LEAGUE OF CALIFORNIA CITIES

Inspections, Abatements and the Fourth Amendment

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Inspections, Abatements & the Fourth Amendment for Code Enforcement

Matthew Silver, ***Managing Partner, Civica Law Group, APC***

Community Problems & Local Laws

The California Constitution grants cities and counties the power to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."[1] When properties are neglected, they often fall into disrepair, creates nuisances and endanger occupants and neighbors. Junk and trash accumulates around the building, plaster cracks and falls off walls, windows crack, wood rots, and vegetation becomes overgrown or dies. These issues are not only aesthetic; junk, trash, and overgrown or dead vegetation can catch fire and impede firefighters' efforts to control the blaze. Unmaintained or broken plaster, roofing and windows allow water to seep into buildings, causing water damage and dangerous mold. Rotting wood plays host to fungi, mold, and termites. Overgrown vegetation creates an ideal home for rats and insects. Sometimes property owners alter their property without permits. Unpermitted construction is not inspected for safety or code compliance. As a result, it can contain serious issues like faulty wiring or plumbing. When plumbing or wiring is installed incorrectly, it can cause floods, mold, rot, sewage seepage, or fires. These do not only pose a danger to the owner. Many nuisances can spread into neighboring properties, harming those living on them. On a wider scale, substandard housing plagues our State, with over two million Californians living in substandard housing, according to U.S. Census Bureau data.[2] Finally, local code violations resulting in nuisances, blight and substandard conditions result in visible signs of disorder, which in turn, signal that criminal behavior is tolerated, contributing, along with other factors, to increased crime.

Other times, it is the *use* of the property that violates the law. Some businesses, such as illegal gambling, "massage" parlors, slums, and crime dens pose dangers to the surrounding community. They increase crime rates in the area and invite more. Other times, the business is a sidewalk vendor operating without a permit, possibly involving hazardous food without a health inspector to verify practices. And yet other businesses may be operating without proper permits, business licenses or even in the incorrect zone, negatively impacting both neighboring communities and the environment, such as an illegal concrete batch plant operating in the flood plain or in a residential district. Municipalities create codes to protect the community, and then are empowered to cause compliance with those codes.

The Role of Code Enforcement & Inspections

When code violations occur, Code enforcement steps in. Code enforcement has several tools in its belt it can use to address the variety of nuisances, substandard conditions, blight, crimes and other problems facing communities. These tools range from administrative fines, to red tags (orders to vacate), civil lawsuits for abatement or injunctions, appointment of a receiver to remediate properties or stop illegal business practices, criminal enforcement and a variety of notices and other remedies., or damages; a criminal proceeding; or administrative abatement. With these remedies available, code enforcement is able to protect and improve their communities. However, enforcement first requires inspections to confirm the existence, nature and scope of code violations. And, in turn, these inspections very often will trigger Fourth Amendment protections under the United States Constitution. When cities comply with the Fourth Amendment while inspecting and otherwise obtaining evidence of violations, they will almost always successfully obtain compliance. However, the contrary is also true: when they violate constitutional protections, cities not only risk losing their case and allowing potentially very dangerous violations to continue, they also face potential liability. As such, cities should focus on *how* inspections are conducted and evidence is obtained. Compliance with the Fourth Amendment is always possible – whether an exception complies or an inspection warrant is obtained – and thus, never should be an obstacle or fear for cities that prevents them from protecting their communities.

The Fourth Amendment

> *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."*

One of the driving forces of the American Revolution against the British monarchy was the opposition to British officers performing unrestrained searches of people's homes in search of evidence of crimes.[3] Officers of the King of England used their power to raid homes of those who opposed the monarchy.[4] The writers of the Bill of Rights were likely motivated by protecting the American People from such searches when they penned the Fourth Amendment.[5] Since its signing, Courts have declared that "at the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion."[6]

A search is when law enforcement examines a person's home, vehicle, or business in search of evidence of a crime.[7] A seizure occurs when law enforcement takes possession of physical evidence during the search.[8] Couts have also held that an arrest is a seizure under the Fourth Amendment as it is the act seizing a person.[9]

The Fourth Amendment is enforced by the Exclusionary Rule. Under the Exclusionary Rule, evidence is generally excluded when it's obtained in a search or seizure prohibited by the Fourth Amendment.[10] This is not a constitutional right, but a remedy created to deter the government from utilizing unreasonable searches and seizures.[11] However, evidence obtained under an unreasonable search and seizure may still be admissible if the government agent reasonably believed the search or seizure was proper.[12]

The Fourth Amendment Applies to Code Enforcement

In order to verify the violation of a code or to remedy the violations, the city must be able to conduct inspections and abatements. To do so, it procures an Inspection Warrant, Abatement Warrant, or hybrid Inspection-Abatement Warrant.

