

Administrative Search Warrants



LAUBER MUNICIPAL LAW, LLC

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What's the plan?

- ▣ Crash course in the Fourth Amendment.
- ▣ What exactly is an Administrative Search Warrants (ASW's) and why would anyone want to use one as opposed to a "regular" search warrant??
- ▣ How to make the most out of ASW's.

- ▣ **DISCLAIMER:** This presentation is for educational purposes only and is not official attorney-client legal advice. Speaking of which, remember, the city police/code officers are probably NOT your clients, no privilege.

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Who is Todd Smith?

- ▣ I'm an attorney in Lauber's Jefferson City office.
- ▣ I focus on public safety and constitutional law issues.
- ▣ Earned 2nd law degree in Law and Government.
- ▣ Served as an assistant county prosecutor and in the MO Attorney General criminal division; extensive experience with drug taskforce operations and felony search warrants.
- ▣ Taught search and seizure for POST credit.
- ▣ Currently assistant municipal prosecutor for the City of Sedalia, use ASW's on a weekly basis.

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What is a Search Warrant?

- Per the 4th Amendment, the government cannot search private property and seize personal property without a search warrant. Duh.
- As a check and balance on law enforcement, a warrant for search/seizure must be authorized by a judge. Also duh.
- 542.271, RSMo. sets out what a search warrant may be issued for or to do.
- 542.276, RSMo. sets out the requirements for the paperwork and process.

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Typical search warrant process.

- Police officer prepares a notarized affidavit setting out the facts supporting the belief that evidence of a crime can be found wherever.
- Prosecuting attorney prepares a signed application stating details of the target search.
- Judge signs the actual warrant allowing the search.
- Police officer executes the warrant.
- Officer seizes the materials sought (drugs, guns, etc).
- Officer provides a return (like a receipt) to the court.
- Seized items are admissible at trial to prove guilt.

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What's "Administrative" mean?

- Normally, "regular" search warrants are all about serious law enforcement, they are used to seize evidence of felonies by detectives and state/county prosecutors, things like drug dealing, serious theft, armed/violent crime, things that get years in prison.
- Administrative search warrants are much less exciting, they are used for boring things like building code inspections by unarmed code enforcement officers and part-time municipal prosecutors looking to charge not serious felonies for a small fine.



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ASW's are actually awesome!

- ▣ ASW allow cities to make serious progress on nuisances.

- ▣ You can use an ASW to:
 - Tow away abandoned vehicles.
 - Remove accumulated trash and rubbish.
 - Establish that a structure is statutorily dangerous.
 - Check to see how many dogs really live in the basement.
 - Inspect to see if the business is keeping proper records.
 - Examine a post-fire building to establish its integrity.(All real-world examples).

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ASW's are SCOTUS approved.

- ▣ The U.S. Supreme Court has specifically approved the use of ASW's by municipalities to conduct inspections pursuant to city codes.
- ▣ *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967).
- ▣ I often cite this case within the body of the ASW application just to make sure anyone new to this type of document has a good place to start if they want to do some checking.

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What's the big deal in *Camara*?

- ▣ The threshold standard for obtaining an ASW is lesser than a normal, criminal search warrant, so an ASW is much easier to get.
 - "It has been suggested that so to vary the probable cause test from the standard applied in criminal cases would be to authorize a synthetic search warrant and thereby to lessen the overall protections of the 4th amendment. But we do not agree. The warrant procedures designed to guarantee that the decision to search private property is justified by a reasonable governmental interest. Reasonableness is still the ultimate standard. If a *valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant.*" *Camara*, 387 U.S. at 538-39. (emphasis added).

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How is it easier?

- ▣ Two metrics
- ▣ Different thresholds for authorization.
 - Probable cause that a crime has occurred
versus
 - Reasonable suspicion that the building code is being violated
- ▣ Different scope of the search.
 - Search the entire contents of the house (anywhere where drugs/powder can physically be concealed, which is literally anywhere inside the residence)
versus
 - Take a quick look around

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How to actually use ASW?

- ▣ The goal is to try and establish a “system” where ASW can be drafted, submitted, and approved efficiently via electronic documents and emails.
- ▣ You will need to write a search warrant ordinance based upon §542.276, RSMo. that sets out the contents of the warrant and the process.
- ▣ The system requires the cooperation of:
 - Municipal Judge
 - Municipal Court clerk
 - Municipal Prosecutor
 - Public Notary
 - Code Enforcement Officer

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How to actually use ASW con't?

- ▣ Get your judge's blessing first on the idea of ASW
- ▣ Get the judge involved with the drafting of templates, you want to make sure the Court is happy with the boilerplate language.
- ▣ All judges are different, tailor the process to them.
 - Do they prefer PDF or Word?
 - How do they sign after-hours orders?
 - Do they want to be emailed or called when a warrant has been submitted?
 - Will the judge swear you in or do you need to arrange a notary.
 - Emphasize that unlike felony warrants or 96-hour commitments, no rush for municipal warrants, no urgency, nothing in the middle of the night.

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Template example.

APPLICATION FOR ADMINISTRATIVE SEARCH WARRANT TO TOW VEHICLE

1. I am a city attorney for the City of Sedalia and am authorized to apply for administrative search warrants.
2. The date and time of the making of this application is **DATE** at _____, approximately am /pm by electronic submission.
3. Sedalia City Code Section 16-24 authorizes administrative search warrants to search or inspect any property, place, or thing and the seizure, photographing, copying, or recording of property or physical conditions found thereon or therein to determine or prove the existence of violations of any ordinance or Code section of the city relation to the use, condition or occupancy of property or structures located within the City or to enforce the provisions of any such ordinance or Code section.
4. I wish to direct city code enforcement staff to enter onto property located at **ADDRESS**, a location within the city limits of Sedalia, Missouri, to seize evidence of code violation located therein, specifically a **COLOR MAKE MODEL**, bearing license plate number **XXX XXX / NO PLATE DISPLAYED** that has been parked **WHERE (DRIVEWAY, GRASS)**.
5. I believe the vehicle is in violation of City Code **SECTION # TITLE**.
6. Facts which support the issuance of a search warrant are provided in the accompanying affidavit.

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Timeline

- ☐ Code officer sees violation.
- ☐ Code officer uses template to draft affidavit stating what was observed, emails that to municipal prosecuting attorney (MPA).
- ☐ MPA uses template to draft an application, affixes notarized signature, emails that to judge along with affidavit and, if available, pictures from the scene.
- ☐ Judge reviews and (hopefully) signs, emails the warrant back to MPA who forwards to code officer and the relevant court clerk.
- ☐ Process takes two hours over two days; easily repeatable.

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What's the bottom line?

Administrative search warrants are an extremely powerful tool for any community looking to become aggressive about code enforcement. The hassle involved in developing an authorizing ordinance and paperwork templates may seem daunting, but it is absolutely worth the time and effort.

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