



Policy Title:	INTERNAL INSPECTION WARRANT POLICY FOR DRONE USE
Date Created/Revised:	October 24, 2024
Created By:	Marcus Beltramo, Code Enforcement Manager
Approved By:	Shannon Walker-Smith, Deputy Community Development Administrator

Purpose and Scope:

County of Lake Community Development Department (CDD) seeks to ensure that it sets and follows an internal policy for obtaining inspection warrants in connection with drone use pursuant to its Drone Policy.

This internal policy serves to provide guidance related to obtaining an inspection warrant prior to County drone use pursuant to its Drone Policy. This internal policy also serves to ensure that Fourth Amendment and privacy considerations are analyzed prior to County drone operations.

Fourth Amendment and Privacy Considerations:

The Fourth Amendment protects individuals from unreasonable searches and seizures, which generally means a search or seizure without consent, an emergency, or a warrant. An inspection by the County, its personnel or agents acting on behalf of, or at the direction of, the County, constitutes a search. Specifically, a search occurs when there is a reasonable expectation of privacy; a reasonable expectation of privacy is an objective belief that a particular place or area is not open to the public to view without consent from the owner, or person in possession or control of the place or area, if not the owner. Generally, there is a reasonable expectation of privacy when a violation exists on a privately owned property.

As such, all County personnel engaging in drone operations must protect private individuals' constitutional rights and reasonable expectations of privacy when conducting surveillance or collecting evidence for code enforcement use, including but not limited to, inspections and abatements. Operating personnel will be held accountable for ensuring that drone operations intrude to the minimal extent that is reasonable under the specific situation.

However, there are factors indicating that a reasonable expectation of privacy does not exist on a privately owned property, including when the observation is made in a non-physically intrusive manner, the vantage point is public navigable airspace, the drone technology is widely available for public use, and the surveillance does not intrude on intimate activities. As such, County personnel engaged in drone operations will make observations via drones in the least intrusive manner reasonably possible, from public



navigable airspace, using widely available drone technology, and avoiding intrusion on intimate activities unless consent or a warrant is obtained, or a legitimate emergency exists.

Regarding aerial surveillance into a private backyard from a public vantage point, the United States Supreme Court has ruled that there is no expectation of privacy from aerial surveillance from an aircraft in navigable spaces. However, the Supreme Court has yet to address aerial surveillance from drones specifically so application of this exception to drone use remains unclear. Although, if the County determines to apply these aerial principles to drone use, all operations are to comply with all FAA and Part 107 requirements to ensure that surveillance and evidence collection is obtained at the authorized altitude, in the least intrusive manner possible, and without the use of non-publicly available and generally used technology, for example, thermal imaging, extreme zoom and similar, unless consent or a warrant is obtained, or a legitimate emergency exists. County drone operations shall strictly adhere to these principles and personnel must obtain an inspection warrant if uncertainty arises.

Default Procedure:

All CDD personnel involved in CDD drone operations must obtain an inspection warrant prior to engaging in any drone operations absent an analysis and determination that Fourth Amendment protections do not apply, and an inspection warrant is not necessary.

Analysis and Determination – Relevant Factors:

To aid in the analysis and determination of whether Fourth Amendment protections apply, CDD personnel shall evaluate the following factors when proposing drone searches without first obtaining an inspection warrant. These factors collectively tend to indicate that Fourth Amendment protections do not apply given the proposed drone operation does not constitute a search because there is no reasonable expectation of privacy:

- The proposed location for drone operations is an open field, an area open to the public, or a vacant, accessible lot with no signs prohibiting access;
- The County is observing from a legal vantage point;
- The observations are made in a non-physically intrusive manner;
- The County is not using advanced, widely unavailable technology; and,
- The County's use does not intrude or receive data on intimate activities associated with the private use of property.

The more factors present the more likely the proposed drone operation does not constitute a search indicating that an inspection warrant is likely not required prior to operations. Given the uncertainty in the surrounding law, lack of bright line rules, and varied circumstances, these factors are subject to interpretation and should not be used as stringent rules but rather broad guidelines to aid in a comprehensive analysis and determination.



Amendments:

Every year, the CDD will review this policy and determine whether new laws or legal interpretations require modification. The CDD will amend accordingly.