

CHAPTER 40: CITY POLICIES

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ADMINISTRATIVE SEARCH WARRANT

§ 40.01 DEFINITION.

For the purpose of this subchapter the following definition shall apply unless the context clearly indicates or requires a different meaning.

ADMINISTRATIVE SEARCH WARRANT. An administrative search warrant is a written order of a judge or other officer authorized by statute to issue search warrants that commands the search or inspection of any property, place, or thing, and the seizure, photographing, copying, or recording of property or physical conditions found. An administrative search warrant authorized an officer to enter any premises to conduct any inspection, sampling, and other functions required or authorized by law to

determine compliance with the provisions of an ordinance, code, or other regulation including, but not limited to, those relating to the use, condition, or occupancy of property or structures.

(Ord. 06-08-01, passed 8-21-06)

§ 40.02 WARRANT APPLICANT.

(A) Whenever a law requires or authorized an inspection or investigation of any place or thing, the administrative officer charged to enforce that law, acting in the course of his or her official duties, may apply for an administrative search warrant. For this purpose, administrative officer includes a Building Inspector, Code Enforcement Officer, Fire Marshal, their deputies, or other duly authorized representatives, as the case may be.

(B) Before filing an application for an administrative search warrant, the administrative officer shall consult with counsel as to its legality in both form and substance.

(Ord. 06-08-01, passed 8-21-06)

§ 40.03 CONTENTS OF APPLICATION.

The application shall:

(A) Be supported by affidavit sufficient under Section 10 of the Kentucky Constitution and be sworn to before an officer authorized to administer oaths as provided in the Kentucky Rules of Criminal Procedure or other applicable law;

(B) State the applicant's status in applying for the warrant, the ordinance or regulation requiring or authorizing the inspection or investigation, and the nature, scope and purpose of the inspection to be performed;

(C) Describe the property or places to be entered, searched, inspected or seized in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;

(D) State that, for the purpose of making an inspection, access to the property has been sought from and refused by the regulated party, or that, after making a reasonable effort, the applicant has been unable to locate the regulated party, or that the facts or circumstances reasonably show that the purposes of the inspection or investigation might be frustrated if entry were sought without first procuring a warrant; and

(E) State the basis upon which sufficient cause exists to search or inspect for violations of the ordinance or regulation specified.

(Ord. 06-08-01, passed 8-21-06)

§ 40.04 GROUNDS FOR ISSUANCE.

(A) An administrative search warrant may issue upon a showing that probable cause for the inspection or investigation exists and that the other requirements for granting the warrant are satisfied. Probable cause may be shown by:

(1) Reasonable legislative or administrative standards for conducting a routine, periodic, or area inspection and that those standards are satisfied with respect to the location;

(2) A reasonable administrative inspection program exists regarding the condition of the property and that the proposed inspection comes within that program;

(3) A health, public protection or safety ordinance, regulation, rule, standard or order and that specific evidence of a condition of nonconformity exists with respect to the particular location; or

(4) An investigation is reasonably believed to be necessary in order to determine or verify the condition of the location.

(B) A copy of the administrative search warrant and supporting affidavit shall be retained by the issuing officer and filed by such officer with the clerk of the court to which the warrant is returnable. (Ord. 06-08-01, passed 8-21-06)

§ 40.05 CONTENTS OF WARRANT.

The warrant:

(A) May direct its execution and return by the administrative officer charged to enforce the ordinance or regulation specified in the application;

(B) Shall specify the property, place, structure, premises, vehicle or records to be searched, inspected or entered upon in sufficient detail and particularly that the officer executing the warrant can readily ascertain it;

(C) May contain a direction as to the time and manner of its execution; and

(D) Shall command the return to the appropriate court of any evidence or ordinance violations found, or of any property seized pursuant thereto, or a description of such property seized, to be dealt with according to law.

(Ord. 06-08-01, passed 8-21-06)

§ 40.06 EXECUTION AND RETURN.

