



Written by [Michael Tennant](#) on July 7, 2010

Oakland Officials Get SMART to Circumvent the Constitution

The Fourth Amendment to the U.S. Constitution is clear: “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.”



Governments, of course, have never much cared for having their powers limited, and are constantly devising new ways around the restrictions. Oakland, California, for example, has come up with a new program called SMART, which stands for Specialized Multi-Agency Response Team, the purpose of which is to search homes without a warrant under the guise of checking for building-code violations.

Alex Weber, [writing](#) about SMART for the *East Bay Express*, points out that “some legal experts say [SMART inspections] may be unconstitutional. That’s because they enter people’s homes without consent or a warrant.” It doesn’t take an expert to see that such actions are blatant violations of the Fourth Amendment.

Weber cites the example of a building known as Off-Ramp Studios, where residents were recently subjected to a SMART inspection: “Two Oakland police officers, two building services code enforcers, a fire inspector, and three property management representatives entered all of their units one by one.”

They came to one loft where no one was home and entered it anyway, finding what Weber describes as the remnants of a large, multi-level grow operation, including what appeared to be psilocybin mushroom caps and potted marijuana plants that had been sawed off. There also was evidence of methamphetamine production, according to fire inspector Vincent Crudele, who called the unit a potential felony crime scene. The officers hauled away large Ziplock bags filled with evidence seized from the inspection, and Crudele ordered the unit to be completely cleaned out by property management within 48 hours.

The SMART inspection had come about as a result of a tenant’s complaint about an open party being planned by another tenant. Crudele had appeared at the building a week prior to the SMART inspection for a preliminary check and, smelling marijuana coming from one unit, decided to schedule the inspection for a week later. Conveniently, the SMART program provided him with cover to have cops search all the units and seize evidence without a warrant.



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Weber writes: "For Crudele, having police officers accompany city inspectors during a SMART inspection ensures security in potentially volatile situations. 'It's a safety issue for us,' he said. 'We have limited policing capabilities. If part of the populace is doing something illegal — that creates a problem for me. They may not want to cooperate.'"

Northern California American Civil Liberties Union staff attorney Michael Risher told Weber that "there are really only three ways for state agents to legally enter a private residence — with consent, with a warrant, or in an emergency. The SMART inspection is a warrantless process. And considering the fact that a week passed between Crudele's first sniff of the wafting marijuana and the actual inspection, this doesn't qualify as an emergency either," Risher said.

Crudele, naturally, couches the whole thing in terms of public safety, bringing to mind yet again Benjamin Franklin's warning about trading liberty for security. "The ultimate goal of a SMART inspection is to bring a building into code for a better quality of living for everyone there," said Crudele. "It's not an attempt to impede any civil liberties or control anybody's life."

The inspection did uncover some serious fire hazards in the raided unit, according to Weber: "hundreds of extension cords, taped-open fuses, and a jerry-rigged greenhouse with a lot of fans and wood — a veritable fire-bomb waiting to happen, Crudele said."

Still, the fact that the inspections took place without tenants' consent and without a warrant seems to point to a deliberate attempt by Oakland officials to circumvent constitutional procedures.

The tenant whose loft was raided told Weber that "roughly \$3,000 worth of various concert memorabilia and housewares" had been destroyed during the SMART inspection and subsequent cleaning out of his apartment and that "as of late last week, he also was not certain whether he's being charged with anything or if there's a warrant out for his arrest."

SMART inspections are just one of innumerable attempts by officials at all levels of government to free themselves from "the chains of the Constitution," as Thomas Jefferson memorably put it. Tackling all these end runs around the law of the land and forcing government to obey the Constitution would be a really smart idea.



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