

Inspection Warrants and Services

3.1 PURPOSE AND SCOPE

This policy establishes the guidelines for the planning and serving of Inspection Warrants by members of the Mendocino County Code Enforcement Division ("the Division"). This policy is intended to be used in conjunction with Policy & Procedures #1: Case Management Structure Policy and to guide the Division's officers on the appropriate procedures to obtain and serve an Inspection Warrant.

3.2 BACKGROUND

The starting point for understanding warrants in the code enforcement context is the case of *Camara v. Municipal Court of San Francisco (1967)* [387 U.S. 523]. In that case, a tenant in an apartment building refused to permit warrantless inspection of his premises for a routine annual inspection conducted to find housing code violations. The United States Supreme Court held that administrative searches by municipal health and safety inspectors constitute significant intrusions upon interests protected by the Fourth Amendment, and such searches, when authorized and conducted without warrant procedure, lack traditional safeguards which the Fourth Amendment guarantees to individuals.

The following principles apply to inspections requiring an inspection warrant:

- (1) Warrants are required for administrative inspections by Government where reasonable cause exists and consent to inspect is not granted by a party with standing for areas of inspection where there is an expectation of privacy.
- (2) However, the reasonable cause required for such a warrant for an administrative inspection is different than in a criminal case (inspection warrant vs. search warrant). The facts justifying an inspection warrant will vary with the municipal law/program being enforced, may be based upon the passage of time, the nature of the code violation and the private property to be inspected.
- (3) Inspection Warrants should normally be sought only after entry and inspection is refused unless there is good cause articulated, as part of your reasonable cause, as to why a refusal from one or more of the person's suspected to have standing (property owner, tenant, etc.) could not be located or contacted after extensive effort of due diligence.

It should be noted that an Inspection Warrant, as described above, is what allows entry onto the property by the Government and their agents to gather evidence by way of inspection, and in some cases execute an abatement order that the County issued through its own administrative abatement procedures. Counties use this process because courts have consistently approved of its use to execute such abatement orders. A County may, by ordinance, declare what constitutes a nuisance and may establish procedures for the abatement of the nuisance at the property owner's expense. However, absent exigent circumstances, the need to summarily abate a public nuisance does not in and of itself justify government invasion of legitimate privacy interests without consent or an Inspection Warrant. Courts have held that abatement of a nuisance involving simultaneous inspection and treatment of a nuisance require compliance with Code Civ. Proc., § 1822.50 et seq. for administrative Inspection Warrants. This procedure is also recognized by California courts to obtain warrants solely for abatement activity. In 1985, the court in *Gleaves v. Waters (1985)* [175 Cal. App. 3d 414] approved of its use. Then later, the court in *Flahive v. City of Dana Point (1999)* [72 Cal. App. 4th 241, 246 at fn. 8]; cited with approval the use of the procedures set forth in Code of Civil Procedure §1822.50 et seq. for issuance of an abatement warrant.

3.3 SCOPE

It is important to follow appropriate procedures for obtaining and executing administrative Inspection Warrants to avoid suppression of evidence should a judicial action be required to enforce the County's ordinances.

Essentially, there are two (2) basic prerequisites to obtaining an administrative Inspection Warrant:

- (1) Refusal by any person suspected to have legal interest or standing to authorize the Division to inspect (or a sufficient reason to proceed without such refusal); AND
- (2) "Cause" (also called "reasonable cause"), which may be a somewhat lesser standard than probable cause. In California, administrative inspection warrant procedures are established in California Code of Civil Procedure ("CCP") Sections 1822.50 through 1822.60. These provisions must be read closely when requesting a warrant.

3.4 INSPECTION WARRANT PROCEDURES

Code Enforcement Officers shall obtain authorization from their Supervisor or the Division Manager before preparing an Inspection Warrant application. Once authorization is obtained, the officer will prepare the Affidavit and Inspection Warrant, consulting with County Counsel, as needed. The officer will provide a copy of the completed Inspection Warrant Affidavit and application to their Supervisor or Division Manager and County Counsel to review for approval prior to seeking authorization from a judge.

There are three essential documents:

- a. The **Affidavit** in Support of an Inspection Warrant - this is where all facts supporting your reasonable cause will be articulated; AND
- b. The **Inspection Warrant** – this is the document signed by the judge granting the inspection and its limitations and scope based on your reasonable cause. This is the document that will be executed/served; AND
- c. The **Return** – this is a declaration by you to the court that the Inspection Warrant was executed/served, and the inspection is complete.