(A) Unless otherwise prescribed in the warrant, the officer executing an administrative search warrant shall make return thereof to the appropriate court within a reasonable time of its execution. The return shall show the date and hour of service.

(B) Except as provided in the following sentence, in executing a search warrant the person authorized to execute it shall before entry make a reasonable effort to present credentials, authority and purpose to an occupant or person in possession of the location designated in the warrant and show him or her the warrant or a copy thereof upon request. In executing a search warrant, the person authorized to execute the warrant need not inform anyone of his or her authority and purpose, as prescribed in the preceding sentence, but may promptly enter the designated location if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition, but shall orally announce their credentials and authority to execute the warrant prior to entry.

(C) If any property is seized incident for the search, the officer shall give the person from whose possession it was taken, if the person is present, an itemized receipt for the property taken. If no such person is present, the officer shall leave the receipt at the site of the search in a conspicuous place. The return shall be accompanied by any photographs, copies, or recordings made, and by any property seized, along with a copy of the itemized receipt of such property required by this section.

(D) The officer may summon as many persons as he or she deems necessary to assist him or her in executing the warrant and may request that a peace officer assist in the execution of the warrant. (Ord. 06-08-01, passed 8-21-06)

IDENTITY THEFT PREVENTION PROGRAM**§ 40.10 PURPOSE.**

The purpose of this subchapter is to establish an Identity Theft Prevention Program for the City of Benton, Kentucky to detect, prevent and initiate identity theft in connection with the opening of accounts for the city's water, sewer and natural gas service and to provide for continued administration of the Program in compliance with § 681 of Title 16 of the Code of Federal Regulations implementing Section 114 and Section 315 of the Fair and Accurate Credit Transactions Act (FACIA) of 2003. (Ord. 08-11-01, passed 11-17-08)

§ 40.11 DEFINITIONS.

For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicated or requires a different meaning.

COVERED ACCOUNT.

(1) An account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes that involves or is designed to permit multiple payments or transaction. **COVERED ACCOUNTS** include credit card accounts, mortgage loans, automobile loans, margin accounts, cell phone accounts, utility accounts, checking accounts and savings accounts; and

(2) Any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation or litigation risks.

IDENTITY THEFT. Fraud committed or attempted using the identifying information of another person without authority.

RED FLAG. A pattern, practice or specific activity that indicates the possible existence of identity theft.

(Ord. 08-11-01, passed 11-17-08)

§ 40.12 PROGRAM.

The city for its water, sewer and natural gas systems establishes a Theft Identity Prevent Program to detect, prevent, and mitigate identity theft. The program shall include any reasonable policies and procedures required to:

(A) Identify relevant red flags for covered accounts the city offers or maintains and to incorporate those red flags into the program;

(B) Detect red flags that have been incorporated into the program;

(C) Respond to those red flags that are detected to prevent and mitigate identity theft; and

(D) Ensure that the program is updated so that it accurately reflects changes in risk to city's customers and to the safety and soundness of the city from identity theft.

(Ord. 08-11-01, passed 11-17-08)

§ 40.13 ADMINISTRATION OF PROGRAM.

(A) The City Clerk shall be responsible for the development, implementation, oversight and continued administration of the Program.

(B) The City Clerk, Manager of the city's Gas System and a representative of the city's Water and Sewer Department shall develop and train the staff needed or required to implement the Program.

(Ord. 08-11-01, passed 11-17-08)

§ 40.14 IDENTIFICATION OF IMPORTANT RED FLAGS.

(A) The Program shall include relevant red flags from the following categories as appropriate:

(1) Alerts, notifications, or other warnings received from consumer reporting agencies or service providers, such as fraud detection services;

(2) The presentation of suspicious documents;

(3) The presentation of suspicious personal identifying information;

(4) The unusual use of, or other suspicious activity related to, a covered account; and

(5) Notice from customers, victims of identity theft, law enforcement authorities, or other persons regarding possible identity theft in connection with covered accounts.

