

## Proof Needed to Apply for a Warrant

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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**Reference Number:** MTAS-1084

Before the building official takes action under this law, he must be denied access to the property and he must prepare an affidavit stating why the official believes a code violation exists on the premises, according to the following statutory language:

(b) In the event that a building official is denied permission to make an inspection and a warrant is required by the Constitution of the United States or the state of Tennessee to perform such inspection, a building official may obtain an administrative inspection warrant in accordance with the procedures outlined in this section. The provisions of title 40, chapter 6, part 1, shall not apply to warrants issued pursuant to this section. *[this language references criminal law requirements for search warrants]*

(c) The issuing officer is authorized to issue administrative inspection warrants authorizing a building official to inspect named premises. In so doing, the issuing officer must determine from the affidavits filed by the building official, acting as an officer of the agency requesting the warrant, that:

(1) The agency has the statutory authority to conduct the inspection;

(2) Probable cause exists to believe that a violation of law has occurred or is occurring. For the purposes of this section, probable cause is not the same standard as used in obtaining criminal search warrants. In addition to a showing of specific evidence of an existing violation, probable cause can be found upon a showing of facts justifying further inquiry, by inspection, to determine whether a violation of any state law or local building, fire, or life safety code is occurring. This finding can be based upon a showing that:

(A) Previous inspections have shown violations of law and the present inspection is necessary to determine whether those violations have been abated;

(B) Complaints have been received by the agency and presented to the issuing officer, from persons who by status or position have personal knowledge of the violations of law occurring on the named premises;

(C) The inspection of the premises in question was to be made pursuant to an administrative plan containing neutral criteria supporting the need for the inspection; or

(D) Any other showing consistent with constitutional standards for probable cause in administrative inspections;

(3) The inspection is reasonable and not intended to arbitrarily harass the persons or business involved;

(4) The areas and items to be inspected are accurately described and are consistent with the statutory inspection authority; and

(5) The purpose of the inspection is not criminal in nature and the agency is not seeking sanctions against the person or business refusing entry. Tennessee Code Annotated § 68-120-117(b) and (c).

The building official must establish in an affidavit that there is reason to believe that violations of city building codes are occurring on the premises. The official may prove probable cause by showing that previous inspections have revealed violations; by stating the official's opinion that a violation exists, based on personal observation of the exterior of the structure; or, by complaints received from citizens or other persons with knowledge of the condition of the premises.

Some cities have building inspection schedules, under which certain structures are inspected on a rotating schedule. In those situations, when a neutral administrative plan is in place, the city is not required to establish reasons why the building official believes a violation of the code is occurring.

The building official should be prepared to identify the codes or ordinances that are violated on the property, and establish that such codes have been properly adopted by the city, in order to establish jurisdiction. There is no requirement that specific sections of model codes be specified, but it is recommended that the official be prepared to testify as to what portions of the code he believes are violated on the property.

In addition to stating facts to establish probable cause that a code violation is occurring on the property, the building official should also be prepared to provide proof that the inspection request is reasonable and is not sought in an attempt to harass the persons or business involved. Officials cannot base their decision to apply for an inspection warrant on the mere fact that the property owner refused them access.

There is no requirement that a formal complaint be filed and served on the property owner. In fact, notice to the property owner is not even mentioned in the law. Although a city building official may obtain an inspection warrant without notice to the property owner, any other enforcement actions taken against the property owner must comply with the due process and notice requirements of the applicable code or ordinance. It is important to remember that the administrative inspection warrant process is supplemental in nature, and cities must carefully follow all procedural requirements of the codes or ordinances being enforced.

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*DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.*

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