

**LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL**

<i>Effective Date</i> August 26, 2015		<i>Amended Date</i> December 13, 2017		<i>Directive</i> 7.07.1	
<i>Subject</i> Searches Without a Warrant					
<i>Reference</i>			<i>Approved</i>  Chief of Police		
<i>Distribution</i> All Personnel City Manager City Attorney		<i>TPCA Best Practices Recognition Program Reference</i> 7.06; 7.07; 10.14; 10.15		<i>Review Date</i> December 13, 2017	
				<i>Pages</i> 12	

This Operations Directive is for internal use only and does not enhance an officer's civil or criminal liability in any way. It should not be construed as a creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this Operations Directive, if proven, may only form the basis for a complaint by this Department, and only in a non-judicial administrative setting.

SECTION 1 PURPOSE

The purpose of this policy is to regulate the scope and authority for searches without a warrant.

SECTION 2 POLICY

- A. It is the policy of the department that search and seizure activity be conducted in accordance with the limits of power placed upon law enforcement personnel as stated by the fourth Amendment, U.S. Constitution; Article I, Section 9, Texas Constitution; and Article 1.06, Chapter 1, Texas Code of Criminal Procedure.
- B. One of a citizen's basic civil rights is to be secure in their persons, houses, papers, and possessions, from all unreasonable seizures or searches.
- C. Department personnel will also provide for the safety of citizens and police personnel by controlling weapons and contraband of subjects in custody.

SECTION 3 DEFINITIONS

- A. **Abandonment of property:** means that the owner or possessor gives up their right to the item or property.
- B. **Contraband:** is any item that is unlawful to possess
- C. **Curtilage:** is the area, usually enclosed, encompassing the grounds and buildings immediately surrounding a home that is used in the daily or intimate activities of domestic life.
- D. **Exigent circumstances:** is when probable cause exists and there is not time to get a warrant and there is a likelihood that loss of life, substantial property damage, or imminent destruction of evidence destruction will result if immediate action is not taken to prevent it. This includes places and vehicle that are mobile.

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GENERAL ORDERS MANUAL**

<i>Effective Date</i> August 26, 2015	<i>Amended Date</i> December 13, 2017	<i>Directive</i> 7.07.1
<i>Subject</i> Searches Without a Warrant		

- E. **Seizure:** is the taking possession of property or restraint of a person's freedom.
- F. **Probable cause:** is the articulable facts and circumstances that are known by an officer that would warrant a reasonable and prudent person in believing that a crime has been or is being committed.
- G. **Weapon:** is any item that could be used to injure a person or damage property.

SECTION 4 PROCEDURES

A. SCOPE OF SEARCH INCIDENT TO ARREST (TPCA 7.07)

1. Person

- a. Officers may make a warrantless search of an arrested person incident to a valid arrest at the time and place of the arrest, and may also search the area into which the arrested person can reach for a weapon or to destroy evidence.
- b. Officers shall conduct a search of all arrested persons to the extent necessary to protect the officer, the arrestee, and any other person.
- c. Officers will not choke, grab and/or squeeze a person's throat or place their hands or fingers into the mouth of a person in order to recover possible drugs or contraband.

2. Residence

- a. If the arrest takes place inside a residence, officers may make a protective sweep of the residence in order to prevent a surprise attack by additional suspect who may be concealed in the residence.
- b. The scope of the sweep must be limited to those places where a person may hide.
- c. The sweep may not be a ploy or tactic to circumvent the laws of searching without a warrant in order to discover evidence.

3. Automobile

- a. Officers may not search a vehicle from which an occupant was arrested once the arrested person has been removed from the arrest area or the arrested person no longer has access to the vehicle without first obtaining a search warrant, unless the officer has: (TPCA 7.06)

**LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL**

<i>Effective Date</i> August 26, 2015	<i>Amended Date</i> December 13, 2017	<i>Directive</i> 7.07.1
<i>Subject</i> Searches Without a Warrant		

