



City of Seattle

Department of Planning and Development

Diane M. Sugimura, Director

MEMORANDUM

TO: Nick Licata, Chair, Committee on Housing, Human Services, Health and Culture
Councilmember Sally Clark
Councilmember Tom Rasmussen

FROM: Diane M. Sugimura, Director
Karen White, Code Compliance Division Director
Diane Davis, Code Compliance Manager

DATE: September 22, 2011

SUBJECT: Sept. 2011 Update on Implementing Civil Warrant Procedures.

Last year the Legislature adopted SSB 6459 authorizing civil search warrants.¹ Subsequently, on June 1, 2010, the Council adopted Resolution 31220, which in part requested the Department of Planning and Development (DPD) to report on its use of the civil inspection warrant procedure as a tool for enforcing the Housing and Building Maintenance Code. This memorandum, which was originally submitted to Councilmember Clark and the Committee on the Built Environment on June 30, 2011, has been updated and responds to that request.

Summary of the Warrant Procedure

The state law allows a judge to issue a civil search warrant to a local code enforcement official to inspect a unit occupied by a residential tenant in order to determine if unsafe building conditions or building regulation violations exist. The warrant may be issued only if there is probable cause that: (1) a state or local rental housing law, regulation, or ordinance violation exists, and (2) the violation endangers the tenant's or adjoining neighbor's health or safety.

Before applying for a warrant, the official must seek the owner's and tenant's consent to inspect the building. The request must be denied or no answer made in order to seek the warrant. If consent was not sought, the official must explain in the warrant application what circumstances reasonably justify the failure to seek consent. The warrant application must be supported with a declaration stating that a state or local rental

¹ RCW 59.18.150(4).



housing law, regulation, or ordinance violation exists *and* that the violation endangers the tenant's or adjoining neighbors' health or safety. Probable cause is normally a criminal law standard. In this civil context probable cause can include specific knowledge of a dangerous violation and other factors including: the age and general condition of the premises, previous violations or hazards found present in the premises, the type of premises, the purposes for which the premises are used, or the presence of hazards or violations in, and the general condition of, premises near the premises sought to be inspected.

In contrast to the procedure for a criminal warrant, which is generally sought without notice, before seeking a civil warrant the City must provide written notice to the owner and tenant of the date, approximate time, and court where the City would seek a warrant and post a copy of the notice at the property to be inspected. Proof of notice and posting must be submitted to the judge with the warrant application. The judge must allow the owner and any tenant who appears to speak against or in favor of issuance of a warrant.

If a warrant is issued, it must include the agency's name and the building official requesting the warrant and authorized to conduct an inspection, a description of premises and items to be inspected, and a description of the purposes of the inspection (the suspected hazard).

An inspection warrant is good for no more than 10 days and must be executed and returned within that time or an extension obtained from the court. The inspection must occur between 8 a.m. and 7 p.m. unless other times are preferred by the owner or the tenant. The owner or tenant must be present at the inspection unless this requirement is waived by a judge. Unlike the process for executing a criminal warrant, forcible entry may not be used unless the judge authorizes force because of an immediate threat to the tenant or when reasonable attempts to serve a previous warrant were unsuccessful.

Implementing the Warrant Procedure

The procedure for obtaining a civil warrant is quite detailed. DPD and Law Department staff spent several weeks after the statute was passed preparing procedures and guidelines for DPD staff, as well as forms and pleadings to be used in the process². In addition, DPD developed a database for tracking cases considered for a warrant and attempts to obtain a warrant. This database over time will help us evaluate how successful we have been in obtaining warrants and gaining access to premises where access was previously denied.

With the procedures, guidelines and tracking system in place, DPD is in position to seek a warrant to gain entry to property that meets the statutory criteria. DPD has not, however, encountered cases where this procedure was needed. In most of our housing code complaints the complainant is the unit occupant and grants access for inspection. In other cases, the warrant criteria may not be met—it is not a housing issue or there is no

² The legal forms developed are attached to this memorandum.

apparent danger to the health or safety of tenants or neighbors. Another factor is that our inspectors are persuasive and experienced at motivating property owners to allow access. Finally, we suspect the existence of a warrant option has motivated some owners to consent to an inspection where consent might have otherwise been withheld. In two instances, a letter to the owner requesting inspection and explaining that we would seek a warrant if consent was not granted resulted in full voluntary access to the property by the property owner.

