Quick Reference Guide

Authority of Fire Department to Enter Building or Premises to Conduct Inspections

Prepared By:

Office of General Counsel
Massachusetts Department of Fire Services
P.O. Box 1025 - State Road
Stow, Massachusetts 01775-1025
(978) 567-3183

Updated: August 2025

Authority of Fire Department to Enter Building or Premises to Conduct Inspections

Table of Contents

I. INTRODUCTION 3
II. OVERVIEW 3
III. CONSTIUTIONAL CONSIDERATIONS 3
A. Requirements for a Warrant 3
B. Types of Search Warrants 4
1. Criminal Search Warrant 4
2. Administrative Search Warrant 4
C. Exceptions to the Warrant Requirement 4
1. Consent 4
2. Emergency Situation 6
IV. ADMINISTRATIVE SEARCH WARRANT PROCESS 6
A. Pre-Request Considerations 6
B. Steps for Obtaining an Administrative Search Warrant 7

Authority of Fire Department to Enter Building or Premises to Conduct Inspections

I. INTRODUCTION

This document serves to provide a basic overview of the authority of Massachusetts fire departments to enter a building or other premises to conduct an inspection. In most instances, the fire department 's entry and inspection of a building or premises will be considered a search under state and federal constitutions and fire departments should be cautioned to ensure their entries and inspections are conducted accordingly. As such, the information presented here is for informational purposes only and does not, nor is it intended to, constitute legal advice. Questions about a specific factual scenario should be directed to your town counsel.

II. OVERVIEW

Fire departments are routinely engaged in the inspection of private property to determine compliance with state statutes and regulations. For fire departments, the requirement to enter buildings and premises to conduct inspections is outlined in, among other areas, the fire prevention laws of Massachusetts General Law Chapter 148 and the State Fire Code (527 CMR 1.00).

However, the authority to enter private property for purposes of an inspection is derived from the Fourth Amendment of the United States Constitution and Article Fourteen of the Massachusetts Constitution which protect citizens from unreasonable searches and seizures.

Fire departments may enter private property to conduct inspections only if: *(1) an authorized person consents to the entry; (2) an administrative search warrant is issued by a court; or (3) there is an emergency situation requiring immediate entry.*

III. CONSTIUTIONAL CONSIDERATIONS

A. Requirements for a Warrant

The general rule is that unless some recognized exception to the warrant requirement applies, a warrant is required to conduct an administrative inspection of residential or business premises. This is true for local officials, including fire departments, that enter buildings or premises for purposes of inspecting or searching the same. Fire departments must be cognizant of the constitutional limitations when entering private property as well as the statutory authorities that define the scope of their inspectional duties.

B. Types of Search Warrants

1. Criminal Search Warrant

A criminal search warrant is generally issued as part of a criminal investigation and would be obtained either by a police officer or fire investigator who is authorized to do so. A criminal search warrant is issued upon a showing of probable cause to believe evidence of a crime can be found on the premises.[1] The probable cause standard is significantly higher than the standard of proof required for the issuance of an administrative warrant.

Enforcement of the fire prevention laws and the State Fire Code is, *for the most part and with some exceptions,* civil in nature and violations carry fines or other similar sanctions. As a result, fire departments are generally not involved (but for assisting the police department(s) in that jurisdiction) in a search for evidence of crime and a fire department should rarely need to consider obtaining a criminal search warrant, independent of the police.

2. Administrative Search Warrant

An administrative search warrant authorizes a fire department to enter a property without the consent of the owner/responsible person. As noted above, the standard of proof required for an administrative search warrant is significantly less that the standard of proof required for a criminal search warrant. A fire department need only show that the inspection is being conducted to comply with regulatory codes. However, an inspection based on the issuance of an administrative warrant is limited and cannot be expanded to the type of search conducted as part of a criminal investigation. That is to say, an administrative warrant cannot be used to avoid the traditional requirements for obtaining a search warrant in the case of a criminal investigation.

C. Exceptions to the Warrant Requirement

Although fire department will be required to obtain warrants before conducting searches of businesses or residences in most circumstances, there are limited exceptions to the warrant requirement. The following are most applicable to fire departments:

1. Consent

Fire departments may search private property without a warrant if they obtain consent of a

[1] Commonwealth v. O'Donnell, 92 Mass. App. Ct. 262, 266, 83 N.E.3d 829, 834 (2017)

person authorized to permit entry. It should be noted, however, that not every person may consent to a warrantless search.[2] The person giving consent must have joint access or control over the building/premises. For example, family members who live in a home together may validly consent to a search of that home. A landlord, however, cannot generally consent to the inspection of a unit rented by one of his or her tenants.[3]

To be constitutionally valid, the consent to search given to a fire department must be voluntary. The question of the voluntariness of a consent to search is one of fact to be determined from all the circumstances of the case. In essence, to be an effective exception to the requirement of an administrative warrant, the consent must be a product of a free and unrestrained choice. There is no consent when the fire department's request to enter or the occupant's response is so ambiguous that a court is unable to discern whether the occupant voluntarily consented to entry

The person who can give consent will vary depending upon the type of property. For example:

- For regulated private and public establishments open to the public - the owner, manager, or person in charge can give permission.
- For private property that is not housing - the owner, occupant, or the occupant's representative can give permission.
- For housing - the occupant or the occupant's representative (usually not the owner or property manager) can give permission.
- For public buildings – the manager or person in charge can give permission.

