

STORMWATER PREVENTION ENFORCEMENT

I. Preparation of a case for enforcement

A. Investigation

1. The Fourth Amendment.

- a. Protects persons from government actions that interfere with their reasonable expectation of privacy.
- b. Fourth Amendment is interpreted by case law. California courts look at state law and U.S. Supreme Court. Federal courts look to federal law and U.S. Supreme Court.
- c. Definition of detention.
- d. Exclusionary rule.
Exclusionary rule: Any illegally obtained evidence or its fruits cannot be used as evidence against any person with standing to challenge the search.

“Plain view” observations do not constitute a search. A “plain view” observation is an observation from a location where the government agent has a lawful right to be, such as an area open to the public or where a person does not have a reasonable expectation of privacy.

Whether the government agent has to trespass to make an observation may be a factor in whether the observation is “plain view.”

- e. Search warrant based on probable cause.
A search warrant is an order, signed by a judge, based on an affidavit, describing the specific area and thing to be searched for. It must be executed and returned within 10 days. A search warrant only may be issued based on the grounds stated in Penal Code section 1524.
- f. Administrative inspection warrant.

Code of Civil Procedure section 1822.50: “An inspection warrant is an order, in writing, in the name of the people, signed by a judge of a court of record, directed to a state or local official, commanding him to conduct any inspection required or authorized by state or local law or regulation relating to building, fire, safety, plumbing, electrical, health, labor, or zoning.”

Code of Civil Procedure section 1822.51: “An inspection warrant shall be issued upon cause unless some other provision of state or federal law makes another standards applicable. An inspection warrant shall be supported by an affidavit, particularly describing the place, dwelling, structure, premises, or vehicle to be inspected and the purpose for which the inspection is made. In addition, the affidavit shall contain either a statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent.”

Code of Civil Procedure section 1822.52: “Cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle.”

Code of Civil Procedure section 1822.53: “Before issuing an inspection warrant, the judge may examine on oath the applicant and any other witness, and shall satisfy himself of the existence of grounds for granting such application.”

Code of Civil Procedure section 1822.55: “An inspection warrant shall be effective for the time specified therein, but not for a period of more than 14 days, unless extended or renewed by the judge who signed and issued the original warrant, upon satisfying himself that such extension or renewal is in the public interest. Such inspection warrant must be executed and returned to the judge by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed, is void.”

Code of Civil Procedure section 1822.56: “An inspection pursuant to this warrant may not be made between 6:00 p.m. of any day and 8:00 a.m. of the succeeding day, nor in the absence of an owner or occupant of the particular place, dwelling, structure, premises, or vehicle unless specifically authorized by the judge upon a showing that such authority is reasonably necessary to effectuate the purpose of the regulation being enforced. An inspection pursuant to a warrant shall not be made by means of forcible entry, except that the judge

may expressly authorize a forcible entry where facts are shown sufficient to create a reasonable suspicion of a violation of a state or local law or regulation relating to building, fire, safety, plumbing, electrical, health, labor, or zoning, which, if such violation existed, would be an immediate threat to health or safety, or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. Where prior consent has been sought and refused, notice that a warrant has been issued must be given at least 24 hours before the warrant is executed, unless the judge finds that immediate execution is reasonably necessary in the circumstances shown.”

1. Ordinarily, inspection warrants will be issued based on a lesser standard than the probable cause standard required to obtain a search warrant. (This has been called a “reasonable cause” standard.) However, if the investigation is entirely focused on criminal conduct, enforcement officers should expect that courts will use the probable cause standards.

g. Consent searches

In general, a person with actual or apparent authority may give consent to search a location provided the consent is free and voluntary. Consent can either be express or implied. Search cannot go beyond extent of consent granted.

h. Abandonment

Observation must be from a location where the government agent has a lawful right to be. Search must not involve reasonable expectation of privacy for location to be searched. Generally permissible to search trash that has been left for collection on curb—no expectation of privacy in place or items.

There is a lesser expectation of privacy in items that have been commingled, such as trash in a common receptacle.

i. Curtilage searches.

Higher expectation of privacy in area immediately surrounding the home. Fenced in area generally is part of curtilage.

B. Report writing

II. Injunction process.

- A. Most enforcement mechanisms for code enforcement allow the city or county to bring enforcement actions in court. An injunction is an order by a court requiring a person to do or refrain from doing a particular thing. In California, there are three main varieties of injunctions, a temporary restraining order, a preliminary injunction, and a permanent injunction. Injunctions usually are punished by the contempt powers of the court and are more difficult to enforce to mandate conduct rather than to prohibit conduct.

III. Civil abatement actions.

- A. Some cities and counties have statutory abatement procedures to address serious dangers to health and safety. These procedures permit the jurisdiction to take steps to eliminate a nuisance and to recover the costs from the property owner at a later date.

IV. Administrative alternatives to civil actions.

- A. Because criminal and civil court proceedings often are expensive and time-consuming, some cities and counties have set up administrative alternatives to court actions.

- B. Compliance order.

- 1. Some jurisdictions have procedures for the head of a department to issue a compliance order directing a person to comply with the provisions of the code. Because the Constitution provides for due process rights, the department head must provide adequate notice and an opportunity for a hearing. After a hearing, an administrative order may be issued that can result in administrative penalties. A person subject to the order has a right to appeal to a court. Failure to comply with the order or to pay penalties may result in a lien being placed on the property.

- C. Administrative citation.

- 1. Some jurisdictions have procedures for code enforcement officers to issue an administrative citation that is not criminal in nature. The citation imposes a civil fine on the property owner. The amount is established based on a fine schedule adopted by the jurisdiction. Because the Constitution provides for due process rights, the jurisdiction must provide a hearing. A person subject to administrative fines has a right to appeal.