



WHAT CITIES MUST KNOW ABOUT NEW HOUSING MANDATORY INSPECTION AND ENFORCEMENT LAWS

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AGENDA

- Introduction
- Housing Inspections and the 4th Amendment (primer)
- AB 838
- AB 548
- Q&A

INSPECTIONS IN YOUR CITY – MYRIAD OF DIFFERENT KINDS

- Right of Way Inspections
 - Investigate Public Complaints
 - Affirmative Observations
 - Compliance Checks
- Inspections of Interior of Buildings
 - Compliance
 - Permits/Unpermitted Work
 - Emergencies
- Highly Regulated Businesses
 - Cannabis
 - Massage
 - Registered Rental Units
 - Short Term Rentals

Inspections Make Up a Significant Portion of City Staff Duties in Code and Building Related Departments!

INSPECTIONS TRIGGER THE 4TH AMENDMENT

THE FOURTH AMENDMENT – BREAKING IT DOWN

- 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.

FOURTH AMENDMENT: AS IT APPLIES TO CODE ENFORCEMENT



- Fourth Amendment protects unreasonable searches by government without a warrant.
- Administrative inspections must adhere to the Fourth Amendment and require there be probable cause before issuing a warrant for such searches.
 - Camara v. Municipal Court, 387 U.S. 523 (1967)
 - See v. City of Seattle, 387 U.S. 541 (1967)

FOURTH AMENDMENT: WHEN DOES IT APPLY?

REASONABLE EXPECTATION OF PRIVACY DOCTRINE

- 4th Amendment only applies to searches of places where the occupant has a reasonable expectation of privacy.
- Searches (inspections) and seizures (abatelements) inside a home without a warrant are presumptively unreasonable.
 - Groh v. Ramirez 540 U.S. 551, 559 (2004)
- There are carveouts, to avoid entering 4th Amendment Territory

For example, there is no expectation of privacy where something is in plain view

- Inspectors can make observations from areas open to the public or open to the public view
- If a neighbor grants permission, inspectors can make observations from the neighbor's yard

FOURTH AMENDMENT: CIRCUMSTANCES WHERE WARRANTS ARE NOT REQUIRED



- Where no reasonable expectation of privacy exists, the Fourth Amendment is not applicable.
- Exceptions to Fourth Amendment:
 - When consent is provided from the occupant
 - Exigent circumstances (such as entering a burning building and investigating the cause)
 - Highly regulated businesses

FOURTH AMENDMENT: CONSENT



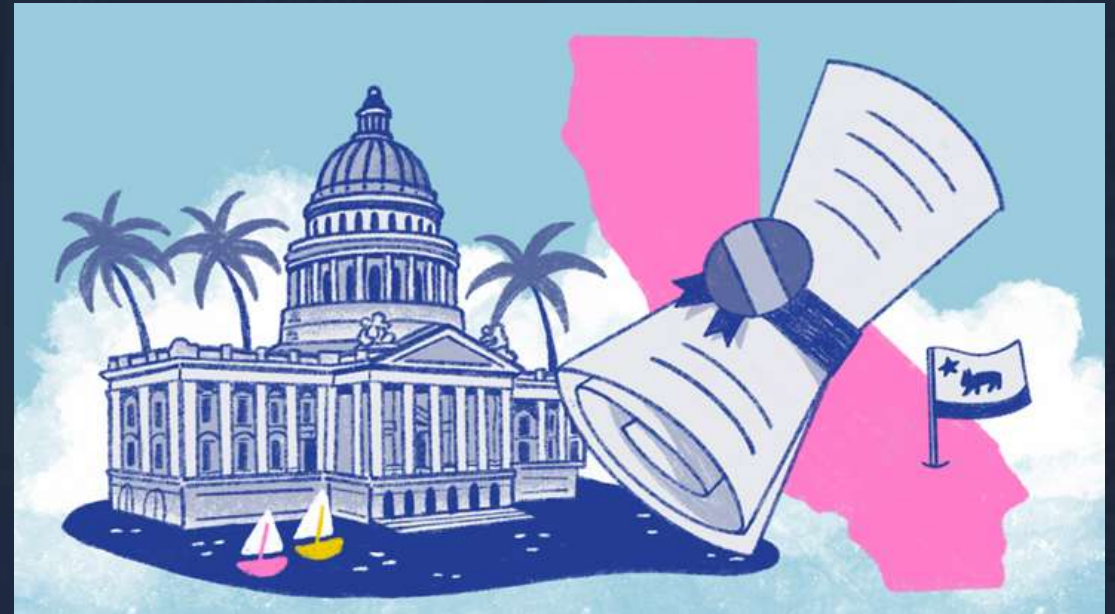
- Voluntary consent is the most direct and legally permissible means
- Only the person in possession of the property (e.g., occupant) is required to give consent, not necessarily the owner
- Discussion:
 - Is a neighbor's consent sufficient?
 - Is the landlord's consent sufficient?
 - Is a minor's consent sufficient?