(B) The Program shall consider the following risk factors in identifying relevant red flags for covered accounts as appropriate:

(1) The types of covered accounts offered or maintained;

(2) The methods provided to open covered accounts;

(3) The methods provided to access covered accounts; and

(4) Its previous experience with identity theft.

(C) The Program shall incorporate relevant red flags from sources such as:

(1) Incidents of identity theft previously experienced;

(2) Methods of identity theft that reflect changes in risk; and

(3) Applicable supervisory guidance.

(Ord. 08-11-01, passed 11-17-08)

§ 40.15 DETECTION OF RED FLAGS.

The Program shall address the identification and detection of red flags related to the opening of new water, sewer, gas and other utility accounts such as:

(A) Obtaining the required information to establish or verify the identity of any person opening a water, sewer, natural gas, or other utility account; and

(B) Authenticating any information obtaining financial customer and monitoring transactions related to a change of address by an existing customer.
(Ord. 08-11-01, passed 11-17-08)

§ 40.16 RESPONSE.

The Program shall provide for appropriate responses to detected red flags to prevent and mitigate identity theft. The response shall be commensurate with the degree of risk posed. Appropriate responses may include:

- (A) Monitor a covered account for evidence of identity theft;
 - (B) Contact the customer;
 - (C) Change any passwords, security codes or other security devices that permit access to a covered account;
 - (D) Reopen a covered account with a new account number;
 - (E) Not open a new covered account;
 - (F) Close an existing covered account;
 - (G) Notify law enforcement; or
 - (H) Determine no response is warranted under the particular circumstances.
- (Ord. 08-11-01, passed 11-17-08)

§ 40.17 UPDATING THE PROGRAM.

The City Clerk and the City Attorney shall periodically update the Program to reflect changes in the law; and in the risk to city's customers to identify theft.
(Ord. 08-11-01, passed 11-17-08)

§ 40.18 OVERSIGHT OF PROGRAM.

(A) The oversight of the Program shall include periodic review of reports prepared by the Managers of the city's utility systems which related to city's compliance.

(B) Approval of any changes in the program designed to address changes in the law or changes in the city's risk of identity theft.

(C) Reports that address development, implementation and administration of the Program are to be prepared by the City Clerk and forwarded to the City Council at the end of each fiscal year.

(D) Those reports shall address matters related to the Program such as:

(1) The effectiveness of the city's policies and procedures related to prevention and detection of identity theft.

(2) Effectiveness of the city's service provider's agreement to protect the city's utility customer's identifying information.

(3) Incidents involving identity theft and city's response.

(4) Recommended changes to the Program.

(Ord. 08-11-01, passed 11-17-08)

§ 40.19 OVERSIGHT OF SERVICE PROVIDERS.

The city will take steps to ensure that any service providers that receive information from the city that might promote identity theft have policies and procedures in place to protect, detect and prevent and mitigate the risk of identity theft.

(Ord. 08-11-01, passed 11-17-08)

§ 40.20 DUTIES REGARDING CUSTOMER ADDRESS DISCREPANCIES.

(A) The city shall develop policies and procedures designed to enable the organization to form a reasonable belief that a credit report relates to the consumer for whom it was requested if the organization receives a notice of address discrepancy from a nationwide consumer reporting agency indicating the address given by the consumer differs from the address contained in the consumer report.

(B) The city may reasonably confirm that an address is accurate by any of the following means:

(1) Verification of the address with the consumer;

(2) Review of the utility's records;

(3) Verification of the address through third-party sources; or

(4) Other reasonable means.

(C) If an accurate address is confirmed, the city shall furnish the consumer's address to the nationwide consumer reporting agency from which it received the notice of address discrepancy it:

(1) The city establishes a continuing relationship with the consumer; and

(2) The city, regularly and in the ordinary course of business, furnishes information to the consumer reporting agency.

(Ord. 08-11-01, passed 11-17-08)