The Fourth Amendment has been held to apply to administrative searches. [13] Although the person whose property is being searched is often not suspected of criminal behavior, the person holds a "tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority."[14]

Translating the Fourth Amendment into code enforcement terms, a "search" is an "inspection" and a "seizure" is an abatement.

A search and an inspection are similar to each other: they both involve a government agent examining someone's car, home, or business. In the same way, a seizure and an abatement are similar: during an abatement, code enforcement may remove things from the property such as junk, trash, debris, vegetation, damaged building materials, or inoperable vehicles, or may order a property vacated or cause its demolition.

Despite the general similarities of searches and inspections or seizures and abatements, courts recognize differences between criminal warrants and the inspections warrants used by code enforcement.

First, the requirement for cause differs between a warrant based on criminal charges and a warrant for code enforcement. Whereas a search or seizure requires probable cause, an inspection or abatement requires reasonable cause, otherwise known as good cause or reason to believe. To determine reasonable cause, Courts weigh the need for inspection with the reasonable goals of code enforcement.[15] Code enforcement's power to inspect areas for code violations "is of indispensable importance to the maintenance of community health; a power that would be greatly hobbled by the blanket requirement of the safeguards necessary for a search of evidence of criminal acts."[16] In other words, the standard is different for inspection warrants because they seek different evidence, for a different purpose with different potential consequences. It can be said that the reasonable cause for an inspection warrant is a lower standard than that required for a search warrant.

Second, unlike a search warrant, inspection and abatement warrants occur after consent has been sought and refused unless facts justify not seeking consent.[17] Unlike criminal searches, routine property inspections often do not *need* to occur at a particular time or on a particular day.[18] Without some sort of good cause, pursuant the Fourth Amendment, warrants should not be sought unless or until consent is refused.[19] Exceptions do apply.

Despite the differences between typical search and seizures and inspections and abatements, code enforcement officials should keep the Fourth Amendment and its rules and exceptions in mind. The rules and exceptions inform officials on when a warrant is needed pursuant to the Fourth Amendment versus when an inspection or abatement can take place without a warrant.

Basic Rules of the Fourth Amendment

Reasonable Expectation of Privacy

The Fourth Amendment protects people, not places.[20] The Fourth Amendment is only implicated if the invaded area is one in which the person holds a justifiable, reasonable, or legitimate expectation of freedom from government intrusion.[21] This is also known as a reasonable expectation of privacy. The Fourth Amendment protects not just those who own a property, but also those with a possessory interest and those who are legitimately on the premises where the search occurs.[22] In the context of code enforcement, this means that the occupant's reasonable expectation of privacy is what matters, not necessarily that of the owner, unless the place is owner-occupied.

Subjective Standard

The subjective standard asks if that particular person took reasonable precautions to protect their privacy.[23] The Fourth Amendment does not protect something knowingly exposed to the public.[24] One must seek to keep something private for it to be constitutionally protected.[25] In code enforcement, this is often seen by whether there are tall fences, walls, or other structures surrounding an area. If someone makes no effort to protect something from prying eyes, or the area can reasonably be seen by the public, there is likely no subjective expectation of privacy.

Objective Standard

The objective standard for a reasonable expectation of privacy asks whether society recognizes the expectation of privacy as reasonable.[26] This element is determined by court cases and juries. Courts analyze whether an area fulfills the objective standard by considering the intent of the Fourth Amendment, the usage of the area, and general societal understanding that some areas deserve more protection from government invasion than others.[27] For instance, there is no reasonable expectation of privacy in information turned over to third parties.[28] There is also no reasonable expectation of privacy in what are considered "open fields" as long as they do not fall under curtilage.[29] There is also no reasonable expectation of privacy in viewing a property's readily obvious violations from a neighbor's property, i.e. second story window, with their consent (i.e. plain view).