- i. probable cause to believe that evidence of the crime for which the occupant of the vehicle was arrested might be found in the vehicle;
 - ii. reasonable suspicion that a passenger or recent occupant of a vehicle, whether or not that person was arrested is dangerous and may gain access to a weapon, in which case, the officer may frisk the passenger compartment for weapons;
 - iii. probable cause that the vehicle contains evidence of criminal activity, the officer may conduct a thorough search of any area of the vehicle in which the evidence might be found;
 - iv. obtained a consent from the arrested person to search the vehicle;
 - v. reasonable suspicion that a dangerous person is hiding in a nearby vehicle, in which case, the officer may conduct a protective sweep of the vehicle by looking in places where such a person might be concealed
- b. Officers may not make a delayed warrantless search of an arrested person's luggage or other personal containers that were seized at the time of arrest, but which are now safely in custody.
- c. Officer will however, conduct an inventory of the vehicle in accordance with Lancaster Police Department General Orders Manual, Directive 7.03.1 "Vehicle Impounds."
4. Strip Searches (TPCA 10.14)
- a. Strip searches will be conducted only when there is a reasonable and articulable cause to believe that a weapon or contraband is secreted on the arrestee's body and exigent circumstances require the search. The cause shall be articulated in the arrest report and/or offense/incident report.
 - b. A strip search will not be conducted in place of or prior to an exterior pat down search.
 - c. Strip searches will be conducted by officers of the same sex.
 - d. Strip searches shall be conducted as privately as possible and out of view of persons of the opposite sex.
 - e. A supervisor must be present during any strip search, but the person being searched must be out of view of the supervisor when the person to be searched is of the opposite gender, except when it is conducted at Tri-City Jail by jail staff. If a strip search is requested at Tri-City Jail, approval from the on-duty supervisor must be granted prior to the search being

**LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL**

<i>Effective Date</i> August 26, 2015	<i>Amended Date</i> December 13, 2017	<i>Directive</i> 7.07.1
<i>Subject</i> Searches Without a Warrant		

conducted. The officer will document in the arrest report that a strip search was conducted at the jail, why it was conducted and the approving supervisor's name. (12-13-17)

- f. Officers conducting a strip search shall not touch the arrestee except for purposes of safety and control.

5. Body cavity searches (TPCA 10.15)

- a. May only be conducted only on authority of a search warrant and shall be performed by medical personnel in a sanitary environment. A supervisor must approve of the search, and the incident must be thoroughly documented.

6. Seizure of property

- a. The officer conducting a search incident to a lawful arrest shall seize the following types of property:
 - i. weapons or other items which could be used to injure the officer or affect an escape;
 - ii. evidence of the crime for which the arrest is made;
 - iii. instrumentalities used to commit the crime;
 - iv. contraband, the possession of which constitutes an offense; and
 - v. evidence of a crime

7. Unlawful Arrest

- a. Evidence obtained by a search incident to arrest cannot be used if the arrest itself is unlawful. Even the exigent circumstance presented by the mobility of an automobile requires a lawful arrest. Searches must be conducted immediate to the arrest for evidence or safety of officers.

B. VEHICLE SEARCHES; NOT INCIDENT TO ARREST

1. Moving/Mobile Vehicle

- a. An officer may conduct a warrantless search of a readily movable vehicle (automobile, mobile home, boat or airplane) if the officer has probable cause to believe that seizable

**LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL**

<i>Effective Date</i> August 26, 2015	<i>Amended Date</i> December 13, 2017	<i>Directive</i> 7.07.1
<i>Subject</i> Searches Without a Warrant		

items are inside the vehicle and that the officer cannot safely delay the search in order to obtain a warrant. (TPCA 7.07)

- b. The search should be made immediately.
- c. Passengers may only be searched if they are being arrested or if the officer has probable cause to search; the officer may however, frisk the passenger(s) if the officer has a reasonable fear for the safety of any person.

2. Parked Vehicle

- a. If the vehicle is legally parked and unoccupied and circumstances permit, the officer should secure the vehicle and consider obtaining a search warrant to search the vehicle. (TPCA 7.07)
 - b. If the vehicle is illegally parked or poses a traffic hazard, the officer may impound the vehicle. If the vehicle is impounded, the officer shall perform a vehicle inventory, in accordance with the Lancaster Police Department General Orders Manual, Directive 7.03.1 "Vehicle Impounds."
3. If the officer has probable cause to believe a person possesses evidence of a crime or contraband, either on the person or in the vehicle the person is occupying, the person or vehicle and all containers that might hold evidence may be carefully searched.