FOURTH AMENDMENT: EXIGENT CIRCUMSTANCES AND HIGHLY REGULATED BUSINESSES

- Exigent Circumstances
 - Imminent or active danger, e.g., fire and need to access?
 - Is there time to obtain consent, or a warrant?
- Highly Regulated Businesses
 - Municipal code may have express provisions on routine inspections for kind of business and license obtained
 - License conditions may provide for routine inspections
 - Other conditions of approval may apply allowing for inspections

CALIFORNIA ASSEMBLY BILLS 838 AND 548

Both Bills add to the Health and Safety Code and create/clarify the **procedure required** for inspections and subsequent enforcement of building standards in buildings used for human habitation



CALIFORNIA ASSEMBLY BILL NO. 838

COMPLIANCE WITH NEW LAW REQUIRED AS OF JULY 1, 2022

Adds Section 17970.5 to Health and Safety Code relating to enforcement responses to building standards complaints by tenants



AB 838: GENERAL RULE

- Health and Safety Code Section 17970.5(a)-(b)
- Rule: When a city or county receives a complaint from a non-owner occupant (such as renters or tenants) regarding a substandard building [HSC 17920.3] or lead hazard [HSC 17920.10] violation, it MUST:
 - Inspect the building
 - Document any violations
 - Advise the owner of each violation AND of each action that is required to correct the violation AND schedule a time for reinspection to verify correction of the violation
 - Inspect the building promptly

AB 838: GENERALLY WIDELY APPLICABLE

Health and Safety Code Section 17920.3 substandard building conditions is exhaustive, including:

- Inadequate sanitation
- Structural hazards
- Any nuisance
- Faulty weather protection
- Inadequate exit facilities
- Areas occupied for living, sleeping, cooking or dining that were not intended to be used as such

AB 838: LIMITS TO INSPECTION REQUIREMENTS

- Health and Safety Code Section 17970.5(g)
- An inspection or report required by this section CANNOT call for the renter/occupant:
 - To first make a demand for correction of the owner of the property
 - Be current on rent
 - Be otherwise in compliance with their rental agreement
 - Not be involved in a legal dispute with the owner of the property

AB 838: EXCEPTIONS TO THE GENERAL RULE

–Health and Safety Code Section 17970.5(c)

–A City or County is NOT required to inspect either of the following types of complaints:

- A complaint that does not allege one or more substandard conditions
- A complaint submitted by a renter who within the past 180 days submitted a complaint about the same property which a building inspector already inspected and determined to be complaint

AB 838: ADDITIONAL REQUIREMENTS

- Cities and Counties MUST:
- Provide free copies of an inspection report and citations issued to owner and complaining party – no PRA request required
- If other units could be affected, it must also provide free copies of the inspection report and citations issued to all potentially affected units
 - NOTE: Member of the public given new right to sue local enforcement agency if it does not comply with the any of the requirements of this new code section.
- Cities and Counties CANNOT:
- Collect a fee, cost or charge from a property owner or property owner's agent for any inspection report
 - UNLESS violation exists

CALIFORNIA ASSEMBLY BILL NO. 548

COMPLIANCE WITH LAW REQUIRED AS OF JANUARY 1, 2025

Adds Section 17970.7 to Health and Safety Code relating to policies and procedures for inspecting buildings with multiple units



AB 548: GENERAL RULE

- Health and Safety Code 17910.7(a)
- Rule: Local enforcement agencies must develop policies and procedures for inspecting a building with:
 - multiple units
 - if an inspector or code enforcement officer
 - has determined that a unit is substandard or
 - is violation of State Housing Law (specifically HSC 17920.3 or HSC 17920.10)

AB 548: REQUIREMENTS

HEALTH AND SAFETY CODE 17910.7(B)

Policy must include requirement to inspect other units if the inspector locates violations in a single unit *with the potential to affect* other units in a multi-unit building used for human habitation. The policy MUST:

- Include criteria that inspectors or code enforcement officers shall use to determine if the substandard condition could reasonably affect other units, taking into account factors, including, but not limited to, the building type, age, size, type of construction, cause of the substandard condition, and history of violations.
- Require inspectors or code enforcement officers to reasonably attempt to inspect additional units at the property, including at least units adjacent to, above, and below the unit in which the defect or violation was found, consistent with existing law and inspection practices.
- Allow for the inspection of all of the units on the premises if severe, building wide defects or violations are found.

Upon determining the substandard condition, the local enforcement agency shall provide the property owner with a notice and order to repair or abate. The enforcement agency MUST advise the owner of each known violation AND action required to remedy the violation AND schedule a reinspection to verify.

QUESTIONS?





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