It has been said that a person's consent may limit the extent or scope of a warrantless search in the same way that the specifications of a warrant limit the search pursuant to that warrant. For example, a person who consents to a search of his garage does not authorize search of an adjoining house, and fire departments need to be mindful of these limits.

[2] *Commonwealth v. Ploude*, 44 Mass.App.Ct. 137, 140 (1998).

[3] *Ploude*, 44 Mass.App.Ct. at 140, internal citations omitted; but see *Boston Housing Authority v. Guirola*, 410 Mass. 820, 827-828 (1991) (landlord could consent to search where lease provision permitted landlord to enter for purposes related to the search).

2. Emergency Situation

As is commonplace, firefighters enter buildings in emergency situations without first obtaining a warrant. This is done to protect or preserve life or to avoid serious injury. For example, a burning building creates an exigency that justifies a warrantless entry by firefighters, and officials do not need a warrant to remain in the building for a reasonable time to investigate the cause of a fire after it has been extinguished. If the warrantless entry to put out the fire and determine its cause is constitutional, the warrantless seizure of evidence while inspecting the premises for these purposes also is constitutional. However, the United State Supreme Court has held that in the case of most routine inspections, there is no compelling urgency to inspect at a particular time or on a particular day. Therefore, in all but the most extreme circumstances, unless proper consent is obtained, fire departments should obtain an administrative warrant before entering and inspecting private property.

IV. ADMINISTRATIVE SEARCH WARRANT PROCESS

A. Pre-Request Considerations

- Is there regulatory authority to conduct the inspection? For fire department, this is generally found in M.G.L. c. 148, ss. 3, 4, & 5, and 527 CMR 1.05.1.7.7

- M.G.L. c. 148, § 4 states that the State Fire Marshal, the head of the fire department, or anyone they delegate their authority to, may enter a building, property, ship, or vessel at any reasonable time to carry out fire safety inspections or investigations. This can be done to enforce fire safety laws, local ordinances or by-laws relating to c. 148, the State Fire Code, or fire department orders. Such entry is not considered trespassing.

- M.G.L. c. 148, § 5 authorizes the State Fire Marshal, the head of the fire department, or anyone they delegate their authority to, to enter a building or premises, at a reasonable time, upon receipt of a complaint from a person with an interest in an adjacent property, to investigate conditions that may pose a fire hazard.

- Has consent been requested or denied?
    - If granted, conduct the inspection
    - If not, and it's an emergency situation, determine whether entry is allowed under the emergency situation exception
    - If no consent and it's not an emergency situation,
        - Make observations based on what is visible from plain view or from a legally obtainable vantage point
        - Seek an administrative search warrant.

- Never force your way in.
- Pursue revocation or suspension of any license, permit, or other permission regulated under the fire code.

- Obtaining an administrative warrant can be time consuming.

- An administrative search warrant only allows for:
  - Conducting an inspection
  - Taking photographs
  - Reviewing documentation
  - Obtaining samples for testing purposes

  - Recording an inventory
  - It does NOT allow for the seizure of items. Seizure of items can only be conducted pursuant to a criminal search warrant.

B. <u>Steps for Obtaining an Administrative Search Warrant</u>

1. Determine which court jurisdiction is appropriate for issuing the administrative search warrant.

   a. In accordance with M.G.L c. 148, s. 34D, a fire department can make application to the Housing, District, or Superior Court.

2. Gather the required forms, which will include a drafted affidavit.

   a. There are no specific forms to be used, although templates may be available from the courts or other municipal agencies.

   b. Descriptions and/or documents may include, but are not limited to:
      i. Observations, along with the date/time/location they were made
      ii. Attempts to get permission for inspection (dates and times, names and titles of people that denied entry, and if the property was occupied)
      iii. Facts about laws or regulations being violated
      iv. Other agencies involved (if any)
      v. Documentation may also include photographs and copies of reports or statements from other agencies or individuals.

3. Fill out all forms completely and accurately.

   a. The proper scope of an administrative warrant . . . is limited by the purpose for which the warrant is sought."

Authority of Fire Department to Enter Building or Premises to Conduct Inspections

b. An administrative warrant must "specify on its face the purpose, place, and objects of a search."
c. Information to be included on the forms includes, but is not limited to, the authority for the inspection, the location where the inspection will occur; areas that will be inspected; the name, title, and agency of the person who will be conducting the inspection, and anyone accompanying the inspector; the property owner, occupant, or person in charge.

4. File the affidavit and any related documentation with the appropriate court where the administrative warrant is being requested.

5. Obtain the administrative search warrant.

   a. The person making the request will appear before a judge and be placed under oath that the information being presented is true.

   b. Often times, a judge will ask for additional information or ask questions of the applicant.
   c. Once the judge is satisfied, he/she will sign the warrant and the fire department can receive a copy from the clerk's office.

6. Consider notifying your town counsel of the decision to obtain an administrative warrant and consider requesting a police officer to accompany the fire department when the warrant is served, as this process may cause some individuals to become upset.

7. Serve the warrant and conduct the inspection as soon as possible.

8. Return the administrative search warrant to the court within seven (7) days.