



# OLR RESEARCH REPORT

December 20, 2011

2011-R-0429

## **COMPLIANCE WITH MUNICIPAL ORDINANCES AND THE FOURTH AMENDMENT**

By: Joseph Holstead, Associate Analyst

You asked if a local zoning enforcement officer (ZEO) needs a permit or permission to enter someone's residential property for an inspection based on a code enforcement complaint.

The Office of Legislative Research is not authorized to give legal opinions and this should not be considered one.

### **SUMMARY**

The law allows a municipality or a municipal ZEO to inspect a home to check for zoning regulation violations and code adherence as long as the (1) homeowner consents to the inspection or (2) inspection official obtains a judicially granted warrant or injunction. An inspection without such authority would be a violation of Fourth Amendment protections. (By law, a municipality's zoning commission determines how zoning regulations are enforced ([CGS § 8-3\(e\)](#))).

If the ZEO has a court ordered warrant or, without one, is not asked to leave, he or she would not be trespassing ([CGS §§ 53a-109](#) and [110a](#)).

### **PRIVATE PROPERTY AND SEARCHES**

Under the U.S. Constitution's Fourth Amendment, the search of private property, except in a carefully defined class of cases (e.g., by consent), must be authorized by a valid search warrant (Connecticut's

Constitution, Article First, § 7, provides similar protections regarding searches or seizures). The Fourth Amendment's warrant requirement generally applies to administrative searches of the home by health, fire, or building inspectors, whether their purpose is to locate and abate a public nuisance, or perform a periodic inspection (*Camara v. Municipal Court*, 387 U.S. 523 (1967); *Michigan v. Tyler*, 436 U.S. 499 (1978)). One exception to the warrant requirement is a search conducted pursuant to valid consent (*State v. Zindros*, 189 Conn. 228 (1983)).

### ***Search with a Warrant for an Administrative Inspection***

The Fourth Amendment's requirement that no warrants issue except upon probable cause also applies to administrative searches. It is not necessary that an administrative warrant issue only upon probable cause to believe a dwelling contains violations of the code being enforced. The probable cause test can take into account the nature of the search that is being sought. Warrants for routine code enforcement inspections meet the probable cause requirement because such periodic code enforcement programs are necessary to prevent or abate dangerous conditions, and they involve limited privacy invasion (they are not personal in nature and are not aimed at discovering evidence of crime) (*Camara v. Municipal Court*). Such standards may be based, for example, on the passage of time and the condition of an area, but not necessarily upon specific knowledge of a particular dwelling (*Michigan v. Tyler*).

Thus, the law allows a municipal ZEO inspect to check for adherence as long as the (1) homeowner consents to the inspection or (2) inspection official obtains a warrant or other judicially granted authority. An inspection without this authority violates Fourth Amendment protections. (At least one Connecticut court found that there is "no statutory authority to allow issuance of such a search warrant to allow a regulatory inspection," and instead authorized a temporary injunction to allow inspection (*Town of Bozrah v. Chmurynski*, WL 1054647 (Conn. Super. 2009)).

JH:ts