

## **COUNTY OF PLACER**

# **Community Development Resource Agency**

#### **BUILDING**

Administrative Policy Right of Entry

TO: Building Department Staff

From: Tim Wegner, Assistant Chief

Approved: Bob Martino, Chief

Effective Date: June 15, 2009

#### ISSUE:

Update prior policy (P-104) to new format.

### **BACKGROUND/HISTORY:**

The original policy was created July 5, 1991.

## **ANALYSIS:**

From time-to-time staff necessitate entering private property. This policy was written with the intent of providing general guidelines for such. California and Federal law govern.

#### POLICY:

**AUTHORITY REFERENCE: IBC, SECTION 104.6** 

Whenever necessary to make an inspection to enforce any of the provisions of this code, or where the Building Official or his/her authorized representative has reasonable cause to believe that there exists in any building or structure or upon any premises any condition which is contrary to or in violation of this code which makes such building, structure, or premises unsafe, dangerous or hazardous, or where a permit is required for the work thereupon, the building official or his/her authorized representative is authorized to enter such building, structure, or premises at reasonable times to inspect the same or to perform any duties imposed upon the building official by this code, provided that if such building, structure, or premises be occupied, that proper credentials be presented to the occupant and entry requested.

If such building, structure, or premises is unoccupied, he/she shall first make a reasonable effort to locate the owner or other person having charge or control of such and request entry.

If entry is refused, the building official or his/her authorized representative shall have the remedies provided by law to secure entry. County Counsel should be consulted if entry is refused.

Additional References:

<u>BUILDING DEPARTMENT ADMINISTRATION</u>, 3rd Edition. International Code Council. p. 451-452.

# THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES READS:

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.

**GENERAL RULE:** DO NOT VIOLATE ANYONE'S CONSTITUTIONAL RIGHT TO PRIVACY. THE ENFORCEMENT OF THE BUILDING CODE OR THE PERFORMANCE OF INSPECTIONS IS NOT EXEMPT FROM THE CITIZENS' CONSTITUTIONAL GUARANTEE OF PRIVACY.

1. INSPECTIONS PURSUANT TO ISSUANCE OF A PERMIT. Inspections are made in response to a request based upon the issuance of a permit. The inspection has been authorized when the permit holder signs the permit--however--the inspection is generally limited to the inspection requested but must never extend beyond the scope of the permit (for violations beyond the scope of the permit see numbers 2 & 3 below); and, if the construction site is under the control of anyone, permission to perform the inspection must be obtained.

For example, an owner-builder has requested a framing inspection. When the inspector arrives on the site there is no one present. However, there is a temporary mobile home. Knock on the door of the temporary mobile home. If someone is there, seek permission. If no one answers, perform the inspection.

In no case, however, is an inspection or entry to be performed when the sole authority for giving consent is from a <u>minor</u>. "Minor", for the purposes of this policy, is anyone under the age of eighteen (18) years of age. This could occur when the inspection has not been requested as part of an issued permit, but occurs due to the interest of the building inspector. Maybe the interest is to see whether or not another portion of the construction is proceeding properly. If the only one present on the site is a minor, <u>do not perform the inspection</u>. If the inspection has been requested, but the only one on site to allow entry into the house is a minor, and such entry is necessary to perform the inspection, **DO NOT PERFORM THE INSPECTION**.

#### 2. "IN PLAIN SIGHT".

Violations that can be seen from a public way, or other locations where the inspector is legally entitled to be, are subject to inspection--provided the occupant of the property grants permission, and (if the property is not occupied), provided the owner gives permission. Be careful of "peeking over a fence" or through knot holes. The fence represents an "expectation of privacy". Be careful of any arrangement of fence, or buildings, that reasonably represent an expectation of privacy. For example, if you have reason to believe that a room is being added on the back of a house, it is <u>not</u> permissible to go through the yard and by-pass going through the house. It is <u>not</u> permissible to stand on a box, or your truck bumper, to peek over the fence from an adjoining property--and if the front yard is fenced but the sides and rear are wide open, do not enter the property using a path of travel different from where the fence establishes the expectation of privacy.

If in the course of performing a requested inspection, the inspector discovers what is apparently an illegal mobile home on the property, the right to inspect the mobile home either on the outside or inside is subject to consent of the occupant and or owner, as appropriate. This is not to say that the violation cannot be pursued--the violation of having a mobile home without permit. In fact, an actual inspection of the mobile home is probably unnecessary.

#### 3. "EMERGENCIES".

THIS IS A DANGEROUS COURSE OF ACTION--ONLY IN THE MOST SEVERE OF CIRCUMSTANCES SHOULD AN INSPECTION BE DONE WITHOUT OBTAINING THE CONSENT OF THE OCCUPANTS OR PROPERTY OWNER, AS APPROPRIATE.

Normally consent can be obtained from the appropriate person after an explanation of the reason to believe that an emergency exists. If consent is not obtained, field personnel should contact the building official or a supervising inspector immediately to determine whether entry is authorized or whether a search warrant will be pursued.

#### 4. "ABANDONED BUILDINGS" AND SUBSTANDARD CONDITIONS"

The general rule to follow is "the expectation of privacy." If a fence exists, permission from the owner is required. If there is no fence, if the door is wide open, the windows broken out without any coverings, it <u>may</u> be possible to inspect the building for the purpose of determining whether or not it is safe--however, the pressing factor must qualify as an "emergency" as discussed in number 3 above. Be careful of driving down private lanes to inspect abandoned buildings without first obtaining permission. A private drive may constitute an expectation of privacy.

An owner cannot give consent for a tenant. For example, a landlord requests that we perform an inspection of dangerous conditions in a dwelling--however, the tenant refuses. We cannot enter. Our next step, if the circumstances warrant, is to seek a search warrant.

A tenant cannot give consent for inspection of premises not under his/her control. For example, if the tenant has rented the house, but not additional buildings on the property, we cannot inspect the additional buildings, or portions of the same building not under the control of the tenant.

Note: Procedures are to be used as a guide and are subject to updates.