Curtilage

> *"The poorest man may in his cottage bid defiance to all the force of the crown. It may be frail—its roof may shake—the wind may blow through it—the storm may enter, the rain may enter—but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement." -William Pitt (1763)*

Warrantless searches and seizures inside a home are presumptively unreasonable.[30] Curtilage is the area so closely connected to a home that the occupant maintains their reasonable expectation of privacy. To be considered curtilage, the area around the house must be so connected to the home that it is considered "under the home's umbrella."[31] There are four factors to determine if an area falls within the curtilage:[32]

1. The area's proximity to the home
2. Whether the area is within the enclosure surrounding a home

3. The nature of the occupant's use of the area, and
4. The steps the occupant takes to protect the area from public view

Not every factor must be fulfilled for an area to be within the home's curtilage.[33] When deciding if an area is within the home's curtilage, consider whether the area is being treated as an extension of the home or simply as property. For example, a small, fenced-in patio next to the house where kids play is more likely to be considered part of the home than a shed used only for storage sitting a hundred feet from the main home. The first is treated like an extension of a living room while the second is treated like a storage facility.

Exceptions to the 4th Amendment

Consent

As with most constitutional rights, the Fourth Amendment right may also be waived through the granting of consent.[34] Consent must be voluntarily given.[35] It cannot be coerced threat or covert force.[36] However, a statement that the city will otherwise seek a warrant if not granted consent is not a threat and does not render the consent invalid.[37] The ultimate question is whether the granting of consent is "an unconstrained choice by its maker."[38] The person consenting does not need to be informed of his right to deny consent, but it is best practice.[39]

The person who holds the Fourth Amendment right is the one with the power to waive it, i.e. the occupant. Even the owner or manager of a property may be unable to consent to a search if the occupant has not consented.[40] Two people with access to an area may have equal right to consent to or refuse a search.[41] However, if multiple occupants are present and any refuses entry, then consent is not granted.[42]

Emergency

In the case of an emergency, there is both a compelling need for action and no time to secure a warrant.[43] There are many such examples in the code enforcement context, but some may include, depending on the facts, unsecured green pools, open buildings, gas leaks, and the proverbial collapsing building. When an emergency exists, government agents who would normally be barred by the Fourth Amendment from entering a protected area can enter that area and conduct inspections and abatements.[44]

Highly Regulated Businesses

Some businesses are so highly regulated and subject to a long history of government oversight that a proprietor could not have a reasonable expectation of privacy over the stock of the business.[45] The Supreme Court has recognized only four industries that lack the expectation of privacy: liquor sales, firearm dealing, mining, and running an automobile junkyard.[46] These types of industries inherently pose a "clear and significant risk to the public welfare" and be subject to a comprehensive scheme of regulation distinguishing them from numerous other industries.[47] The Supreme Court is reluctant to expand this to include other categories, because it sees the highly regulated business standard as a very narrow exception .[48] If a business falls under one of those four industries, it can be valuable to know about the exceptions since they allow a government to avoid the time and costs of securing a warrant to inspect property.

Plain View Doctrine

The plain view doctrine allows the government's agents to perform a search or seizure of items in plain view if the agents are there legally.[49] However, a minor trespass may not cause evidence to be excluded under the Fourth Amendment.[50] Although a warrant is needed to enter a home or its curtilage, an inspector may observe areas within a home's curtilage from a public place.[51] For instance, if a government agent is walking along the sidewalk or up a path to the front door, somewhere visitors are expected to go, they can keep a lookout for violations of law.[52] It is also generally permissible to view violations of law from a neighbor's backyard with that neighbor's consent.[53] Even aerial surveillance is permitted under the plain view doctrine.[54] What the government agent views in these cases can then be used to procure a warrant.[55]

This also applies to the seizure of items when a government agent is legally in a house. For instance, if a government agent gains access to a home in an emergency, such as a firefighter entering a house to stop a fire, the agent can then seize evidence of arson if it is plain view.[56] In code enforcement, the Plain View Doctrine is often implicated when an inspector can see violations of law inside a home or an enclosed backyard from a legal vantage point. In that case, the violations of law are within plain view and can accompany an application for a warrant.

When No Exception Applies

"[I]n the absence of consent or exigent circumstances, government officials engaged in the abatement of a public nuisance must have a warrant to enter any private property where such entry would invade a constitutionally protected privacy interest."[57] When no exception applies, code enforcement must follow proper procedure to get a warrant.

The first step is to seek consent to inspect the area of suspected code violations. This can be done by sending a letter to the owner/occupants requesting their full consent to inspect or abate. The letter should also give the owner and occupants a set deadline by which to respond with the granting or refusal of consent.

