

HOARDING HAZARDS: MUNICIPAL TEAM RESPONSE

RIGHT OF ENTRY

June 21, 2016



Topics We Will Cover

1. Your statutory duty/authority to enter and inspect.
2. Constitutional provisions that protect property owners.
3. The exclusionary rule.
4. Three key exceptions to the warrant requirement.
 - a) Consent
 - b) Plain View
 - c) Emergencies
5. Administrative search warrants.
 - a) What they are and when to use them
 - b) How to prepare them

Statutes & Ordinances

The Statutes Say...

- Health: C.G.S. 19a-206
 - Duty to examine and remediate public health nuisance.
 - Abate, remediate, cause to be removed all filth which may endanger the health of the inhabitant.
- Fire: C.G.S. 29-306
 - Duty to order remedy of a dangerous accumulation of materials especially susceptible to fire or blocked egress in ANY BUILDING.
 - Authority to issue Directive 10 for blocked egress.
 - C.G.S. 29-305: Right of Entry at all reasonable hours.

The Statutes Say...

- Building
 - C.G.S. 29-261: Right of Entry for BO/ABO.
 - C.G.S. 29-393: Duty of Building Inspector to inspect upon receipt of information from authentic source alleging a hazard.
 - C.G.S. 29-393: Right of entry for Building Inspector.
- Local Housing Ordinances (C.G.S. 7-148)
 - May provide for right of entry or duty to inspect/investigate.

**Protection From
Your Authority:
The Federal And
Connecticut
Constitutions**

U.S. Constitution

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.**

Connecticut Constitution

- **Article First, section 7**
 - **“The people shall be secure in their persons, houses, papers and possessions from unreasonable searches or seizures; And no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.”**

It's Not Just For This....



For Fourth Amendment Purposes...



There is NO DIFFERENCE!!!



Warrantless searches
are presumed

UNREASONABLE

(Unless an Exception Applies)

SEARCH = INSPECTION

UNREASONABLE = UNLAWFUL

What If You Inspect Illegally?



**Suppression of Evidence
(Among Other Things)**

A Lawful Inspection Requires Either:

- **A Warrant**
- **An Exception to the Warrant Requirement**

The Three Most Important Exceptions To The Warrant Requirement:

- **Consent**
- **Plain View**
- **Exigency/Emergency**

Consent

Consent

- Free and voluntary permission from an authorized person.
- Reasonable person feels free to refuse.
- Consent may not be the result of duress or coercion.
- If challenged, burden of proof is on the government.



Consent

- An inference that refusal is futile, or that a search warrant will be issued automatically, has been held to be coercive.

Consent Considerations

- **Consent can be withdrawn at any time.**
- **Consent can be limited.**
- **How about photos?**

Third Party Issues

- A person may consent to a search of areas over which he shares common authority with another person.
- One person cannot consent to a search of the exclusive possessions or private space of another person.
- Consent of one occupant is not sufficient if the other occupant is present and objects to the search.

Plain View

Plain View



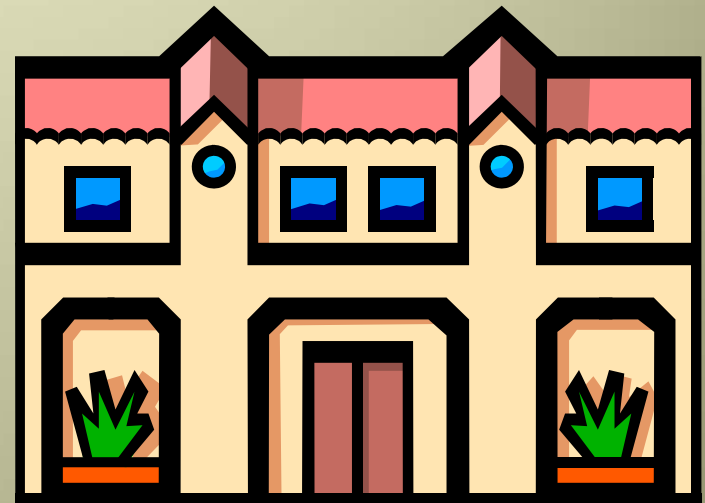
- It is not a search within the Fourth Amendment to observe what is in plain view from a location where you have the right to be.