C. SEIZURE OF ITEMS IN PLAIN VIEW; PUBLIC PLACES (TPCA 7.07)

- 1. Any item listed in Article 18.02, Texas Code of Criminal Procedure, that could be the subject of a search warrant may be seized without a warrant if:
 - a. the officer recognized the item as seizable property;
 - b. the officer sees it from a lawful vantage point; and
 - c. both the observation and the seizure can be made without unreasonably intruding on anyone's reasonable expectation of privacy – that is, the property is in plain sight or open view
- 2. If the items are in a place where the officer cannot enter legally without a warrant or consent, the items cannot be seized without a search warrant, unless there is danger of imminent destruction or removal of the items. Officer may guard the property until a search warrant is obtained and executed. (TPCA 7.06)

**LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL**

<i>Effective Date</i> August 26, 2015	<i>Amended Date</i> December 13, 2017	<i>Directive</i> 7.07.1
<i>Subject</i> Searches Without a Warrant		

3. If an area or property cannot be sealed or secured, and there is danger of imminent destruction of a seizable item, and an officer has seen the item in plain view from a lawful vantage point, entry can be made without a warrant. In this circumstance, a search warrant should be obtained as quickly as possible after entry is made. (TPCA 7.06)
4. There is no requirement that officers obtain a search warrant before seizing items that are brought into public places that are open to public view.

D. OPEN FIELD SEARCHES (TPCA 7.07)

1. The open field doctrine is a term used for the concept that anything plainly visible to the eye, even if it is on private property, is subject to a search since it is not hidden. Under this doctrine, consent to inspect the location is not required in order for a law enforcement officer to observe and report on things in plain view and include observations made. Courts have said that open fields are not a constitutionally protected area because they cannot be construed as persons, houses, papers, or effects.

E. CURTILAGE SEARCHES

1. Boundaries of a Curtilage

- a. Determining the boundaries of curtilage is imprecise and subject to interpretation. Four of the factors used to determine whether to classify the area as curtilage include:
 - i. the distance from the home to the place claimed to be curtilage (the closer the home is, the more likely to be curtilage);
 - ii. whether the area claimed to be curtilage is included within an enclosure surrounding the home;
 - iii. the nature of use to which the area is put (if it is the site of domestic activities, it is more likely to be a part of the curtilage); and
 - iv. the steps taken by the resident to protect the area from observation by people passing by (shielding from public view will favor finding the portion is curtilage)

2. Constitutionally Protected

- a. While open fields are not protected by the Fourth Amendment, the curtilage, or outdoor area immediately surrounding the home, may be protected. Courts have treated this area as an extension of the house and as such subject to all the privacy protections afforded a person's home (unlike a person's open fields) under the Fourth Amendment.

**LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL**

<i>Effective Date</i> August 26, 2015	<i>Amended Date</i> December 13, 2017	<i>Directive</i> 7.07.1
<i>Subject</i> Searches Without a Warrant		

3. Use of canine to search property/curtilages

- a. The Supreme Court ruled in *Florida v. Jardines*, No. 11-564, that the use of a drug sniffing dog to detect drugs at a person's home and its curtilages without probable cause to enter onto the property constitutes a search under the Fourth Amendment, thus requiring a search warrant.

F. CRIME SCENE SEARCHES

1. Private Property

- a. Assuming an officer has a right to take control of private premises; initial searches conducted at a crime scene on private property should be limited to obtaining control of the scene. Two situations common for an officer to be able to legally search a private premise without a warrant are exigent circumstances and protective sweeps. Once a crime scene on private property is secured, officers should obtain a warrant or consent before continuing a search. In cases where consent may be challenged, officers should obtain a search warrant. Any items immediately identifiable as evidence found in plain view during the initial search may be seized.

2. Public Places

- a. Officers may conduct searches and seize evidence found in public places without a search warrant. This includes privately owned open fields, parking lots and other common areas of private property that are accessible to the public. If the owner (or his representative) of the private property requests a search be stopped, officers should secure the location and obtain a warrant before continuing with the search.

G. ABANDONED PROPERTY

1. Unprotected under Fourth Amendment

- a. Abandoned property is not protected under the Fourth Amendment because ownership of the item was given up, along with the person's reasonable expectation of privacy; therefore, a subsequent search or seizure does not invade the person's reasonable expectation of privacy under the constitution.

2. Factors to determine whether property is abandoned

- a. There are two (2) determining factors whether the property is merely left or actually abandoned.

**LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL**

<i>Effective Date</i> August 26, 2015	<i>Amended Date</i> December 13, 2017	<i>Directive</i> 7.07.1
<i>Subject</i> Searches Without a Warrant		

- i. **Actions** – it is generally assumed that if the item is left in a public place, the item is abandoned. This also includes a person's garbage. Once the item is placed onto the public street or domain, it becomes abandoned property. When an item is abandoned the actions that the officer takes to seize the item must be legal. For instance if a car has been abandoned, the officer may have to leave legal notice upon the vehicle to warn the owner that the vehicle will be removed after a certain period of time.
- ii. **Intent** – this is primarily determined by what a person says or does, and not what a person thinks. A person's denial of ownership of an item can establish the grounds of abandonment. A person's leaving of a vehicle in a parking lot or on a street for an extended period of time may show intent that the owner or occupant has given up the right or ownership to the vehicle.

3. Vehicle-specific considerations

- a. **There are special considerations when determining whether a vehicle is abandoned or just left:**
 - i. **willing flight from the vehicle;**
 - ii. **length of time vehicle is left unattended;**
 - iii. **condition of the vehicle (locked or unlocked, wrecked, notice of abandonment left on vehicle, etc.); and**
 - iv. **denial of ownership of vehicle**

H. CONSENT SEARCHES (TPCA 7.07)

1. Authority

- a. **A police officer may search a person or property without a warrant or probable cause if the officer obtains consent to the search from the owner or person who has lawful control of the property.**
- b. **Although a reason is not required to request consent to search from an individual, officers should make these requests only when they have articulable, reasonable suspicion justifying the detainment.**

**LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL**

<i>Effective Date</i> August 26, 2015	<i>Amended Date</i> December 13, 2017	<i>Directive</i> 7.07.1
<i>Subject</i> Searches Without a Warrant		

- c. When requesting consent to search, officers shall notify the owner or person in control of the premise or property to be searched of the following:
 - i. the right to refuse to consent to the search; and
 - ii. the right to limit the scope of the search
- d. Where a search warrant is not needed, consent to search is not needed.
- e. Officers may obtain consent to search outside their jurisdiction.

2. Voluntary

- a. Officers shall not use coercion, duress, or deceit to obtain consent to search.
- b. Officers shall not falsely claim to possess a search warrant in order to obtain consent to search.
- c. The following are some factors that may affect the voluntariness of the consent:
 - i. number of officers present (especially uniformed);
 - ii. appearance or amount of force used for detainment or arrest (i.e., displaying firearms, baton, pepper spray, etc.);
 - iii. any non-verbal behavior that may represent threat, coercion, or intimidation;
 - iv. language, tone of voice, used in interview requesting consent

3. Documenting Consent and Scope of Search

- a. Whenever reasonably possible, the consent to search will be recorded on the Voluntary Consent to Search form. When the Voluntary Consent to Search and Property/Inventory forms are used, they are to be submitted to the Property and Evidence Division. Officers will not rely on a video or audio recording, alone, to document the consent.
- b. In describing the thing(s) to be searched on the Voluntary Consent to Search form, officers should consider the following:
 - i. most descriptions may be simple (i.e., residence, business, vehicle, etc.), but if detached garages, outbuildings, storage sheds, fields, or other sites on the

**LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL**

<i>Effective Date</i> August 26, 2015	<i>Amended Date</i> December 13, 2017	<i>Directive</i> 7.07.1
<i>Subject</i> Searches Without a Warrant		

curtilage are to be searched, then they should also be included and listed individually;

- ii. regarding hotel or motel rooms, apartments, mini-warehouses, or other multi-unit locations, the unique number or a detailed description for that unit should be included;
 - iii. vehicles descriptions should include the color, year, make, model, license and/or Vehicle Identification Number (VIN) (Use VIN, if vehicle has paper plates)
- c. Officers conducting a consent search shall limit the search to those areas within the scope of the consent and shall immediately terminate the search if consent is revoked.
- d. The officer must document the consent by:
- i. completing the Voluntary Consent to Search form;
 - ii. obtaining the signature of the person providing the consent;
 - iii. noting the incident number on the consent to search form;
 - iv. turning the form into Property and Evidence Division;
 - v. stating in the report how the consent was documented

4. Verbal Consent

- a. In order to minimize the challenges to a verbal consent, officers should video and/or audio record the consent, obtain a written consent, or, have an impartial third party – other than a police officer – witness the consent. (TBP 7.06)

5. Joint Custody of Search Object/Location (TBP 7.06)

- a. If the place or item to be searched is used jointly by two or more persons, any one of them may grant consent over the objections of the other(s) but only for places or things commonly used by both.
- b. Conversely, if any person who has joint ownership or control over an area or item to be searched objects to the search, the officer is required to obtain a search warrant before conducting the search.