The second step is to prepare a warrant application. Inspection warrants and abatement warrants follow the same requirements.[58] A warrant must be supported by an affidavit (declaration) including the following[59]:

1. A description of the area to be searched,
2. The purpose of making the inspection,
3. A statement consent was sought and refused or the facts justifying failure to seek consent

An inspection or abatement warrant requires a showing of cause.[60] Cause exists when reasonable legislative or administrative standards for routine or area inspections are satisfied or when there is a reasonable belief there is a violation of law in the area.[61] To show cause, the application for a warrant should include a declaration from a code enforcement official describing the violations previously observed and how they create a reasonable belief there are more violations in areas not easily observed. It is advisable also to include a Memorandum of Points and Authorities outlining the statutes and case law allowing for the issuance of the warrant because some judges have little or no knowledge of the applicable law.

If appropriate under the law, it might also arguments for allowing the warrant to be executed in the absence of the owner or occupant and by forcible entry. Without express authorization from the Court to do so, a warrant cannot be executed in absence of the owner or occupant, and forcible entry may not be used.[62] For a judge to grant permission to do so, the warrant application should show executing the warrant in the absence of the owner or occupant is reasonably necessary based on the purpose of the codes being enforced. For forcible entry, the declaration should assert facts creating a reasonable suspicion of code violations creating an immediate threat to health and safety or show that the city unsuccessfully attempted to serve a prior warrant.[63]

Because judges are extremely busy, and because the warrant should be applicable to the particular case, the application should include a proposed warrant. Most judges will refuse to grant a warrant without one. The proposed warrant should include a description of the area to be searched, who is granted the power to execute the warrant, a time limit in which the warrant must be returned, that the warrant will be executed between 8:00 a.m. and 6:00 p.m., that the warrant may be executed in absence of the owner or occupants, and that forcible entry is authorized. If the application is successful, the judge will simply cross out the word "proposed" and sign the warrant.

The third step is to attend an *ex parte* hearing for the warrant. Notice does not need to be given. There, be prepared to argue each point as to why a warrant should be granted.

Once the judge issues the warrant, unless expressly waived, the fourth step is to give notice and execute the warrant. The owner or occupant generally must be given 24 hours' notice before the execution of the warrant.[64] The warrant will contain instructions on who may execute the warrant, what they may inspect or abate, whether forced entry is permitted and under which circumstances, and by which time the warrant must be returned.

After executing the warrant, the final step is to return it to the judge within the given time period. The warrant will contain a time period for which the warrant is valid, which is no more than 14 days.[65] It may be extended upon a showing that it favors the public interest.[66] After the time period lapses, the warrant is void.[67]

By following all required steps for procuring and executing a warrant, code enforcement can ensure it operates within the confines of the Fourth Amendment and avoid the use of the Exclusionary Rule. This allows code enforcement to use the evidence acquired in the inspections and abatements to pursue legal action such as injunctions, appointment of a receiver, or utilize other abatement tools to protect and improve their communities.

Practice Tips

City attorneys may benefit from some practical tips to avoid Fourth Amendment pitfalls, and make the process of obtaining and executing an inspection warrant more efficient and effective.

First, code enforcement staff will benefit from ongoing training on the Fourth Amendment as it applies to code enforcement duties, as well as inspection warrants. These subjects can seem complicated and intimidating, but are important to understand and implement. For this reason, periodic refreshers and covering specific scenarios code enforcement officers may face are both good practices.

Second, when in doubt, consider an inspection warrant. A warrant provides an extent of legal protection to the city and its employees. While there are several scenarios in which the law clearly provides authority to inspect without a warrant, when an unclear situation arises, a city should consider seeking a warrant.

Third, cities must keep in mind the dangers faced by code enforcement officers during inspections, and implement the necessary safety tools to protect them. Senate Bill 296, now codified into law in Penal Code section 829.7, requires all public agencies in California that employ a code enforcement officer to adopt safety standards that are "appropriate for the code enforcement officers employed in their jurisdiction." This means the agency must evaluate the risks, threats and hazards associated with the code enforcement officer's duties, including conducting inspections, and implement appropriate safety standards. The author of this article wrote this law and specifically recommends adopting standards tailored to the particular jurisdiction, as opposed to adopting general standards that are available from several organizations, in order to comply with both the intent and letter of the law that require "appropriate" standards for the particular jurisdiction.

Finally, as the process for obtaining an inspection warrant differs in each county, and often in each courthouse and even department, cities should speak with their local court's supervising clerk or the presiding judge to determine what process to follow to obtain the warrant. Courts often will be unfamiliar with these types of warrants, so some explanation may be needed. Some courts utilize a duty judge to review inspection warrants, while others may assign a specific judge. In addition, some courts prefer electronic filing, while others require the code enforcement officer to walk it in.