Have We Crossed the Line From Plain View To Search?

- **Are you someplace where the owner has a reasonable expectation of privacy?**
- **Did you do something that constituted a trespass?**

Commonly Questioned Areas

- **Curtilage**
- **3 Family and Larger:**
 - Common Hallways
 - Common Porches
 - Exterior Grounds



Trespass

In recent cases, the United States Supreme Court has started to look at whether there has been a

physical intrusion onto property.

Trespass

- A **search** occurs whenever the government **physically intrudes** upon a protected area for the purpose of obtaining information, regardless of the person's reasonable expectation of privacy.
- Warrantless use of drug detecting canine on the front porch found to be an unreasonable and illegal search.

Trespass

- Implicit license exists for visitors to:
 - Approach by the front path
 - Knock promptly
 - Wait to be received
 - Absent invitation to remain longer, leave
- Government official may do what any other private citizen may do.
 - Salesman, trick or treater, Girl Scout

Trespass

OK:

- Walk up the driveway
- Walk up porch steps to front door
- Knock on door
- Observe anything in plain view on your way to and from the door
- Observe anything in plain view (or smell, or hearing) if resident opens the door
- Ask permission to enter and inspect

Trespass

NOT OK:

- Open a gate marked “No trespassing.”
- Stray from the path on the way to the door.
- Explore path or yard with tech devices (metal detector, thermal imager).
- Go into back yard (absent invitation to do so).
- Go around house looking into windows.

**Emergency &
Exigent
Circumstances**

Emergency/Exigent Circumstance



- Two different standards in law enforcement context.
 - Exigent: Apprehension of suspect
 - Emergency: Person in need of immediate aid
- Code context:
 - Imminent and substantial threat to life or property
 - Not practical to obtain warrant

Administrative Search Warrants



INSPECTION WHERE ENTRY REFUSED

*When cooperation ceases
and access to the property is denied,
an*

ADMINISTRATIVE SEARCH WARRANT

*is required before entry and
inspection can be accomplished.*

ADMINISTRATIVE SEARCH WARRANT

- An administrative search warrant is similar to a search and seizure warrant, except:
 - No seizure takes place
 - There is no requirement to show probable cause that a violation exists.
- All that must be demonstrated to a judge is that the official:
 - has a lawful right or duty to inspect, and
 - the premises is within your jurisdiction.

ADMINISTRATIVE SEARCH WARRANT

- The administrative warrant affidavit and application is a simple form to complete.
- It must be signed by two co-affiants and sworn to or affirmed in the presence of a judge of the superior court.
- Preparation of the affidavit is not complex, nor should it be.

ADMINISTRATIVE SEARCH WARRANT

The following elements are to be written into every affidavit:

1. The two affiants' credentials and credibility.
2. The authority to inspect.
3. The locations to be inspected.
4. What the inspection is intended to determine.
5. Why are you requesting the warrant, including efforts to obtain voluntary compliance.

DRAFT THE APPLICATION

- You will submit for review to the prosecutor.
- If the application is approved by a prosecutor, it must be taken to the judge for review.
 - Remember, both affiants must go together to apply for the warrant and to swear or affirm before the reviewing judge.

AFTER THE WARRANT IS SIGNED

- Right of entry for inspection purposes overrides objection of owner/occupant.
- Warrant must be served in 10 days or less unless Judge specifies shorter time.
- Police officer should accompany inspector for safety.
- Entry limited to those agencies on affidavit.
- Return should be sent to clerk within reasonable time of inspection.

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QUESTIONS?