6. Overnight Guest Clause

**LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL**

<i>Effective Date</i> August 26, 2015	<i>Amended Date</i> December 13, 2017	<i>Directive</i> 7.07.1
<i>Subject</i> Searches Without a Warrant		

- a. Whenever a person stays overnight as a guest at another person's house, the guest has a reasonable expectation of privacy to the guest room(s).

7. Withdrawal of Consent

- a. The person consenting, or any person having joint ownership or control over the area or the property being searched, may withdraw the consent at any time. The person must be present and have the ability to withdraw the consent. The officer conducting the consensual search must honor this right and stop the search immediately.
- b. If probable cause for a search is developed prior to the withdrawal of the consent, officers should consider obtaining a search warrant to continue the search when there are no exceptions to the warrant requirements. (TBP 7.06)

8. Receipt for Items Seized

- a. Any item seized must be listed on a Property Sheet and a receipt for the property must be provided to the person. The Property Sheet with the "Property Receipt" option circled shall serve as the receipt. The carbon copy or duplicate or copy of the receipt will be given to the person from whom the property was taken; the original will be submitted with the officer's report(s).

I. FRISK

- 1. Stop and Frisk refers to the police practice involving the temporary detention, questioning, and limited frisk or pat down of a person suspected of criminal activity.
- 2. Stop and Frisk is initiated on a reasonable suspicion of crime amounting to less than probable cause for the purpose of crime prevention, criminal investigation and protection of the officer.
- 3. When an officer observes unusual activity which leads to a reasonable conclusion that criminal activity may be occurring or about to occur, and that person with whom the officer is dealing may be armed and presently dangerous, the officer may conduct a limited frisk or pat down of the outer clothing of such person in an attempt to discover any weapons which might be used to assault the officer.

J. EXIGENT CIRCUMSTANCES

- 1. Exigency Established for Entering Premises without Warrant
 - a. An officer may enter any premises without a search warrant when the officer:
 - i. reasonably believes immediate entry is necessary to aid persons in danger of death or imminent harm, or to prevent family violence in accordance with Chapter 5, Texas Code of Criminal Procedure; or

**LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL**

<i>Effective Date</i> August 26, 2015	<i>Amended Date</i> December 13, 2017	<i>Directive</i> 7.07.1
<i>Subject</i> Searches Without a Warrant		

- ii. has probable cause to obtain a search warrant but loss, destruction, or removal of seizable property or evidence will result before a warrant can be obtained and the premises cannot be secured until a warrant can be obtained; or
- iii. is in fresh pursuit (or "hot pursuit") of a fleeing offender who has committed a felony offense in the officer's presence or view

2. Warrantless Search Under Exigent Circumstances

- a. When entry into a premise is made under this section, the officer may for the safety of any person, and to prevent escape, search the premises into which officers have pursued the person, until the person is apprehended. The scope of the search must be limited to those places in which a person may hide. Once the lawful purpose of a search under this section is achieved, all other laws of search and arrest shall apply. (TBP 7.07)

3. Scope of Search After Arrest

- a. Once the apprehension is made, only the area the suspect(s) went through or that are immediately adjacent to the location of the arrest may be searched. (TBP 7.07)

4. Officers may not intentionally create a situation which causes exigent circumstance to apply.

5. Officers must document the exigent circumstances existing in the offense and arrest report.

K. SURVEILLANCE WITHOUT ELECTRONIC DEVICES

- 1. An officer may, without a warrant, conduct surveillance by use of the officer's eyes and ears—including the use of devices that can enhance an officer's senses—unless the surveillance invades the person's reasonable expectation of privacy from government intrusion.

L. SCOPE OF RESPONSIBILITY

- 1. All members of the department shall know and comply with all aspects of this directive.
- 2. All Division Commanders and supervisory personnel are responsible for ensuring compliance with the provisions and intent of this directive.