The **Affidavit** sets forth your experience and expertise (aka "Hero Sheet" – see comments below) and the reasons why an Inspection Warrant is needed in a particular case (the facts of the case). In addition to establishing that the County was refused entry onto the property, the Affidavit shows a judge the reasons why there is reasonable cause to believe that there are municipal code violations on a particular piece of property and why the inspection is necessary. If forcible entry is needed, then reasons for this must be set forth in the Affidavit.

The **Inspection Warrant** shall include ALL of the following:

- (1) The location or property that may be inspected
- (2) The actions that may be taken while inspecting the property
- (3) The types of violations that may be present on the property
- (4) The times the property may be inspected
- (5) Whether or not the occupant or owner must be present
- (6) Whether notice must be given
- (7) Whether force may be used to gain entrance onto the property
- (8) How long the warrant is effective. (No longer than 14 days, although it can be extended)
- (9) Who (which agencies) may attend the inspection

The Code Enforcement Officer seeking to obtain the Inspection Warrant must be prepared to speak with the judge and answer any of their questions pertaining to the request for the warrant. The officer needs to be prepared and must be able to go alone, as they are the affiant for the case and are swearing on the applicability, need, and information provided within the warrant and affidavit as true and correct.

After obtaining a signed Inspection Warrant and Affidavit by a judge, the Code Enforcement Division must adhere to the sections provided under CCP §1822.55 – CCP §1822.57 when executing the warrant, by doing the following:

- (1) The 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. After the expiration of such time, the warrant, unless executed, is void (CCP§1822.55).
- (2) Prior to serving the Inspection Warrant, a copy of the warrant must be posted at the property **at least 24 hours in advance** of the Inspection Warrant being served, unless the judge finds that immediate execution is reasonably necessary in the circumstances shown (CCP§1822.56).
- (3) If determined to be necessary for safety purposes, request law enforcement to attend during the execution of the Inspection Warrant. Additionally, any person who willfully refuses to permit an inspection lawfully authorized by warrant issued pursuant to this title is guilty of a misdemeanor (CCP§1822.57).

In addition to these requirements, it is beneficial to for the Code Enforcement Officer to retain an extra copy of the Inspection Warrant at the time of its execution, to ensure there is an available copy to be reviewed by individuals on site. However, it should be noted that individuals do NOT have the right to stop to read a warrant or interfere with the officer's execution of said warrant in any way. They need to stand aside and let the officers do their job, or else they are subject to arrest.

The warrant **Return** is completed after the County executes the Inspection Warrant. This document is returned to the clerk of the court along with the original Inspection Warrant and Affidavit to be formally filed by the Court. The officer filing the original affidavit, warrant and return with the court must request that the court send the officer "Endorsed Filed Copies." **NOTE: The Return does NOT require a judge's signature, unlike the requirement for served criminal search warrants.** The documents are formally filed by the court, and it may take several weeks for the court to process the documents and send the copies to the Officer.

3.5 HERO SHEET

As with Criminal Search Warrants, the officer's experience in Enforcement and Training is required to be stated in an Affidavit in support of an Inspection Warrant. This will provide the issuing judge the information necessary to accept your expertise and conclusions described in the Affidavit supporting the Warrant – expertise which is unique to you (the affiant) making such declarations to the court. Some formats used to craft Inspection Warrant Affidavits may include an "exhibit" with a comprehensive list of experience and expertise related to you, and this "exhibit" would be referenced in the affidavit. This "exhibit" approach is likely more appropriate for criminal search warrants drafted by peace officers as the types of crimes that may need a warrant to gather evidence are vastly varied and not every peace officer has the subject matter expertise and training in every kind of criminal investigation (example: narcotics crimes, homicides, gangs, etc.).

In the case of Inspection Warrants it is recommended that your "Hero Sheet" simply state in the introductory body of the Affidavit your duration of time (experience) investigating administrative code violations and your expertise doing the same – this will serve to separate you from the average person who does not have that type of experience, so that your conclusions in the affidavit have weight with the court. Keeping your experience and expertise concise in the body of the Affidavit helps prevent having too much extraneous information for the reviewing judge and keeps the focus on the facts of the case supporting the inspection warrant.

3.6 TEMPLATES & EXAMPLES

For further information, refer to examples of Warrants, Affidavits and Returns that have been previously approved and signed through the local court.
