonable cause to issue Administrative Search Warrants. Justification for the issuance of an Administrative Search Warrant does not rise to the level of criminal “probable cause.” As the United States Supreme Court noted in *See, supra*, an “agency’s particular demand for access will of course be measured, in terms of probable cause to issue a warrant, against a flexible standard of *reasonableness* that takes into account the public need for effective enforcement the particular regulation involved. *See*, 387 U.S. at 545. (*Emphasis supplied*). This Joint General Court Regulation thus references such standard as “reasonable cause” to highlight the applicable legal standard, while cognizant of the fact that some appellate cases may use the term “probable cause” while noting, as the United States Supreme Court did in *See*, that the administrative search warrant standard does not rise to the level of a criminal search warrant.

The original Joint General Court Regulation shall be filed with the Office of Judicial Records in dockets maintained for General Court Regulations issued by the Administrative Judge of the Court of Common Pleas and the President Judge of the Philadelphia Municipal Court, and one certified copy shall be submitted to the Administrative Office of Pennsylvania Courts. Two certified copies of the Joint General Court Regulation and an electronic copy on a computer diskette shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, shall be published in *The Legal Intelligencer*, and shall be posted on the First Judicial District’s website at <http://courts.phila.gov>. Copies of this General Court Regulation and shall also be submitted to *American Lawyer Media*, *Jenkins Memorial Law Library*, and the Law Library for the First Judicial District. This General Court Regulation shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

BY THE COURT:

/s/ **Kevin M. Dougherty**

/s/ **Marsha H. Neifield**

Honorable Kevin M. Dougherty
Administrative Judge, Trial Division
Court of Common Pleas
Chair, Administrative Governing Board

Honorable Marsha H. Neifield
President Judge,
Philadelphia Municipal Court
Philadelphia County

Date: 10/26/15

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