Referrals from Other Agencies

Typically we learn of potential violations by receiving complaints, most often from the rental unit tenant. We expect that to continue to be our main source of information about housing code violations. Staff from other agencies, such as the Fire Department, the Health Department and the Seattle Police Department, also may identify dangerous housing conditions in the course of their work. We have discussed the warrant legislation with the Fire Marshal's office and expect that Fire Department staff will continue to refer potential code enforcement cases to us as they have in the past. We have met with Health Department staff and alerted them to the civil warrant standards. We have also provided information about the civil warrant authority to all the police precincts and have been in close contact with the Community Police Teams in the precincts about the process and its requirements.

In our meetings with these agencies, we have provided information about the housing code provisions we enforce and the type of information needed to obtain warrants to gain entry for further investigation. We have asked for referrals about possible violations of the codes DPD enforces, which may be different from the enforcement responsibilities of the other agencies. With information about possible violations from the other agencies, we would then proceed as with any other case to investigate for violations of DPD codes and seek warrants to gain access where such access is not granted voluntarily and where we believe we can meet the probable cause criteria.

We will continue to reach out to other agencies for possible warrant referrals. One comment we have heard is that some agencies are unlikely to make a referral for the purpose of obtaining a warrant due to the potential for negative unintended consequences for their tenant clients. Under the statute the tenant must be unwilling to allow us access in order to be able to obtain a warrant, and making a referral for this purpose may be unwelcome by the tenant and damage their relationship with the other agency.

Identifying a Test Case

Since the passage of the warrant authority we have been evaluating code enforcement cases to identify those appropriate for testing this tool. With the Law Department we reviewed code enforcement cases in litigation for possible test cases; none were found to be suitable. In addition, we have evaluated several other violation complaints and cases for suitability for the warrant process. For a variety of reasons, none of those were suitable either. These cases are summarized below.

- One case began when an inspector observed a hose entering what appeared to be a vacant unit in a triplex owned by a property owner familiar to DPD from other housing code cases. “Pirated” utilities can be evidence of an unauthorized rental unit that does not have regular utility service. The hose was, however, gone at subsequent visits and there was no other evidence the unit was occupied.
- Another case was a building that exhibited water and structural damage and decay. This property proved to be a vacant commercial building and the external evidence was sufficient to proceed with an enforcement action without obtaining interior access. The owner subsequently granted access voluntarily.
- At two different properties we received reports of dwelling units in commercial structures; in each case the allegations were determined to be unfounded after inspections by the Health and Fire Departments.
- In one case where neighbors alleged excessive numbers of residents in a single-family home and the garage being occupied as a dwelling unit, DPD inspectors gained access and determined there were no violations.
- DPD investigated a referral from a Health Department inspector who suspected a garage associated with a restaurant in Fremont is being used as living quarters. A warrant was not needed: access was given, a violation was identified, and the owners voluntarily ceased using the space as living quarters.
- A commercial building in the Delridge neighborhood was brought to DPD’s attention by a CPT officer who was assisting a tenant. The building has been subject to enforcement action in the past for renting unauthorized rooms to tenants and it was suspected the practice was recurring. However, after DPD sent a letter requesting access and explaining the intent to seek a warrant if consent was not provided, the owners allowed DPD inspectors access and no unauthorized rental rooms were identified.
- A complaint to City Council about a house with broken windows, unkempt grounds, and alleged electrical problems raised by a neighbor. DPD had previously had cases at this property and the owner had been responsive in the past. Inspection revealed no code violations and a vacant unit under renovation by the owner, who allowed full access upon request.
- A case where an inspector had been able to gain entry to identify an illegal conversion of a garage to a dwelling unit but subsequent inspection requests were denied. Further investigation revealed that housing code violations had been corrected, so that the warrant criteria were not met.
- An ongoing matter involving a number of adjacent commercial properties, with new allegations of residential tenants occupying the properties where the owner has previously denied access. These cases have also been referred to the Law

Department for a civil penalties action. After DPD sent a letter requesting access and explaining the intent to seek a warrant if consent was not provided, the owner provided full access and the inspectors identified significant health and safety issues. The Law Department will use this new evidence as it plans next steps in the ongoing enforcement lawsuit.

Although we have not yet found a case appropriate to test the warrant process, we will continue to seek access and evaluate cases for an opportunity to test this new tool if the inspector's normal efforts to inspect are not successful.

Attachment