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[1] CA Constitution art XI § 7.
[2] Accessed July 15, 2026. https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html?s_areas=00006&s_year=2023&s_tablename=TABLE5&s_bygroup1=1&s_bygroup2=1&s_filtergroup1=1&s_filtergroup2=1; Matthew R. Silver and Lauren E. Brown: "Is your city complying with California's substandard housing investigation rules?" Western City Magazine, April 1, 2025. Legal Notes.
[3] *Riley v. California* (2014) 573 U.S. 373, 403.
[4] *Boyd v. United States* (1886) 116 U.S. 616, 625-26.
[5] *Id*. at 630.
[6] *Silverman v U.S.* (1961) 365 U.S. 505, 511.
[7] LII. "Search and Seizure." LII / Legal Information Institute, Cornell Law School. Accessed July 14, 2026. https://www.law.cornell.edu/wex/search_and_seizure.
[8] Id.
[9] *Payton v. New York* (1980) 445 U.S. 573, 585.
[10] *Mapp v. Ohio* (1961) 367 U.S. 643, 648.
[11] *United States v. Leon* (1984) 468 U.S. 897, 906.
[12] *Id*. at 919.
[13] *Camara v. Municipal Court* (1967) 387 U.S. 523, 530-31.
[14] *Id*.
[15] *Id*. at 535.
[16] *Id*. at 538.
[17] CCP 1822.51.
[18] Camara, *supra* note 13, at 539.
[19] *Id*. at 387-388.
[20] *Katz v. United States* (1967) 389 U.S. 347, 351.
[21] *Smith v. Maryland* (1979) 442 U.S. 735, 740.
[22] *United States v. Jeffers* 342 U.S. 48; *Jones v. United States* 352 U.S. 257.
[23] *Smith, supra* note 21, at 740.
[24] *Katz, supra* note 20, at 351–52.
[25] *Id*.
[26] *Smith*, *supra* note 21, at 740.

[27] *Oliver v. United States* (1984) 466 U.S. 170, 178.
[28] *Smith*, supra note 21, at 743-44.
[29] *Oliver*, *supra* note 27, at 178.
[30] *Payton*, *supra* note 9, at 586.
[31] *United States v. Dunn* (1987) 480 U.S. 294, 301.
[32] *Id*.
[33] *United States v. Depew* (1993) 8 F.3d 1424, 1427.
[34] *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 219.
[35] *Id*. at 223.
[36] *Id*. at 228.
[37] *People v Goldberg* (1984) 161 CA3d 170, 188; *People v Ward* (1972) 27 CA3d 218, 224.
[38] *Schneckloth*, *supra* note 34, at 225.
[39] *U.S. v Watson* (1976) 423 US 411, 424-425; *People v James* (1977) 19 C3d 99.
[40] *Chapman v. United States* (1961) 365 U.S. 610, 617.
[41] *Georgia v. Randolph* (2006) 547 U.S. 103, 106.
[42] *Id*. at 108.
[43] *Michigan v. Tyler* (1979) 436 U.S. 499, 509–10.
[44] *Id*.
[45] *Los Angeles v. Patel* (2015) 576 U.S. 409, 424.
[46] *Id*.
[47] *Id*.
[48] *Id*.
[49] *Washington v. Chrisman* (1982) 455 U.S. 1,9.
[50] *People v. Terry* (1969) 70 Cal.2d 410.
[51] *United States v. Perea-Rey* (9th Cir. 2012) 680 F.3d 1179, 1186.
[52] *People v. Chavez* (2008) 161 Cal. App. 4th 1493.
[53] *Dillon v. Superior Ct*. (1972) 7 Cal. 3d 305, 310.
[54] *Florida v. Riley* (1989) 488 U.S. 445, 451-452.
[55] *Steele v. United States* (1925) 267 U.S. 498, 504-05.
[56] *Michigan, supra* note 43, at 509.
[57] *Gleaves v. Waters* (1985) 175 Cal.App. 3d 413, 419.
[58] *Flahive, supra* note 2, at 246; *Gleaves v. Waters* (1985) 175 Cal.App.3d 413, 420.
[59] CCP § 1822.51.
[60] *Id*.
[61] CCP § 1822.52.
[62] CCP § 1822.56.
[63] *Id*.
[64] *Id*.
[65] CCP § 1822.55.
[66] *Id*.
[67] *Id*.