

HOARDING

The Roles and Responsibilities of the Health Department

Information Provided By



Local Public Health
Institute of Massachusetts

LBOH AUTHORITY

The State Sanitary Code 105 CMR 410.000 (410)

is the principle regulation used by LBOH to address hoarding situations

410 establishes minimum standards of fitness for human habitation and outlines inspection and enforcement processes

In addition to 410, there are two laws that can be applied to hoarding situations:

MGL Ch111 s122 - requires LBOH to examine all nuisances, sources of filth, and causes of sickness, and allows for local regulations to protect public health and safety.

MGL Ch111 s123 - allows LBOH to order the owner or occupant of any private premises, at his/her own expense, to remove any nuisance, source of filth, or cause of sickness found thereon.



Remember, unless evidence of hoarding is visible from the exterior of a dwelling the LBOH must obtain the occupant's consent



<https://smallbusiness.chron.com/definition-master-services-agreement-40141.html>



Except in emergency situations, a LBOH must ask for permission to gain access for inspections.

Obtaining an administrative search warrant can be time-consuming.

It is recommended that LBOH **exhaust all attempts to gain permission first.**

Owner/Occupant contact information

Certified letter requesting an inspection

Second notice

Document all attempts!!!



Who Can Give Permission?

The person who can give permission for inspections will vary depending on the type of property.

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 (not the owner or property manager) can give permission.

For public buildings – the manager or person in charge can give permission.

Certain federal and state-owned buildings are not, by law, subject to LBOH authority.

When a LBOH needs to inspect these premises, he/she should contact the municipal attorney first.



If permission is not granted and it's an emergency situation...

- Ordinary procedures can be suspended. 310 CMR 11.05 and 105 CMR 400.200 allow LBOH to take any action deemed necessary to meet an emergency. MGL Ch111 s30 allows the LBOH to appoint an agent or director of public health to act for them in cases of an emergency. This agent/director can decide which procedures or actions are necessary to protect the public's health during the emergency and must report them to the LBOH for approval/ratification within 48 hours of the action.



If permission is not granted and it's a non-emergency situation...

- Make observations based on what is visible from plain view or from a legally obtainable vantage point (using plain view principle described below).
- Seek an administrative search warrant.
- Never force your way in.
- Pursue revocation or suspension of any license, permit, or other permission regulated under a code.



Getting and Serving Administrative Search Warrants

A search warrant is a court order authorizing the examination or inspection of a property. For LBOH, who are conducting administrative searches and not uncovering criminal acts, search warrants grant them the power to assess public health, public safety, and public welfare matters.

LBOH should never intentionally try to uncover criminal acts. This is within the jurisdiction of the police.

For two reasons, the Supreme Court has authorized a more lenient standard of probable cause for administrative searches:

1. Enforcement of public health regulations by government agencies is meant to promote and safeguard the general welfare of society.
2. Administrative searches are considered less intrusive than criminal ones.

However, 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. This is also within the jurisdiction of the police.



Eight Steps

Step	Description
1	Determine which court jurisdiction is appropriate for issuing the administrative search warrant (i.e., district or housing court). If you're unsure, check with other officials (i.e., police department or municipal legal staff).
2	Gather the required forms, which will include a drafted affidavit. Samples of forms can be found in the Additional Resources section at the end of this training.
3	Fill out all forms completely and accurately, using written documentation. In addition to your written documentation, be prepared to include: <ul style="list-style-type: none">• Location where the inspection will occur• Areas that will not be inspected• A determination about taking photographs during the inspection• 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



Eight Steps

Step	Description
4	File the affidavit and any related documentation with the clerk magistrate.
5	Obtain the administrative search warrant.
6	Notify municipal legal staff of the decision and request a police officer to accompany you to serve the administrative search warrant.
7	Serve the administrative search warrant and conduct the inspection as soon as possible.
8	Return the administrative search warrant to the court within seven days (extensions can be requested).



Now That You Are In.....????



The health inspector may also initiate additional enforcement procedures, which could include:

1. Determining fitness for human habitation
2. Ordering nuisance abatement (per MGL Ch 111 s122 and s123)
3. Convening hearings
4. Considering penalties, condemnation, orders to vacate or secure, or demolition

The health inspector should identify and contact other agencies that might be able to provide support to the person, including the appropriate agency responsible for protecting elders.



Sections of 410 That May Be Applicable During Housing Inspections That Involve Hoarding

Section Title	Citation	Brief Description
Egress Obstructions	410.451	No person shall obstruct any exit or passageway.
Maintenance of Areas Free from Garbage and Rubbish	410.602 A-D	Areas must be maintained free from garbage and rubbish.
Extermination of Insects, Rodents and Skunks	410.550 A-D	Insects, rodents, and skunks must be exterminated and excluded.
Heating Facilities Required and Temperature Requirements	410.200 and 410.201	Heating facilities must be maintained in good operating condition and certain temperature requirements met.



Sections of 410 That May Be Applicable During Housing Inspections That Involve Hoarding

Section Title	Citation	Brief Description
Owner's and Occupant's Installation and Maintenance Responsibilities	410.351 and 410.352	Facilities and equipment must be properly installed and maintained and occupant must maintain them in a clean and sanitary condition and exercise reasonable care.
Smoke Detectors and Carbon Monoxide Alarms	410.482	Detectors must be installed and maintained in operable condition.
Owner's Responsibility to Maintain Structural Elements	410.500	Owner must maintain structural elements, such as the foundation, floor,walls, ceilings, and staircases.
Temporary Wiring	410.256	Wiring cannot lie under rugs or floor coverings or extend through doorways other openings. Temporary wiring (with the exception of extension cords) is prohibited.



How and When to Condemn a Property



